



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
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TO: Steven M. Sutkin Director
Division of Property Management and Construction, Department of the Treasury

FROM: Thomas E. Harris Jr., Esq., Legal Assistant 2

DATE: July 21, 2015

Pursuant to N.J.S.A. 52:14B-1 et seq., enclosed please find:

Proposal No. PRN 2015-098

The comment period for this rule expires on October 16, 2015.

Subject to the provisions of N.J.A.C. 1:30-6.2(a), you may adopt this proposal on or after October 17, 2015. If adopted, the adoption notice must be filed with this Office within one year of the proposal's publication date.

The following changes have been made by the Office of Administrative Law to the notice of proposal as submitted by your agency:

- Codification
- Grammatical and technical changes
- Other (Specify) W.Martorelli

Summary revised to discuss rules
HAI and SGDI revised to include statutory requirements

TREASURY-GENERAL

DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION

State Leasing and Space Utilization

Proposed Readoption: N.J.A.C. 17:11

Authorized By: Steven M. Sutkin, Director, Division of Property Management and Construction.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2015-098.

Submit comments by October 16, 2015, to:

Charles Connery, Assistant Deputy Director

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The agency proposal follows:

Summary

The Division of Property Management and Construction (“DPMC” or “Division”) proposes to readopt N.J.A.C. 17:11, which governs the State’s space leasing process, without change. Pursuant to N.J.S.A. 52:14B-5.1.c., the rules in this chapter are scheduled to expire July

9, 2015. In accordance with N.J.S.A. 52:14B-5.1.c(2), the submission of this notice of proposal to the Office of Administrative Law extended the expiration date 180 days to January 5, 2016.

The Division has reviewed the rules and determined that they continue to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Since their initial 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 Director proposed to readopt this chapter without amendment.

Pursuant to the rules proposed for readoption, DPMC will continue to review, evaluate, approve, and disapprove all State agency Space Planning Requests (SPR). Upon approval of the SPR, DPMC will determine whether available State-owned or leased space meets the specifications of the requesting agency. DPMC is responsible for the consolidation and reduction of leased space, while balancing the programmatic needs of State agencies. When DPMC determines that the leasing of new space is in the best interest of the State and existing inventory of space is not suitable for the intended use of the State agency, DPMC will list all available space needs on the DPMC website. DPMC will also place periodic general advertisements in the "Commercial Real Estate Wanted" or other appropriate section of various regional newspapers to notify interested parties of the existence of the website and the periodic need for leased space and the process for interested parties to follow, if they have space available that may meet the State's space needs. Leased space requirements that exceed 20,000 square feet will be advertised in the "Commercial Real Estate Wanted" or other appropriate section in the regional newspaper, which

maintains the largest circulation in the location of the desired space. All proposed lease agreements must be cost effective and in compliance with the comprehensive State space utilization plan.

No proposed lease agreement negotiated by DPMC 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 DPMC: an approved State agency Space Planning Request; a statement that 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 DPMC 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 DPMC to cover all costs associated with the proposed lease agreement, including the cost of renovation, for the fiscal year.

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption create a framework for control and oversight of State leasing procedures. The process by which DPMC 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 enforcement of compliance with the provisions of the leases executed by DPMC 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 this chapter, 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 DPMC has benefited and will continue to benefit the public by ensuring DPMC'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 rules proposed for readoption will continue to enable DPMC 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.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption 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

The Division does not anticipate that the rules proposed for readoption will have any impact on jobs.

Agriculture Industry Impact

The rules proposed for readoption 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 that would decrease the current level of participation of small businesses as lessors for the State.

The rules proposed for readoption impose reporting, recordkeeping, 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 DPMC 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.

Housing Affordability Impact Analysis

The Division does not anticipate that the rules for readoption will have any impact on the availability of affordable housing or on the average costs of housing because the rules pertain to the State leasing of property.

Smart Growth Developmental Impact Analysis

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. However, the rules themselves will have an insignificant impact on smart growth and there is an

unlikely that the rules, in and of themselves, would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey as the rules pertain to the State leasing of property.

Full text of the rules proposed for readoptions may be found in the New Jersey Administrative Code at N.J.A.C. 17:11.