

NOTICE OF PROPOSED REGULATION AMENDMENT

Date: March 3, 2015

REGULATION TITLE:

Lease of Space

REGULATION NO.:

3.025

SUMMARY: The amendments to this regulation revise language regarding University's standard form of lease, including involvement of Office of Real Estate when deviations are allowed or changes are made. The University's Office of Real Estate is made primarily responsible for solicitations and/or advertisements relating to University lease of space when required. The method of space measurement is changed to match existing Board of Governor regulations which incorporate a method set forth in the current State University System space file. An additional permissible standard of measurement based on the Building Owners and Managers Association protocols, is added for privately owned space. A requirement relating to designation of useable square footage in solicitation responses is also added.

AUTHORITY: BOG Regulation 1.001

COMMENTS CONCERNING THE PROPOSED REGULATION SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. The comments must identify the regulation you are commenting on.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION IS: Sandra L. Mitchell, Senior Administrative Assistant, 123 Tigert Hall, Post Office Box 113125, University of Florida, Gainesville, Florida 32611, 352-392-1358 office, 352-392-4387 facsimile, regulations@ufl.edu.

NAME OF PERSON WHO APPROVED THE PROPOSED REGULATION:

Mike McKee, Interim Vice President and Chief Financial Officer, Budget Office

THE FULL TEXT OF THE PROPOSED REGULATION IS ATTACHED TO THIS NOTICE.

REGULATIONS OF THE
UNIVERSITY OF FLORIDA

~~6C1~~-3.025 Lease of Space

(1) Purpose. This regulation implements the authority given to the University of Florida to lease real property for the purpose of implementing approved programs of the University.

(2) Definitions. For purposes of this regulation, a lease is a document containing the terms and conditions establishing the relationship of landlord and tenant for real property, including land and any improvements thereon.

(3) Approval. All leases shall be prepared in accordance with this regulation and executed by the President or ~~the~~ President's designee. In addition, if a lease of real property is being entered into for the benefit of a particular college and that college will have financial responsibility for the lease, the Dean or Dean's designee for such college must authorize the lease.

(4) Standard Lease. The University uses a standard lease form as periodically developed ~~, Form BCM 4054 (R5-01), approved~~ by the University's Office of the Vice President and General Counsel and the University's Office of Real Estate, and is available from the Office of Real Estate. The University's Office of the Vice President and General Counsel, following consultation with the Office of Real Estate, shall be responsible for the review and approval of any deviations from the standard lease form. ~~incorporated herein by reference. The standard lease may be obtained from the Purchasing Division, Elmore Hall, Room 102, University of Florida. The University's lease form may be changed by deleting, adding to or revising its terms,~~

~~which shall remain consistent with the requirements of this regulation as far as practical given the circumstances of the lease, with the prior approval of the University's Office of the Vice President and General Counsel.~~

(5) Escalation Clauses Prohibited. A lease shall not contain a rental escalation clause or an open rental rate that permits an adjustment in the amount paid by the University based on the happening of a future event, such as a change in the Consumer Price Index or other economic indicator, without also including a ceiling on the total amount the rent may increase. Any such clause in a lease shall be null, void, and unenforceable. The final cost to the University for the complete term of a lease, including all renewal periods, must be clearly set forth in the lease.

(6) Right-to-Terminate Clause Required. All leases for a term exceeding one (1) fiscal year shall include the following provision: "The State of Florida's performance and obligation to pay under this Lease is contingent upon an annual appropriation by the Legislature."

(7) Renewal of Leases. Any lease may contain options to renew and any renewal(s) shall be made according to the terms and conditions of the lease.

(8) Code Compliance in Leased Space.

(a) Any privately-owned building or any part thereof to be leased to the University shall comply with those portions of Chapters 553 and 633, [Fla. Stat.](#), including, but not limited to, fire safety, life safety and disabled access standards, applicable to University buildings.

(b) No construction or renovation of any state-leased building may commence until the University has ascertained that the proposed construction or renovation plan complies with those portions of Chapters 553 and 633, [Fla. Stat.](#) applicable to University buildings.

(c) The cost of all modifications or renovations made for the purpose of bringing state-leased property into compliance with the applicable portions of Chapters 553 and 633, [Fla. Stat.](#), shall be borne by the landlord unless otherwise agreed in writing by the University.

(9) Leases of 5,000 Square Feet or More.

(a) The University shall not enter into a lease for 5,000 square feet or more of space in a privately-owned building except upon advertisement for and receipt of competitive bids and award to the lowest bid meeting specifications. The University shall not enter into, within any [twelve \(12\)](#)-month period, more than one [\(1\)](#) lease for space in the same privately-owned facility or complex except upon the solicitation of competitive bids. Exceptions to these requirements are as follows:

1. This [sub](#)section shall not apply to the renewal of leases when the lease contains renewal terms. The University may approve extensions of an existing lease of 5,000 square feet or more of space if such extensions are determined to be in the best interest of the University but in no case shall the total of such extensions exceed [eleven \(11\)](#) months. If at the end of the 11th month the University still needs space, it shall be procured by competitive [solicitation](#)~~bid~~. However, if the University determines it is in its best interest to remain in space it currently occupies, the University may negotiate a replacement lease with the landlord if an independent market analysis demonstrates that the lease rates offered are within market rates for the space and the cost of the new lease does not exceed the cost of a comparable lease plus documented moving costs. The term of such replacement lease may not exceed the base term of the expiring lease. The decision to extend a lease and to remain in space currently occupied shall be based on the following factors: the cost of moving, the disruption of activities that will occur as a result of

moving, the location of the space, the suitability of the space, the proximity of services, the layout and type of space, and the quality of space involved.

2. This subsection shall not apply to specialized research, medical or educational facilities, if the President or ~~the President's~~ designee certifies in writing that said facility is available from a single source and that compliance with competitive bid requirements would be detrimental to the University.

3. This subsection shall not apply to any lease having a term of less than one hundred twenty (120) consecutive days for the purpose of securing one-time special use of the leased property.

4. This subsection shall not apply to buildings or facilities of any size leased for the purpose of providing care and living space for persons.

5. This subsection shall not apply to emergency space needs in the event existing state-owned or leased space is destroyed or rendered uninhabitable by an act of God, fire, malicious destruction, or structural failure, or by legal action upon certification by the President or ~~his~~ designee that other University controlled space is not available and the term of the lease does not exceed eighteen (18) months, provided the University may modify the lease to extend month to month for up to six (6) additional months to allow completion of such construction or renovations.

6. This subsection shall not apply when leasing facilities in a research and development park, a hospital, or other medical facilities, such as a medical office building, with which the University is affiliated.

7. This subsection shall not apply to any lease for nominal or no consideration.

(b) The University shall not enter into a lease agreement in a privately owned building when suitable space is available in a state-owned building located in the same geographic region unless it is determined to be in the best interest of the University, such as when the cost of the move from a private building to the state-owned building would exceed the rental savings associated with the state-owned building.

(c) Solicitation.

1. A public solicitation for proposals will be publicized using newspaper advertisements and/or contact with owners, developers or realtors in the city or area in which space is desired. The University's Office of Real Estate shall be responsible for the solicitation and/or advertisement for proposals for leased space.

2. The solicitation shall set forth, but not be limited to, the following:

a. Approximate net square footage required to be measured in accordance with the method used by the State University System for gross square feet as described in the current Physical Facilities Space File, or if in a privately owned building, measured according to an industry-accepted measurement protocol, such as Building Owners and Managers Association Standards.~~subsection 60H-2.003(2), F.A.C.~~

b. General area in which space must be located.

c. Date space must be available.

d. Name and address of location where specifications may be obtained.

e. Terms and conditions of lease.

(d) Specifications.

1. Specifications shall be written by the University in general terms and shall afford each prospective landlord, interested in submitting a proposal, knowledge of the University's space requirements. Specifications shall not be structured to favor any specific location or landlord.

2. Specifications provided to each prospective landlord shall set forth, but not be limited to, the following:

a. Approximate net square footage required to be measured in accordance with [Section 9\(c\)\(2\)\(a\) above](#). ~~subsection 60H-2.003(2), F.A.C.~~

b. An approximate floor plan of space needed showing partitioning and other physical requirements.

c. General location of required space.

d. Date space must be available.

e. Term of lease with option to renew, if desired.

f. Services required to include parking, dining and transportation requirements.

3. Specifications shall also set forth that the prospective landlord will agree to:

a. Enter into the University's standard lease.

b. Provide a scaled floor plan showing present configurations and measurements that equate to net rentable square footage offered, [as well as useable square footage](#).

c. Be an Equal Opportunity Employer.

d. Provide Full Disclosure Statements of Ownership.

e. Validate the proposal for a minimum of forty-five (45) days following the public bid opening date.

f. Propose a rental rate per square foot per year that will include all renovations and other special requirements necessary to accommodate the program at the time of initial occupancy, and clearly stating of that rental rate per square foot the amount allocated to (i) base rent, (ii) the cost of tenant improvements or renovations necessary to make the space conform to the University's specifications and (iii) operating costs, such as real property taxes and utilities, being reimbursed by the University.

4. Specifications may provide that sealed proposals are to be submitted, in a titled envelope, to a designated individual by a specified closing time and date, at which time all proposals will be publicly opened.

(e) Proposals.

1. Proposals shall respond specifically but need not be limited to each item included in the specifications.

2. Each proposal shall be signed by the owner(s), corporate officers, or legal representative(s). The corporate, trade, or partnership name must be either stamped, written or typewritten, beside the actual signature(s). If the proposal is signed by an agent, written evidence of his authority must accompany the proposal. If a corporation foreign to the State of Florida is the owner, evidence of authority to conduct business in Florida shall be presented.

(f) Evaluation.

1. The University reserves the right to accept or reject any or all bids submitted and, if the University deems it necessary, to reinitiate procedures for soliciting competitive proposals.

2. The University, in conjunction with preparing specifications, shall develop weighted evaluation criteria. The criteria items most significant to the University's needs should bear the

highest weight. The cost of relocation, if any; consolidation of activities, if desirable; and any other factors deemed necessary should be weighed.

3. Selection shall be made by the University and shall be publicly posted at the location where the bids were opened and remain posted for seventy-two (72) hours, which shall be interpreted as three (3) working days, not counting Saturdays, Sundays, and State of Florida holidays.

5. Documentation to support the selection shall be maintained and shall include, but not be limited to, the following:

- a. A copy of all advertisements.
- b. A copy of the proposal specifications.
- c. A copy of all proposals received.
- d. A synopsis of the University's findings for each proposal.

(g) Lease preparation and approval. After the selection has been awarded, a lease shall be properly executed.

(10) Disclosure Statements -- Private Entities, Public Officials.

(a) The landlord shall provide the statements required pursuant to sections 255.249(4)(h) and (i), [Fla. Stat.](#), regarding ownership interests in the lease property.

(b) It is not necessary to make disclosure of any beneficial interest which is represented by stock in any corporation registered with the Securities and Exchange Commission or registered pursuant to Chapter 517, [Fla. Stat.](#), which stock is for sale to the general public. A statement certifying the registration shall be provided by the landlord.

(c) It is not necessary to make disclosure under paragraphs (a) and (b) above of any leasehold interest in property located outside the territorial boundaries of the United States.

(d) Each subsequent transaction pertaining to a lease for which a Disclosure Statement has been provided, may be accompanied by a landlord's affidavit that the previous Disclosure Statement submitted on (date provided) is still valid, if no change in the interest held or individuals concerned has occurred.

(11) Certification of Compliance. The President or designee, shall certify that the lease is in compliance with all leasing criteria provided by Chapter 255, [Fla. Stat.](#)

(12) Standard Method of Space Measurement. Space measurement shall be based on usable space as defined in Department of Management Services [Rule subsection 60H-2.003\(2\)](#), F.A.C.

(13) Space Allocation. Space allocation shall be based on the formula provided in the publication "State Requirements for Educational Facilities, 1999 Volume I-Process and Rule and Volume II-Building Code."

(14) Rental Rates. The rental rate for space shall be within rental rate guidelines established by the University.

(15) Leases Not Requiring Competitive Bidding. In any leasing of space that is accomplished without competition, the individuals taking part in the development or selection of criteria for evaluation, in the evaluation, and in the award processes shall attest in writing that they are independent of, and have no conflict of interest in, the entities evaluated and selected.

~~Specific~~ Authority: BOG [Regulation 1.001](#) ~~Resolution dated January 7, 2003.~~

History--New 1-28-80, Formerly 6C1-3.25, Amended 2-9-87, 5-18-92, 4-30-95, 5-23-96, 7-27-98, 1-12-00, 07-25-02, 6-3-03, 3-14-08 (BOT approval), [Formerly 6C1-3.025, Amended](#)
