



Real Estate Asset
Management (STREAM)

STREAM Leasing Communications and Negotiations Policy and Procedure

**Real Estate Asset Management
Lease Communications and Negotiations Policy & Procedure**

Effective: Upon approval of the State Building Commission dated _____

Prepared by: Real Estate Asset Management, Tennessee Department of General Services ("STREAM")

Purpose

With respect to leases of real property, this document establishes the policy and procedure (the "Policy") for communicating and negotiating with Proposers during the procurement and amendment process that is fair, equitable, and maximizes competition in accordance with Tennessee Code Annotated and SBC Policy and Procedures.

Scope

This Policy applies to all new lease procurements and lease amendments conducted by STREAM.

Definitions

For purposes of this Policy, capitalized terms shall have the meanings described below:

"Broker" means the person or entity engaged by contract with the State and pursuant specific directions of the STREAM Director of Leasing to (i) assist with an initial stage of the leasing process; (ii) assist the State with solicitation and analysis of lease procurements and proposals; and/or (iii) to engage in Negotiations with Proposers at the direction of the State.

"Leasing Agent" means the State employee assigned to (i) assist with an initial stage of the leasing process; (ii) assist the State with solicitation and analysis of lease procurements and proposals; and/or (iii) to engage in Negotiations with Proposers.

"Lowest Cost Proposer" means the Proposer whose proposal offers the least expensive total cost to the State based on the net present value of all anticipated expenses to the State from the commencement of the lease until the expiration of the term. The total cost will include base rent, the costs of moving from the existing location to the proposed location, estimates of additional rent such as pass through of operating expenses or separately metered utilities, costs associated with any landlord services not included in the base rent, costs associated with delayed occupancy, costs associated with any improvements to be made to the proposed premises at the cost of the State, costs associated with renovating in place, costs associated with deviations from the specifications requested by the State, and any other cost factors properly and reasonably allocable to the proposed lease. In calculating the net present value, the "Discount Rate" found on the OSA website pursuant to SBC Policy 7.01.I. applicable to the proposed term will be used.

"LPR" means the lease proposal request form issued by the State to elicit proposals from Proposers summarizing the terms and conditions upon which the State would like to lease space.

"Market Survey" means an analysis of existing and available real properties, including their features and amenities, that might be available for lease to the State based on the space needs outlined in the SPG. A Market Survey will typically include, where possible, a description of the features and amenities of each property surveyed, as well as the rental rates and other economic terms on which a lease may be based, and an analysis of the market forces in the area which could have an impact on such economic terms. The Market Survey should be as inclusive as possible, covering as many properties as possible, as

a type of property that may be options to meet the State's needs.

"Negotiations" means all communications, verbal or written, between the Leasing Agent or Broker and the Proposer and/or authorized representative of the Proposer, regarding an advertised Lease Procurement Request and/or the terms and conditions of a proposed lease with the State. Negotiations are not binding on the State.

"Proposal Evaluation" means an analysis of all proposals to determine the Lowest Cost Proposer, which also includes information about the features and amenities of each proposal and the risk to the State posed by the terms of each proposal. The result of a Proposal Evaluation will be a ranking of the proposals with the Lowest Cost Proposer at the top of the list.

"Proposer" means a legal entity that has properly provided a proposal in response to an LPR as required by the State.

"Responsible" means, with respect to a Proposer, a person or entity that has the capacity in all material respects to perform fully the requirements outlined in the lease, and the integrity and reliability that will assure good faith performance.

"Responsive" means, with respect to a Proposer, a person or entity that has submitted a proposal, which conforms in all material respects to the terms outlined in the LPR.

"SBC" means the State Building Commission or the Executive Subcommittee of the State Building Commission, as applicable.

"SPG" means the statement of procurement goal prepared by the State summarizing the space needs of the User Agency for which a lease will be sought.

"State" means the State of Tennessee and its agencies, boards, institutions, and commissions that are supported by the authority granted to STREAM to centrally manage leases.

"User Agency" means the entity of the State for which a new lease or lease amendment will be sought.

Negotiation Process for New Leases

All parties involved in Negotiations and in the performance or administration of procurements and leases for STREAM shall act in good faith. All individuals involved with the lease procurement process, including, without limitation, Market Surveys, Proposal Evaluations, Negotiations, and recommendations for award, shall complete a disclosure of conflicts of interest and statement of understanding of non-disclosure of information during the procurement process and until the procurement file is open for public inspection. All Negotiations shall be conducted in a manner that supports equity in proposal improvement, and all Proposers shall be given equitable treatment.

There shall be no disclosure of the identities of Proposers or proposal contents, or no public comment by any State employees or contractors involved in the lease procurement process that would be averse to the procurement or the Proposers, until after the intent to award notice is issued. In conducting Negotiations with a Proposer, the Leasing Agent or Broker may use information derived from a Market Survey and/or proposals submitted by competing Proposers, only if the identity of the Proposer providing the information is not disclosed to others.

The LPR shall state whether a Leasing Agent or Broker will be involved in the Proposal Evaluation and any Negotiations with Proposers. The LPR (and its attachments) shall provide the procurement and negotiation objectives. All Negotiations with Proposers shall be conducted in a transparent and documented manner that is calculated to most nearly achieve or surpass the terms outlined in the LPR and on terms and conditions most advantageous to the State.

The LPR and other materials provided directly to the Proposers or available for Proposer review on the STREAM website shall clearly provide that neither the Leasing Agent nor a Broker has the lawfully delegated ability to commit the State to any lease terms or conditions during Negotiations, and only following review and approval by all appropriate State officials and the SBC, if necessary, shall the lease terms become binding upon execution of the documents by the State officials.

Negotiations shall be conducted with all Responsive and Responsible Proposers by the Leasing Agent or Broker, as applicable, until such individual determines that it has obtained each Proposer's best offer. Such Negotiations may include the suggestion in writing of alternative terms or costs to the Proposers. Negotiations include email or other written correspondence documenting a verbal conversation where the email or other correspondence is sent promptly after the verbal conversation. During Negotiations of economic terms, Proposers are not obligated to meet or beat suggested terms.

At the conclusion of Negotiations, the Leasing Agent or Broker, as applicable, will rank the proposals with the Lowest Cost Proposer at the top of the list.

Documentation of the Negotiations shall include, at a minimum, the following documents:

- A log of the dates and times of each material, verbal communication with a Proposer, including the identity and contact information of the Proposer and/or its authorized representative, and a description of the nature or reason for all material communications with each Proposer, and a summary of such communication.
- A copy of all written communications, including electronic communications, with each Proposer.
- A copy of every form of proposal received from a Proposer during the lease procurement.
- A copy of every justification for a determination made by the State not to pursue a proposal; and
- A copy of all conflict-of-interest forms and non-disclosure forms.

The STREAM Director of Leasing shall issue to all Proposers a notice of intent to award the lease to the selected Proposer.

The procurement file shall be open for public inspection after issuance of the notice of intent to award the lease is issued by the STREAM Director of Leasing.

Negotiation Process for Amendments to Leases

If the STREAM Director of Leasing determines, after consultation with a User Agency, that a revision in the terms of a lease is necessary, the STREAM Director of Leasing shall obtain a memo for the lease file from STREAM strategy group stating that the revision is consistent with STREAM leasing strategy. Upon receipt of the memo, the STREAM Director of Leasing may assign to a Leasing Agent the duty to enter Negotiations for a lease amendment for such a revision.

Documentation of the Negotiations for a lease amendment shall be the same as and consistent with the requirements for documentation of the procurement of a new lease as set forth above.