

**UNIVERSITY OF WEST FLORIDA
NOTICE OF PROPOSED AMENDMENT TO REGULATION**

REGULATION TITLE: UWF/REG 6.002-Leasing Program

SUMMARY: The proposed amendments update the regulation to conform to Board of Governors' regulation 17.001 concerning the leasing authority of the university, updates the regulation to reflect current organizational titles, and deletes language regarding solicitations that will be moved to the Standard Operating Procedures of the Office of Procurement and Contracts.

AUTHORITY: BOG Regulations 1.001 and 17.001.

NAME OF UNIVERSITY OFFICIAL INITIATING PROPOSED REGULATION AMENDMENT:

Angela Jones, Procurement Director

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION IS: James Felder, Associate General Counsel, jfelder@uwf.edu, Phone (850) 474-3420; FAX (850) 857-6058; Bld. 10/Rm 114; 11000 University Parkway; Pensacola, FL 32514-5750. Any comments regarding the proposed regulation amendment must be sent in writing to the contact person on or before August 13, 2014 to receive full consideration.

THE DATE THIS NOTICE WAS POSTED ON THE UWF BOARD OF TRUSTEES WEBSITE:

July 31, 2014

THE DATE THIS NOTICE WAS PUBLISHED IN "@UWF":

July 31, 2014

THE FULL TEXT OF THE PROPOSED AMENDMENT TO THIS REGULATION IS SET FORTH BELOW:

University of West Florida Regulations

UWF/REG-6.002 Facilities Leasing Program

- (1) **Purpose** – The purpose of this regulation is to implement the delegated leasing authority from the Board of Governors received by to the University of West Florida (“UWF”) Board of Trustees in accordance with BOG Regulation 17.001 regarding the leasing of space.
Section 1001.74, Florida Statutes.
- (2) **Authority** -- The UWF Board of Trustees or designee(s) may enter into leases for space in a building or any part of a building for use by the university or one of its direct-support organizations, including those leases in a research and development park with which the university is affiliated. Leases subject to s. 1010.62 F.S. must be approved by the Board of Governors, in accordance with the Board of Governors Debt Management Guidelines. **Definitions**—For the purpose of this regulation, each of these words shall have the following meaning:
 - (a) Lease—The contract instrument or agreement required to lease a building or any part thereof.
 - (b) Privately Owned—Any building not owned by a governmental agency or by a Direct Support Organization of the University.
- (3) **Approval** – Before leasing a building or any part thereof, prior approval of the need and lease terms shall be obtained from The Vice President for Business, Finance, and Facilities University Affairs or designee(s). Prior to execution occupancy, lease terms and conditions shall be reviewed for form and legality by the Office of General Counsel. All lease agreements in compliance with the criteria set forth herein shall may be executed by the President Vice President for Business, Finance, and Facilities or a designee(s).
- (4) **State Owned Buildings** - A lease agreement for space of 5,000 square feet or more in a privately owned building shall not be entered into when suitable space is available in a state-owned building located in the same geographic region unless it is determined to be in the best interest of the University. The term “state-owned building” as used in this section means any state-owned facility regardless of use or control. Standard Lease Agreement Form—The University of West Florida Standard Lease Agreement form may be used. If another format is used, such form should embrace the terms and conditions of the UWF Standard Lease Agreement. Provisions of the UWF Standard Lease Agreement may be changed or additional covenants or conditions added thereto with the prior approval of the Office of General Counsel.
- (5) **Escalation Clauses Prohibited** – A lease entered into by UWF may not contain a rental escalation clause or an open rental rate that permits an adjustment in the amount paid by the university based on the happening of a future event, such as a change in the Consumer Price Index. Any such clause in a lease shall be null and void and unenforceable. The final cost to the University for the complete term of a lease, including the projected costs for all renewal periods, must be clearly set forth in the lease or calculable based on the terms of the lease.
A lease shall not contain an open rate, such as Consumer Price Index or rental escalation clause unless a ceiling on the amount of such increase is also provided. Any such clause in a lease shall be null and void and unenforceable.
- (6) **Right-to-Terminate Clause Required** – A right-to-terminate clause shall be a part of any lease for a term exceeding one year and may not be omitted from any lease.
- (7) **Renewal of Leases** – Any UWF lease may contain an option to renew and any such renewal shall be made according to the terms and conditions of such agreement.
- (8) **Fire Code Compliance in Leased Space**
 - (a) Any private sector building or part thereof to be leased by UWF shall must comply with those portions of Florida Statutes Chapters 553 and 633, applicable to University buildings, including but not limited to fire safety, life safety, and disabled access standards. -of the State Building-

Code:

- (b) Before construction or renovation of any ~~state- UWF leased~~ building ~~from a third party lessor~~ is commenced, ~~UWF shall require that~~ the proposed construction or renovation plan ~~shall complie~~s with the ~~applicable portions of Chapters 553 and 633. fire safety standards of the State Building Code. This responsibility may be delegated to any ex-officio agent of the State Fire Marshal.~~
- (c) Whenever it is determined that a construction or renovation plan is not in compliance with such ~~fire-~~ safety ~~and access~~ standards, an order may be issued to cease all construction or renovation activities until compliance is obtained, except those activities required to achieve such compliance.
- (d) Approval of any proposed lease shall be withheld until the facility and/or construction or renovation plan complies with ~~fire-~~ safety ~~and access~~ standards.
- (e) The cost of all modifications or renovations made for the purpose of bringing lease property into compliance with ~~the fire~~ safety ~~and access~~ standards shall be borne by the lessor ~~unless otherwise agreed in writing by UWF.~~

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

- (a) ~~The University of West Florida shall not enter into a lease for 5,000 square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive bids and or proposals as determined by UWF in accordance with BOG Regulation 17.001. award to the lowest bid meeting specifications. Leases that are not subject to the competitive solicitation process include those types of leases that are enumerated in BOG Regulation 17.001.~~

Space shall not be divided for the purpose of avoiding the requirements of this regulation.

- 1. ~~Exceptions. This regulation shall not apply to renewal of leases.~~
- 2. ~~This regulation shall not apply to any lease having a term of less than 21 consecutive days for the purpose of securing the one-time special use of the leased property.~~
- 3. ~~This regulation shall not apply to any lease for nominal or no consideration. As used herein, "nominal consideration" means consideration for \$1.00 or less per year.~~
- 4. ~~This regulation shall not apply to building or facilities of any size leased for the purpose of providing care and living space for persons.~~
- 5. ~~The University may approve extensions of an existing lease of 5,000 square feet or more of space if such extensions are determined to be in the best interest of the University but in no case shall the total of such extensions exceed 11 months. If at the end of the 11th month the University still needs space, it shall be procured by competitive bid. However, if the University determines it is in its best interest to remain in space it currently occupies, the University may negotiate a replacement lease with the landlord if an independent market analysis demonstrates that the lease rates offered are within market rates for the space and the cost of the new lease does not exceed the cost of a comparable lease plus documented moving costs. The term of such replacement lease may not exceed the base term of the expiring lease. The decision to extend a lease and to remain in space currently occupied shall be based on the following factors: the cost of moving, the disruption of activities that will occur as a result of moving, the location of the space, the suitability of the space, the proximity of services, the layout and type of space, and the quality of space involved.~~
- 6. ~~This regulation shall not apply for specialized educational facilities excluding classrooms, provided the President or Executive Vice President certifies in writing that the space is available only from a single source. The certification and documentation determining the sole-source status shall be filed with the official records of the University of West Florida.~~
- (a) ~~A lease agreement for space of 5,000 square feet or more in a privately owned building shall not be entered into when suitable space is available in a state-owned building located in the same geographic region unless it is determined to be in the best interest of the University. The term "state-owned building" as used in this section means any state-owned facility regardless of use or control.~~
- (b) ~~Solicitation.~~
 - 1. ~~A public solicitation for proposals will be widely publicized using newspaper-~~

~~advertisements, the University's Procurement website, and/or contact with owners, developers or realtors in the city or area in which space is desired.~~

- ~~2.—Solicitation should set forth, but not be limited to the following:
 - a.—Approximate net square footage required.
 - b.—General area in which space must be located.
 - c.—Date space must be available.~~

~~(c) Specifications:~~

- ~~1.—Specifications shall be drawn in general terms. They shall afford each prospective lessor interested in submitting a proposal, knowledge of the user's space requirements. They shall not be structured to favor any specific location or lessor.~~
- ~~2.—Specifications provided to each prospective lessor should set forth, but not be limited to, the following:
 - a.—Approximate net square footage required, to be measured in compliance with the State University System Standard Method of Space Measurement.
 - b.—An approximate floor plan of space needed showing partitioning and other physical requirements.
 - c.—General location of required space.
 - d.—Date space must be available.
 - e.—Term of lease with option to renew, if desired.
 - f.—Services required to include parking, dining and transportation requirements.~~
- ~~3.—Specifications shall also set forth that the prospective lessor will agree to:
 - a.—Enter into a contract on the specified lease agreement form.
 - b.—Provide a scaled floor plan showing present configurations and measurements that equate to net rentable square footage offered.
 - c.—Comply with the requirement of any Design Standards for Special Facilities for the Physically Disabled.
 - d.—Be an Equal Opportunity Employer.
 - e.—Provide Full Disclosure Statements of Ownership.
 - f.—Validate the proposal for a minimum of thirty (30) or more days following the public bid opening date.
 - g.—Comply with the fire safety standards of the State Building Code.
 - h.—Ensure that any renovations required will comply with safety standards of the State Building Code before renovations are commenced.
 - i.—Propose a rental rate per square foot per year that will include all renovations and other special requirements necessary to accommodate the program at the time of initial occupancy.~~
- ~~4.—Specifications may provide that sealed proposals are to be submitted, in a titled envelope, to a designated individual by a specified closing time and date, at which time all proposals will be publicly opened.~~

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

~~(e) Evaluation:~~

- ~~1.—The University of West Florida alone shall reserve the right to accept or reject any or all bids submitted and if necessary reinitiate procedures for soliciting competitive proposals.~~
- ~~2.—Weighted criteria shall be developed. The criteria items most significant to the user's needs should bear the highest weight. The cost of relocation, if any; consolidation of activities, if desirable; and any other factors deemed necessary should be weighted.~~
- ~~3.—The evaluation shall be made by The University of West Florida.~~
- ~~4.—Selection shall be made by The University of West Florida.~~

- 5.—Documentation to support the selection shall be maintained and shall include but not be limited to the following:
 - a.—A copy of all advertisements.
 - b.—A copy of the proposal specifications.
 - c.—A copy of all proposals received.
 - d.—A synopsis of the findings for each proposal.
- 6.—Selection shall be publicly announced.
- (f) ~~Lease preparation and approval—After the selection has been announced, a lease agreement shall be properly executed.~~
 - 1.—~~Disclosure Statements—Private Entities, Public Officials.~~A Statement by the owner providing for full disclosure of the names and the extent of interest of the owners holding 4% or more interest in any privately owned property leased to the state or in the entity holding title to the property, shall be secured for all new leases, renewal leases, modifications to approved leases and the notification of renewal under an existing lease option.
 - 2.—A statement by the owner providing for full disclosure of the names of all public officials, agents, or employees holding any interest in any privately owned property leased to the state, or in the entity holding title to the property, and the nature and extent of their interest, shall be secured for all new leases, renewal leases, modifications to approved leases, and notifications of renewal under a lease option. It is not necessary to make disclosure of any beneficial interest which is represented by stock in any corporation registered with the Securities and Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, which stock is for sale to the general public. A statement certifying the registration shall be provided by the Lessor.
 - 3.—It is not necessary to make disclosure under subparagraphs (h) 1. and 2. of any leasehold interest in property located outside the territorial boundaries of the United States.
- (10) ~~Each subsequent transaction pertaining to a lease for which a Disclosure Statement has been provided, may be accompanied by a lessor's affidavit that the previous Disclosure Statement submitted on (date to be provided) is still valid, if no change in the interest held or individuals concerned has occurred.~~Legal Review. All leases of space in a privately owned building shall be reviewed as to form and legality by The Office of General Counsel and approval thereof indicated on the Lease Agreement. This regulation shall not apply to leases for less than twenty one (21) consecutive days. Certification of Compliance—The President, Executive Vice President, or authorized designee shall certify that the lease is in compliance with all leasing criteria set forth herein. The certification shall be filed with the official records of the University of West Florida.

(11) **Space Measurement** – The measurement of leased space shall be based on the method of measurement used by the State University System for gross square feet as described in the current Physical Facilities Space File.

(12) ~~The State University System method of space measurement as specified in the HEGIS Facilities Inventory and Classification Manual~~ **Space Allocation** – Space allocation shall be based on the State University System Space Generation Formula.

(13) ~~Exception to Competitive Bidding—Any lease for purposes of providing care and living space for persons shall be exempt from competitive bidding requirements provided the President, Executive Vice President, or authorized designee certifies that the space is to be used for that purpose.~~

(14) ~~Nominal or No Consideration Leases—Leases for nominal or no consideration shall be reported to and approved by the Executive Vice President annually.~~

Specific Authority: BOG Regulations 1.001(3)(j), 1.001(7)(b), and 17.001, 1001.74 FS. Law Implemented, 255.248, 255.249, 255.25 FS.

*History—New 6-30-81, Amended 4-12- 84, Formerly 6C6-6. 002--Converted to UWF/REG 6.002 7/21/05;
Amended 1/5/07, 9/4/08, .*