

The South Carolina Department of Administration's Lease Process Workshop

Staff of Real Property Services Leasing Division

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Statewide Strategic Plan

The South Carolina Department of Administration (Admin) implemented the Statewide Strategic Real Estate Plan in 2016 in conjunction with the Governor's Executive Order 2016-06.

Key Goals:

- ▶ Reduce the square footage of occupied space.
- ▶ Upgrade tools, processes and technologies.

Space Management

- ▶ Consolidation of small local offices into a central location.
 - ▶ Sharing services and spaces such as:
 - ▶ IT
 - ▶ Storage
 - ▶ Break rooms
 - ▶ Conference rooms
 - ▶ Etc.

Space Management

\$4.1M
saved since
2016

- ▶ Implementation of Space Standards.
 - ▶ Target density of 210 RSF/person.
 - ▶ Saves money agencies can use to support their core missions.
 - ▶ 328,330 SF reduction totaling more than \$4.1M in lease costs saved since implementation in 2016.

Technology Updates

- ▶ Upgrading tools, processes and technologies:
 - ▶ SCEIS Flexible Real Estate Module
 - ▶ RPS@admin.sc.gov mailbox
 - ▶ Coordination of agency moves with the Office of Technology and Information Services (OTIS)
 - ▶ Space Needs Worksheet
 - ▶ Proposal to Lease Form

Laws and Regulations Pertaining to State Leases

- ▶ SC Code of Laws Section 1-11-55
- ▶ SC Code of Laws Section 1-11-56
- ▶ SC Code of Regulations 19-447.1000
- ▶ SC Budget Proviso 117.127, 2021-2022 Appropriations Act

Types of Lease Transactions

- ▶ Gross – all inclusive
- ▶ Modified Gross – Base rent + proportionate share of operating expenses
- ▶ Net – Base rent + one or more additional expenses:
 - Single Net (N) – Base rent + 1 additional cost
 - Double Net (NN) – Base rent + 2 additional costs
 - Triple Net (NNN) – Base rent + 3 additional costs

Types of Leases and Approvals Required

- ▶ State Leases

- ▶ Commercial Leases

- Exempt
- Staff-level approval
- Major
- Other

- ▶ Lease-Outs

State Leases

- ▶ Leases in Admin-operated buildings to State agencies
- ▶ Rent cap:
 - \$11.29/SF for Class A buildings
 - \$9.10/SF for Class B buildings
 - \$3.40/SF for warehouse space
- ▶ Term — one year and automatically renews until terminated
- ▶ \$1.52 per SF for energy costs included. Usage over that amount is billed as “excess energy.”

State Leases

Funds are used for:

- ▶ Maintenance
- ▶ Operations
- ▶ Capital improvement projects

Commercial Leases Exempt

- ▶ Rental rate \leq \$25,000 per year and \leq \$1 million over term
- ▶ Technical College or Higher Education Institution Rental Rate \leq \$100,000 per year and \leq \$1 million over term
- ▶ Provide a copy to Admin for information only.
- ▶ Regulation 19-447.1000
- ▶ Other agency exemptions

Commercial Leases Staff-Level Approval

- ▶ Commercial Leases \leq \$200,000 annually and \leq \$1 million over term
- ▶ Per SC Code §1-11-56 (7)

Commercial Leases Major

- ▶ Rental rate > \$200,000 in any year or > \$1 million over term
- ▶ These require approval from the Joint Bond Review Committee (JBRC) and the State Fiscal Accountability Authority (SFAA) approximately six to nine months before current lease expiration.
- ▶ Universities and Technical Colleges must also receive other required approvals (i.e., Board of Trustees, Commission on Higher Education, or State Board for Technical and Comprehensive Education) before submittal by Admin to SFAA and JBRC for approval.

Commercial Leases Major

- ▶ Requirements for Admin submittal to JBRC/SFAA:
 - ▶ All lease terms agreed upon.
 - ▶ Budget Approval Form.
 - ▶ Letter from agency requesting approval.
 - ▶ Private Participant Disclosure forms from landlord.
 - ▶ Agenda Item Worksheet.
 - ▶ Agency attendance required.

Lease-Out

- ▶ Lease from an agency to another agency or private entity
- ▶ Submit to Admin for review before signing
- ▶ Must charge fair market rent unless justified and approved by Admin
- ▶ Rental payments of > \$200,000 in any year or > \$1 million over term requires JBRC and SFAA approval

Lease-Out

- ▶ Requirements for Admin submittal to JBRC/SFAA :
 - Letter from the agency requesting approval.
 - Private Participant Disclosure forms from tenant.
 - Agenda Item Worksheet.

- ▶ Agency attendance required.

Solicitation Process

A solicitation must be conducted through Real Property Services (RPS) for all non-exempt commercial leases, including emergency use space. The normal process is:

- ▶ RPS contacts agency approximately 18 months before lease expiration.
- ▶ Draft Space Needs Worksheet and Form sent to agency.
- ▶ Agency reviews and updates Space Needs Forms.
- ▶ Draft solicitation prepared for agency review.
- ▶ Solicitation advertised for one week to two months in South Carolina Business Opportunities (SCBO) online and on Admin's website and is sent to commercial and agency mailing lists.
- ▶ State space must be considered before commercial space.

Review of Proposals

- ▶ RPS will provide agency copies of proposals and proposal analysis.
- ▶ Agencies evaluate the proposals based on needs and criteria.

Site Visits and Selection

- ▶ RPS schedules site visits.
- ▶ Meet on-site with landlord and/or agent.
- ▶ Notice parking, accessibility, location, options for signage, etc.
- ▶ Test fits may be requested.
- ▶ The agency provides pros and cons of sites.
- ▶ Agencies are encouraged to accept the least expensive offer and, if not selected, must provide justification.

Negotiations

- ▶ Negotiations are to be conducted through RPS.
 - ▶ (See SC Code §1-11-55)
- ▶ RPS will negotiate the best rate possible on behalf of agency.
 - ▶ Negotiating points: overall price, upfit costs, renovation costs, parking provisions, term lengths and abated rent
- ▶ RPS will advise and consult with the agency on negotiations.

Lease Document

- ▶ RPS drafts lease document on standard form lease to include all negotiated points.
- ▶ Exhibits to lease should include the:
 - Floor plan.
 - Pre-approved Subordination and Non-Disturbance Agreement (SNDA).
 - Pre-approved Tenant Estoppel Certificate.
- ▶ Other forms that may be included, if applicable, are the:
 - Renovations list.
 - Acceptance Agreement.
 - Janitorial Specifications.
 - Building Rules and Regulations.

Lease Document

- ▶ State Agencies shall not:
 - Indemnify.
 - Warrant or provide warranties or guarantees.
 - Agree to pay attorney's fees on behalf of others.
 - Agree to pay late fees.
- ▶ Termination clauses A-C (see below) must be included in lease per SC Code § 1-11-56:
 - A. If funds are not appropriated.
 - B. If the agency is dissolved.
 - C. If public space becomes available instead of private space.

Lease Payment Authorizations

- ▶ RPS enters lease information in SCEIS and prepares the Lease Payment Authorization (LPA).
- ▶ The LPA and signed lease or amendment is sent to the agency.
 - ▶ Includes per SF, monthly, and yearly rates for each year of term
- ▶ If the agency utilizes SCEIS the processing of the payment is required.
- ▶ Vendor's registration information must match lease payment address.

Lease Payment Authorizations

NOTE: If the lease states that the payment due date is other than 30 days from invoice date, the agency must email the State Treasurer's office (STO.AP.Workflow@sto.sc.gov) to notify of nonstandard terms and provide a copy of the lease, the vendor number and vendor name to change payment date.

Lease Amendments

- ▶ Lease amendments are used to modify the terms of the lease.
- ▶ Examples of reasons for amendments:
 - Lease term extension or reduction.
 - Rate change.
 - Square footage change of leased premises.
 - Landlord changes/property sold.
- ▶ Lease amendments are attached to the original lease.
- ▶ Admin must approve the amendments unless the lease is exempt. Additional approvals may also be required depending upon terms and previous approvals.

Reporting

- ▶ SC Code of Regulation § 19-447.1000: agency is required to report exempt leases to RPS yearly and provide a copy of lease and any amendments.
- ▶ Monthly lease reports are published on Admin's website.
- ▶ Proviso 117.128 of the 2021-2022 Appropriations Act: Admin must report agencies that do not meet the state space standards to the legislature.

What if the landlord changes during the lease term?

- ▶ The Subordination and Non-Disturbance Agreement (SNDA) included in the lease must be signed by a new landlord, and lender, if any.
- ▶ If new the landlord or lender refuses to sign the pre-approved SNDA, submit the proposed SNDA to RPS for review and approval.
- ▶ The new landlord (vendor) must be registered to do business in South Carolina and registered as a vendor with CG's office.
- ▶ RPS will create a new LPA and forward to the agency.
- ▶ The tenant may be required to provide Estoppel certificate. The preapproved form attached to lease should be used. If an alternative is presented, submit it to RPS for review.

What is a holdover?

- ▶ Allows the agency to remain in leased space on a month-to-month rental basis after the lease expires, **if** the tenant is not in default.
- ▶ Agency has no security as a month-to-month tenant; tenancy may be cancelled by the landlord at any time with 30 days' notice.
- ▶ A holdover should be avoided to protect the rights of the tenant.
- ▶ RPS will create a new LPA monthly when tenants are in holdover and forward to the agency.

Responsibility Reminders — Agency

- ▶ Timely participate in meetings with Admin to provide space needs information.
- ▶ Timely review and approve space needs forms.
- ▶ Timely review and approve prepared space solicitation.
- ▶ Notify Admin of preferences for site selection and rates

Responsibility Reminders — Agency

- ▶ Timely delivery of documents is required for board meetings.
- ▶ Agency attendance at board meetings is required.
- ▶ Notify the landlord in writing of any Issues or any violation of the lease terms.
- ▶ Provide lease termination notice to the landlord when the premises will be vacated.

Responsibility Reminders — RPS

- ▶ Prepare draft Space Needs Worksheet and Space Needs Form based on past information for agency review and approval.
- ▶ Offer guidance and assistance in evaluating space needs and ensuring space standards are met.
- ▶ Prepare and conduct the solicitation for space.
- ▶ Negotiate all lease terms.

Responsibility Reminders — RPS

- ▶ Prepare approval requests.
- ▶ Coordinate document execution.
- ▶ Provide support and assistance as liaison between the landlord and tenant if needed.
- ▶ Provide draft termination letters or forms when needed.

Available Resources

- ▶ Building Owners and Managers Association International (BOMA) information — www.boma.org.
- ▶ Loopnet, Cityfeet, Showcase — websites of available commercial space.
- ▶ SC Code of Laws, Budget Provisos, JBRC and SFAA meetings and agendas — <https://www.scstatehouse.gov>.
- ▶ SC Business Opportunities publication — <https://scbo.sc.gov>.
- ▶ Vendor Registration — <https://procurement.sc.gov/vendor/registration>.
- ▶ Consumer Price Index (CPI) — <https://bls.gov/cpi/>.
- ▶ SC Department of Administration's Website — https://admin.sc.gov/real_property.