

POLICY and PROCEDURE
of the
STATE BUILDING COMMISSION
of
TENNESSEE

7.01 PROCUREMENT OF LEASES WHERE THE STATE IS LESSEE

- A. Approval of the Commission. These policies and procedures are intended to clarify the requirements of TCA §§ 12-2-114 and 12-2-115. All leases (i) where the rent due to the lessor under the lease is in excess of \$150,000 per year or (ii) where the term of the lease, including all renewal and extension options contemplated in the lease, is greater than 5 years, must be approved by the Commission prior to execution by the State. As used in (i) above, the term "rent" includes all sums paid to the landlord in accordance with the terms of the lease connected to the State's occupancy of the space, such as utilities, janitorial expenses, operating or management expenses and the like, but does not include the cost of any tenant build-out or construction work in the space requested by State.
- B. General Requirements. The lease procurement process shall be objective, impartial, transparent, and consistent in its application. All leases must be procured in compliance with the policies and procedures of the Commission, the Office of the State Architect, and the applicable state procurement agency ("SPA"). The SPAs are the Department of General Services, Real Estate Asset Management; the University of Tennessee, Office of Capital Projects; and the Tennessee Board of Regents, Department of Facilities Development. Any exception from the requirements of this Item 7.01 must be requested in writing by the Head of the applicable SPA and approved by the Commission.
1. Prior to engaging in any activities to lease space for any state agency, department or institution of higher education of the State (each an "Entity"), the applicable SPA shall prepare a general statement of such Entity's space needs.
 2. Lease procurement documents shall be drafted in such a manner as to maximize competition and allow the State to make better informed decisions on leasing matters.
 3. Each SPA shall procure leases using a form of request for proposal (including pro forma lease) that has been previously approved by the Commission unless advertisement is not required (See Section 7.01E).
 4. No individual, company, or other entity involved in the evaluation or negotiation of proposals should have a financial interest or have the appearance of a conflict of interest unless disclosed and addressed in accordance with SBC Policy Item 12. A written conflict of interest disclosure documenting the independence of each person involved must be completed and retained as part of the procurement file.
 5. All proposals to lease space to the State must contain the name(s) of any persons who are contemplated to become financially interested in the lease and shall be displayed in such manner as to make them readily available and accessible for public examination.
 6. Leases may be negotiated if negotiation is determined in writing by the Head of the SPA to be (a) in the best interest of the State or (b) necessary to ensure consistent evaluation of lease proposals. All negotiations shall be conducted in accordance with a lease negotiation policy approved by the Executive Sub Committee.

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7. All documents associated with a lease procurement shall be confidential from initiation of the lease process until a Notice of Intent to Award is issued to all proposers. At such time as a Notice of Intent to Award is issued, all proposals, analyses, and other records and documentation of the procurement shall become public information.
 8. A Notice of Intent to Award shall be issued and all proposals, analyses, and other records and documentation of the procurement shall become public information not less than ten (10) days prior to the meeting of the Commission or the Executive Sub Committee at which approval of the lease will be sought.
- C. Additional Higher Education Requirements. All leases with annual rents in excess of \$150,000 or with terms greater than five (5) years procured by a Higher Education SPA must be submitted to the Tennessee Higher Education Commission for review, analysis, and approval, prior to the issuance of any advertisement of space needs. The review and analysis of the lease request by the Tennessee Higher Education Commission may include, but shall not be limited to, the gathering of comments from various parties regarding the lease action request; the funding implications, and the appropriateness of the lease action request in lieu of a building construction request through the annual capital budget process.
- D. Advertising Requirement. Unless one of the exceptions set forth in Section E is satisfied, the applicable SPA must advertise, at least two (2) weeks prior to the date the proposals are opened and at the cost of the Entity requesting the space, the Entity's space needs prepared in accordance with Section B: (i) on the website of the SPA procuring the lease; (ii) in a newspaper of general circulation in the city(s) and/or county(s) where the space is needed on at least one (1) occasion and at least two (2) weeks before proposals are opened; and (iii) via at least one (1) of the following additional methods:
1. A public notice, conspicuously posted, in some part of the courthouse or central government building of that particular county;
 2. A news release distributed to daily and weekly newspapers and broadcast stations in that particular county; or
 3. An email blast or other written communication to (i) the members of the legislature, mayors, county executives of the county(s) in which space is sought and (ii) all persons currently leasing property to the SPA conducting the procurement or who have expressed an interest in leasing property to the applicable SPA in writing in the past twelve (12) months.
- The advertisement shall describe the location, square footage, term of the lease, and other general information regarding the space needed by the State and shall include the name and contact information for State employee responsible for coordinating the lease procurement, together with the web address where a copy of the lease procurement documents and other pertinent information can be found.
- E. Exceptions to Advertising Requirement. Advertisement shall not be required if one of the following exceptions is satisfied:
1. The annual rental will be less than fifty thousand dollars (\$50,000);
 2. The property to be leased is owned or otherwise controlled by a State agency; city, county or other political subdivision of the State; or the federal government;
 3. The space required by the entity has special and unique requirements as determined by the Commission;
 4. The term of the lease will be one (1) year or less, although if Commission approval is needed the requirements of Section G must be satisfied.

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F. Special and Unique Space.

1. Space meeting the following needs has been determined by the Commission to be "special and unique":
 - a. The space to be leased (i) has characteristics, such as location, size or quality, which can only be satisfied by one landowner, as determined by a reasonable survey of the real estate market, and (ii) will have an annual rent of less than \$50,000.
 - b. The space to be leased (i) will be let for less than 30 days; (ii) will have a total cost of \$50,000 or less; and (iii) is for an auditorium, hearing room, conference or related space.

If a lease is procured under this Section F, the file must include documentation of the special and unique nature of the need and space; the efforts of the SPA to obtain a fair rental rate for the space; that there is no State owned space that will meet the need; and the approval of this special and unique nature of the space and proposed procurement method by the Chief Financial Officer of the University of Tennessee, the Chancellor of the Board of Regents, or the Commissioner of the Department of General Services, as applicable.

2. The Commission may determine that other space needs have special and unique requirements on a case by case basis upon receipt of a written justification signed by the head of the Entity for whom the space is sought and the Head of the SPA conducting the procurement prior to the commencement of any discussions regarding a lease of space with the potential lessor. Said written justification will include documentation of the special and unique nature of the need and space; the efforts of the SPA to obtain a fair rental rate for the space; and any other matters requested by the Commission.

G. Leases with Terms of One (1) Year or Less. Leases requiring Commission approval that were not advertised because the term of the lease will be for one (1) year or less, will be approved by the Commission upon receipt of a written justification from the head of the Entity and the Head of the SPA that such a short term lease is in the best interest of the State because:

1. The Entity only has need for space for one (1) year or less at which time the Entity's needs will either terminate or be fulfilled through State-owned space; or
2. An unforeseen situation has arisen making it impractical to advertise.

If a lease is procured under this subsection, the file must include documentation of the efforts of the SPA to obtain a fair rental rate for the space and to gain multiple proposals to lease space to the State.

H. Termination For Convenience of the State. All leases shall be terminable for convenience by the State on not more than 120 days written notice, unless approved by the Commission. Any request to deviate from the requirement of the preceding sentence shall be submitted in writing by the Head of the SPA making such request to the Commission together with a justification supporting such request for a deviation. For leases with terms of (i) less than 1 year, including renewal and extension options, or (ii) 5 years or less with a total annual rental amount of less than \$150,000, the authority to approve such a request for a deviation from the 120 day requirement is delegated to the Chief Financial Officer of the University of Tennessee, the Chancellor of the Board of Regents, or the Commissioner of the Department of General Services, as applicable.

I. Lease Evaluation. In evaluating lease proposals the SPA may take into account not only the rent offered but the type of space, the location, its suitability for the purpose, services offered by the

lessor, moving costs, and all other relevant factors. In the event that an SPA, in the evaluation of a lease proposal, intends to utilize (i) a “net present value” approach or (ii) standard cost estimates, the discount rate or standard cost estimates used by the SPA shall be those posted on the website of the Office of the State Architect at the time the proposal is evaluated. An SPA may use other estimated cost factors in evaluating a lease proposal so long the lease procurement documents reflect that estimated cost factors may be used and how such estimated cost factors will be established. The SPA shall propose that the State enter into a lease with the proposer offering the proposal with the lowest total cost unless a statement of justification from the Head of the SPA supporting award to a different proposer has been submitted to and approved by the Commission prior to entering into the lease. For leases with terms of (i) less than 1 year, including renewal and extension options, or (ii) 5 years or less with a total annual rental amount of less than \$150,000, the authority to approve such a proposal is delegated to the Chief Financial Officer of the University of Tennessee, the Chancellor of the Board of Regents, or the Commissioner of the Department of General Services, as applicable.

J. Signatures Required. Leases shall be executed on behalf of the State as follows:

1. By the Attorney General and Reporter if the lease has a term, including all renewal and extension options, of more than 5 years or a rental amount due to the lessor of more than \$150,000 per year, in compliance with TCA § 12-2-115.
2. By the Commissioner of the Department of General Services if procured by STREAM.
3. By the Chancellor of the Tennessee Board of Regents if procured by TBR.
4. By the Chief Financial Officer of the University of Tennessee if procured by UT.

7.02 LEASE AMENDMENTS WHERE THE STATE IS LESSEE

- A. Approval by Commission. Amendments to leases originally submitted to and recommended by the Commission shall receive Commission approval prior to execution of such amendments. Further, any amendment to a lease which was not submitted and approved by the Commission because the term was less than five years or the annual rent due to the lessor was less than \$150,000, but due to the amendment or the aggregate effect of amendments now exceed those limits, shall be submitted to the Commission for approval prior to the execution of the lease amendment.
- B. Advertising Requirement. Advertising meeting the requirements of Section 7.01D above shall be required for all lease amendments unless one of the requirements set forth below is satisfied:
1. The amendment is for the sole purpose of exercising a lease renewal or extension pursuant to the terms of the lease.
 2. The amendment is for the sole purpose of extending the term of the lease by one (1) year or less beyond the expiration date of the lease so as to allow for additional time needed for the procurement of a new lease to meet the space need; to allow the user time to transfer the occupants or purpose to an alternative location; or to allow the user to wind up its operations for which the space was leased.
 3. Advertisement has been waived by the Commission.

7.03 CERTIFICATION OF FUNDS WHERE THE STATE IS LESSEE

- A. Pursuant to TCA § 12-2-115(d), certification of funds under TCA § 9-4-5113 shall not be required for leases of space, so long as funds are certified in accordance with the process set forth below.
1. General Government Requirements. The requirements below shall be followed to satisfy the requirement for a certification of funds for leases that will replace expiring leases and for new leases, as applicable. In all cases, promptly after executing a new

lease, STREAM shall provide to the Finance and Administration Budget Office a statement with the term of the new lease; the total amount due each year during the term to the lessor under the terms of the lease; and the estimated total of all other utility, janitorial or other costs that are the responsibility of the State under the terms of the lease.

- a. Expiring Leases. In August of each year, a list of existing leases which will expire during the next fiscal year for needs requiring the procurement of new leases shall be provided to the Finance and Administration Budget Office with sufficient information for them to identify the current rental cost, allotment code, and cost center of each expiring lease, as well as STREAM's estimate of the rental cost of a new lease to meet the continuing need. The Finance and Administration Budget Office will return the list to STREAM with a certification that funds will be available for new leases to meet the needs of the expiring leases, with any exceptions on the list clearly noted. New lease may then be procured to meet the space needs satisfied by the expiring leases in accordance with this policy. If, however, the new lease requires rental payments in excess of those estimated by STREAM, the Finance and Administration Budget Office must certify the availability of funds prior to execution of the lease.
 - b. New Leases. For leases that will satisfy new space needs, STREAM must obtain a certification of funds from the Finance and Administration Budget Office for the estimated rental amount prior to advertisement or negotiation of a lease. If the new lease requires rental payments in excess of those estimated by STREAM, the Finance and Administration Budget Office must certify the availability of funds prior to execution of the lease.
2. Higher Education Requirements. The requirements below shall be followed to satisfy the requirement for a certification of funds for leases that will replace expiring leases and for new leases, as applicable.
 - a. Expiring Leases. In August of each year, a list of existing leases which will expire during the next fiscal year for needs requiring the procurement of new leases shall be provided to the Business and Finance office of the University of Tennessee or Tennessee Board of Regents, as applicable (the "Business and Finance Office"), with sufficient information for them to identify the current rental cost, allotment code, and cost center of each expiring lease, as well as the requesting party's estimate of the rental cost of a new lease to meet the continuing need. The Business and Finance Office will return the list to requesting party with a certification that funds will be available for new leases to meet the needs of the expiring leases, with any exceptions on the list clearly noted. New lease may then be procured to meet the space needs satisfied by the expiring leases in accordance with this policy. If, however, the new lease requires rental payments in excess of those estimated by the requesting party, the Business and Finance Office must certify the availability of funds prior to execution of the lease.
 - b. New Leases. For leases that will satisfy new space needs, the leasing party must obtain a certification of funds from the Business and Finance Office for the estimated rental amount prior to advertisement or negotiation of a lease. If the new lease requires rental payments in excess of those estimated by the leasing party, the Business and Finance Office must certify the availability of funds prior to execution of the lease.

7.04 REPORTING OF LEASES WHERE THE STATE IS LESSEE

- A. Reporting of Leases. On a quarterly basis, each SPA must provide the information required by TCA § 12-2-115 and any other information requested by the Commission for all leases entered into by that SPA, so that information on all leases to which the State is a party are posted on the website of the Office of the State Architect whether approved by the Commission or not.

7.05 DISPOSAL OF INTEREST IN LAND BY LEASING OF SURPLUS STATE REAL PROPERTY FOR CROP LEASE

- A. In accordance with TCA 12-2-112(d) the Tennessee Wildlife Resources Agency is responsible for leasing of surplus State real property for crop leases, as well as being responsible for the administration of all crop leases and such leasing and administration shall be pursuant to forms reviewed and approved by the State Building Commission. Such crop lease forms shall include, at a minimum:
1. The procedure through which property is selected for participation in the crop lease program;
 2. The procedure through which crop leases are procured, including how the invitation to bid is prepared; how potential bidders are notified; and information on bidding and bid opening requirements;
 3. The approval procedure for the form of crop lease and any required terms and conditions of such form of crop lease, including, but not limited to, durations of not more than five (5) years, liability insurance, security for rental payment for revenue leases; and
 4. A list of documentation that must be maintained in the central office of Tennessee Wildlife Resources Agency for each lease.
- B. The Tennessee Wildlife Resources Agency is required to provide an annual report of crop leases entered into for the previous calendar year no later than May 31 of the following year. Said annual report shall include a statement as to compliance with the procedures of the State Building Commission, with any deviations noted, and the following information for each new and existing lease: name of lessee, acreage of land leased, county in which leased land is located, acreage of crops left in the field or cash rent due (with any offsets), statement of whether advertisement was required or waived. If there have been any deviations from full compliance with the procedures of the State Building Commission, said annual report shall include a disclosure of such deviations and information as to actions taken to address such deviations.