

Tennessee Board of Regents Lease Procurement Policy & Procedures

Effective: Upon approval of State Building Commission (“SBC”) on December 17, 2014.
Prepared by: Tennessee Board of Regents (“TBR”)

Purpose

With respect to leases for real property, to establish a policy and procedure in accordance with State Building Commission By-laws, Policy and Procedure (“SBC Policy”) Item 7 that ensures equity, transparency and the maximum amount of competition in response to a Request for Proposal (“RFP”) procurement for leased space.

Scope

These policies and procedures apply to all lease procurements, awards and amendments to such awarded lease when the solicitation and award are conducted by TBR pursuant to SBC Policy.

Definitions

For purposes of this policy, the following terms shall have the meanings described below:

“Average Annual Effective Cost”- means the product of a fraction whose numerator is the Total Annual Cash Flows and whose denominator is the total term of the proposed lease.

“Cost Proposals” - means the proposals received from Proposers containing the economic terms proposed by the Proposer in response to the RFP.

“Discussions”- means communications (verbal and written) between TBR and the authorized representative of a Proposer, regarding terms and/or conditions in a proposal received from a Proposer in response to the RFP or in response to a request for alternative terms from the State. With respect to the Intended Awardee, “Discussions” may also include communications regarding a more favorable rental rate.

“Evaluation List”- means the list of Proposers proposing the set of lease terms determined to be most desirable to TBR with the Lowest Cost Proposer at the top and the Proposer proposing the highest Average Annual Effective Cost at the bottom of the list.

“Intended Awardee”- means the Proposer whose proposal, under the terms of the RFP and this Policy & Procedure, is selected by TBR as the proposal that should be selected for lease award.

“Institution”- means the appropriate campus or group for whom the leased space is being procured.

“Lease”- means an agreement between the State and a third party regarding the use and occupancy of real property that has been approved by all required entities.

“Lowest Cost Proposer” – means Proposer the proposing the lowest Average Annual Effective Cost for a proposal that meets TBR’s desired terms

“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 requirements of TBR. A Market Survey will typically include, where possible, a description of each property

surveyed, as well as, the rental rates and other economic terms on which a lease may be based including amenities and parking. The Market Survey should be as inclusive as possible, covering as many properties or type of properties that may be options to meet the TBR's needs. The purpose of the Market Survey is to determine whether competition exists for the space needs requirement of TBR.

“Proposer”- includes a “respondent” or “proposer” that is a legal entity that has properly registered as required by the State. The terms “respondent” and “proposer” may be used interchangeably for the term “proposer”.

“Responsible”- with respect to a Proposer means a person or entity which has the capacity in all material respects to perform fully the Lease requirements and the integrity and reliability that will assure good faith performance.

“Responsive”- with respect to a Proposer means a person or entity which has submitted a proposal, which conforms in all material respects, to the RFP.

“RFP Coordinator: - means the State employee specified in the RFP as being the primary person responsible for handling the RFP.

“Revised Statement of Procurement Goal”- means the written document approved by the TBR Executive Director of the Office of Facilities Management and prepared after completion of the Market Survey and prior to issuance of the RFP which sets forth the desired terms on which the TBR would like to enter into a Lease. The Revised Statement of Procurement Goal will be based on the Statement of Procurement Goal, but will include revisions to terms in the Statement of Procurement Goal based on the results of the Market Survey.

“SAR”- means the “Space Action Request” form prepared by the Institution and submitted to-TBR.

“SNA”- means the “Space Needs Analysis” form, which will include programming information and other user specific needs for the space, prepared by the Institution after review of the SAR and submitted to TBR for approval.

“Standard Cost Estimates” - means the TBR Standard Cost Estimates developed in accordance with 7.07A.1 of the State Building Commission By-Laws, Policy and Procedures and approved by the State Building Commission.

“Statement of Procurement Goal”- means the written document created by the Institution prior to the preparation of the Market Survey and submitted for approval to TBR which sets forth the desired terms on which the Institution would like to enter into a lease. The Standard of Procurement Goal will include desired term length; programming and user specific requirements; desired termination options; preferences regarding payment of utilities, janitorial services and the like; and any other items determined by TBR to be necessary for the procurement.

“Total Annual Cash Flows”- means the sum of the means the sum of the total expense anticipated to be paid by the State for the leased premises for each year of the lease term proposed, including base rent and applicable Standard Cost Estimates for the proposed square footage.

Policy and Procedure- Procurement Process

Framework

This Policy and Procedure shall act as a framework for establishing a consistent, reasonable process for determining the appropriate method of RFP lease procurement in accordance with State Building Commission By-laws, Policy and Procedure Item 7.

All parties involved in the procurement, agreement preparation or administration of leases for TBR shall act in good faith. All individuals involved with the development of the RFP, proposal reviews, analysis, Negotiations, recommendation for award or any other portion of the procurement process shall complete a disclosure of conflicts of interest and statement of understanding of non-disclosure of information during the procurement process and until file is open for public inspection.

Preparation of the RFP

The RFP shall be prepared based on the Statement of Procurement Goal and any revisions thereto after completion of the following steps in the order listed below:

1. For a request for assistance for a new space need, receipt of a SAR and SNA from the Institution;
--OR--
For a request for assistance for a space need where the current lease is nearing expiration, receipt of a SAR and SNA from the Institution that was submitted in response to a notification from TBR that the current lease is nearing expiration. Such expiration notice shall be sent out by TBR at least six months prior to the expiration of the current lease.
2. Evaluation by TBR of the SAR and the SNA.
3. Preparation by the Institution of the Statement of Procurement Goal and approval of the same by TBR.
4. Completion of a Market Survey. The Market Survey should confirm that there are multiple properties capable of meeting the requirements of the Statement of Procurement Goal. If the Market Survey does not confirm that there are at least two (2) properties that will meet the requirements of the Statement of Procurement Goal, then (i) the Statement of Procurement Goal will need to be modified in such a manner that the original Market Survey or a subsequent Market Survey confirms that there are multiple properties capable of meeting the requirements of the Statement of Procurement Goal, or (ii) TBR shall seek the approval of the SBC to advertise for a lease that may not have the desired level of competition.
5. Preparation of the Revised Statement of Procurement Goal by the Institution and approval of the same by TBR, if necessary.
6. Once the Revised Statement of Procurement Goal has been approved by TBR, the Institution shall be notified that it may commence preparation of the RFP based on the Revised Statement of Procurement Goal, a copy of which shall be included in the notification.
7. The RFP shall be drafted and advertised to encourage proposals that satisfy the Revised Statement of Procurement Goal. Once TBR has approved the RFP, it shall be promptly issued. After issuance, efforts commensurate to the particular circumstances of the RFP shall be undertaken to encourage responses to the RFP.

Clarifications and Corrections

It is in the best interest of the State to have as much competition as possible. Immaterial defects in a RFP response may be waived, provided such defects are not of a type that will give one Proposer an unfair advantage over other Proposers, as determined by the RFP Coordinator. Additionally, Proposers may be permitted to clarify any ambiguities in their RFP responses upon request by the TBR. In the event that TBR identifies a suspected mistake in the RFP response, the RFP Coordinator

may, if practicable, notify the Proposer of such suspected mistake and allow the Proposer to correct such mistake, so long as such correction does not give the Proposer an unfair advantage over other Proposers.

Evaluations of Lease Proposals

The RFP Coordinator will review each proposal to determine compliance with the mandatory requirements of the RFP. If the RFP Coordinator determines that a proposal may have failed to meet one or more of the mandatory requirements, the RFP Coordinator shall seek the advice of an attorney on the staff of the Tennessee Board of Regents Office of General Counsel who will review the proposal and document his/her determination of whether:

- a. the proposal adequately meets requirements for further evaluation;
- b. TBR will request clarifications or corrections for consideration prior to further evaluation; or
- c. TBR will determine the proposal non-responsive to the RFP and reject it.

After the mandatory requirements review is completed, the RFP Coordinator will review the Cost Proposals submitted by each apparently Responsive and Responsible Proposer. The RFP Coordinator will assess whether each Cost Proposal complies with RFP requirements without qualification. The RFP Coordinator will document, in writing, any determination (and the specific reasons therefore) that a Cost Proposal is non-compliant with requirements such that the Proposer is non-responsive to the RFP. If a Proposer proposes alternate terms that TBR desires to accept, all other Proposers will be requested, in writing, to provide a proposal to TBR including those same alternate terms within not less than three (3) business days of the date of receipt of the request from TBR for a subsequent proposal. The RFP Coordinator will then calculate the "Average Annual Effective Cost" to the State for each compliant and responsive Cost Proposal that is determined to meet the State's desired terms. The Average Annual Effective Cost is calculated by dividing the total expense anticipated to be paid by the State for the leased premises for each year of the lease term proposed, including base rent and any applicable Standard Cost Estimates for the proposed square footage, by the lease term proposed. Upon completion of the calculation described above, the RFP Coordinator prepare the Evaluation List.

Lease Recommendation and Award Process

The RFP Coordinator will then send the Evaluation List and a written recommendation for award to the Lowest Cost Proposer, together with all working documentation including calculations of Average Annual Effective Cost for all evaluated proposals, to the Chancellor. The Chancellor shall then select the Intended Awardee from the Evaluation List. The Chancellor should typically select the Lowest Cost Proposer as the Intended Awardee. If, however, the Chancellor selects a Proposer who is not the Lowest Cost Proposer, justification for such a selection must be provided in writing, and may be based upon one or more of the following:

- The Lowest Cost Proposer proposes a location that the Institution which will be the primary tenant determines is unacceptable to it, as expressed in writing and signed by the president or head of the Institution;
- TBR determines that the quality of the site or building proposed by the Lowest Cost Proposer is not in the best interest of the State;
- Documented evidence of poor past performance by the Lowest Cost Proposer as a landlord to the State; or

- Based on a totality of the above and other considerations, an award to another respondent is in the best interests of the State.

Upon the receipt of documentation from the Chancellor setting forth the Intended Awardee, TBR may engage in Discussions with the Intended Awardee to better his proposal from an economic perspective. After the completion of Discussions with the Intended Awardee, if any, the Chancellor shall issue to all Proposers a notice of intent to award the lease to the Intended Awardee. The procurement file shall be open for public inspection after issuance of the notice of intent to award the lease is issued by the Chancellor.

Procurement File

A procurement file shall be maintained for every RFP for leased space. Such file shall include, at a minimum, the following documentation, if applicable:

- A copy of the RFP and any amendments or clarification thereof;
- Any Conflict of Interest Disclosure documentation;
- Documentation regarding any additional cost estimates to be used in the evaluation;
- A list of all potential proposers to whom the RFP for leased space was sent directly;
- A copy of each evaluation sheet;
- A copy of any clarifications sent respondents;
- A copy of all correspondence between the proposers and TBR regarding Discussions;
- A copy of any cost proposal analysis performed during the procurement;
- Any calculation documentation;
- A copy of all cost scores;
- The Evaluation Notice/File Open for Inspection letter;
- A copy of the protest procedures and the exact dollar amount of the Protest Bond;
- Documentation of any decision to determine a response bypassed or non-responsive;
- Any correspondence or documentation detailing the evaluation process, clarifications, selection of alternate lease or proposal terms; and Discussions; and
- A copy of any pre proposal conference and site-visit sign-in sheets.