

NOTICE OF PROPOSED REGULATION AMENDMENT

Date: March 1, 2016

REGULATION TITLE:
Lease of Space

REGULATION NO.:
3.025

SUMMARY: The amendments to this regulation remove a reference to a statutory provision that no longer exists, replacing it instead with language from a related statutory section that addresses the same subject matter; clarify that only certain portions of Chapter 255, F.S. will be applicable to University leases; correct an internal inconsistency by ensuring that the prescribed method of space measurement is consistent throughout; and remove a reference to a specific version of a space allocation authority document, citing instead to the most recent version.

AUTHORITY: BOG Regulation 1.001

COMMENTS CONCERNING THE PROPOSED REGULATION SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. The comments must identify the regulation you are commenting on.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION IS: Sandra L. Mitchell, Senior Administrative Assistant, 123 Tigert Hall, Post Office Box 113125, University of Florida, Gainesville, Florida 32611, 352-392-1358 office, 352-392-4387 facsimile, regulations@ufl.edu.

NAME OF PERSON WHO APPROVED THE PROPOSED REGULATION: Paula V. Fussell, Vice President for Human Resources Services

THE FULL TEXT OF THE PROPOSED REGULATION IS ATTACHED TO THIS NOTICE.

REGULATIONS OF THE
UNIVERSITY OF FLORIDA

3.025 Lease of Space

(1) Purpose. This regulation implements the authority given to the University of Florida to lease real property for the purpose of implementing approved programs of the University.

(2) Definitions. For purposes of this regulation, a lease is a document containing the terms and conditions establishing the relationship of landlord and tenant for real property, including land and any improvements thereon.

(3) Approval. All leases shall be prepared in accordance with this regulation and executed by the President or President's designee. In addition, if a lease of real property is being entered into for the benefit of a particular college and that college will have financial responsibility for the lease, the Dean or Dean's designee for such college must authorize the lease.

(4) Standard Lease. The University uses a standard lease form as periodically developed by the University's Office of the Vice President and General Counsel and the University's Office of Real Estate, and is available from the Office of Real Estate. The University's Office of the Vice President and General Counsel, following consultation with the Office of Real Estate, shall be responsible for the review and approval of any deviations from the standard lease form.

(5) 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. Any such clause in a lease shall be null, void, and unenforceable. The final cost to the University for the complete term of a lease, including all renewal periods, must be clearly set forth in the lease.

(6) 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.”

(7) Renewal of Leases. Any lease may contain options to renew and any renewal(s) shall be made according to the terms and conditions of the lease.

(8) Code Compliance in Leased Space.

(a) Any privately-owned building or any part thereof to be leased to the University shall comply with those portions of Chapters 553 and 633, Fla. Stat., including, but not limited to, fire safety, life safety and disabled access standards, applicable to University buildings.

(b) No construction or renovation of any state-leased building may commence until the University has ascertained that the proposed construction or renovation plan complies with those portions of Chapters 553 and 633, Fla. Stat. applicable to University buildings.

(c) The cost of all modifications or renovations made for the purpose of bringing state-leased property into compliance with the applicable portions of Chapters 553 and 633, Fla. Stat., shall be borne by the landlord unless otherwise agreed in writing by the University.

(9) Leases of 5,000 Square Feet or More.

(a) The University shall not enter into a lease for 5,000 square feet or more of space in a privately-owned building except upon advertisement for and receipt of competitive proposals and award to the responsive and responsible proposer whose proposal is determined to be the most

advantageous to the University, taking into consideration the price and other criteria set forth in the University's solicitation. The University shall not enter into, within any twelve (12)-month period, more than one (1) lease for space in the same privately-owned facility or complex except upon the solicitation of competitive proposals. Exceptions to these requirements are as follows:

1. This subsection shall not apply to the renewal of leases when the lease contains renewal terms. The University may approve extensions of an existing lease of 5,000 square feet or more of space if such extensions are determined to be in the best interest of the University but in no case shall the total of such extensions exceed eleven (11) months. If at the end of the 11th month the University still needs space, it shall be procured by competitive solicitation. However, if the University determines it is in its best interest to remain in space it currently occupies, the University may negotiate a replacement lease with the landlord if an independent market analysis demonstrates that the lease rates offered are within market rates for the space and the cost of the new lease does not exceed the cost of a comparable lease plus documented moving costs. The term of such replacement lease may not exceed the base term of the expiring lease. The decision to extend a lease and to remain in space currently occupied shall be based on the following factors: the cost of moving, the disruption of activities that will occur as a result of moving, the location of the space, the suitability of the space, the proximity of services, the layout and type of space, and the quality of space involved.

2. This subsection shall not apply to specialized research, medical or educational facilities, if the President or designee certifies in writing that said facility is available from a single source and that compliance with competitive proposal requirements would be detrimental to the University.

3. This subsection shall not apply to any lease having a term of less than one hundred twenty (120) consecutive days for the purpose of securing one-time special use of the leased property.

4. This subsection shall not apply to buildings or facilities of any size leased for the purpose of providing care and living space for persons.

5. This subsection shall not apply to emergency space needs in the event existing 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 the lease does not exceed eighteen (18) months, provided the University may modify the lease to extend month to month for up to six (6) additional months to allow completion of such construction or renovations.

6. This subsection shall not apply when leasing facilities in a research and development park, a hospital, or other medical facilities, such as a medical office building, with which the University is affiliated.

7. This subsection shall not apply to any lease for nominal or no consideration.

(b) The University shall not enter into a lease agreement in a privately owned building when suitable space is available in a state-owned building located in the same geographic region unless it is determined to be in the best interest of the University, such as when the cost of the move from a private building to the state-owned building would exceed the rental savings associated with the state-owned building.

(c) Solicitation.

1. A public solicitation for proposals will be publicized using newspaper advertisements and/or contact with owners, developers or realtors in the city or area in which space is desired. The University's Office of Real Estate shall be responsible for the solicitation and/or advertisement for proposals for leased space.

2. The solicitation shall set forth, but not be limited to, the following:

a. Approximate net square footage required to be measured in accordance with the method used by the State University System for gross square feet as described in the current Physical Facilities Space File, or if in a privately owned building, measured according to an industry-accepted measurement protocol, such as Building Owners and Managers Association Standards.

b. General area in which space must be located.

c. Date space must be available.

d. Name and address of location where specifications may be obtained.

e. Terms and conditions of lease.

(d) Specifications.

1. Specifications shall be written by the University in general terms and shall afford each prospective landlord, interested in submitting a proposal, knowledge of the University's space requirements. Specifications shall not be structured to favor any specific location or landlord.

2. Specifications provided to each prospective landlord shall set forth, but not be limited to, the following:

a. Approximate net square footage required to be measured in accordance with [Section 9\(c\)\(2\)\(a\)](#) above.

b. An approximate floor plan of space needed showing partitioning and other physical requirements.

c. General location of required space.

d. Date space must be available.

e. Term of lease with option to renew, if desired.

f. Services required to include parking, dining and transportation requirements.

3. Specifications shall also set forth that the prospective landlord will agree to:

a. Enter into the University's standard lease.

b. Provide a scaled floor plan showing present configurations and measurements that equate to net rentable square footage offered, as well as useable square footage.

c. Be an Equal Opportunity Employer.

d. Provide Full Disclosure Statements of Ownership.

e. Validate the proposal for a minimum of forty-five (45) days following the public proposal opening date.

f. Propose a rental rate per square foot per year that will include all renovations and other special requirements necessary to accommodate the program at the time of initial occupancy, and clearly stating of that rental rate per square foot the amount allocated to (i) base rent, (ii) the cost of tenant improvements or renovations necessary to make the space conform to the University's specifications and (iii) operating costs, such as real property taxes and utilities, being reimbursed by the University.

4. Specifications may provide that sealed proposals are to be submitted, in a titled envelope, to a designated individual by a specified closing time and date, at which time all proposals will be publicly opened.

(e) Proposals.

1. Proposals shall respond specifically but need not be limited to each item included in the specifications.

2. Each proposal shall be signed by the owner(s), corporate officers, or legal representative(s). The corporate, trade, or partnership name must be either stamped, written or typewritten, beside the actual signature(s). If the proposal is signed by an agent, written evidence of his authority must accompany the proposal. If a corporation foreign to the State of Florida is the owner, evidence of authority to conduct business in Florida shall be presented.

(f) Evaluation.

1. The University reserves the right to accept or reject any or all proposals submitted and, if the University deems it necessary, to reinitiate procedures for soliciting competitive proposals.

2. The University, in conjunction with preparing specifications, may elect to develop either weighted or un-weighted criteria. If weighted criteria are used, the criteria items most significant to the University's needs should bear the highest weight. The cost of relocation, if any; consolidation of activities, if desirable; and any other factors deemed necessary should be weighed.

3. Selection shall be made by the University and shall be publicly posted at the location where the proposals were opened and remain posted for seventy-two (72) hours, which shall be

interpreted as three (3) working days, not counting Saturdays, Sundays, and State of Florida holidays.

5. Documentation to support the selection shall be maintained and shall include, but not be limited to, the following:

- a. A copy of all advertisements.
- b. A copy of the proposal specifications.
- c. A copy of all proposals received.
- d. A synopsis of the University's findings for each proposal.

(g) Lease preparation and approval. After the selection has been awarded, a lease shall be properly executed.

(10) Disclosure Statements -- Private Entities, Public Officials.

(a) The landlord shall provide ~~the~~ statements disclosing the names and the extent of interest of the owners holding a 4 percent or more interest in any privately owned property leased to the University, or in the entity holding title to the property. required pursuant to sections 255.249(4)(h) and (i), Fla. Stat., regarding ownership interests in the lease property.

(b) It is not necessary to make disclosure of any beneficial interest which is represented by stock in any corporation registered with the Securities and Exchange Commission or registered pursuant to Chapter 517, Fla. Stat., which stock is for sale to the general public. A statement certifying the registration shall be provided by the landlord.

(c) It is not necessary to make disclosure under paragraphs (a) and (b) above of any leasehold interest in property located outside the territorial boundaries of the United States.

(d) Each subsequent transaction pertaining to a lease for which a Disclosure Statement has been provided, may be accompanied by a landlord's affidavit that the previous Disclosure Statement submitted on (date provided) is still valid, if no change in the interest held or individuals concerned has occurred.

(11) Certification of Compliance. The President or designee shall certify that the lease is in compliance with all leasing criteria provided by Chapter 255, Fla. Stat., to the extent applicable.

(12) Standard Method of Space Measurement. Space ~~measurement~~ shall be measured in accordance with the methods set forth in 9(c)2.a. above. ~~based on usable space as defined in Department of Management Services Rule 60H-2.003(2), F.A.C.~~

(13) Space Allocation. Space allocation shall be based on the formula provided in the most recent publication of the "State Requirements for Educational Facilities, ~~1999~~ Volume I-Process and Rule and Volume II-Building Code," as in effect at the relevant time.

(14) Rental Rates. The rental rate for space shall be within rental rate guidelines established by the University.

(15) Leases Not Requiring Competitive Proposals. In any leasing of space that is accomplished without competition, the individuals taking part in the development or selection of criteria for evaluation, in the evaluation, and in the award processes shall attest in writing that they are independent of, and have no conflict of interest in, the entities evaluated and selected.

Authority: BOG Regulation 1.001.

History--New 1-28-80, Formerly 6C1-3.25, Amended 2-9-87, 5-18-92, 4-30-95, 5-23-96, 7-27-98, 1-12-00, 07-25-02, 6-3-03, 3-14-08 (BOT approval), Formerly 6C1-3.025, Amended 4-3-15-[_____](#).