

The Regulation is substantially rewritten to read as follows:

6C2R-2.011 Facilities Leasing

(1) The purpose of this Regulation is to implement the delegated authority from the Board of Governors (BOG) to the Florida State University (FSU) found in BOG Regulation 17.001 with respect to leasing of space.

(2) The President or designee may enter into leases for space in a building or any part of a building for use by FSU or its direct-support organizations. However, Leases subject to Section 1010.62, Florida Statutes, relating to revenue bonds and debt, must be approved by the Board of Governors.

(3) The President or designee must first certify that there is no available and suitable university controlled space within a reasonable distance of the need before approving any lease. All leases will achieve best leasing value. “Best leasing value” means the highest overall value to the state based on objective factors that include, but are not limited to, rental rate, renewal rate, operational and maintenance costs, tenant-improvement allowance, location, lease term, condition of facility, landlord responsibility, amenities, and parking. Cost savings related to the university procurement processes are not sufficient justification for direct negotiation.

(4) Leases for space of 5,000 square feet or more in a privately owned building must be competitively procured. Competitive bids shall be awarded to the lowest responsible and responsive bidder; competitive proposals shall be awarded to the most advantageous responsible and responsive proposer based on all criteria in the proposal including price. The university may not negotiate with responding proposers unless the university makes a specific statement why this will achieve best leasing value. Cost savings related to the university procurement processes are not sufficient justification for direct negotiation.

(5) Competitive procurement shall not be required for the following:

(a) Renewal of leases procured under this Regulation where the specific renewal involved is provided in the initial lease which was itself competitively procured, where such is required.

(b) Lease of less than 120 consecutive days which is for the purpose of securing a one-time special use of the leased property.

(c) Lease for nominal or no consideration.

(d) One extension of a current, existing lease of 5,000 square feet or more, however procured, not exceeding eleven (11) months, if determined to be in the best university interest.

(e) Lease of educational facilities in a FSU affiliated Research and Development Park. However, as required by Section 1013.17, Florida Statutes, the Board of Trustees or designee must certify in writing that it is in the best university interests and that the exemption is not detrimental to the state,

(f) Leasing of specialized research, medical or educational facilities certified by President or President's designee in writing that such leasing is available only from a single source and that compliance with competitive bid requirements would be detrimental to the university.

(g) In an emergency, when university/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 designee that other University controlled space is not available and the term of any such lease does not exceed 18 months, provided the University may modify the lease to extend it on month to month basis for up to 6 additional months to allow completion of such construction or renovations.

(h) Leasing facilities in a hospital or other medical facilities, such as a medical office building, with which the University is affiliated.

(6) All measurement of potential leased space shall be based on the method of measurement used by the State University System for gross square feet as described in the current Physical Facilities Space File.

(7) 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. For leases of ten years or more a process may be established within the terms of the lease that allow for determining and adjusting the rental amounts based on existing fair market leasing values at agreed upon milestones.

(8) 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.”

(9) Lease Form. All leases shall be prepared in accordance with this regulation, and executed by the President or the President’s designee. The University uses a standard lease approved by the Senior Vice President for Finance and Administration and by the University General Counsel for form and legal content. Any deviations from the standard lease must be within the requirements of this Regulation and will acquire specific approval of these same parties.

(10) For leases or renewal of leases of space of 5,000 square feet or more, Lessor must disclose to FSU all owners of the leased property to ensure compliance with conflict of interest provisions of Chapter 112, Florida Statutes.

Specific Authority BOG Regulations 1.001 (3) (j) and (7) (b), 17.001. History—
New 9-30-75, Amended 6-14-81, Formerly 6C2-2.11, Substantially
rewritten,_____

~~6C2R-2.011 Facilities Leasing Program.~~

~~(1) Definitions. The following terms shall have the meanings ascribed to them unless the context clearly requires another meaning.~~

~~(a) Off Campus Space. Off Campus Space is defined as any building, structure, or facility other than that:~~

~~1. As to which title is held by the Board of Trustees of the Internal Improvement Trust Fund subject to lease thereof to the Board of Regents for use by the Florida State University; or~~

~~2. As to which title is held by a direct support organization of the Florida State University subject to the equitable ownership rights of the University pursuant to Section 240.299, F.S.~~

~~(b) Lease. Lease is defined as the contract, instrument, document, or agreement for the use of a building, structure, or facility, or any part thereof.~~

~~(c) Privately Owned. Privately Owned is defined as any building not owned by a governmental agency.~~

~~(d) Department. Department is defined as any college, school, department, principal investigator, organization or other budget entity which has been assigned a departmental account by the University Controller.~~

~~(2) General Policy; Purpose; Statute Interpretation.~~

~~(a) General Policy. It is the general policy of the Florida State University to provide adequate space and facilities consistent with available resources for its constituent components and programs to carry out their functions and activities. On campus space will be allocated whenever possible in accordance with applicable internal management policies, but off campus space will be obtained when consistent with the State's interest in the most efficient use of resources possible for the effective operation of the University.~~

~~(b) Purpose. The purpose of this rule is to implement a comprehensive program for the acquisition by lease of off campus space by integrating, and interpreting when necessary, the authority of the University provided in Sections 240.227(1), (15) and (17), F.S., with the authority delegated to the State University System, pursuant to Section 240.225, F.S., by the Department of General Services in Rule 60D-9.001, F.A.C.~~

~~(c) Statute Interpretation. In accord with the policy of the State University System that the powers and duties received by it from the Department of General Services with respect to leasing are received and~~

~~may be exercised equally by each component of the State University System, the powers and duties provided in Sections 255.248, 255.249, and 255.25, F.S., shall be construed by substituting the term "The Florida State University" for the terms "division" or "department" wherever they appear in the statutes last above cited. When such construction results in an untenable or absurd conclusion or a conclusion which is inconsistent with legislative intent, further interpretation and construction will be made herein which is consistent with such legislative intent.~~

~~(3) Initial Approval. Whenever a department determines that it needs additional space to carry out its functions and activities, it shall make a request for such space to the Executive Secretary of the University Space Committee, in accordance with the internal management criteria published in the Florida State University Business Manual, OP B 4.12, or in another appropriate writing. The University Space Committee shall consider the request and advise the President that it either approves or disapproves the need for the requested space. The President shall make the final determination of what action should be taken on the request and shall instruct the Executive Secretary accordingly. If more timely action is necessary to protect the interests of the University, the President, or the Executive Secretary or Chairman of the University Space Committee may, if circumstances permit, call a special meeting of the Committee. The President, however, may at any time determine what action should be taken. When the final decision is to seek and obtain off campus space, the Executive Secretary shall implement the decision pursuant to this rule.~~

~~(4) Negotiated Leases. The terms and conditions of the following types of leases of off campus space may be established, and such leases be entered, pursuant to negotiations, between the University and the prospective lessor. The Executive Secretary or his designee shall represent the University in such negotiations, and the Executive Secretary shall initiate the lease preparation and final approval procedures provided in this rule.~~

~~(a) Leases With Governmental Agencies. This category includes all instances where the prospective lessor is a nation, state, county, or municipality, or is a public agent or agency of the governing body thereof.~~

~~(b) Leases For Nominal Or No Consideration. This category includes all instances wherein no monetary or other tangible consideration is given by the University to secure the use of the off campus space, or where such monetary or other tangible consideration is de minimus in comparison to the fair market rental value of the space.~~

~~(c) Short Term Leases. This category includes all leases for a term of 21 consecutive days or less as provided in Section 255.25(7), F.S.~~

~~(d) Leases For Less Than 2,000 Square Feet. The category includes all leases of space totaling less than 2,000 square feet as measured by the method prescribed in this rule.~~

~~(e) Leases for Providing Care and Living Space. This category includes all leases for the purposes of providing care and living space for persons, within the purview of Section 255.25(3)(a), F.S.~~

~~(f) Leases of Specialized Educational Facilities. This category includes all leases of specialized educational facilities in accordance with Section 255.25(9), F.S.~~

~~(5) Competitive Proposals or Bids. In all cases where 2,000 sq. ft. or more off campus space is to be leased or where Section 255.25(8), F.S., applies, a competitive selection or bidding process shall be implemented pursuant to Section 255.25(3)(c), F.S. The Executive Secretary shall be responsible for the implementation of such process, which shall include the following elements and procedures:~~

~~(a) Solicitations. A public solicitation of proposals (bids) shall be made by giving notice thereof by publication in at least one newspaper of general circulation in the area in which the space is desired. The notice shall be published at least once and there shall be no less than ten working days between the last date of publication and the date on which proposals must be received in order to be considered. Notice may also be given verbally or in writing to developers or realtors in the area in which the space is desired, either directly, by communications with an appropriate trade or professional association, or by advertising in a newsletter or other publication of such association. The Director may make, or cause to be made, surveys of developers, realtors, or prospective lessors regarding the possible availability of space. Such survey information may be used to determine the nature and extent to which notice should be given beyond the required minimum notice set forth in this section. The notice shall include, but not be limited to, the following:~~

- ~~1. Approximate net square footage required.~~
- ~~2. General area in which the space must be located.~~
- ~~3. General use to be made of the space.~~
- ~~4. Date the space must be available.~~
- ~~5. Name and address of the person or office from which specifications may be obtained.~~

~~(b) Specifications. Specifications shall be drawn for each solicitation of space. The published notice and the specifications shall together constitute the solicitation. The solicitation shall provide each prospective lessor with knowledge of the University's space requirements to enable the prospective lessor to prepare and submit a proposal. The specifications shall not be structured to favor any specific location or lessor; provided, however, that location may be considered as a determining factor in evaluating the proposals. The specifications should set forth, but need not be limited to, the following:~~

- ~~1. The estimated net square footage required, to be measured according to the State University System Standard Method of Space Measurement, as specified in Rule 6C 17.012, F.A.C., and the State University System Space Generation Formula as specified in Rule 6C 17.013, F.A.C.~~

- ~~2. An approximate floor plan of the space needed, showing partitioning and other physical~~

requirements.

~~3. The general location desired for the required space.~~

~~4. The date on which the space must be available.~~

~~5. The term of the lease, indicating options to renew, if desired.~~

~~6. Services required as part of the Lessor's lease obligations, including but not limited to parking, dining, and transportation requirements.~~

~~7. The maximum rental rate which the University will pay pursuant to the rental rate guidelines recommended by the University Space Committee and approved by the President. Such guidelines shall be established in the same manner as provided in Rule 6C 17.014, F.A.C., and shall be based on an average rental rate for the type of property involved within the local area. Current guidelines shall be maintained by the University. A copy of such guidelines may be obtained by writing to the Executive Secretary of the University Space Committee. Provided, however, that the President may make exceptions to the rental rate guidelines when he deems it to be in the best interests of the University and the State.~~

~~8. Other matters to be included in the proposal or the lease document, such as, but not limited to, the lessor's agreement to:~~

~~a. Enter into a written lease (contract) in the standard form or containing the necessary terms and conditions described hereinafter.~~

~~b. Provide a scaled floor plan showing the present configurations and measurements that equate to the net rentable square footage offered.~~

~~c. Comply with the requirements of Section 255.21, F.S., regarding special facilities for the physically disabled.~~

~~d. Provide assurance of non-discrimination in the lessor's commercial or employment practices on the basis of race, sex, color, creed, religion, national origin, handicap, marital status, or veteran's status.~~

~~e. Validate the proposal for the period of time following the public bid opening date, as set forth in the specifications.~~

~~f. Provide to the Executive Secretary, not less than ten days prior to the date of execution of the lease or occupation of the space, whichever is earlier, the statements of full disclosure of ownership and beneficial interest, as required by Sections 255.249 and 286.23, F.S.~~

~~g. Provide an analysis of life cycle costs in accordance with Sections 255.253(4), 255.254, and 255.255, F.S., and subparagraph 60H 1.015(4)(c)7., F.A.C., and such guidelines and methods promulgated or adopted by the Florida Department of General Services.~~

~~h. Comply with the fire safety standards of the State Building Code, as required by Sections 255.25(5) and 633.05(8), F.S., and ensure that any required renovations will comply with such fire safety standards.~~

i. ~~Propose a rental rate per square foot per year that will be the University's sole financial obligation to the lessor pursuant to the lease. Therefore, such proposed rental rate should be calculated to account for all renovations and other requirements necessary to accommodate the University's space needs at the time of initial occupancy.~~

9. ~~Notice that, in order to be eligible for evaluation and award, sealed proposals must be submitted, in a titled envelope, to a designated individual by a specified closing time and date, and the date, place, and time at which all proposals will be publicly opened.~~

10. ~~Other requirements pertaining to the space which the University deems necessary or desirable for its purposes.~~

~~(c) Proposals or Bids.~~

1. ~~For purposes of this rule dealing with the lease of off-campus space, the terms "proposal" and "bid" may be used interchangeably, with respect to the competitive selection process.~~

2. ~~Each proposal must specifically respond to each item included in the specifications. The proposal may also include additional items or offerings, which the University will consider in evaluating the proposal. The proposal should present each item in a corresponding sequence to the specifications, with additional items and offerings contained in a separate section. However, failure to follow this format will not result in disqualification of the proposal unless it is submitted in a form which does not reasonably enable the University to evaluate the proposal in terms of the specifications.~~

3. ~~Each proposal shall be signed by the owner(s), or if the owner is a legal entity other than an individual(s), by its corporate officers, or legal representative(s). The corporate, trade or partnership name must be either stamped, written or typewritten in immediate proximity to the actual signature(s).~~

~~(d) Evaluation and Award.~~

1. ~~The University reserves the right to reject all bids submitted for any reason, and if desirable, to reinitiate the solicitation of proposals. The University further reserves the right to reject any bid on the ground that: it is nonresponsive to the solicitation and specifications; the bidder has failed to comply with any requirement set forth in the specifications or this rule; or, the bidder has failed to comply with any precondition of contract execution as set forth in the specifications or this rule.~~

2. ~~The University in conjunction with preparing specifications, shall develop evaluation criteria, which shall be used in evaluating the proposals submitted. Such evaluation criteria may include, but are not limited to, location of the offered facilities, the nature and costs of relocation activities, or the consolidation and coordination of activities, or any other factor affecting the effectiveness and efficiency of the University's operations.~~

3. ~~The Executive Secretary shall appoint a committee of not less than three University employees who have knowledge regarding the space needs to which a solicitation is applicable. The Committee shall~~

~~be present at the public opening of bids. Thereafter, the Committee, using the applicable evaluation criteria, shall advise the Executive Secretary regarding the evaluation of bids. The Executive Secretary shall consider the Committee's advice in formulating his recommendation to the President or his designee. Prior to submitting a recommendation, the Executive Secretary shall consult with the University official responsible for the operating budget of the using department for confirmation that such official desires the process to go forward. Upon receipt of the Executive Secretary's recommendation, the President or his designee shall determine whether to go forward with the process and if so shall select the lowest and best bidder.~~

~~4. Notice of the proposed award to the lowest and best bidder shall be given in writing to all responsive bidders.~~

~~5. Documentation of the selection shall be maintained and shall include but not be limited to copies of all notices and advertisements, a copy of the specifications, copies of all proposals received; and a summary of the University's findings for each proposal.~~

~~(6) Bid Protests. Any responsive bidder aggrieved by the proposed award, may submit a written protest thereof, to the Executive Secretary. The protest must be received within 14 days of the date of mailing of the notice of proposed award. The form of the protest and the procedures for resolution of the protest shall be carried out in accordance with subsection 6C2R 2.015(23), F.A.C. Provided, however, that in connection with petitions by prospective lessors, the Executive Secretary shall have and exercise the powers and duties as delegated therein to the Director of Purchasing.~~

~~(7) Lease Preparation. If no bid protests are timely received, or, after such protests have been administratively determined, or following negotiations in cases where no competitive bids are required, the lease document shall be prepared in accord with the following provisions:~~

~~(a) Preconditions. The Executive Secretary or his designee shall be responsible for ensuring that the proposed lessor has complied with all requirements regarding:~~

~~1. The disclosure of ownership and beneficial interests as provided in Sections 255.249(2)(h), (i), F.S.
2. Compliance with State Fire Code provisions, including approval by the University of plans for bringing the premises into compliance prior to occupancy.~~

~~3. Compliance with all requirements for accessibility by the physically disabled as provided in Section 255.21, F.S., or as required by the specifications, including approval by the University of plans designed to bring about compliance.~~

~~4. Where applicable, the preparation and submission of the life cycle analysis provided for in Section 255.251 et seq., F.S.~~

~~Failure of the proposed lessor to comply with any of these requirements prior to the time of occupancy shall be grounds for the University to void any lease. In such case, the University shall have no liability to~~

~~the proposed lessor.~~

~~(b) Form and Content of Agreement.~~

~~1. General. Unless there is cause to the contrary, the standard Florida State University Lease Agreement form shall be used for all agreements for lease of a privately owned building or space therein. In any case, the lease document must address and provide for the following: the term of the agreement; the amount, payment period, and dates of payment of rents; the allocation of responsibility for utilities, heating, air conditioning and janitorial services, light fixture installation and maintenance, other maintenance, and repairs; the allocation of risk and obligation for injury to persons or damage to property on the premises, and fire and other hazards; the respective obligations of the parties upon expiration of the term; rights regarding subletting and assignment and the acknowledgment thereof; the rights of the lessor regarding inspections of the premises, and the rights and mutual agreements of the parties regarding waiver of defaults, the severability of covenants, and breach of the lease; the responsibility for taxes, insurance, and commissions; limitations on the use of the premises; and directions regarding the delivery of notices.~~

~~2. Escalation Clauses Prohibited. No lease shall contain contingency or rate escalation clauses by which rental rates are adjusted in relation to changes in some outside index, indicator, or other factor. Any clause providing for rental rate adjustments must expressly include the time periods to which the adjustments are applicable and the amounts thereof.~~

~~3. Renewal of Leases. Any lease may contain an option to renew clause and any such renewal shall be made according to the terms and conditions of the renewal clause.~~

~~4. Option to Purchase. Any lease may contain an option to purchase clause; provided, however, that the terms and conditions of such clause, and the exercise of such option must be in compliance with such other statutes and rules applicable to the purchase of real property.~~

~~5. Entirety and Severability. Every lease shall contain or be deemed to contain a clause providing that a finding of invalidity as to any provision therein will not invalidate the remainder of the lease unless the invalidated provision materially frustrates the purpose of the lease or the intended use of the premises. Every lease shall also contain or be deemed to contain a clause providing that the lease document expresses the entirety of the agreement between the parties. However, the specifications and the lessor's proposal shall be deemed incorporated in the document in every case for purposes of interpretation and clarification, and, when specified in the lease for purposes of expressing substantive terms and conditions.~~

~~6. Not Consent to Sue. Every lease shall contain, or be deemed to contain, a clause providing that the execution of the lease does not constitute the consent of the State of Florida or its agencies to be sued by reason thereof, nor a waiver of the defense of sovereign immunity beyond that which the Legislature has lawfully made by statute.~~

~~7. Florida Law. Every lease shall contain, or be deemed to contain, a clause providing that: the lease is subject to the laws of the State of Florida; the laws and administrative rules, including this rule, of the State of Florida, are incorporated in, and made a part of the lease; and any administrative or judicial actions, arising out of, or, in connection with, the lease, shall be commenced before the court or administrative body of competent jurisdiction within this State.~~

~~8. Availability of Funds. Every lease shall contain, or be deemed to contain, a clause providing that the University's obligations pursuant to the lease shall be subject to, and contingent upon, the availability of funds lawfully appropriated by the Legislature or otherwise lawfully expendable for such obligations. This clause shall further provide that the University has the right to terminate the lease and shall be subject to no liability on account of termination on the lease of the nonavailability of such funds. The clause may also provide for notice requirements and other conditions for returning the parties and the premises to their previous status in the event of the nonavailability of such funds. The clause shall comply with the requirements of Section 216.311, F.S.~~

~~9. Right to Terminate Clause. Every lease for a term of more than one year shall contain, or be deemed to contain, a clause which gives the University the right to terminate the lease without being subject to any liability to the lessor by reason of such termination. Such clause may, however, provide for the return of the parties, on an equitable basis, to their pre-lease status.~~

~~(8) Final Approval and Execution.~~

~~(a) Legal Review. After the lease document has been prepared, the University Attorney's Office shall review it as to form and legality. Deficiencies in this regard shall be addressed and corrected as appropriate by the Executive Secretary with the advice and assistance of the attorney's office. Approval as to form and legality shall be indicated in writing on the lease document.~~

~~(b) Certification of Compliance. Upon the approval of the Office of the University Attorney as to form and legality, the Executive Secretary shall advise the President as to whether the lease document, preconditions thereto, and the procedures under which it was prepared are in compliance with Chapter 255, F.S. If the President determines that there has been such compliance, he shall so certify on a form prepared by the University. The President may delegate to a designee the duty to determine and certify compliance, except in such cases where by statute he is required to personally certify such compliance.~~

~~(c) Execution. When permitted by statute and/or the rules and regulations of the Board of Regents, the President shall execute the lease document. Otherwise, he shall cause the lease document and the certification of compliance to be transmitted to the Board of Regents Central Office for execution in accord with the Board of Regents rules and regulations.~~