

CHAPTER 11**STATE LEASING AND SPACE UTILIZATION****Authority**

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

Source and Effective Date

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See: 27 N.J.R. 3779(a), 28 N.J.R. 171(a).

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CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. GENERAL PROVISIONS**

- 17:11-1.1 Purpose and scope
- 17:11-1.2 Source for public information
- 17:11-1.3 Definitions

SUBCHAPTER 2. RULES OF GENERAL APPLICABILITY

- 17:11-2.1 Planning and usage
- 17:11-2.2 Occupancy, operation and maintenance
- 17:11-2.3 Negotiation of leases; general
- 17:11-2.4 Negotiation of leases in special circumstances
- 17:11-2.5 Compliance with building, fire, safety and sanitary codes
- 17:11-2.6 Site visits
- 17:11-2.7 Waiver

SUBCHAPTER 3. IDENTIFICATION OF AGENCY SPACE AND USAGE

- 17:11-3.1 Capacity and utilization report
- 17:11-3.2 Failure to report
- 17:11-3.3 Current inventory report of State-owned real property
- 17:11-3.4 Square footage report of occupied and vacant space

SUBCHAPTER 4. STATE AGENCY REQUESTS FOR SPACE

- 17:11-4.1 Requests for space
- 17:11-4.2 Project description
- 17:11-4.3 Occupancy of space after approval of SPR

SUBCHAPTER 5. ADVERTISEMENTS FOR LEASED SPACE

- 17:11-5.1 Advertising process
- 17:11-5.2 Property profile form
- 17:11-5.3 Who is eligible to submit a PPF
- 17:11-5.4 DPM review of completed property profile forms

SUBCHAPTER 6. SITE EVALUATION AND RECOMMENDATION

- 17:11-6.1 Proposal request
- 17:11-6.2 Proposal submission
- 17:11-6.3 Extension of time to submit proposal
- 17:11-6.4 Prices
- 17:11-6.5 Provision of leased space
- 17:11-6.6 Withdrawal of proposal
- 17:11-6.7 Correction of pricing error
- 17:11-6.8 Verification of proposal
- 17:11-6.9 Rejection and re-advertisement of proposal

- 17:11-6.10 Evaluation
- 17:11-6.11 Negotiations
- 17:11-6.12 Selection
- 17:11-6.13 Documents considered public information

SUBCHAPTER 7. STATE LEASING AND SPACE UTILIZATION COMMITTEE APPROVAL

- 17:11-7.1 Notice of proposed lease (NPL)
- 17:11-7.2 Decision of the State Leasing and Space Utilization Committee
- 17:11-7.3 Validity of lease agreement
- 17:11-7.4 Execution of lease agreement
- 17:11-7.5 Rescission of Committee approval

SUBCHAPTER 8. CONSTRUCTION

- 17:11-8.1 Approval of construction documents
- 17:11-8.2 Notice to proceed with work
- 17:11-8.3 Change order
- 17:11-8.4 Requests for renovation

SUBCHAPTER 9. FURNISHING SPACE

- 17:11-9.1 Acquisition of furniture
- 17:11-9.2 Relocation of furniture

SUBCHAPTER 10. ENFORCEMENT OF LEASE AGREEMENT

- 17:11-10.1 Submission of disclosure statement
- 17:11-10.2 Tenant complaints

SUBCHAPTER 11. TENANT AGENCY RESPONSIBILITIES

- 17:11-11.1 Tenant compliances with lease
- 17:11-11.2 Repair costs
- 17:11-11.3 Renovations
- 17:11-11.4 Notification of lessor non-compliance
- 17:11-11.5 DPM investigation of complaints

SUBCHAPTER 12. VACATING LEASED SPACE

- 17:11-12.1 Approval to vacate
- 17:11-12.2 Condition of vacated premises

SUBCHAPTER 1. GENERAL PROVISIONS**17:11-1.1 Purpose and scope**

(a) The Office of Leasing Operations (OLO) was established within the General Services Administration pursuant to P.L. 1992 Chapter 130, approved on October 26, 1992. The rules in this chapter are promulgated by the General Services Administration 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.

17:11-6.4 Prices

(a) A proposal shall include all the price information required by the request for lease proposals. Unless the information either is clearly immaterial to determining the lowest cost proposals, or can readily be inferred from other prices in the proposal, a respondent shall not omit any of the required price information. Furthermore, prices shall be typewritten, photocopied, or written in ink or some other indelible substance.

(b) Unless the request for lease proposal states otherwise, the prices submitted shall remain effective for 90 days after the opening date, subject to any negotiations conducted in accordance with N.J.A.C. 17:11-6.11.

(c) Any price alterations in a lease proposal shall be initialed by the proposer, unless the price either is clearly immaterial to determining the lowest cost lease proposal, can be readily inferred from other unaltered prices in the proposal, or is duplicated on photocopies of the proposal submitted with the original proposal.

17:11-6.5 Provision of leased space

Unless the request for lease proposals permits otherwise, a respondent shall unequivocally agree to provide the leased space specified in the request for lease proposals. The respondent shall also supply with this proposal any information required by the request.

17:11-6.6 Withdrawal of proposal

(a) Prior to the opening of the lease proposals, a respondent may, for any reason, request the withdrawal of a proposal. The request shall be made in writing to the Director or his or her designee and shall be signed by a person authorized to submit the proposal (see 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 respondent or the DPM discovers a material error in a proposal, the respondent may request the withdrawal of the proposal. If the error is discovered by DPM, it will notify the respondent in writing, and the respondent will have five working days from receipt of the notice to respond. Any request from the respondent shall be addressed to the director or his or her designee, and shall be signed by a person authorized to submit the proposal (see N.J.A.C. 17:11-5.3). The director or his or her designee will return the proposal if the respondent can demonstrate that he or she exercised reasonable care in preparing and submitting the 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 discretion of the Director.

17:11-6.7 Correction of pricing error

(a) DPM may correct a pricing error in a proposal under the following circumstances:

1. Where the proposal contains an obvious computational error, DPM may correct the respondent's faulty addition, subtraction, multiplication or division.

- i. Any error must be obvious on its face, and any correction must be consistent with internal evidence in the proposal.

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

17:11-6.8 Verification of proposal

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

17:11-6.9 Rejection and re-advertisement of proposal

DPM shall reserve the right to reject all leased space proposals and to re-advertise if insufficient competition results from the initial advertisement, or the price is unfavorable to the State in the current market.

17:11-6.10 Evaluation

DPM shall evaluate each leased space proposal received in accordance with this subchapter and shall identify the proposals determined to be most cost effective and best able to fulfill the space need as defined in the scope of work.

17:11-6.11 Negotiations

DPM shall negotiate with the respondents who submitted the lowest price space proposals and the Director of DPM shall recommend to the State Leasing and Space Utilization Committee the one respondent who will provide the most cost effective lease agreement which will best serve the interests of the State.

17:11-6.12 Selection

The selection by the Division of Property Management of particular space pursuant to the advertisement procedures for soliciting competitive leased space proposals is not a final agency action because it is subject to the review and approval of the Committee. The Director of the Division shall give notice to all respondents to the Division's request for lease proposals of the space intended for recommendation prior to submission of a final recommendation to the Committee. Challenges to the notice of intent to recommend a lease shall be submitted in writing to the Director of the Division of Property Management, within seven working days from the date of the letter giving notice of the intent to recommend. These challenges shall be forwarded by DPM to the Committee, together with the Director's final recommendation of a lease, for the Committee's review and final determination.

17:11-6.13 Documents considered public information

Subsequent to the Director's issuance of notice to all respondents of his or her intent to recommend a lease to the Committee, the documents submitted by the respondents shall be considered public information, notwithstanding any other disclaimers submitted by the respondent 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 bids for lease agreements and the consequent identification of the most cost effective lease agreement under consideration, the DPM shall prepare a notice of proposed lease (NPL) for submission to the State Leasing and Space Utilization Committee. The NPL shall include:

1. The approved State agency SPR;
2. A statement setting forth the terms and conditions of the lease agreement;
3. A statement setting forth the cost of the leased space, including the cost of rent, taxes, renovation and other costs involved in the lease agreement;
4. A statement from the Attorney General that the 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 lease agreement is cost effective and in compliance with the space utilization master plan;

6. A statement certifying that the office advertised for bids for lease agreements and that the lease agreement under consideration is the most cost effective; and

7. A statement from the Director of the Division of Budget Accounting in the Department of the Treasury certifying that funds have been appropriated to the DPM to cover all costs associated with the lease, 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 State Leasing and Space Utilization Committee shall approve or disapprove in writing the lease agreement under consideration.

17:11-7.3 Validity of lease agreement

No lease agreement negotiated by the DPM shall be valid without the prior written approval of the State Leasing and Space Utilization Committee.

17:11-7.4 Execution of lease agreement

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

17:11-7.5 Rescission of Committee approval

(a) Any request by a State agency for cancellation of a proposed lease agreement subsequent to Committee approval and prior to execution, must be submitted in writing to the Director of the Division of Property Management for review. The Director shall then submit such request to the Committee for its review when the Director determines the agency's request for cancellation is not in accordance with the provisions of N.J.A.C. 17:11-4.3.

(b) The Committee shall assess the State agency for any expenses resulting directly from the cancellation, including, but not limited to, planning or construction costs and any rent payable.

SUBCHAPTER 8. CONSTRUCTION
17:11-8.1 Approval of construction documents

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

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

17:11-8.2 Notice to proceed with work

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

17:11-8.3 Change order

(a) Any agency requiring a change to an authorized construction project prior to occupancy shall submit a change order request to DPM describing the needed change and reason for such change. DPM shall approve a change order request if it meets the criteria established by DPM, which includes 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 shall assist the agency in developing an acceptable alternative, if necessary.

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

17:11-8.4 Requests for renovation

Any agency requesting renovations to an existing leased building shall conform to the provisions of N.J.A.C. 17:11-11.3.

SUBCHAPTER 9. FURNISHING SPACE**17:11-9.1 Acquisition of furniture**

No State agency shall acquire loose or systems furniture for use in any State owned or leased space without the prior approval of DPM, unless the furniture to be acquired shall be within the dollar amount established by law.

17:11-9.2 Relocation of furniture

No State 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, based on the State Space Plan and the agency SPR.

SUBCHAPTER 10. ENFORCEMENT OF LEASE AGREEMENT**17:11-10.1 Submission of disclosure statement**

All lessors contracted with the State shall annually submit an updated disclosure statement to DPM.

17:11-10.2 Tenant complaints

DPM shall be the liaison for the tenant agency with the lessor. All space-related complaints shall be directed to DPM for resolution.

SUBCHAPTER 11. TENANT AGENCY RESPONSIBILITIES**17:11-11.1 Tenant compliances 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.

17:11-11.2 Repair costs

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

17:11-11.3 Renovations

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

(b) DPM shall evaluate the TSR in accordance with established criteria, as follows:

1. Compliance with 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 the State Space Plan; and
5. Consistency with the comprehensive space utilization plan.

17:11-11.4 Notification of lessor non-compliance

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

17:11-11.5 DPM investigation of complaints

In the event a tenant agency is directed to respond to a PEOSHA or other life safety complaint and requests DPM assistance, DPM shall investigate and shall direct the appropriate party to resolve those items deemed by DPM to be such party's responsibility, in accordance with the terms of this chapter and the specific lease agreements.

SUBCHAPTER 12. VACATING LEASED SPACE**17:11-12.1 Approval to vacate**

(a) No State agency shall vacate a leased facility without the prior approval of DPM. DPM will approve any agency vacate when alternate space is identified and secured by DPM for a program; the program is no longer a funded

program; or for more effective utilization of the leased space in accordance with the approved Master Plan.

(b) No moving services shall be contracted or performed without DPM approval.

17:11-12.2 Condition of vacated premises

(a) A State agency vacating a leased facility shall be responsible for the removal of all properties belonging to the State of New Jersey and shall bear the cost of said removal.

(b) A State agency vacating a leased facility shall leave the facility in usable condition in accordance with the lease. The vacating State agency shall bear the cost, if any, required to return the facility to usable condition under the direction of DPM.