

DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET

REAL ESTATE DIVISION

REAL ESTATE SERVICES

(By authority conferred on the department of technology, management and budget by sections 4 and 13 of 1948 PA 51, section 31 of 1969 PA 306, sections 131 and 221 of 1984 PA 431 and Executive Reorganization Order 2009-39, MCL18.4, 18.13, 24.231, 18.1131 and 18.1221 18.441)

R 18.501 Definitions.

Rule 1. As used in these rules:

(a) "Agreement" means a contract transferring the right, acquired for a consideration, to possession or use of real property on a month-to-month basis for a period not to exceed 1 year.

(b) "Appraisal" means an estimate or opinion as of a given date of the fair market value of real property.

(c) "Bidder" means an individual or other legal entity that submits a sealed bid or bid proposal.

(d) "Bidder list" means a general or geographic list maintained by the department's real estate office which sets forth the names and addresses of potential owner/lessors who have requested that they be provided solicitations for sealed bids or bid proposals. The bidder list is subject to ongoing additions and deletions in response to written requests from owner/lessors and is also formally updated by solicited responses on an annual basis.

(e) "Bid proposal" means an offer submitted in response to the state's solicitation for available space (including major remodeling or new construction, or both, when acceptable multiple locations are available) which meets or exceeds minimum specifications, requirements, and instructions outlined in a solicitation notice, with all exceptions or substitutions noted.

(f) "Department" means the department of technology, management and budget.

(g) "Director" means the director of the department or his or her authorized representative.

(h) "Fair market value" means the highest estimated price which real property will bring if offered for sale on the open market, allowing a reasonable time to find a purchaser who would buy with knowledge of the property's possible uses.

(i) "Financial analysis" means an analysis of the cost or value of the land, the improvements, and construction; amortization; interest; taxes; insurance; and any other pertinent factors included in a proposed rental rate which can be verified and compared to the open market competition.

(j) "Lease" means a contract transferring the right, acquired for a consideration, to possession or use of real property for a definite period of time.

(k) "Lessee" means a tenant or one who rents real property.

(l) "Lessor" means the owner of real property or one who lets the property.

(m) "Market rental analysis" means the conclusion reached through the comparison of rental rates on similar properties taking into account established market costs for differences in services provided.

(n) "Option" means the right, acquired for a consideration, to buy certain property for a fixed price within a specified time.

(o) "Real estate manager" means the manager of the state's central real estate office as designated by the director.

(p) "Real property" means the interests, benefits, and rights inherent in the ownership of the physical real estate, including the land, everything attached to it, and everything under or over it.

(q) "Rental" means a consideration paid by a lessee for the possession or use of real property.

(r) "Sealed bid" means a bid quotation in response to a solicitation where comparable facilities are established by complete plans and specifications which may include a designated site.

History: 1983 AACCS; 2012 AACCS.

R 18.502 Leasing of facility space; legal lessee; attorney general and board approval of lease required; competitive award process required specifications; objectives; justification of rent and rate increases required; options.

Rule 2. (1) Pursuant to sections 4 and 13 of Act No. 51 of the Public Acts of the First Extra Session of 1948, as amended, being SS18.4 and

18.13 of the Michigan Compiled Laws, facility space for the various state departments shall be leased in a manner which provides an equal opportunity for all individuals to participate in the procurement process insofar as there is no abrogation of the director's authority to award contracts which he or she deems to be in the best interest of the state.

(2) The state of Michigan is the legal lessee of all property occupied and rented by a state department or agency. An individual state department or agency shall not lease property in the name of the department or agency unless specifically authorized by statute.

(3) All lease contracts are subject to the approval of the attorney general as to legal form.

(4) All lease contracts are subject to the approval of the state administrative board prior to execution by the director.

(5) Unless otherwise waived by the director, the awarding of lease contracts shall be determined through a competitive bid proposal or sealed bid process. If waived, lease terms shall be subject to a complete market analysis or financial analysis, or both, to substantiate the rental amount.

(6) Specifications shall be written to encourage overall economy and efficiency through maximum competition in providing facilities, building space, equipment, services, and supplies to satisfy the state's needs. Specifications shall not be unduly restrictive.

(7) Sites or locations for leased space shall be evaluated consistent with the following criteria:

(a) Consolidating a state department, agency, or departments into 1 building if practical.

(b) Providing maximum occupancy of state-owned and leased facilities.

(c) Centralizing a department, agency, or departments into downtown areas if practical.

(d) Complying with policies and directives from the governor or director which are in the best interest of the state.

(e) Entering into lease contracts with local governments if possible to take advantage of their tax-exempt status and to encourage joint location of government services.

(f) Protecting the health, safety, and welfare of the public and employees.

(8) Lease contracts renewed through negotiation shall justify any increases in rental rates through comparative data. If a renewal includes renovations or additional construction, costs shall be substantiated and rental rates justified through market analysis or financial analysis, or both.

(9) The director may option a specific site or sites which meet a department's or agency's program needs, subject to the following criteria:

(a) The fair market value of the site or sites shall be determined by appraisal.

(b) Any deposit money required by an option shall be paid by the user department or agency.

(c) Purchase options for the acquisition of property for state use which specify a deposit in an amount greater than 1 dollar shall contain a clause that the owner shall return the deposit money to the user department or agency if the option is not exercised. The requirement for this clause in a purchase option may be waived by the director for good cause when deemed in the best interest of the state.

(d) The state has the right to assign an option to the successful bidder.

History: 1983 AACCS.

R 18.503 Special provisions.

Rule 3. Unless otherwise authorized by the director, for good cause when deemed in the best interest of the state, except as required by law, every lease contract entered into by the state shall have all of the following special provisions:

(a) The lessor, pursuant to the requirements of Act No. 453 of the Public Acts of 1976, as amended, being S37.2101 et seq. of the Michigan Compiled Laws, shall agree not to discriminate against any employee or applicant for employment, to be employed in the performance of the

contract, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, color, religion, national origin, ancestry, sex, height, weight, marital status, or age, except where a requirement as to age is based on a bona fide occupational qualification. Further, the lessor shall agree that every subcontract entered into for the performance of the contract shall contain a provision requiring nondiscrimination in employment, as herein specified, binding as a material breach of contract.

(b) The lessor shall, at the lessor's expense, during the term of the lease or any extension thereof, insure the premises with public liability insurance, the terms of such requirement to be set forth in the lease.

(c) The lessor shall warrant that the premises will comply with the barrier-free design requirements made applicable by Act No. 1 of the Public Acts of 1966, as amended, being S125.1351 et seq. of the Michigan Compiled Laws, unless an exception or exemption is granted by the Michigan barrier free design board.

(d) The lessor shall provide to the state, before possession, a written fire inspection report approving the premises for occupancy. Fire inspection reports shall be updated as determined by the director.

History: 1983 AACCS.

R 18.504 Contracts.

Rule 4. (1) Any type of contract which is in the best interest of the state may be used.

(2) A short-term lease contract agreement (1 to 4 years) may be used when a building requires little or no remodeling in order to allow the department or agency maximum flexibility and mobility in accordance with siting policy objectives.

(3) A long-term lease contract (5 to 10 years) may be used in the following situations:

(a) A building is to be extensively remodeled or rehabilitated by the lessor to meet state requirements.

(b) A building is to be constructed for a specific use by a state department or agency.

(c) The building and location best serves the interest of the state.

(4) A month-to-month agreement may be authorized by the real estate manager when space is needed for temporary, emergency, or interim quarters, for a period not to exceed 12 months, for any of the following purposes:

(a) Seasonal programs.

(b) Additional space to relieve congestion caused by temporary increases in workload.

(c) Immediate occupancy when unusual delays occur in the lease process.

(d) When there is a threat to public health, safety, or welfare under emergency conditions.

(e) For good cause when deemed in the best interest of the state.

History: 1983 AACCS.

R 18.505 Leasing information; public access.

Rule 5. Leasing information shall be a matter of public record to the extent provided in Act No. 442 of the Public Acts of 1976, as amended, being S15.231 et seq. of the Michigan Compiled Laws, and shall be available to the public pursuant to this act.

History: 1983 AACS.

R 18.506 Rescinded.

History: 1983 AACS; 2012 AACS.

R 18.507 Bid solicitation.

Rule 7. Unless otherwise authorized by the director, for good cause when deemed in the best interest of the state, the following provisions apply:

(a) Sealed bids or bid proposals shall be solicited from all parties who express an interest in bidding in response to the public notice or in response to notification sent to those on the bidder list.

(b) All sealed bids and bid proposals are subject to the specifications, requirements, and instructions outlined in each specific bid solicitation.

History: 1983 AACS.

R 18.508 Bids; right of refusal.

Rule 8. The state reserves the right to reject any or all bids or to waive defects in bids for good cause when deemed in the best interest of the state.

History: 1983 AACS.

R 18.509 Solicitation or award of contract; public right of protest.

Rule 9. (1) A person who is aggrieved in connection with the solicitation or award of contract action taken by the real estate manager may protest to the director.

(2) A person who is aggrieved in connection with a solicitation or award of contract authorized by the director may protest to the building committee of the state administrative board.

(3) A person who is aggrieved in connection with a solicitation or award of contract recommended by the building committee of the state administrative board may protest to the state administrative board.

History: 1983 AACS.