

**APPENDIX E-1**  
**SAMPLE BUSINESS POINTS MEMORANDUM (BPM)**

TO: (contact person), Developer

FROM: (contact person), United States of America, represented by the Secretary of the Air Force

RE: Systems Acquisition Management Support (SAMS) Complex at Los Angeles Air Force Base (LAAFB)

DATE: \_\_\_\_\_, 2002

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This Business Point Memorandum presents the current status of a work in progress. None of the terms and conditions described herein is intended to bind either party in any way. The memorandum is subject to the following:

1. SAF/IEI approval of this transaction; and
2. Final negotiation, preparation and execution of the Purchase and Sale Contract (the “Agreement”) by both parties;

Selected Offeror: (developer)

Parties to the Agreement: The Selected Offeror; and, the United States of America represented by the Secretary of the United States Air Force (the “Secretary”).

Purpose: The conveyance of a large portion of the LAAFB’s existing real property to Selected Offeror, in exchange for completion of SAMS Complex for the Air Force (the “Consideration”) on a portion of the LAAFB’s remaining property (or alternatively on property near the base), as described in solicitation for SAMS complex and Selected Offeror’s proposal.

Term: Construction period of the SAMS complex (plus the term of the possible building and/or ground lease).

Site: The existing properties of LAAFB, total approximately 113 acres, located in El Segundo, Hawthorne, and Sun Valley, California. The Air Force and the Selected Offeror will enter into the Agreement, with respect to the Area A, Lawndale Annex and Sun Valley sites and part of Area B (or alternatively on property near the base)

together with equipment and other personal property (the “Personal Property”), which will set forth the terms and conditions under which the Air Force will convey fee simple title to these LAAFB assets at settlement (to “Close” or the “Closing”).

In the Agreement, the property shall be conveyed by the Air Force in an “AS IS”, “WHERE IS” condition and subject to certain provisions related to environmental condition, existing restrictions, and easements. The property will be conveyed by the Air Force to the Selected Offeror by a quitclaim deed, subject to all existing restrictions and easements.

Conveyance:

Conveyance of the properties to the Selected Offeror shall be subject to documentation provided to the Air Force that the Selected Offeror is in compliance with the terms of construction financing and the provision of evidence reasonably acceptable to the Air Force that the Selected Offeror has sufficient financing (debt and equity) to complete those portions of the SAMS Complex, which may remain to be completed after the deed conveyance of the property by the Air Force.

The Selected Offeror shall be responsible for obtaining all federal, state and local permits, licenses and other approvals required for construction and operation of the SAMS Complex. The Selected Offeror shall obtain all permits necessary for the commencement of construction and shall commence construction by \_\_\_\_\_, 2002.

Building Lease:

Upon the execution of the Agreement, the Air Force may initiate a building lease for a portion of Area B with the Selected Offeror, if necessary. Upon expiration of the Lease, title to the leased improvements shall vest with the Air Force.

Ground Lease:

Pending the conveyance of the property in accordance with terms and conditions of the Agreement, the Secretary and the Developer may enter into a Ground Lease for all or for certain portions of the property. The Ground Lease shall be for a specified term of years, and in accordance with the other terms and conditions specified in said Lease. The Ground Lease may be terminated with respect to any portion of the property upon the conveyance of such portion to the Selected Offeror. Upon expiration of the Lease, title to the leased Land shall vest with the Air Force

Design/Build Contract:

The Selected Offeror shall design and construct all site improvements, government office space and associated improvements together comprising the SAMS Complex in accordance with the

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terms of the solicitation, the Selected Offeror's proposal and the Agreement. A substantially complete form of the Design/Build Contract, including the date construction will commence and the length of the construction period shall be attached as an exhibit to the Agreement.

- Design/Construction Agent** The Air Force will monitor the site development work and all construction of the SAMS complex and associated improvements; approve the payment of construction draws; and confirm acceptance of the SAMS Complex upon completion. Prior to commencement of site development and construction of the SAMS Complex, the Resident Architect shall confirm in writing that the plans and specifications provide for the construction of the SAMS Complex in conformance with the requirements of the Design/Build Contract and that the SAMS Complex can be constructed as set forth in the Design/Build Contract.
- Financing:** The Selected Offeror shall arrange for the private funding of the SAMS Complex; such funding may include construction permanent first mortgage debt and developer provided cash equity in amounts required to complete the funding of the SAMS Complex. The exact amount and timing of any differential lease payments will be determined during the period of exclusive negotiations.
- If the Selected Offeror secures construction/permanent first mortgage debt financing for the SAMS Complex, such financing shall be secured at the best terms available at the time the Agreement is executed, subject to the approval of the Air Force.
- Proof of Equity:** Within ten (10) days of the effective date of this BPM, the Selected Offeror shall provide proof of equity including, but not limited to amount and form of equity, location and number of account, financial institution and name of contact at the financial institution. For equity other than cash, describe the type, condition and location of the equity and the form of legal instruments necessary to transfer ownership of the equity to the SAMS Complex. Also describe how the value of the equity will be determined.
- The Selected Offeror's Failure to Close:** In the event the Selected Offeror determines that it is unable to close on all or part of the Property and notifies the Air Force in writing of such inability, the Air Force shall be entitled to terminate this Agreement, in which event the Selected Offeror shall forfeit all consideration made to the Air Force and/or improvements made by the Selected Offeror on any Property that has been conveyed to the Selected Offeror, and such payments and improvements shall be retained by the Air Force. In addition, title to any

property transferred shall return to the Air Force. Relative to the foregoing, the parties recognize that the Air Force will incur expense in connection with the transaction contemplated by this Agreement and that it is extremely difficult and impractical to ascertain the extent of the detriment to the Air Force caused by such breach by the Selected Offeror under this Agreement and the failure of the consummation of the transaction contemplated hereby or the amount of consideration the Air Force should receive as a result of such breach or default.

Upon the occurrence of any default by the Developer, the Secretary may terminate this Contract, without any cost or liability; provided, however, that the Secretary shall provide the Developer with at least sixty (60) days prior written notice of any such termination. The Secretary shall also be entitled to pursue any and all remedies available at law and/or in equity.

- Security Deposit: Within ten (10) days of the effective date of this BPM, the Selected Offeror shall provide a cash security deposit in the amount of \$250,000. This amount shall be held by an Escrow Agent in accordance with Appendix E-2, Exhibit J of the Agreement.
- Transition Conference: The Selected Offeror shall attend a transition conference once the security deposit is made. The purpose of the conference is to identify all tasks and documents that must be completed prior to closing, and to define an Air Force/Selected Offeror transition plan which addresses, but is not limited to, security, mobility, utility, facility operations, and maintenance and management requirements.
- Inspection Period: For a period of 60 days following the effective date of this BPM, the Selected Offeror and its authorized agents and representatives shall be authorized to enter upon the Property at all reasonable times during normal business hours to conduct inspections and tests to determine the suitability of the property for commercial development (the "Inspection Period"). The Selected Offeror shall bear the costs of all inspections and tests. The Selected Offeror and its agents or representatives shall (a) not unreasonably disturb the Property; (b) not damage any part of the Property or any part of the Property or any personal property owned or held by Air Force; (c) not injure or otherwise cause bodily harm to Air Force agents, contractors and employees; (d) maintain general liability insurance in terms and amounts to cover any accident arising in connection with the presence of the Selected Offeror, its agents and representatives on the Property; (e) restore the surface of the land to the condition it was found before any such inspections were under-

taken; and (f) conduct its work at all times in strict compliance with security procedures on the base.

The Selected Offeror indemnifies and holds the Air Force harmless from any and all liens and expenses arising out of the Selected Offeror's tests or studies during the Inspection Period.

Title:

Title to the Property shall be evidenced by an ALTA Extended Coverage Form B (latest edition) owner's policy or policies of title insurance issued by Associated Title Company (referred to herein either singularly or collectively as the ("Title Policy")), including such endorsements as the Selected Offeror may reasonably require, with liability in the full amount of the Consideration insuring good and marketable fee simple title to the Property as vested in the Selected Offeror pursuant to the Deed(s), to be free and clear of all covenants, conditions, rights, rights-of-way, "easements, liens, encumbrances or any other matters affecting title to or use of the Property, except (a) the "Air Force Exceptions", as set forth in those certain Covenants, Conditions and Restrictions imposed by the Air Force with respect to certain environmental matters and (b) such other matters affecting the title to or use of the Property as may be agreed to by the Parties (the "Approved Exceptions"). The Title Policy shall be issued at the Closing, as defined below with all general exceptions deleted and subject only to the Air Force Exceptions and the Approved Exceptions.

Within 30 days of the effective date of this BPM, the Selected Offeror shall cause the title company to issue a commitment for an owner's title insurance policy in the full amount of the Consideration.

Survey:

Prior to Closing, the Air Force shall furnish to the Selected Offeror, in triplicate, a survey of the Property, including: (i) the outer boundaries of the Property, and (ii) The Title Policy.

The Selected Offeror shall pay:

- (1) Any escrow agent's fee;
- (2) All other costs incurred by it in the satisfaction of its obligations under this Agreement;
- (3) The cost of the Title Policy; and
- (4) Recording costs.

The Air Force shall pay:

- (1) The cost of relocating its communications equipment (if necessary)

(2) All other costs incurred by it in the satisfaction of its obligations under this BPM; and

(3) The costs of moving its equipment and personnel (if necessary)

Air Force Approval: The Air Force shall have the standard approval rights for actions of the Selected Offeror, including the right to approve the following:

- (i) Incurrence of additional debt by the SAMS Complex
- (ii) Assignments
- (iii) Conveyance of Project ownership

Statutory Requirements: Compliance with the following federal statutes is required:

- 18 USC 874 and 40 USC 276c Copeland Act
- 41 USC 423 Procurement Integrity
- 31 USC 1352 Payments to Influence Certain Transactions
- 41 USC 327 et seq. Contract Work Hour and Safety Requirements Act
- 40 USC 276a et seq. Davis Bacon Act
- 41 USC 10b Buy American Act – Construction
- 41 USC 601 et seq. Contract Disputes Act
- 10 USC 2692 Storage and Disposal of Toxic and Hazardous Material

This memorandum accurately describes the current understanding of the parties with regard to the SAMS Complex as of the date first mentioned.

This document may be executed and delivered by facsimile transmission and in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

United States Air Force

Selected Offeror

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_