

System-wide Policy: FI0630 - Leasing Negotiation	
Version: 1	05/08/2018

FI0630 - Leasing Negotiation

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Objective:

To provide guidelines to University of Tennessee officials who are involved in the lease of real property to the university. This policy is based on Tennessee Code Annotated, State Building Commission (SBC) policy, and University of Tennessee policy and procedures. This policy addresses lease negotiations with Proposers during the procurement process to ensure the process is objective, impartial, transparent, and consistent in its application.

Policy:

Scope

1. This policy applies to all new lease procurements and lease amendments conducted by the University of Tennessee.

Definitions:

2. For purposes of this Policy, capitalized terms shall have the meanings described below:
 - a. “Lowest Cost Proposer” means the Proposer whose proposal offers the lowest total cost to the University based on the net present value of all anticipated expense to the University 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

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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 University, costs associated with renovating in place, costs associated with deviations from the specifications requested by the University, 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.

- b. “Market Survey” means an analysis of existing and available real properties, including their features and amenities, that might be available for lease to the University based on the space needs. 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 or type of properties that may be options to meet the University’s needs.
- c. “Negotiations” means all communications, verbal or written, between the University and the Proposer and/or authorized representative of the Proposer, regarding an advertised Request for Proposal and/or the terms and conditions of a proposed lease with the University. Negotiations are not binding on the University.
- d. “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 University 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.
- e. “Proposer” means a legal entity that has properly provided a proposal in response to an RFP as required by the University.
- f. “Responsible Proposer” means, a person or entity which has the capacity in all material respects to perform fully the requirements set forth in the lease, and the integrity and reliability that will assure good faith performance.
- g. “Responsive Proposer” means, a person or entity which has submitted a proposal, which conforms in all material respects to the terms set forth in the RFP.

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- h. "RFP" means the Request for Proposal form issued by the University to elicit proposals from Proposers summarizing the terms and conditions upon which the University would like to lease space.
- i. "SBC" means the State Building Commission or the Executive Subcommittee of the State Building Commission, as applicable.
- j. "University" means the University of Tennessee System, including all campuses and institutes that fall under the University of Tennessee System.

Negotiation Process for New Leases

- 3. The procurement of all leases shall be consistent with Item 7, Policy and Procedure of the State Building Commission of Tennessee and [FI0625 - Lease of Real Property by or to the University](#). As outlined in that policy, the following are emphasized -
 - The lease procurement process shall be objective, impartial, transparent and consistent in its application.
 - No individual, company, or other entity involved in the 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.
 - 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.
 - Leases may be negotiated if negotiation is determined in writing by the University to be (a) in the best interest of the University or (b) necessary to ensure consistent evaluation of lease proposals. All parties involved in Negotiations and in the performance or administration of procurements and leases for the University shall act in good faith. All individuals involved with the lease procurement process, including, without limitation, Market Surveys, Proposal Evaluations, Negotiations, and recommendation for award shall complete a disclosure of conflicts of interest and statement of understanding of nondisclosure 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

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given equitable treatment.

4. The RFP and addenda shall outline the space need and requirements including but not limited to the square footage needed, type of space, amenities and services desired, and location
5. All Negotiations with Proposers shall be documented and conducted in a manner that is calculated to most nearly achieve or surpass the terms set forth in the RFP and on terms and conditions most advantageous to the University. In conducting Negotiations with a Proposer, the University 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.
6. The RFP and other materials provided directly to the Proposers or available for Proposer review on the University of Tennessee Purchasing website shall clearly provide that no party involved with the Negotiation has the lawfully delegated ability to commit the University to any lease terms or conditions during Negotiations, and only following review and approval by all appropriate University officials and the SBC, if necessary, shall the lease terms become binding upon execution of the documents by University and State officials.
7. Negotiations shall be conducted with all Responsive and Responsible Proposers by the University until the University Director of Real Property and Space Administration 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.
8. 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 University to not pursue a proposal; and

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- A copy of all conflict of interest forms and non-disclosure forms.
9. The University Director of Real Property and Space Administration 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 University Director of Real Property and Space Administration. There shall be no disclosure of the identities of Proposers or proposal contents or no public comment by any University employees or contractors involved in the lease procurement process that would be adverse to the procurement or the Proposers until after the intent to award notice is issued.

Negotiation Process for Amendments to Leases

10. If the University Director of Real Property and Space Administration determines, after consultation with a campus/institute, that a revision in the terms of a lease is necessary, the University Director of Real Property and Space Administration shall document the need.
11. The process and 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.

PROCEDURES:

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

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

FOR MORE INFORMATION:

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