

## *Seminar on Alternative Lease Construction Methods*

On 4 December, 2008, the Naval Heritage Center on Pennsylvania Avenue was the scene of an active engagement. This one did not involve the navy, however; it was all about ideas. Government Leasing News, together with AMV, LLC, sponsored a seminar on Alternative Lease Construction Methods. AMV assembled a team of investment bankers, lawyers, developers and public procurement experts and presented a variety of new methods for doing lease construction projects to a wide range of Federal agency real estate professionals. A preview of the seminar has appeared in a series of articles appearing in GLN throughout 2008.

In recent years, Federal agencies have had to rely increasingly on lease construction methods to meet their space requirements. "Lease construction" is a term somewhat unique to government that means a privately financed leased

standards. Add to that the destabilized credit markets and it's the perfect storm. And all that combined with the intrinsic difficulties of the procurement system currently employed by GSA has re-



**Pat Keogh of AMV, LLC**

sulted in the government's lease construction efforts having ground to a halt.

AMV has assembled a team of firms to bring a more commercial approach to the Federal lease construction market. Current estimates of the backlog in lease construction projects are in the \$4 to \$5 billion range. AMV outlined a public-private partnering alternative to the current conventional contracting approaches. Patrick J. Keogh, the President of AMV, argued that more conventional Federal contracting practices tended to promote an adversarial environment. This is compounded by the extraordinarily high pursuit costs required by the current procurement process. Tom Regan of the Herndon Virginia development firm, Regan Associates LLC, said offerors on GSA's lease construction projects routinely expend between \$500,000 to \$1 million or more in their attempt to win a deal.

Keogh and Regan were joined in the day-long series of presentations and panel discussions by David Miller of the law offices of Pillsbury Winthrop

Shaw Pittman LLP. Also on the panel were Tom Zarrilli and Paul Penney of the New York City-based investment banking firm of CTL Capital, LLC. Panelists recommended to the government attendees that the current package system of procurement be replaced with a process for disaggregating the components of a major development project. At a minimum, they advocated the disaggregation of the financing which comprises the single largest component of project cost. Tom Zarrilli said that requiring the developer to provide the financing saddled the contractor with a cost that was mostly under the control of the government tenant. Zarrilli further indicated that existing lease construction solicitations could easily be amended to provide the government with the right to arrange separate financing.

Tom Zarrilli's presentation was particularly interesting to seminar atten-



**Tom Regan of Regan Associates, LLC**

build-to-suit project. The cost of the ongoing war on terrorism has diminished the funds available for the capital building assets required by Federal agencies. This comes at a time when the cost of public buildings is otherwise increasing as a result of the added emphasis on security and green building



**Tom Zarrilli of CTL Capital, LLC**

dees in light of the significant market changes experienced in recent months. He demonstrated graphically the interrelationship of financing rates, development costs, and real property market valuations in explaining the recent rash of failed procurements. Zarrilli made

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some particularly interesting points on the budgetary scoring rules and how they are influenced by other market factors such as capitalization rates.

David Miller of Pillsbury Winthrop gave a fascinating presentation of the role of public-private partnerships in federal contracting, emphasizing the cooperative nature of the PPP approach vs. the often adversarial nature of conventional contracting.

The panel's key recommendation was that GSA employ a more total disaggregation approach to its lease construction procurements. This approach would be patterned on the procurement structure employed by the \$300 million Archives II project in College Park, MD. Most recently, this approach was employed for the \$250 million National Institutes of Health Research Center on the east Baltimore Bayview campus of Johns Hopkins. Members of the AMV team advised NIH on the Bayview deal. Tom



**David Miller of Pillsbury Winthrop Shaw Pittman LLP**

Regan's presentation presented data to show that the disaggregated procurement structure most closely parallels the best practices currently in use among major corporate credit tenants.

Dr. Dennis Eisen the founder, owner

and editor of Government Leasing News announced the establishment of the Virgil W. Ostrander Award for innovation in lease procurement. The in-



**Rear Admiral Richard Buchanan, USN (ret.), President and CEO of the Navy Memorial**

spiration for the "Virgil" award comes from Section 1.102(d) of the Federal Acquisition Regulations. That section encourages all members of the acquisition team, including private sector contractors, to exercise innovation in finding better, less costly ways to conduct the government's business. As Dr. Eisen told the audience, Mr. Ostrander worked his way up from management intern to become the Assistant Commissioner for Procurement in GSA's Public Buildings Service. He was then detailed to fill a similar position at the Resolution Trust Corporation (see elsewhere in this issue for a discussion of the enormous success of the RTC), and then returned to GSA as director of the Office of Public Utilities. Eisen quoted Ostrander, who attended the seminar, as being remembered for saying that "deal" should not be a four letter word in government procurement."

Seminar attendees were given a presentation at lunch on the redevelopment of Pennsylvania Avenue by Tom

Regan, the former head of the Pennsylvania Avenue Development Corporation. Rear Admiral Richard A. Buchanan, USN (ret.), who serves as President and CEO of the Navy Memorial delighted the crowd with a talk on the importance of our Navy in America's defense and global business activities. The Admiral shared many of the traditions and Navy values incorporated into the Navy Memorial.

In concluding the panel's presentations, Keogh mentioned that AMV has a GSA multiple award schedule contract which covers all the professional services provided by panel member firms in representing government agencies on build-to-suit deals. A GSA schedule contract is a master contract that can be used by any Federal agency and some local governments as well to procure services at prearranged rates and terms. The AMV schedule contract was the vehicle used by NIH to access the various firms' services in completing the



**Paul Penney of CTL Capital, LLC**

Bayview transaction.

For those of you who were not able to attend the seminar, do not despair. You can order a copy of the slides and plan to attend the next session in the series. See the next page for details.