

## RULE

**Office of the Governor  
Division of Administration  
Office of Facility Planning and Control**

Rental and Lease Procedure and Regulations  
(LAC 34:III.Chapter 5)

### Title 34

## GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

### Part III. Facility Planning and Control

#### Chapter 5. Rental and Lease Procedure and Regulations

##### §501. Authority, Policy, Purpose, and Application

A. Authority. Louisiana Revised Statutes provide that all agreements for the lease or rental of space shall be made by the agency whose offices and/or activities are to be housed, but shall be made and entered into only with the approval of the commissioner of administration. (Louisiana Procurement Code, Louisiana Revised Statutes, Chapter 17 of Title 39 R.S. 39:1551 et seq. with particular reference to 39:1641-1644). The commissioner has designated the Office of Facility Planning and Control, Real Estate Leasing Section, to administer this function (1641).

B. Policy. It is the policy of the Division of Administration to acquire the best available rental space for state agencies with the greatest amount of competition among lessors of privately owned facilities (1594(G), 1594(E) as amended, 1643(A) as amended).

C. Purpose. The purpose of these procedures and regulations is to simplify and clarify the procurement practices for renting and leasing of space for state agencies, to provide increased economy and efficiency in procurement activities, to foster more effective competition for bid space, ensure fair and equitable treatment of all persons involved, to enable greater public confidence in the lease procurement process, and to maintain a procurement system of quality and integrity.

D. Application. The definition of "agency" stated in R.S. 39:2(2) shall be the sole definition of the term "state agency" employed herein in connection with the acquisition of housing space and the fact that an agency is supported by fees or taxes collected by, or dedicated to, the agency or which otherwise receives its operating funds through means other than direct appropriations, shall not be a test as to whether these rules shall be applicable to an agency of the state. [39:1641(C)].

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Department in LR 10:902 (November 1984), amended LR 26:0000 (May 2000).

##### §503. Space Acquisition Method

###### A. In General

1. The Office of Facility Planning and Control, Real Estate Leasing Section, will retain an original of each lease and will notify a user agency when its lease is about to expire.

2. All standard forms mentioned herein are available on request from the Office of Facility Planning and Control, Real Estate Leasing Section.

3. Every lease for the use of 5,000 square feet or more, with the exception of emergency and sole source procurements as set forth in Rules 513 and 514 and cooperative use agreements between public procurement units, as set forth in R.S. 39:1701 and 1704, must be procured in accordance with R.S. 39:1594.

4. All leases and lease amendments, including amendments both for space of less than 5,000 square feet (which can be negotiated) and for 5,000 square feet or more, which must be bid, must be preceded by a request for approval form RL-2A (negotiable and amended leases) and RL-2B (leases competitively bid) on which the request for space, location and terms of lease are detailed.

5. The Office of Facility Planning and Control, Real Estate Leasing Section, will examine the request in relation to authorized programs, funds, and personnel, and will approve, take under advisement, or disapprove the user agency request, taking into consideration, including but not limited to, the price per square foot of rental space, space allocation, availability of housing in State-owned space, location of the requested space, number of locations considered, timeliness of the availability of the requested space.

###### B. Procedure for Space Less than 5,000 Square Feet

1. An agency seeking to acquire a lease for less than 5,000 square feet or to amend an existing lease which will result in total leased space of less than 5,000 square feet, shall attempt to obtain at least three written proposals. Upon receipt of these proposals, the user agency shall enter into a negotiation process to obtain the best price and terms possible under the circumstances subject to approval by the Division of Administration.

2. Once the agency has completed this negotiation process and has selected a prospective lessor, it submits an RL-2A form to the Office of Facility Planning and Control, Real Estate Leasing Section, for approval of the proposed lease.

3. If an RL-2A request is not approved, the agency is notified in writing of the reasons for disapproval. Facility Planning and Control, Real Estate Leasing Section, may request additional information for further consideration.

4. Upon approval of the RL-2A request, the Real Estate Leasing Section will prepare the lease and extract of lease/amendment. The lease, extract of lease/amendment, and accompanying affidavit are executed, first by the lessor, then by the lessee, who is the user agency or department, and then given final approval by the Division of Administration. The extract of lease and the affidavit become a part of the lease. All leases and amendments shall be executed as four originals and distributed as follows: two leases shall be distributed to the user agency, one distributed to the lessor, and one retained by the Office of Facility Planning and Control, Real Estate Leasing Section. The lessor shall record the extract of lease/amendment, lease or amendment in the public records of the parish in which the leased premises are located, and provide the Real Estate Leasing Section with a certified copy showing such recordation.

###### C. Space 5,000 Square Feet or Greater

###### 1. The Bid Specifications and Solicitation

a. The Office of Facility Planning and Control, Real Estate Leasing Section, receives the RL-2B from the user agency. If an RL-2B is not approved, the agency is notified in writing of the reasons for disapproval. Additional information may be requested for further consideration. If

the RL-2B is approved, the Office of Facility Planning and Control, Real Estate Leasing Section, prepares the bid specifications. The bid specifications shall include the bid proposal form, affidavit attesting to control of the offered property and parking area, evidence of agency, corporate, or partnership authority (if applicable), space specifications and requirements, criteria for evaluation of the bids and a sample lease. Criteria for evaluation of bids shall include location of the proposed space, conditions of the proposed space, suitability of the proposed space for the user agency's needs, and timeliness of availability of the proposed space. (Act 635 of 1995 amending 39:1594(E) and Act 121 of 1997 adding 39:1594(C)(4).

b. The Real Estate Leasing Section forwards the bid specifications to the user agency for final review and comment prior to advertisement.

2. Advertisement and Notice. As required by R.S. 39:1643, leases for the use of 5,000 square feet or more of space are to be awarded pursuant to R.S. 39:1594 (unless exempt under R.S. 39:1593) which requires adequate public notice of the invitation for bids to be given at least 20 days prior to bid opening date. This notice is given by advertising in the official journal of the state and in the official parish journal of the parish where the property is to be leased. The advertisement shall be published twice in the state and parish journals, with one publication on a Saturday, if available. The bid specifications are then made available and distributed to bidders who request a copy. Bidders receiving a copy of the bid specifications, become a "Bidder of Record" for that solicitation.

3. Pre-Bid Conference. A pre-bid conference may be held upon the request of the user agency to answer questions from prospective bidders. The date and time of the pre-bid conference shall be included in the advertisement, which shall state if attendance at the pre-bid conference is a prerequisite to submission of a bid.

#### 4. Addenda to Bid Specifications

a. A potential bidder or the user agency can request changes/alterations to the advertised bid specifications, but only in writing to the Office of Facility Planning and Control, Real Estate Lease Section. The written request is reviewed by the Real Estate Leasing Section and by the user agency. If approved, an addendum to the bid specifications is issued and provided to all "Bidders of Record."

b. Addenda modifying the bid specifications must be issued no later than three working days prior to the advertised time for the opening of bids, excluding Saturdays, Sundays and any other legal holidays. If the necessity arises to issue an addendum modifying the bid specifications within the three-day period prior to the advertised time for the opening of bids, the opening of bids shall be extended exactly 14 days, without the requirement of re-advertising. Addenda shall be sent to all "Bidders of Record."

c. If any changes/alterations to the advertised bid specifications are a substantial deviation from the advertised bid specifications, the solicitation must be re-advertised with a new bid opening date established. The bid opening is rescheduled for at least 20 days after the re-advertisement. Any alterations or changes to advertised geographic boundaries may be grounds for re-advertisement of the solicitation.

#### 5. Bid Opening

a. Bids are opened by the Real Estate Leasing Section at the specified date, time and place. The Real Estate

Leasing Section evaluates the bids and arranges them on a bid tabulation sheet. If deemed necessary by the Real Estate Leasing Section, additional information and documentation evidencing control of the offered property and parking areas can be requested of the apparent low bidder.

b. The Real Estate Leasing Section sends the bid tabulation to the user agency with a request that the user agency verify availability of funds for rental payments to the apparent low bidder and compliance of the property offered by the apparent low bidder with the specified geographic boundaries.

#### 6. Determination of Lowest Bidder

a. Upon receipt from the user agency of verification of availability of rental payments to the apparent low bidder and verification of compliance of the property offered by the apparent low bidder within the specified geographic boundaries, the Real Estate Leasing Section sends written notice to the apparent low bidder requesting schematic floor plans, site plans, and outline specifications of the proposed lease space. The apparent low bidder is allowed 20 days in which to provide the required documents. The user agency shall then review the documents as to adjacencies and layout of the space. If they meet the agency's requirements, the agency shall then submit the schematic plans, site plans, and outline specifications to the Real Estate Leasing Section for review. Once the Real Estate Leasing Section determines they are in compliance with the advertised bid specifications, it will proceed with the issuance of the lease documents.

b. If the schematic plans, site plans, and outline specifications are not approved by the Real Estate Leasing Section, the apparent low bidder is allowed ten days in which to correct any deficiencies or discrepancies between the submitted plans and the advertised bid specifications. Upon receipt of the revised plans, the Real Estate Leasing Section reviews for compliance with the advertised bid specifications. If the documents are then approved by the Real Estate Leasing Section, the lease documents are then issued. Should the schematic plans, site plans, and outline specifications still not comply with the advertised bid specifications, the bid may be rejected for non-compliance with the advertised bid specifications. The next apparent low bidder can then be considered by following the same procedures.

c. Should all bidders be considered non-responsive or not in compliance with the advertised bid specifications, the bid solicitation is canceled. The bid specifications can be reviewed for possible revisions in order that a new solicitation can be issued.

7. Execution of the Lease. The Real Estate Leasing Section will prepare the lease and extract of lease. The lease and extract of lease and accompanying affidavit are executed, first by the lessor, who must return the signed lease and the affidavit within ten days after receipt. The lease is then executed by the lessee, who is the user agency or department, and then given final approval by the Division of Administration. The affidavit and extract of lease become a part of the lease. All leases shall be executed as four originals and are distributed as follows: two leases to the user agency, two to the lessor, and one retained by the Office of Facility Planning and Control, Real Estate Leasing Section. The lessor shall record an extract of lease or lease in the public records of the parish in which the leased premises are located and provide the Real Estate Leasing Section with a certified copy showing such recordation.

8. Notice to Other Bidders. When the lease documents are mailed to the lowest, responsible bidder for execution, all other bidders are notified via certified mail of the contract award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Department in LR 10:902 (November 1984), amended LR 26:0000 (May 2000).

#### **§505. Space Offered**

A. A bidder may offer space consisting of any of the following: owned or leased space ready for occupancy, owned or leased space to be renovated for occupancy, owned or leased new construction.

B. Space may not be offered for lease in response to a solicitation if the same space has been offered/bid for another solicitation within the last 60 days and has not been withdrawn for that solicitation.

C. A bidder must control the offered property and parking areas as of the date of the bid opening and throughout the term of the lease and option period. He shall submit an affidavit with his bid indicating how the property and parking areas are controlled. The Real Estate Leasing section shall ask the apparent low bidder to provide schematic plans, outline specifications, and site plans and will evaluate those plans and specifications to determine compliance of the offered space with the advertised bid specifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Department in LR 10:902 (November 1984), amended LR 26:0000 (May 2000).

#### **§506. Rejection of Bids and Cancellation of Invitations for Bids or Requests for Proposals**

A. The Chief Procurement Officer or designee has the right to reject any or all bids, and to cancel an invitation for bids, a Request for Approval Form RL-2, or other solicitation when it has been deemed to be in the best interest of the State of Louisiana. Such determination must be made in writing.

B. If the solicitation is cancelled prior to bid opening, all bidders of record (those bidders who obtain from the Real Estate Leasing Section a copy of the bid specifications) are notified. If the solicitation is cancelled after the bid opening, all bidders are notified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:0000 (May 2000).

#### **§507. Additional Requirements of Lessor Repealed**

#### **§508. Correction and Withdrawal of Bids**

A. Prior to Bid Opening. Prior to the bid opening, a written request for the withdrawal of a bid will be granted if the request is received prior to the specified time of the bid opening. If a bidder withdraws a bid, all bid documents shall remain the property of the State.

B. After Bid Opening. Patent errors in bids or errors in bids supported by clear and convincing evidence may be corrected, or bids may be withdrawn, if such correction or withdrawal does not prejudice other bidders. Such bid may

be corrected or withdrawn after bid opening only with the approval of the Office of Facility Planning and Control, Real Estate Leasing Section. A bidder who wishes to correct or withdraw a bid, must request approval for such action in writing. The request must specify the justification for the proposed correction or withdrawal. If a bidder is allowed to withdraw a bid, he may be required to withdraw all other bids he has submitted for that solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:0000 (May 2000).

#### **§509. Determination of Responsibility**

A. The Real Estate Leasing Section may request that an apparent low bidder submit suitable evidence that he is a responsible bidder. A responsible bidder shall:

1. have adequate financial resources for performance, or have the ability to obtain such resources as required during performance;

2. have the necessary experience, organization, technical qualifications, skills, and facilities, or have the ability to obtain them (this may include subcontractor arrangements);

3. be able to comply with the proposed or required occupancy date; and

4. not have an unsatisfactory record of contract performance.

B. The Real Estate Leasing Section may request the following information:

1. a letter of credit from a financial institution;

2. financial statement;

3. a letter of commitment from the bank or other institution financing the project and addressed to the Division of Administration, stating the amount and terms of commitment to the Lessor;

4. information from the prospective Lessor, including representations and other data contained in proposals, or other written statements or commitments, such as financial assistance and subcontracting arrangements;

5. other information supportive of financial responsibility, including financial data, and records concerning lessor performance;

6. publications, including credit ratings and trade and financial journals; and

7. information from other sources, including banks, other financial companies, state departments and agencies, and courts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Department in LR 10:902 (November 1984), amended LR 26:0000 (May 2000).

#### **§510. Assignment of Proceeds of Lease and Assignment of Lease**

Assignments of Lease and Assignments of Proceeds of Lease by a lessor must be approved in advance and in writing by the Office of Facility Planning and Control/Real Estate Leasing Section. Approval of a requested assignment shall not be unreasonably or arbitrarily withheld by either party. However, the approval of any assignment of proceeds of lease may be conditioned upon receipt of reasonable assurances from assignee of his ability and willingness to

assume responsibility for performance of the terms of the lease in the event of failure of performance by the assignor. Assignment of Lease forms and Assignment of Proceeds of Lease forms shall be provided by the Office of Facility Planning and Control, Real Estate Leasing Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:0000 (May 2000).

#### **§511. Resolution of Controversies**

A. Right to Protest. Any prospective lessor who is aggrieved in connection with the solicitation or award of a contract may protest to Facility Planning and Control. Protests with respect to a solicitation shall be submitted in writing no later than 10 days prior to the opening of bids. If a person protests a solicitation, an award cannot be made until said protest is resolved. Protests with respect to the award of a contract shall be submitted in writing within 14 days after contract award. Said protest shall state fully and in particular, the reason for protest if a protest is made with respect to the award of a contract. Work on the contract cannot be commenced until it is resolved administratively.

B. Decision. The assistant director, Facility Planning and Control, must notify the protesting party in writing and the legal counsel of the Division of Administration within 14 days after receipt of said protest whether or not the protest is denied or granted. If the protest with reference to the solicitation is granted, the solicitation will be canceled and reissued. If the protest with reference to the award is granted, then the lease will be voided and the remaining solicitations may be re-evaluated for another selection. If another selection cannot be made or if it appears to be in the best interest of the state, a new solicitation will be issued.

C. Appeal. If an aggrieved party is not satisfied with the rendered decision, then that party may appeal said decision in writing to the commissioner of administration within seven days of the decision. The protesting party should fully explain the basis of his appeal. The commissioner then must render a decision in writing within 14 days of receipt of the appeal. The commissioner's decision is final and an aggrieved party may bring judicial action within two weeks from receipt of said decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control in LR 11:945 (October 1985), amended in LR 22:345 (May 1996), repromulgated LR 26:0000 (May 2000).

#### **§512. Lease Clauses**

A. A lease may include clauses providing for equitable adjustments in prices, time for performance, or other contract provisions, as appropriate, covering such subjects as:

1. the unilateral right of the state to order in writing changes in the work within the general scope of the contract in the drawings, designs, or specifications for space to be furnished;
2. the unilateral right of the state to order in writing temporary stopping of the work or delaying of performance; and
3. variations between estimated and actual quantities.

B. A lease may include clauses providing for appropriate remedies covering such subjects as:

1. liquidated damages as appropriate;

2. specified excuses for delay or non-performance;
3. termination of the contract for default; and
4. termination of the contract in whole or in part if sufficient funds have not been appropriated by the Legislature.

C. A lease may also provide that in the event that the lessor fails to fulfill or comply with the terms of any contract, he may be subject to disqualification on future state projects and the chief procurement officer may award the contract to the next lowest responsible bidder, subject to acceptance by that bidder, and charge the difference in cost to the defaulting lessor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:0000 (May 2000).

#### **§513. Emergency Procurement**

A. The Office of Facility Planning and Control, Real Estate Leasing Section, may make emergency procurements for acquisition of housing space of 5,000 square feet or more when there exists an imminent threat to the public health, welfare, safety or public property.

B. The declaration of an emergency must be made in writing by the Chief Procurement Officer or his designee, fully documenting the nature of the emergency, the circumstances leading up to the emergency and a description of the threat to public health, welfare, safety or public property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1598.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Department in LR 10:902 (November 1984), amended LR 26:0000 (May 2000).

#### **§514. Sole Source Procurements**

The Office of Facility Planning and Control, Real Estate Leasing Section may make sole source procurements for acquisition of housing space of 5,000 square feet or more or may amend an existing lease to total in excess of 5,000 square feet or more when the Chief Procurement Officer, or his designee, determines in writing that there is only one source for the required space.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1597.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Department, LR 26:0000 (May 2000).

#### **§515. Amendments to Leases**

A. Additional Space. Any additional space added is to be only that for which the requirement could not reasonably have been foreseen at the time of execution of the lease or the latest option renewal; the additional space provision is not to be used to circumvent the bid law.

1. Leases for Space of Less than 5,000 Square Feet. Any lease for less than 5,000 square feet may be amended by negotiation between the user agency and the lessor. The square footage of such a lease may be increased up to a total of 4,999 square feet with the approval of the Division of Administration. If the amendment causes the space to measure 5,000 square feet or more, the additional space must be procured in accordance with RS 39:1594 unless it is deemed a sole source or emergency procurement.

2. Leases for Space of 5,000 Square Feet or More. Any lease for space of 5,000 square feet or more, may be

amended by negotiations between the user agency and the lessor to include up to 4,999 square feet of additional space. Such amendment must also be approved by the Division of Administration. If the amendment adds 5,000 square feet or more, the additional space must be procured in accordance with RS 39:1594 unless it is considered a sole source or emergency procurement.

B. Modifications and Alterations. In the event alterations to or modifications of space currently under lease are required to meet changed operating requirements, a lease may be amended. Such lease amendment may, with the approval of the Division of Administration, provide an adjustment in monthly lease payments not to exceed 25 percent of the original annual lease price per square foot, sufficient to reimburse the lessor for paying for the leasehold improvements. Any adjustment in lease payments shall also require the approval of the Joint Legislative Committee on the Budget. The continuance of a rental adjustment in excess of 25 percent of the original rental rate shall be further contingent on the appropriation of funds in the following fiscal years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Department in LR 10:902 (November 1984), amended LR 26:0000 (May 2000).

#### **§516. Renegotiation and Renewal of Current Leases**

A. Leases of Less than 5,000 Square Feet. If an agency wishes to renew an existing lease of less than 5,000 square feet, it may renegotiate with the present lessor or attempt to obtain proposals from other prospective lessors.

B. Space of 5,000 Square Feet or More. An existing lease for office or warehouse space of 5,000 square feet or more, may be renegotiated with the present lessor, but only after the Division of Administration has entered into a competitive negotiation process involving discussions with at least three offerors who submit written proposals. If less than three written proposals are submitted, the Division of Administration may, nevertheless, hold discussions with those offerors, as well as with the current lessor, but without revealing information gleaned from competing proposals to other offerors. Such proposals shall be solicited by advertising as provided in R.S. 39:1594(C).

C. Evaluation of Proposals. If the Commissioner of Administration, or his designee, determines after evaluation of the proposals and discussions with the current lessor that to renew the present lease would be in the best interest of the State, an existing lease may be renewed. The Commissioner, or his designee, may enter into a lease with one of the other offerors if determined to be in the best interest of the State. In making such a determination, the Commissioner, or his designee, shall take into consideration, over the duration of the lease, rental rates, the amount of funds necessary to relocate, any geographical considerations particular to that state program, the amount of disruption to state business that may be incurred in moving to a new location, and any other relevant factors presented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:0000 (May 2000).

#### **§517. Revised Statutes and Louisiana Administrative Code**

These regulations shall be read and interpreted jointly with Chapter 17 of Title 39 of the Revised Statutes and, when not in conflict, with the purchasing rules of the *Louisiana Administrative Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Department in LR 10:902 (November 1984), amended LR 26:0000 (May 2000).

Roger Magendie  
Director

0005#045