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TREASURY-GENERAL

DIVISION OF PROPERTY MANAGEMENT & CONSTRUCTION

State Leasing and Space Utilization

Proposed New Rules: N.J.A.C. 17:11-1.1 et seq.

Authorized By: John E. McCormac, State Treasurer, through Edmund F. Jenkins, Director,
Division of Property Management and Construction

Authority: N.J.S.A. 52:18A-191.1 et seq., specifically N.J.S.A. 52:18A-191.8.

Proposal Number:

Submit comments within sixty days to:

Steven M. Sutkin, Deputy Director
Division of Property Management & Construction
33 West State Street, P.O. Box 034
Trenton, New Jersey 08625-0034

The agency proposal follows:

Summary

By enactment of P.L. 1992, c.130, approved on October 26, 1992 (N.J.S.A. 52:18A-191.1 et seq.), the Legislature recognized the need for a comprehensive review of State agency space needs and the implementation of an efficient, effective and economical State space

leasing program.

The statute established the Office of Leasing Operations under the supervision of the Administrator of the General Services Administration. Pursuant to Reorganization Plan 003-1997, set out under N.J.S.A. 52:18A-178 et seq., the Office of Leasing Operations and related functions, powers, and duties were transferred to the Division of Property Management and Construction (“DPM&C”). Notwithstanding any provision of law to the contrary, the statute empowers and directs DPM&C to perform a number of functions including:

- ◆ Approve or disapprove all State agency space planning requests;
- ◆ Negotiate leases on behalf of the State agencies and determine requirements for construction or renovations including costs;
- ◆ Solicit competitive proposals for lease agreements and prepare written evaluations and recommendations;
- ◆ Establish reporting requirements to be followed by State agencies;
- ◆ Arrange for renovations of leased space;
- ◆ Develop a comprehensive space utilization plan, to be updated every two (2) years, which shall include a survey of current and future State space needs and specify the extent leasing should be used to support urban renewal; and
- ◆ Implement the privatization pilot program established by the State Leasing and Space Utilization Committee.

The statute also establishes a three member State Leasing and Space Utilization Committee consisting of the President of the Senate, the Speaker of the General Assembly and the State Treasurer, or their respective designees. The duty of the Committee is to:

- ◆ Approve or disapprove all proposed lease agreements negotiated by DPM&C;
- ◆ Approve or disapprove the comprehensive State space utilization plan developed and updated by DPM&C; and
- ◆ Establish a privatization pilot program in which DPM&C shall contract with private business entities to assist it in carrying out its leasing functions.

Regulatory History

N.J.A.C. 17:11 et seq. became effective January 2, 1996, pursuant to the authority of N.J.S.A. 52:18A-191.8. 27 N.J.R. 3779(a) (Oct. 2, 1995); 28 N.J.R. 171(a) (Jan. 2, 1996). The chapter expired January 2, 2001. Pursuant to Executive Order 66 (1978), the Director has conducted a review of N.J.A.C. 17:11-1.1 et seq. and has determined that the rules at N.J.A.C. 17:11-1.1 et seq. are necessary, adequate, reasonable, efficient, understandable and responsive to the purposes for which they were originally promulgated. Since their adoption in 1996, the rules have provided an effective framework to allow the State to coordinate the space utilization needs of all State agencies through one division, to establish a uniform process for advertising requests for competitive proposals, and to manage the provision of facilities, products and services to tenant agencies from space lessors and other suppliers of goods and services, such as utilities, furnishings and maintenance. Therefore, the Treasurer and the Director propose these new rules, that are

built upon the provisions of the expired rules, with technical amendments to reflect organization changes, and certain substantive changes intended to improve the administration of the State's leasing program.

Pursuant to the proposed regulations, DPM&C will review, evaluate, approve and disapprove all State agency Space Planning Requests ("SPR"). Upon approval of the SPR, DPM&C will determine whether available State owned or leased space meets the specifications of the requesting agency. DPM&C is responsible for the consolidation and reduction of leased space when cost effective. When DPM&C determines that the leasing of new space is in the best interest of the State, DPM&C will advertise for available properties, if existing inventory of space is not suitable for the intended use of the State agency. All proposed lease agreements must be cost effective and in compliance with the comprehensive State space utilization plan.

No proposed lease agreement negotiated by DPM&C shall be valid without the prior written approval of the State Leasing and Space Utilization Committee. Before it considers a proposed lease agreement, the Committee must receive from DPM&C: an approved State agency Space Planning Request; a statement which sets forth the terms and conditions of the proposed lease agreement and all costs, including rent, taxes, and renovations associated with the proposed lease agreement; a statement certifying that, based on the cost and a financial analysis, the proposed lease agreement is cost effective and in compliance with the space utilization master plan; and a statement certifying that

DPM&C advertised for competitive proposals and the proposed lease agreement under consideration is the most cost effective. In addition, the Committee must receive a statement from the Attorney General that the proposed lease agreement is not in conflict with any applicable State or Federal law or regulation and a certification from the Director of the Division of Budget and Accounting in the Department of the Treasury that funds have been appropriated to DPM&C to cover all costs associated with the proposed lease agreement, including the cost of renovation, for the fiscal year.

Social Impact

The proposed rules, like the expired rules, create a framework for control and oversight of State leasing procedures. The process by which DPM&C solicits competitive proposals has ensured and will continue to ensure fairness to potential lessors and the efficient use of public resources. The centralization of the negotiation and drafting of proposed lease agreements, and the e enforcement of compliance with the provisions of the leases executed by DPM&C on behalf of the State have resulted and will continue to result in consistency, fairness and uniformity in dealing with potential lessors and tenant agencies, and the elimination of redundancy of tasks common to leasing operations.

Prior to the existence of these rules, individual State Departments and agencies commonly negotiated and entered into their own leases for space usage, resulting in a hodgepodge of inconsistent leases and inefficient space usage. In addition to allowing the State to benefit from the efficiencies of scale and a competitive process, centralization of leasing

operations in DPM&C has benefited and will continue to benefit the public by ensuring DPM&C's ability to ensure uniform compliance of all lessors and potential lessors with State laws protecting important State interests, such as building codes, minimum wages, the Americans with Disabilities Act, affirmative action in public contracts, and prohibitions against doing business with debarred persons.

Economic Impact

The proposed rules, like the expired rules, will continue to enable DPM&C to maximize State agency use of existing State-owned and leased space, resulting in an overall reduction in the State's leasing obligations. The implementation of a competitive process to solicit proposals for leased space has resulted and will continue to result in more cost-effective leases, thereby saving the taxpayers' money.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules contained in this proposal are mandated by the provisions of N.J.S.A. 52:18A-191.1 et seq., and are not subject to any Federal requirements or standards.

Jobs Impact

In accordance with P.L. 1995, c.166, signed into law by Governor Whitman on July 5, 1995, the Administrative Procedure Act at N.J.S.A. 52:14B-4(a)(2) was amended to require all notices of proposals to include a "jobs impact statement" which shall include an assessment of the number of jobs to be generated or lost if the proposed rule takes effect.

The Division does not anticipate that the proposed rules will have any impact on jobs. These rules implement P.L. 1992, c.130 by providing clarification of responsibilities and procedures for the acquisition and allocation of State agency space.

Agriculture Industry Impact

The proposed rules will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

Additional documents and statements will be required of prospective lessors, some of which may be small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These requirements will not impose undue burdens which would decrease the current level of participation of small businesses as lessors for the State.

The proposed rules impose reporting, record-keeping, and compliance requirements on small businesses as that term is defined within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. The types of small businesses affected by the rules are those that are potential lessors responding to State advertisements requesting leased space proposals.

Entities wanting to submit leased space proposals are required to:

- ◆ Submit Property Profile Forms (PPFs) and provide the information required therein;
- ◆ Respond to requests for leased space proposals (RFPs) within the established timeframes;

- ◆ Establish fixed price information;
- ◆ Maintain the availability of the property proposed for leasing;
- ◆ Submit disclosure statements; and
- ◆ Subject their leased space proposal documents to public scrutiny upon the documents being deemed public information.

Entities whose proposed lease agreements the Committee approves must submit construction and renovation plans, execute a written lease, comply with applicable codes and DPM&C procedures for change orders, and submit an annual disclosure statement, which document includes an annual statement verifying that the taxes have been paid on the property.

Potential lessors may be required to retain the services of architects and engineers to develop construction plans, accountants or other financial personnel to assist in pricing leased space proposals and attorneys to assist in their coming to agreement with the State on the terms of a lease. The expense of these services will vary depending on the size of the project under review.

Executive Order #4, Smart Growth Impact

For every lease initiative, as part of the Space Planning Request (SPR) process, the Division requires the State agency requesting to lease space to provide detailed information regarding its compliance with the State Development and Redevelopment Plan. The Division will continue to request this information, as required by Executive Order No. 4. The information provided will remain an essential part of the SPR evaluation process and

will ensure that State leases are consistent with and serve the principles of smart growth and implement the State Plan.

Full text of the proposed rules follow:

CHAPTER 11
STATE LEASING AND SPACE UTILIZATION

SUBCHAPTER 1. GENERAL PROVISIONS

17:11-1.1 Purpose and scope

(a) The Office of Leasing Operations was established by statute under the supervision of the Administrator of the General Services Administration. Pursuant to Reorganization Plan 003-1997 as set out under N.J.S.A. 52:18A-178 et seq., the Office of Leasing Operations and related functions, powers, and duties were transferred to the Division of Property Management and Construction (“DPM&C”). The rules in this chapter are promulgated by the Division of Property Management and Construction of the Department of Treasury to implement the provisions of that law.

(b) The rules require State agencies to account and plan for all operations and programmatic space requirements and to accurately and regularly report these requirements to DPM&C.

(c) These rules apply to all State agencies, as defined by N.J.A.C. 17:11-1.3.

17:11-1.2 Source for public information

The public may receive information concerning the State Lease Program and requests for leased space proposals (RFPs) by contacting the Director of the Division of Property Management & Construction, P.O. Box 034, Trenton, New Jersey 08625-0034.

17:11-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Change order request" means a document requesting authorization for modification or variation from an original scope of work.

"Committee" means the State Leasing and Space Utilization Committee.

"Construction documents" means the drawings and specifications, as prepared, signed and sealed by licensed architects and engineers, necessary to obtain all applicable permits for the construction/renovation of space and the associated certificate of occupancy. These drawings and specifications may include, but are not limited to, general construction, electrical, plumbing, HVAC, fire protection and telecommunications.

"Cost effective" means the least expensive space procurement alternative that can be demonstrated to conform to criteria provided by DPM&C in the leased space proposal package and to the operational concerns and restrictions of the State agency.

"Co-terminus amendment" means a change that amends the substance of an existing lease to include additional space and provides that the lease term for the additional space will terminate on the same date as the original lease.

"Disclosure statement" means a document formulated by DPM&C, and required of

all lessors seeking to do business with the State, that elicits information related to ownership and other interests in the property, tax liabilities and possible conflicts of interest.

"Division of Property Management and Construction (DPM&C)" is the organization formed pursuant to a reorganization which occurred subsequent to the passage of P.L. 1992, c.130. Pursuant to Reorganization Plan No. 003-1997 (filed May 8, 1997, effective July 7, 1997), 29 N.J.R. 2498(a) (June 2, 1997), Governor Whitman abolished the General Services Administration and reorganized the Department of the Treasury's Division of Building and Construction, Division of Facilities Management, the Office of Real Property Management, and the Office of Leasing Operations into the newly created Division of Property Management & Construction (the Division) in the Department of the Treasury, and transferred the functions of the General Services Administrator under P.L. 1992, c.130, to the Division Director (the Director).

"Lease" means the documents recommended by DPM&C, approved by the Committee in accordance with N.J.S.A. 52:18A-191.4 and N.J.S.A. 52:18A-191.5, and fully executed by the State and the lessor that contain the terms and conditions under which the lessor will provide and the State will take a leasehold interest in certain specified real property.

"Leased space proposal" means the documents formulated by prospective lessors that contain pertinent cost and site information including rental, renovations and services. Leased space proposals serve as the basis for DPM&C's evaluation of the cost-effectiveness of each proposal submitted in response to the competitive process.

"Notice of proposed lease (NPL)" means the documents submitted to the Committee prior to the execution of the lease that contain statutorily required

information and recommend the proposed lease agreement to the Committee.

“Proposed lease agreement” means the terms and conditions of the leased space proposal submitted by a prospective lessor, as modified by negotiations between DPM&C and the prospective lessor, and recommended by DPM&C to the Committee.

"Project description" means a brief outline of the State agency’s project requirements.

"Property profile form (PPF)" means a standardized document formulated by the DPM&C that provides an overview of property offered to the State by a potential lessor. Information requested on the form includes property size, location, names of property owners and authorized negotiator.

“Renewal option” means a provision in a previously negotiated and approved lease by which the State, at its sole option, may exercise a right to continue to occupy a space for a specified time period beyond the expiration date of the original lease term.

"Scope of work (SOW)" means a document developed by DPM&C that identifies in detail the components of the space planning request or components of the project description which the potential lessor must address in the leased space proposal. The SOW outlines the components of the space as it pertains to construction-related practices and finishes and identifies schedules and cost breakdowns required to be addressed by each potential lessor.

"Space planning request (SPR)" means a document developed by DPM&C to be completed by State agencies to document pertinent information and justify requests for the authorization, development, procurement and management of space.

Information to be provided includes position numbers, employee names and titles, square footage requirements and special program needs, such as site requirements, location, legislative mandates, computer and client space provisions.

"State agency" means any department, division, office, board, commission, council, or bureau in the Executive branch of State government.

"State Space Plan" means the space utilization plan developed by DPM&C, in accordance with N.J.S.A. 52:18A-191.3.

"Tenant agency" means any State agency that is occupying a State leased facility.

"Tenant service request (TSR)" means a document developed by DPM&C and used by a tenant agency to request that DPM&C obtain a cost proposal from the landlord or a contract vendor for specific work to be performed for the tenant agency. Information to be provided includes building location, specific need, site of requested service, full description of work, funding source and contact person.

SUBCHAPTER 2. RULES OF GENERAL APPLICABILITY

17:11-2.1 Planning and usage

(a) DPM&C shall procure and manage all professional services related to the planning and use of space occupied by state agencies, including, but not limited to:

1. Development of project description;
2. Development of space plans and design;
3. Development of scope of work;
4. Evaluation of leased space proposals; and

5. Review and approval of all construction documents and construction costs.

(b) Neither officials nor employees of agencies for which DPM&C is acquiring (or has acquired) leased space shall, at any time, whether before an SPR is submitted to DPMC

or after a lease agreement is executed, directly or indirectly contact lessors for the purpose of making oral or written representations, commitments or agreements with respect to the terms of occupancy of particular space, tenant improvements, alterations and repairs, or payment for overtime services.

17:11-2.2 Occupancy, operation and maintenance

(a) DPM&C shall procure and manage all services related to the occupancy, operation and maintenance of all leased space, including, but not limited to:

1. Moving services;
2. Security services;
3. Janitorial services;
4. Building management services; and
5. Inspection services.

(b) DPM&C shall make periodic site visits to leased property and shall report to the Committee instances of improper use of leased space by a tenant agency, including misuse, abuse and neglect which pose safety problems and/or damage to the building space by any agency employee, client and/or visitor.

(c) Prior to occupancy of a new leased space, DPM&C shall require that the leased space conform with applicable laws, orders, regulations of federal, state, county or municipal authorities and with any direction or requirement of any public officer pursuant to said laws, orders, regulations, directions or requirements.

17:11-2.3 Negotiation of leases; general

- (a) Except as set forth below, after DPM&C approves an SPR, it shall negotiate all proposed lease agreements on behalf of the State.
- (b) In the event the anticipated cost of a proposed lease agreement does not exceed the time and cost limits established by N.J.S.A. 52:25-23 for temporary needs less than twelve (12) consecutive months, the proposed lease agreement may be negotiated by the using agency. However, the proposed lease agreement must be approved by DPM&C prior to execution of a binding lease.

17:11-2.4 Negotiation of leases in special circumstances

(a) DPM&C may elect not to advertise for leased space proposals when the Director of DPM&C determines that the Space Planning Request involves such specialized, unique or mandated characteristics or requirements that a competitive process would be unlikely to result in a more cost effective proposed lease agreement.

(b) The requisite specialized, unique or mandated characteristics or requirements are present in, but are not limited to, the following circumstances:

1. DPM&C's exercise of a lease renewal option contained in an existing lease;
2. Leases for air monitoring and antenna stations, as defined by the State or Federal governments;
3. Leases negotiated with other governmental entities for space that governmental entities are uniquely suited to provide, such as space in county courthouses;

4. Month-to-month holdover tenancies when it is anticipated that the continued occupancy will be less than one (1) year.

5. Short term leases of less than two (2) years for the continued use of existing facilities where the Director has determined as a matter of business judgment, that the public interest will be best served by such a short-term lease.

6. A co-terminus amendment to an existing lease for additional space to house expansion of existing programs that cannot function independently at a separate location;

7. Leases for an emergency relocation or an interim replacement facility;

8. Renewals of residential properties leased by the State to eligible State employees as defined by N.J.S.A. 52:31-23 et seq.;

9. Leases for specialized State facilities; or

10. Leases of Out-of-State facilities.

(c) Leases executed in accordance with this section, with the exception of the renewal option described in (b) 1 above, shall be subject to approval by the Committee.

SUBCHAPTER 3. IDENTIFICATION OF AGENCY SPACE AND USAGE

17:11-3.1 Capacity and utilization report

Annually, on a schedule and in a format prescribed by DPM&C, each State agency

shall verify and report to DPM&C the capacity and utilization of all space it owns, leases and subleases, and the employee position information for each site occupied by that State agency, for the current and subsequent fiscal year.

17:11-3.2 Failure to report

In the event a State agency fails to provide current, accurate and complete information as required by N.J.A.C. 17:11-3.1, DPM&C may, at the option of the Director, decline to consider the agency's request for space needs until all DPM&C requirements are met.

17:11-3.3 Current inventory report of State-owned and leased real property

Annually DPM&C shall verify the current inventory of all State owned and State-leased real property including:

1. Site location;
2. Agency holding the title, or, in the case of leased space, occupying the site;
3. Building name; and
4. Square footage, by functional use; in the event the leased space is not occupied, the report shall state the square footage of the vacant space.

SUBCHAPTER 4. STATE AGENCY REQUESTS FOR SPACE

17:11-4.1 Requests for space

(a) Prior to acquisition, disposal, increase, decrease or change in utilization of owned, leased and subleased real property, a State agency shall submit an SPR to DPM&C for approval.

(b) DPM&C shall approve or disapprove all State agency Space Planning Requests.

(c) DPM&C shall review the SPR in accordance with the following criteria:

1. Completeness of the document, as defined in this chapter;
2. Accuracy of the information;
3. Compliance with the square footage estimates for State agency space allocation contained in the space utilization plan; and
4. Compliance with DPM&C standards for programmatic space demands, as supported by the space utilization plan and the model space descriptions for like or similar functions and any existing legislative mandates.

(d) The Office of Management and Budget ("OMB") shall supply DPM&C with a certification that:

1. The employee position information is accurate, according to the current approved budget; and
2. The funds have been allocated to DPM&C to cover all costs associated with the lease, including the cost of renovations, for the fiscal year.

(e) In the event an SPR does not meet the criteria or OMB fails to provide the certification referenced in (d) above, DPM&C shall disapprove the Space Planning Request and return it to the agency for correction, additional information or justification.

17:11-4.2 Project description

(a) When advertising is required to secure space, or major space alterations are required to meet an agency's needs, DPM&C shall develop a project description and/or scope of work relating to the Space Planning Request and shall establish a reasonable deadline for its completion.

1. State agencies shall cooperate with DPM&C to the extent necessary for the timely development of the project description or scope of work and shall certify

in writing their agreement with the content of the completed documents.

2. In the event a State agency does not provide accurate information or the cooperation necessary for the development of the project description or scope of work, DPM&C may suspend the space procurement process until such time as the accurate information and requisite cooperation shall be forthcoming, notwithstanding any prior SPR approval.

3. DPM&C may refuse a State agency's request to modify the content of the project description or scope of work if the request is received by DPM&C beyond the established deadline.

4. When more than one (1) State agency requests space that is similar in specifications and size, DPM&C may employ in whole or in part a generic project description or scope of work in connection with any SPR.

17:11-4.3 Occupancy of space after approval of SPR

(a) Upon approval of an SPR requesting additional space, DPM&C shall direct the State agency to occupy the most effective, efficient and economical State owned or leased space available that meets the specifications of the requesting State agency.

(b) If State owned or leased space meeting the specifications of the requesting State agency is not available, DPM&C shall pursue the most advantageous means of accommodating the request.

(c) In the event DPM&C determines that leasing of additional space is in the best interests of the State, DPM&C will advertise for available properties in accordance with N.J.A.C. 17:11-5, unless it determines not to advertise pursuant to N.J.A.C. 17:11-2.4.

(d) A State agency shall notify DPM&C in writing of any change in or withdrawal of an SPR. A State agency's decision to change or withdraw an SPR after DPM&C's receipt of a leased space proposal shall be reviewed by DPM&C. If the change or withdrawal is deemed unreasonable by DPM&C, it shall assess the State agency for all expenses resulting directly from the change, any expenses incurred prior to the withdrawal of the SPR, or any rent payable for space procured prior to the withdrawal, to the extent the space cannot be used by another State agency.

SUBCHAPTER 5. ADVERTISEMENTS FOR LEASED SPACE

17:11-5.1 Advertising process

- (a) DPM&C shall place advertisements for available space in the "Commercial Real Estate Wanted" or other appropriate section in the regional newspaper which maintains the largest circulation of readers in the location of the desired space.
- (b) DPM&C may advertise on the internet and in such regional, local or trade publications as deemed appropriate to assure competition.
- (c) The advertisement may contain threshold criteria which must be met by the potential lessor in order to become eligible for further consideration.

17:11-5.2 Property profile form

DPM&C shall provide a property profile form to potential lessors, to be returned to DPM&C by the closing date specified in the advertisement.

17:11-5.3 Who is eligible to submit a PPF

(a) For responses received in accordance with this subchapter to be eligible for further consideration, the potential lessor must provide written evidence of its standing as either:

1. The owner;
2. The holder of a purchase option; or
3. An attorney or real estate broker with written authority to negotiate and act as attorney in fact for an owner or holder of a purchase option.

17:11-5.4 DPM&C review of completed PPF's

(a) DPM&C shall review all PPF's received as a result of advertising and those general submissions already on file, based on criteria stated in the advertisement, to determine the property's eligibility for further consideration.

(b) DPM&C shall remove from consideration those properties that do not meet the threshold criteria for the advertised use and shall hold the PPF's on file for one (1) year.

SUBCHAPTER 6. SITE EVALUATION AND RECOMMENDATION

17:11-6.1 Proposal request

(a) For each property deemed eligible for further consideration, DPM&C will request that the owner, the holder of the purchase option, or the authorized representative review the scope of work developed for the SPR and submit a leased space proposal within a specified time and date in the format prescribed by DPM&C.

(b) All potential lessors submitting leased space proposals to DPM&C shall hold available to the State those properties under consideration for a minimum of ninety

(90) days after the submission date or as otherwise specified by DPM&C.

17:11-6.2 Proposal submission

DPM&C will not consider leased space proposals unless they are submitted on or before the specified time and date required by the request for leased space proposals and contain all information requested by DPM&C. Unless the request for leased space proposals specifically states otherwise, a leased space proposal shall not be submitted by telephone, telegraph, telefacsimile or other electronic means.

17:11-6.3 Extension of time to submit proposal

All leased space proposals not received prior to or at the time designated for formal opening of leased space proposals shall be rejected. However, the Director may extend the time for opening at the request of a potential lessor who notifies DPM&C that he or she intends to submit a leased space proposal and gives valid reasons why he or she will not meet the formal opening date. The potential lessor making this request shall do so in writing and specify the length of additional time requested. The written request must be received by DPM&C no later than one (1) week prior to the deadline. All potential lessors shall be notified of any extension date. All leased space proposals shall be held and remain sealed until the expiration of the time extension granted by the Director.

17:11-6.4 Prices

(a) A leased space proposal shall include all material price information required by the request for leased space proposals. Prices shall be typewritten, photocopied, or written in ink or some other indelible substance.

(b) Unless the request for leased space proposal states otherwise, the prices

submitted shall remain effective for ninety (90) days after the opening date, subject to any negotiations conducted in accordance with N.J.A.C. 17:11-6.11.

17:11-6.5 Withdrawal of proposal

(a) Prior to the opening of the leased space proposals, a potential lessor may, for any reason, request the withdrawal of his or her leased space proposal. The request shall be made in writing to DPM&C and shall be signed by a person authorized to submit the proposal pursuant to N.J.A.C. 17:11-5.3. Proof of authorization shall accompany the request.

(b) After the opening of the leased space proposals, if either the potential lessor or DPM&C discover a material error in a leased space proposal, the potential lessor may request the withdrawal of the leased space proposal. If the error is discovered by DPM&C, the Division will notify the potential lessor in writing, and the potential lessor will have five (5) working days from receipt of the notice to request withdrawal of the proposal. Any submission from the potential lessor shall be addressed to DPM&C, and shall be signed by a person authorized to submit the leased space proposal (see N.J.A.C. 17:11-5.3). DPM&C will return the leased space proposal if the potential lessor can demonstrate that he or she exercised reasonable care in preparing and submitting the leased space proposal, and that it would be unconscionable for the State to enforce the proposed lease agreement. The decision to grant or deny any such request shall be at the sole discretion of the Director.

17:11-6.6 Correction of pricing error

(a) DPM&C shall correct a pricing error in a leased space proposal under the following circumstances:

1. Where the leased space proposal contains an obvious computational error, DPM&C shall correct the potential lessor's faulty addition, subtraction, multiplication or division. Any error must be obvious on its face, and any correction must be consistent with internal evidence in the leased space proposal.

2. Unless the request for leased space proposals states otherwise, or the result would be unconscionable, where a leased space proposal contains a discrepancy between a unit price and a total price based on those units, the unit price shall govern. Where the leased space proposal contains any other price discrepancy, DPM&C shall determine the price if the leased space proposal contains clear evidence of the intended price.

17:11-6.7 Verification of proposal

DPM&C may seek information outside of the leased space proposal to verify the accuracy and responsiveness of the leased space proposal, and the responsibility of the potential lessor. DPM&C may request such information from the potential lessor, from public records, or from others familiar with the potential lessor or the space. Such information may clarify, but not modify, a leased space proposal. Such investigation may include, but shall not be limited to, contacting the potential lessor's surety companies, financial institutions, prior lessees or visiting the potential lessor's place of business and property sites.

17:11-6.8 Rejection and re-advertisement of proposal

DPM&C reserves the right to reject all leased space proposals and to re-advertise if insufficient competition results from the initial advertisement, if the price is unfavorable to the State in the current market, or for any other compelling reason.

17:11-6.9 Evaluation

DPM&C shall evaluate each leased space proposal received in accordance with this

subchapter and shall identify the proposals determined to be responsive to all material elements set forth in the scope of work, cost effective and best able to fulfill the space need as defined in the scope of work.

17:11-6.10 Negotiations

DPM&C shall negotiate with the potential lessors who submitted cost effective leased space proposals which appear able to fulfill the material elements in the scope of work, including the space need as defined in the scope of work. DPM&C shall recommend to the Committee the one (1) potential lessor who will provide the most cost effective proposed lease agreement which will best serve the interests of the State.

17:11-6.11 Recommendation to the Committee

For proposed leases that DPM&C, in its sole discretion, decides to recommend to the Committee, the recommendation by DPM&C of a particular leased space pursuant to N.J.S.A. 52:18A-191.4 (a), shall not constitute a lease until it has been reviewed and approved by the Committee and executed by the lessor and the State. DPM&C shall give notice to all potential lessors of the particular leased space proposal to be recommended to the Committee prior to submission of a final recommendation to the Committee. Challenges to the notice of intent to recommend a particular proposed lease agreement shall be submitted in writing to the Director of DPM&C, within seven (7) working days from the date of the letter giving notice of the intent to recommend. After receipt of a challenge, or in its own discretion, DPM&C may decide not to recommend a leased space proposal to the Committee.

17:11-6.12 Documents considered public information

Subsequent to DPM&C's issuance of notice to all respondents of its intent to recommend a proposed lease agreement to the Committee, the documents submitted by potential lessors (excluding those items exempt from public access pursuant to N.J.S.A. 47:1A-1 et seq.) shall be considered public information, notwithstanding any disclaimers submitted by the potential lessors to the contrary.

SUBCHAPTER 7. STATE LEASING AND SPACE UTILIZATION COMMITTEE APPROVAL

17:11-7.1 Notice of proposed lease (NPL)

(a) Upon completion of the advertisement process for requests for proposals for leased space proposals and the consequent identification of the most cost effective proposed lease agreement under consideration, DPM&C shall prepare a notice of proposed lease ("NPL") for submission to the Committee. The NPL shall include the following information (or an explanation as to why such information is not applicable):

1. The approved State agency SPR;
2. A statement setting forth the terms and conditions of the proposed lease agreement;
3. A statement setting forth the cost of the proposed lease agreement, including the cost of rent, taxes, renovation, operating expenses and other costs involved in the proposed lease agreement;
4. A statement from the Attorney General that the proposed lease agreement under consideration is not in conflict with any applicable State or Federal law or regulation;

5. A statement certifying that, on the basis of a comparison of costs and an analysis of financing, the proposed lease agreement is cost effective and in compliance with the space utilization master plan;

6. Except as permitted by N.J.A.C. 17:11-2.4, a statement certifying that DPM&C advertised for competitive proposals for the proposed lease agreement and that the proposed lease agreement under consideration is the most cost effective; and

7. A statement from the Director of the Office of Management and Budget in the Department of the Treasury certifying that funds have been appropriated to DPM&C to cover all costs associated with the proposed lease agreement, including the cost of renovations, for the fiscal year.

17:11-7.2 Decision of the State Leasing and Space Utilization Committee

Upon its receipt of the NPL, the Committee shall approve or disapprove in writing the proposed lease agreement under consideration or send the proposed lease agreement back to DPM&C with a written request for additional information.

17:11-7.3 Validity of lease agreement

No proposed lease agreement negotiated by DPM&C shall be valid without the prior written approval of the Committee or before it is fully executed by the parties.

17:11-7.4 Execution of lease

No lease will be executed prior to the approved prospective lessor's completion of all work plans and specifications required by DPM&C, pursuant to this Chapter.

17:11-7.5 Cancellation of an NPL

Any request by a State agency for cancellation of an NPL subsequent to Committee approval and prior to execution, must be submitted in writing to the Director of DPM&C. The Director may, at his discretion, grant or deny the request and assess the State agency for any expenses to the State resulting directly from the cancellation, including, but not limited to, planning and or construction costs and any rent payable.

SUBCHAPTER 8. HEARINGS

17:11-8.1 Informal hearings; subject matter

- (a) The purpose of this subchapter is to provide the procedures that govern the challenge of an action of the Director in the denial of a leased space proposal or the issuance of a recommendation to the Committee for leased space. All references to the "Director" in these regulations include the Director's designee.
1. "Protest" is defined as an objection by a potential lessor, set forth in writing in accordance with N.J.A.C. 17:11-8.2, to a determination that the potential lessor's proposal was non-responsive and/or untimely.
 2. "Challenge" is defined as an objection by a potential lessor, set forth in writing in accordance with N.J.A.C. 17:11-8.3, to the decision of DPM&C of its intent to recommend another party's proposal to the Committee.
- (b) Protests of the type described in this subchapter, for the purpose of this chapter, are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 et seq.

17:11-8.2 Protest procedures; rejection of a leased space proposal

- (a) A potential lessor, after submitting a leased space proposal in response to an advertised PPF pursuant to N.J.S.A. 52:18A-191.1 et seq., may submit a written protest to the Director if the leased space proposal is rejected for being non-responsive or untimely submitted.

- (b) A potential lessor, after submitting a proposal in response to an advertised PPF and finding cause to protest the rejection of the proposal pursuant to (a) above, shall make written request to the Director, setting forth, in detail, the specific grounds for protesting the rejection. The protest shall be filed within 10 working days following the potential lessor's receipt of written notification that its proposal has been rejected for being non-responsive or untimely.
 - 1. A protest regarding the Director's decision to reject a leased space proposal shall contain the following items:
 - i. Identification of the Division's SPR number for the particular agency.
 - ii. All arguments, materials and/or other documentation that may support the protester's position that the leased space proposal should not have been rejected ; and
 - iii. A statement as to whether the protester requests an opportunity for oral presentation and the reason(s) for the request.

 - 2. The Director may disregard a protest not containing all of the items set forth in 1 above.

 - 3. The Director may disregard any protest filed after the 10-day protest period.

- (c) The Director shall, upon receipt of a timely protest to the rejection of a proposed lease agreement, issue a final written decision on the protest prior to making a determination of the most cost effective sites.
1. The Director has sole discretion to determine if an oral presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. Oral presentations are fact-finding for the benefit of the Director. The Director has the discretion to establish the scope and format of such presentations and to limit attendance at an oral presentation to those parties likely to be affected by the outcome of the protest.
 2. The Director may perform a review of the written record or conduct an oral presentation directly, or may appoint a hearing officer. In the case of the latter, the hearing officer's report shall be advisory in nature and is not binding on the Director. All parties shall receive a copy of the hearing officer's report and shall have 10 days to provide written comments or exceptions to the Director. Subsequent to the 10-day period for comments or exceptions, the Director shall make a final written decision on the matter.

17:11-8.3 Challenge procedures; Challenge to a Notice of Proposed Lease

- (a) A potential lessor, after submitting a leased space proposal in response to an advertised PPF pursuant to N.J.S.A. 52:18A-191.1 et seq., may submit a written protest to the Director when another party's proposed lease is recommended to the Committee for approval.
- (b) A potential lessor, after submitting a proposal in response to an advertised PPF and finding cause to challenge the decision to recommend another party's leased space proposal, shall make written request to the Director, setting forth, in detail, the

specific grounds for challenging such decision. The challenge shall be filed within 10 working days following the potential lessor's receipt of the award decision.

1. A challenge regarding the Director's decision to recommend a lease shall contain the following items:
 - i. Identification of the Division's SPR number for the particular agency.
 - ii. All arguments, materials and/or other documentation that may support the challenger's position that the proposed award should be overturned; and
 - iii. A statement as to whether the challenger requests an opportunity for oral presentation and the reason(s) for the request.
 2. The Director may disregard a challenge not containing all of the items set forth in (b) 1 above.
 3. The Director may disregard any challenge of the decision to recommend another party's leased space proposal filed after the 10-day challenge period and proceed with the leased space recommendation to the Committee.
- (c) The Division shall, except as set forth in (e) below, hold all recommendations to award for 10 days pending protests from potential lessors. If the recommendation is challenged as set forth herein, the Division shall not present the matter to the Committee until a final decision is rendered by the Director on the merits of the challenge. The Director may present the recommendation to the Committee, notwithstanding the receipt of a challenge pursuant to the above provisions, if the failure to award the lease shall result in substantial cost to the State or if the public exigency so requires. In such event, the Director shall notify all interested parties.
- (d) Any challenge which satisfies all requirements set forth above, shall be resolved by written decision of the Director on the basis of the Director's review of the written

record including, but not limited to, the written challenge, the terms, conditions and requirements of the PPF and scope of work, the proposals submitted in response to the PPF, pertinent administrative rules, statutes and case law, and any associated documentation the Director deems appropriate. Such review of the written record shall, in and of itself, constitute an informal hearing.

1. The Director has sole discretion to determine if an oral presentation by the challenger is necessary to reach an informed decision on the matter(s) of the challenge. Oral presentations are fact-finding for the benefit of the Director. The Director has the discretion to establish the scope and format of such presentations, determine the appropriate means of recording the process, and to limit attendance at an oral presentation to those parties likely to be affected by the outcome of the challenge.
 2. The Director may perform a review of the written record or conduct an oral presentation directly, or may appoint a hearing officer. In the case of the latter, the hearing officer's report shall be advisory in nature and is not binding on the Director. All parties shall receive a copy of the hearing officer's report and shall have 10 days to provide written comments or exceptions to the Director. Subsequent to the 10-day period for comments or exceptions, the Director shall make a final written decision on the matter.
- (e) The Director may, in instances where public exigency exists or where there is potential for substantial cost benefit or other such advantage to the State, modify or amend the time periods noted in this subchapter. In these instances, the Director shall give adequate notice to the parties involved.

17:11-8.4 Discovery Procedures

Notwithstanding any provisions to the contrary, the Director is entitled to request, receive and review copies of any and all records and documents deemed appropriate and relevant

to the issues and arguments set forth in the protest or challenge. Upon receipt of the Director's request, the party filing the protest or challenge shall promptly provide the requested records and documents free of charge in the time, place and manner specified by the Director. Failure of the party to comply with this section may, at the reasonable discretion of the Director, constitute sufficient basis to resolve the protest or challenge against such party. The Director may also consider relevant information requested and received from other parties deemed appropriate by the Director.

SUBCHAPTER 9. CONSTRUCTION

17:11-9.1 Approval of construction documents

(a) The prospective lessor shall provide construction documents to DPM&C for approval within the time frames established by DPM&C.

(b) DPM&C shall coordinate the review of the construction documents with the tenant agency, but shall retain the sole authority for approving all construction documents.

17:11-9.2 Notice to proceed with work

DPM&C shall have sole authority for issuing a notice to proceed with any construction or renovation work prior to occupancy of a new site. Issuance of a notice to proceed will only be granted after the Committee has approved the NPL and the proposed lease agreement has been signed by the lessor.

17:11-9.3 Change order

(a) Any State agency requiring a change to an authorized construction project prior to occupancy shall submit a change order request to DPM&C describing the needed

change and reason for such change. DPM&C shall approve a change order request if it meets the criteria established by DPM&C, which criteria include the following:

1. Compliance with all applicable codes;
2. Compliance with SPR approvals and the State Space Plan;
3. Compliance with executed lease documents;
4. Availability of funding by the agency; and
5. No adverse impact on construction or occupancy schedule.

(b) In the event a change order cannot be approved because it does not meet the established criteria, DPM&C shall assist the agency in developing an acceptable alternative, if necessary.

(c) DPM&C has sole responsibility for the authorization of any change orders.

17:11-9.4 Requests for renovation

Any State agency requesting renovations to a leased building in which it is a tenant shall conform to the provisions of N.J.A.C. 17:11-11.3.

SUBCHAPTER 10. FURNISHING SPACE

17:11-10.1 Acquisition of furniture

No tenant agency shall acquire loose or systems furniture for use in any State owned or leased space without the prior approval of DPM&C, unless the tenant agency has its own statutory authority to make such purchase.

17:11-10.2 Relocation of furniture

No tenant agency shall relocate loose or systems furniture in any State owned or leased space, unless the relocation is only of agency purchased furnishings and between existing department spaces, and such relocation has been approved by DPM&C, based on the State Space Plan and the agency SPR.

SUBCHAPTER 11. COMPLIANCE WITH LEASE AGREEMENT

17:11-11.1 Submission of disclosure statement

All lessors under contract with the State through DPM&C shall annually submit an updated disclosure statement to DPM&C, which statement shall include an updated certification of taxes.

17:11-11.2 Tenant complaints and lessor compliance issues

DPM&C shall be the liaison between the tenant agency and the lessor. All complaints and compliance issues shall be directed to DPM&C for resolution.

SUBCHAPTER 12. TENANT AGENCY RESPONSIBILITIES

17:11-12.1 Tenant compliance with lease

A tenant agency utilizing premises leased by the State shall at all times comply with the terms of the lease and with the requirements of this chapter.

17:11-12.2 Repair costs

A tenant agency shall be responsible for costs to repair damages to premises caused by the agency, its clients or invitees. DPM&C shall determine the extent of damages and take actions to have repairs made.

17:11-12.3 Renovations

(a) A tenant agency desiring to make renovations to leased or owned space shall submit a TSR to DPM&C for approval.

(b) DPM&C shall evaluate the TSR in accordance with the following criteria:

1. Compliance with applicable laws, regulations, fire and safety codes, ADA, UCC and zoning restrictions;
2. Proposed cost;
3. Consistency with terms and conditions of the lease;
4. Consistency with the approved SPR; and
5. Availability of funds.

17:11-12.4 Notification of lessor non-compliance

All tenant agencies shall notify DPM&C of any failure by a lessor to comply with the terms and conditions of the lease or of deficiencies in the leased space. Notification shall be by telephone or in writing, as appropriate. No tenant agency shall initiate corrective action without prior DPM&C approval.

17:11-12.5 DPM&C investigation of complaints

In the event a tenant agency is directed to respond to a PEOSH or other life safety complaints and requests DPM&C assistance, DPM&C shall investigate and shall direct the appropriate party to resolve those items deemed by DPM&C to be such

party's responsibility, in accordance with the terms of this chapter and the specific lease agreements.

SUBCHAPTER 13. VACATING LEASED SPACE

17:11-13.1 Approval to vacate

- (a) No tenant agency shall vacate a leased facility without the prior approval of DPM&C. DPM&C will approve a tenant agency's request to vacate when:
 - 1. Alternate space is identified and secured by DPM&C for the tenant agency;
 - 2. Funds are no longer available; or
 - 3. There is a more cost effective utilization of the leased space in accordance with the approved space utilization plan.

- (b) DPM&C shall be entitled to charge any agency which vacates a leased facility without prior DPM&C approval for all costs and fees associated with that facility until said vacated space can be otherwise utilized by DPM&C.

- (c) No moving services shall be contracted for or performed by a tenant agency without DPM&C approval.

17:11-13.2 Condition of vacated premises

A tenant agency vacating a leased facility shall leave the facility in broom clean condition, with the exception of reasonable wear and tear and any condition due to force majeure. The vacating tenant agency shall bear the cost, if any, of returning the facility to broom clean condition under the direction of DPM&C.

SUBCHAPTER 14. DEBARMENT/SUSPENSION

17:11-14.1 Debarment/Suspension

DPM&C may suspend or debar a lessor or potential lessor in accordance with the procedures set forth in N.J.A.C. 17:19-3.1 et seq. and N.J.A.C. 17:19-4.1 et seq.

SUBCHAPTER 15. WAIVER

17:11-15.1 Waiver

DPM&C may waive any provision of the rules promulgated in this Chapter, when it determines that the application of these rules would impair expeditious location or relocation of a State agency or a tenant agency necessitated by health, safety, environmental concerns, the requirements of an Executive Order or legislation, or eviction or demand for possession by lessors.