

# DEPARTMENT OF VETERANS AFFAIRS



## ***AMENDMENT #1 TO REQUEST FOR PROPOSALS No. VA-101-11-RP-0094***

**BROCKTON AND BEDFORD VA MEDICAL CENTERS  
ENHANCED-USE LEASE DEVELOPMENT PROJECTS  
BROCKTON, MASSACHUSETTS and BEDFORD, MASSACHUSETTS**

**DATE AND TIME PROPOSALS DUE: OCTOBER 25, 2011 at 12:00 noon EDT**

**DISCLAIMER**  
**AMENDMENT #1**  
**REQUEST FOR PROPOSALS No. VA-101-11-RP-0094**  
**BROCKTON and BEDFORD VAMCS**  
**ENHANCED-USE LEASE DEVELOPMENT**  
**October 3, 2011**

**Amended Items:**

**1. SECTION 1.4:**

*Replace:* “By submitting a proposal, each Offeror accepts all of the terms and conditions set forth in this RFP, and its Attachments, including but not limited to the Bid Terms Agreement and the EUL Agreement (i.e., **Attachments D and E, respectively**). Any conflict (whether actual or perceived) between the terms of the Bid Terms Agreement, the EUL Agreement (collectively, the “**Transaction Agreements**”), this RFP, or provision there in shall be resolved at and in accordance with VA’s sole and absolute discretion, notwithstanding any provisions of the “Disclaimer” indicating otherwise, which is included and made part of this RFP, or any other document.”

*With:* “By submitting a proposal, each Offeror accepts all of the terms and conditions set forth in this RFP, and its Attachments, including but not limited to the Bid Terms Agreement (**Attachment D**). Any conflict (whether actual or perceived) between the terms of the Bid Terms Agreement, the EUL agreement (collectively, the “**Transaction Agreements**”), this RFP, or provision therein shall be resolved at and in accordance with VA’s sole and absolute discretion, notwithstanding any provisions of the “Disclaimer” indicating otherwise, which is included and made part of this RFP, or any other document.”

**2. SECTION 2.3.1 – TIMELINE:**

*Replace:* “VA anticipates awarding the EUL Sites described in Attachment B to selected Offeror(s) by October 31, 2011. Developers will be required to prepare a draft Development Plan (see Section 3 for details) for each EUL Site they are awarded within 21 calendar days of selection and a final draft for VA review and approval within 45 calendar days of selection. Upon the completion of the Development Plans and final approval by VA, and the completion of any other outstanding key milestones required under the EUL Statute (<http://www.va.gov/AssetManagement/docs/EulStatute.pdf>), VA will enter into EULs with the selected Offeror(s). VA anticipates executing an EUL for each site by December 31, 2011. The EUL Agreement will be in the form contained in Attachment E to this RFP, with such modifications as are deemed necessary and appropriate by VA at their sole and absolute discretion.”

*With:* “VA anticipates selecting the preferred developer(s) for the EUL sites described in Attachment B by October 31, 2011. The preferred developer(s) will be required to prepare a draft Development Plan (see Section 3 for details) for each EUL site they are awarded within 21 calendar days of selection and a final draft for VA review and approval within 45 calendar days of selection. Upon the completion of the Development Plans and final approval by VA, and the completion of any other outstanding key milestones required under the EUL Statute (<http://www.va.gov/AssetManagement/docs/EulStatute.pdf>), VA will enter into an initial EUL agreement with the Offeror(s) selected as the preferred developer(s). VA anticipates executing an initial EUL agreement for each site by December 31, 2011. The sample EUL agreement will be posted at the following website: [www.va.gov/assetmanagement/burr](http://www.va.gov/assetmanagement/burr).”

**3. SECTION 2.3.3 – NATIONAL ENVIRONMENTAL POLICY ACT AND OTHER ENVIRONMENTAL CONSIDERATIONS:**

*Replace:* “EULs and Projects will be subject to all applicable Federal, State, and local environmental laws, codes, ordinances, and regulations, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (“**CERCLA**”), 42 U.S.C. §§ 9601-9675; the Resource Conservation and Recovery Act (“**RCRA**”), 42 U.S.C. §§ 6901, et seq; and the National Environmental Policy Act (“**NEPA**”), 42 U.S.C. §§ 4321-4347. NEPA requires that Federal agencies, including VA, avoid adverse environmental impacts to the maximum extent practical when considering major Federal actions that could affect the quality of the human environment (e.g., an EUL). The NEPA analysis will be initiated upon VA’s selection of the Offeror(s). The Offeror(s) will be required to provide development-specific information to support the analysis. The NEPA documentation must be completed prior to execution of the EULs. Offeror(s) will be responsible for complying with mitigation requirements of the NEPA analysis. In addition, the Offeror(s) will be responsible for complying with regulatory requirements for the removal of any asbestos and/or lead-containing material. Information regarding how to obtain any available environmental information for the EUL Sites can be found in Attachment F. Other than the information referenced in Attachment F (if any), all required environmental studies, reports, site assessments, and any required or appropriate remediation or abatement, as well as compliance with all applicable environmental laws, will be the responsibility of the Offeror(s), unless and to the extent that VA otherwise agrees at its sole and absolute discretion.”

*With:* “EULs and Projects will be subject to all applicable Federal, State, and local environmental laws, codes, ordinances, and regulations, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (“**CERCLA**”), 42 U.S.C. §§ 9601-9675; the Resource Conservation and Recovery Act (“**RCRA**”), 42 U.S.C. §§ 6901, et seq; and the National Environmental Policy Act (“**NEPA**”), 42 U.S.C. §§ 4321-4347. NEPA requires

that Federal agencies, including VA, avoid adverse environmental impacts to the maximum extent practical when considering major Federal actions that could affect the quality of the human environment (e.g., an EUL). The NEPA analysis will be initiated upon VA's selection of the preferred developer(s). The preferred developer(s) will be required to provide development-specific information to support the analysis. The NEPA documentation must be completed prior to execution of the EULs. The preferred developer(s) will be responsible for complying with mitigation requirements of the NEPA analysis. In addition, the preferred developer(s) will be responsible for complying with regulatory requirements for the removal of any asbestos and/or lead-containing material. Information regarding how to obtain any available environmental information for the EUL sites can be found in Attachment E. Other than the information referenced in Attachment E (if any), all required environmental studies, reports, site assessments, and any required or appropriate remediation or abatement, as well as compliance with all applicable environmental laws, will be the responsibility of the preferred developer(s), unless and to the extent that VA otherwise agrees at its sole and absolute discretion."

**4. ATTACHMENT D – BID TERMS AGREEMENT, ITEM 8:**

*Replace:* "The Developer understands that time is of the essence to the VA in accomplishing the milestones set forth on the Agreed Milestone Timetable and in otherwise complying with the Developer's obligations under this Agreement. If the Developer fails in any material respect to meet in a timely manner any milestone contained in the Agreed Milestone Timetable or fails to execute and deliver any of the Transaction Documents as and within the timeframe required by the preceding paragraph or otherwise fails to comply with or breaches any provision of this Agreement, the VA will have the right to declare the Developer in default under this Agreement and, upon any such default, the VA shall have the right to (i) terminate the Developer's rights under this Agreement (and all further discussions with the Developer); (ii) in the VA's sole and absolute discretion, if it so chooses, make an award to another developer; and (iii) draw and retain as liquidated damages the full amount of the Initial Deposit letter of credit. In the event that the VA exercises its right to draw under the Initial Deposit letter of credit, the VA shall be entitled to retain, as its sole and exclusive remedy for the default, the entire Initial Deposit as fixed, agreed and liquidated damages, and not as a penalty, the Developer and the VA having agreed that actual damages that may be incurred by the VA in the event of such a default will be difficult or impossible to measure and that an amount equal to the Initial Deposit is a reasonable estimate of what those damages would be."

*With:* "The Developer understands that time is of the essence to VA in accomplishing the milestones set forth on the Agreed Milestone Timetable and in otherwise complying with the Developer's obligations under this Agreement. If the Developer fails in any material respect to meet in a timely manner any

milestone contained in the Agreed Milestone Timetable or fails to execute and deliver any of the Transaction Documents as and within the timeframe required by the preceding paragraph or otherwise fails to comply with or breaches any provision of this Agreement, VA will have the right to declare the Developer in default under this Agreement and, upon any such default, VA shall have the right to (i) terminate the Developer's rights under this Agreement (and all further discussions with the Developer); and (ii) in VA's sole and absolute discretion, if it so chooses, make an award to another developer."

**5. ATTACHMENT D – BID TERMS AGREEMENT ITEM 13 (d) (iv):**

*Replace:* "neither the Developer nor any of its partners, members, or stockholders is a person who poses a security or safety risk as determined by the Secretary of State including, but not limited to, any person who either represents a country, or is a member of or provides political, financial, or military support to a group, that is listed in the most current "Country Reports on Terrorism" report, issued by the Secretary of State in compliance with 22 U.S.C. § 2656f(a), available from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402 and also available at <http://www.mipt.org/pdf/Country-Reports-Terrorism-2004.pdf>;"

*With:* "neither the Developer nor any of its partners, members, or stockholders is a person who poses a security or safety risk as determined by the Secretary of State including, but not limited to, any person who either represents a country, or is a member of or provides political, financial, or military support to a group, that is listed in the most current "Country Reports on Terrorism" report, issued by the Secretary of State in compliance with 22 U.S.C. § 2656f(a), available from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402 and also available at: <http://www.state.gov/s/ct/rls/crt/2010/index.htm>;"