

<b>System-wide Policy:</b>	
<b>FI0625 - Lease of Real Property by or to the University</b>	
<b>Version: 3</b>	<b>Effective Date:10/20/2017</b>

## FI0625 – Lease of Real Property by or to the University

### Topics:

<a href="#">General Policies</a>	<a href="#">Lease Renewal, Amendments and Termination</a>
<a href="#">General Requirements</a>	<a href="#">Reporting of Leases</a>
<a href="#">Advertising and Evaluation</a>	<a href="#">Procedures To Be Followed Based On Rent Payment And Term</a>
<a href="#">Exceptions to Advertising Requirement</a>	<a href="#">Procedures</a>
<a href="#">Termination for Convenience</a>	<a href="#">Contacts</a>
<a href="#">Lease Amendments</a>	

### Objective:

To provide guidelines to university officials who are involved in the lease of real property by or to the university. Lease approval authority, advertising and reporting requirements vary depending on the annual rent and the term of the lease. This policy is based on State Building Commission (SBC) policy, Tennessee Higher Education Commission (THEC) policy, and University policy and procedures.

This policy addresses general leasing policies, reporting of leases, advertising requirements and exceptions, and approval levels.

Any questions concerning leases of real property or related SBC/THEC policies should be referred to the Office of Capital Projects (OCP).

<b>System-wide Policy:</b>	
<b>FI0625 - Lease of Real Property by or to the University</b>	
<b>Version: 3</b>	<b>Effective Date:10/20/2017</b>

## Policy:

### General Policies

1. All lease requests with rent of more than \$25,000 per year (all-inclusive) or a term greater than five (5) years (including all renewal options) shall be reviewed, prepared and processed through OCP. The term rent used throughout this policy includes all payments such as base rent, real estate taxes, insurance, janitorial service, building and grounds maintenance and repair, utilities and any other payments related to the lease. The \$25,000 per year threshold is intended to be all-inclusive and representative of the total annual cost of the lease.
2. When a campus/institute requests leased space the following information is required:
  - Executive Summary that explains the history of the program(s) that will occupy the space, funding source(s) for the lease request and programmatic need for the space
  - Type of space, square footage needed, preferred geographic location, date needed, and special requirements
  - Unique Space Justification (if required – see below)
3. The review and analysis of the lease request by OCP 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 new capital outlay request through the annual capital budget process.
4. Leases with a term of five years (including all renewal options) or less and annual consideration of less than \$25,000 per year (all-inclusive as defined above) should be handled in the same manner as routine contract agreements by the campus and submitted through normal contract review channels for execution by the campus chief business officer (or designee). The

<b>System-wide Policy:</b>	
<b>FI0625 - Lease of Real Property by or to the University</b>	
<b>Version: 3</b>	<b>Effective Date:10/20/2017</b>

campus/institute shall adopt a procedure of providing public notice of their desire to seek a lease for real property.

Table 1 provides a summary of lease approval and advertising requirements. The sections following Table 1 provide a detailed outline of the leasing process based on the approval and advertising requirements.

### General Requirements

5. The lease procurement process shall be objective, impartial, transparent, and consistent in its application. All leases must comply with the policies and procedures of the SBC, THEC, the Office of the State Architect, and this policy. Any exception from the requirements must be requested in writing by the System Chief Financial Officer (or designee) and, if applicable, approved by the SBC.
  1. Prior to engaging in any activities to lease space the campus/institute shall prepare a general statement of the need.
  2. Lease procurement documents shall be drafted in such a manner as to maximize competition and allow the university/state to make better-informed decisions on leasing matters.
  3. The university shall procure leases using a form of request for proposal (RFP) including pro forma lease that has been previously approved by the SBC unless an advertisement is not required.
  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. 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 university/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 System Chief Financial Officer (or designee) to be (a) in the best interest of the university/state or (b) necessary to ensure consistent evaluation of lease proposals.
  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

<b>System-wide Policy:</b>	
<b>FI0625 - Lease of Real Property by or to the University</b>	
<b>Version: 3</b>	<b>Effective Date:10/20/2017</b>

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 SBC or the Executive Sub Committee at which approval of the lease will be sought.

### Advertising and Evaluation

7. Leases entered into by the University involving annual rent of less than \$50,000 per year (all inclusive) shall follow university policy for advertising. See Table 1 for a summary of advertising requirements.
8. Leases involving annual rent greater than \$50,000 per year (all inclusive) shall have been made following an advertisement of a formal RFP in a format approved by the SBC and the formal evaluation of any RFP proposals. The lease procurement process shall be conducted by OCP. Unless one of the exceptions set forth below (see Exceptions to Advertising Requirement) is satisfied, the lease must be advertised at least two (2) weeks prior to the date the proposals are opened and at the cost of the campus/institute requesting the space. The campus/institute space needs (when University is the tenant) or available space (when University is landlord) should be handled in accordance with this policy and placed: (i) on the website of the campus/institute procuring the lease or Procurement website under the direction of the Office of the Treasurer – Procurement Services; (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 university conducting the procurement or who have expressed an interest in leasing property to the university in writing in the past twelve (12) months.
9. The advertisement shall describe the preferred geographic location (when University is tenant), square footage, term of the lease, and other general information regarding the space and shall include the name and contact information for the university employee responsible for coordinating the lease procurement, together with the web

<b>System-wide Policy:</b>	
<b>FI0625 - Lease of Real Property by or to the University</b>	
<b>Version: 3</b>	<b>Effective Date:10/20/2017</b>

address where a copy of the lease procurement documents and other pertinent information can be found.

10. The notice shall be publicized at the time a decision is made to lease space. The notice shall allow, at least two weeks for submitting proposals. Further, the campus/institute shall maintain a file by county of persons who lease, have leased, have offered to lease, or have expressed interest in leasing property to the university. Once the RFP is issued, the campus/institute chief business officer should notify these parties.
11. Exceptions to this policy must be substantiated in writing by the System Chief Financial Officer or designee. If campus/institute or unit officials desire to lease real property that is considered unique in satisfying program needs, documentation of the unique nature of the property should be forwarded to OCP who will then determine if the justification is adequate for submission of a request to waiver advertisement for approval to enter into a direct negotiation process.

See Table 1 for university and state approval requirements.

### Exceptions to Advertising Requirement

12. Advertisement shall not be required if one of the following exceptions is satisfied:
  1. The annual rent will be less than fifty thousand dollars (\$50,000) – in this case follow campus procurement policy;
  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 SBC (contact OCP for additional information);
  4. The term of the lease will be one (1) year or less, with SBC approval.

### Termination for Convenience

13. All leases shall be terminable for convenience by the University on not more than 120 days' written notice, unless an exception is approved by the SBC or Chief Financial Officer of the University (for leases with rent less than \$150,000 per year and a term including all extension less than five years).

### Lease Amendments

<b>System-wide Policy:</b>	
<b>FI0625 - Lease of Real Property by or to the University</b>	
<b>Version: 3</b>	<b>Effective Date:10/20/2017</b>

14. Amendments to leases originally submitted to and approved by the SBC, shall receive SBC approval prior to execution of the amendment. Any amendment to a lease which was not approved by the SBC because the term was less than five years and the annual rent 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 SBC for approval prior to the execution of the lease amendment.

**Lease Renewal, Amendments and Termination**

15. For leases with a term greater than five (5) years or annual rent greater than \$25,000, any renewal, amendment to terms or conditions, or termination must be reviewed in advance by OCP and approved by the System Chief Financial Officer (or designee) and, if applicable, approved by the SBC prior to any such lease action being taken.

**Reporting of Leases**

16. On a quarterly basis, all leases entered into by the university and that have not been approved by SBC shall be reported by OCP to the Tennessee Higher Education Commission and for posting on the website of the Office of the State Architect. As a result, a summary of any lease entered into by a campus as allowed under this policy shall be submitted to OCP on a quarterly basis (i.e., June 1, September 1, December 1, and March 1).

**Procedures To Be Followed Based On Rent Payment And Term**

17. The remainder of this policy addresses procedures to be followed for leases subject to the approval requirements outlined in Table 1.

**TABLE 1 – SUMMARY OF LEASE APPROVALS AND ADVERTISING REQUIREMENT**

<b>System-wide Policy:</b>	
<b>FI0625 - Lease of Real Property by or to the University</b>	
<b>Version: 3</b>	<b>Effective Date:10/20/2017</b>

Scenario	Annual Lease Cost Including all Payments to Landlord*	Term of Lease including Extensions**	University Review/ Approval	Advertising Required	Report to THEC	THEC Approval	SBC Approval – RFP and/or Lease
1	< \$25,000	< 5 Years	Campus/ Institute	Follow Campus Procurement Policy	Yes	No	No
2	< \$25,000	> 5 years	OCP	Follow University Policy	No	Yes	Yes
3	\$25,000 - \$50,000	< 5 Years	OCP	Follow University Policy	Yes	No	No
4	\$25,000 - \$50,000	> 5 years	OCP	Follow University Policy	No	Yes	Yes
5	\$50,000 - \$150,000	< 5 years	OCP	Yes State Requirement	Yes	No	Yes
6	\$50,000 - \$150,000	> 5 years	CFO Or Designee	Yes State Requirement	No	Yes	Yes
7	>\$150,000	< 5 years	CFO Or Designee	Yes State Requirement	No	Yes	Yes
8	>\$150,000	> 5 years	CFO Or Designee	Yes State Requirement	No	Yes	Yes

\* Includes base rent, real estate taxes, insurance, janitorial service, building and grounds maintenance and repair, utilities and any other payments related to the lease

\*\* Includes base term of the lease and any extensions options.

## **SCENARIO 1 –**

**Lease Payment < \$25,000 per year (all inclusive) and Term < 5 years (including all renewal options)**

<b>System-wide Policy:</b>	
<b>FI0625 - Lease of Real Property by or to the University</b>	
<b>Version: 3</b>	<b>Effective Date:10/20/2017</b>

#### Drafting the Lease Agreement

The terms of the proposed lease will be determined through appropriate negotiations between the campus/institute and the tenant/landlord. The campus/institute is responsible for following university policy for contract agreements. The campus/institute may request involvement of OCP in the lease negotiations during the initial discussions and/or meetings. The campus/institute will then prepare the draft lease and forward to the Office of General Counsel for an internal review prior to preparation of the final draft of the proposed lease agreement.

#### Executing the Lease Agreement

After the lease document is reviewed and approved, the campus/institute will obtain the landlord/lessee's signature on the original and two copies of the agreement. After execution of the lease agreement by the landlord/lessee, the campus/institute will execute the lease and process it through the university's contract review system.

#### Distributing the Executed and Approved Agreements

When the lease has been executed, a copy will be transmitted to the Treasurer's Office for placement in the permanent document files. In addition, one executed copy will be transmitted to the landlord/lessee and to OCP.

#### **SCENARIOS 2, 3 and 4–**

**Lease Payment < \$25,000 per year and Term > 5years – OR –**

**Lease Payment \$25,000-\$50,000 per year and Term < 5 years –OR –**

**Lease Payment \$25,000-\$50,000 per year and Term > 5 years**

#### Advertising, Drafting, and Reviewing the Lease Agreement

While the SBC does not require advertising under these scenarios, a unique space justification must be approved by the campus/institute Chief Business Officer when the University is the tenant and an RFP is not issued.

The campus/institute should provide to OCP an executive summary, space requirements (when University is tenant), and unique space justification (if required) as outlined under general policies. The terms of the proposed lease will be determined through appropriate negotiations involving OCP, the campus/institute, and the landlord/tenant. OCP shall be involved in the lease negotiations during the initial discussions and or meetings. OCP will then prepare the draft lease and forward it to the Office of General Counsel for review.

Once reviewed and revised as necessary, OCP will arrange for review by the System Chief Financial Officer (or designee) and the campus/institute chief business officer. **If the term of the lease is greater than five years and upon receiving approval by the**



<b>System-wide Policy:</b>	
<b>FI0625 - Lease of Real Property by or to the University</b>	
<b>Version: 3</b>	<b>Effective Date:10/20/2017</b>

**System Chief Financial Officer (or designee), OCP will initiate the process for SBC, State Attorney General and THEC review and approval.**

#### Executing and Distributing the Lease Agreement

After the lease document is approved by the SBC, State Attorney General and THEC, OCP will obtain signatures from the landlord/lessee, System Chief Financial Officer (or designee) and, if required, the state. Thereafter, OCP will process the lease through the university's contract review system, forward it to the Treasurer's Office for placement in the permanent document files, and send one executed copy to the landlord/lessee and one executed copy to the originating campus/institute, where additional copies will be distributed locally as required.

#### **SCENARIOS 5, 6, 7, and 8–**

**Lease Payment \$50,000-\$150,000 and Term < 5 years –OR –**

**Lease Payment \$50,000-\$150,000 and Term > 5 years – OR -**

**Lease Payment > \$150,000 and Term < 5 years –OR –**

**Lease Payment > \$150,000 and Term > 5 years**

#### Advance Determination of Needs when University is Tenant

When leasing space under Scenarios 5, 6, 7 and 8, OCP must be notified at least six (6) months in advance to prepare the RFP/lease package and request SBC review and approval; advertise; and evaluate of proposals in response to the RFP. Thereafter, the best-evaluated bid proposal will be presented to SBC and THEC for approval of the lease. Additional time will be required if the proposed space necessitates tenant improvements or space build-out.

The notification of the need for space shall include the following information:

- Executive Summary that explains the history of the program, funding source(s) for the lease request and programmatic need for the space; and
- Type of space, square footage needed, preferred geographic location (if University tenant), date needed, and special requirements; and
- Unique Space Justification (if required);

The information above is required before the request can be submitted to the SBC for approval to issue an RFP.

#### Advertising, Drafting, and Reviewing the Lease Agreement

<b>System-wide Policy:</b>	
<b>FI0625 - Lease of Real Property by or to the University</b>	
<b>Version: 3</b>	<b>Effective Date:10/20/2017</b>

Once the request to issue the RFP is approved by the SBC, OCP is responsible for advertising and soliciting proposals in accordance with SBC requirements.

Once the proposals are received, OCP and campus/institute officials should then participate in an evaluation of proposals. Per SBC policy, the University shall propose entering into a lease with the proposer offering the lowest total cost (when University is tenant) unless a statement of justification from the System Chief Financial Officer supporting award to a different proposer has been submitted to and approved by the SBC.

OCP will then prepare the draft lease and forward it to the Office of General Counsel. Once reviewed and revised as necessary, OCP will arrange for review by the System Chief Financial Officer (or designee) and the campus/institute chief business officer. Once approved, OCP will initiate the process for SBC, State Attorney General and THEC review and approval.

#### Executing and Distributing the Lease Agreement

After the lease document is approved by the SBC, State Attorney General and THEC, OCP will obtain signatures from the landlord/lessee, System Chief Financial Officer (or designee) and, if required, the state. Thereafter, OCP will process the lease through the university's contract review system, forward it to the Treasurer's Office for placement in the permanent document files, and send one executed copy to the landlord/lessee and one executed copy to the originating campus/institute, where additional copies will be distributed locally as required.

Prior to the approval of the SBC and the State Attorney General, the lease agreement shall not be binding. Furthermore, no university official is authorized to commit university funds with respect to a lease transaction until all required approvals have been obtained.

**PROCEDURES:** [https://policy.tennessee.edu/fiscal\\_policy/fi0625/](https://policy.tennessee.edu/fiscal_policy/fi0625/) - top

To view links to campus policies and procedures, click here:

<https://policy.tennessee.edu/campus-policies-procedures/>

<b>System-wide Policy:</b>	
<b>FI0625 - Lease of Real Property by or to the University</b>	
<b>Version: 3</b>	<b>Effective Date:10/20/2017</b>

**FOR MORE INFORMATION:**

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