**Facilities Leases UPPS No. 08.01.16**

 **Issue No. 2**

**Effective Date: 11/04/2019**

**Next Review Date: 02/01/2025 (E6Y)**

**Sr. Reviewer: Real Estate and Planning Manager**

**01. POLICY STATEMENTS**

* 1. This policy is applicable to the preparation and execution of lease agreements for space, including land, entered into by Texas State University.
	2. The authority for obtaining leased space for all state agencies, including Texas State, rests with the Texas Facilities Commission (TFC), as outlined in [Texas Government Code, Title 10, Subtitle D, Chapter 2167](https://law.justia.com/codes/texas/2017/government-code/title-10/subtitle-d/chapter-2167/).
	3. Texas State has obtained delegated lease authority from the Texas Facilities Commission (TFC).
	4. Texas State may choose to exercise its delegated authority, or to have the TFC obtain the lease of space from another state agency, another governmental entity, or from a private source, whichever is determined to be in the university’s best interests.
	5. Off-campus space may be leased by Texas State from a private source through competitive bidding, competitive proposals, or direct negotiation. The method used must be documented by the real estate and planning manager and responsible account manager as providing the “best value” to Texas State.
	6. Lease space must comply with [Texas Government Code, Chapter 469, Elimination of Architectural Barriers](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.469.htm). If applicable, lease space paid with federal funds must meet the federal requirements for individuals with physical disabilities in accordance with the American Disabilities Act of 1990 ([42 U.S.C., Subsections 12101 – 12213](https://www.law.cornell.edu/uscode/text/42)) and Section 504 of the Rehabilitation Act of 1973 ([29 U.S.C., Subsection 794](https://www.law.cornell.edu/uscode/text/29/794)).
	7. Lease of real property shall be in accordance with [The Texas State University System (TSUS) Rules and Regulations, Chapter III, Section 1. (13)2](https://www.tsus.edu/about-tsus/policies.html).
	8. Each lease for off-campus space must be contingent on the continued availability of funds to pay for the lease unless approved by the vice president for Finance and Support Services.
1. **PROCEDURES IN PREPARATION FOR OBTAINING LEASE SPACE**

02.01 An account manager should first inquire through the appropriate administrative channels to see if university space is available to meet the account manager's space needs (see [UPPS No. 01.03.01](https://policies.txstate.edu/university-policies/01-03-01.html), Space Management).

02.02 If it is determined that adequate university space is not available, and approval to lease space off campus is obtained, the account manager should contact the real estate and planning manager. The account manager, in collaboration with the real estate and planning manager, shall determine if it is in Texas State’s best interest to process the lease through the TFC or exercise Texas State’s delegated lease authority. If it is determined to use Texas State’s delegated authority, the real estate and planning manager shall be responsible for securing the required lease space.

02.03Whenever Texas State’s delegated lease authority is exercised, the real estate and planning manager is to attempt to obtain lease space through solicitation for competitive bids or proposals, if practical. The required lease space shall be acquired in accordance with the university's Procurement and Strategic Sourcing office and Historically Underutilized Businesses (HUB) procedures (see [UPPS No. 05.02.02](https://policies.txstate.edu/university-policies/05-02-02.html), Texas State Purchasing Policy and [UPPS No. 05.02.04](https://policies.txstate.edu/university-policies/05-02-04.html), Historically Underutilized Business Advocacy Program.

a. The lease space solicitation package should be prepared by the real estate and planning manager and reviewed with the account manager prior to transmittal to potential respondents (lessors).

b. After receipt, the real estate and planning manager, account manager, and any other identified stakeholders will evaluate and select the property offering the best value to Texas State. The real estate and planning manager shall prepare a best value analysis to document the award recommendation.

c. In determining best value, Texas State may consider the following criteria:

1. the total cost of the lease;
2. condition and location of lease space;
3. utility costs;
4. access to public transportation;
5. parking availability;
6. security;
7. telephone and telecommunication service availability;
8. indicators of probable lessor performance under the lease agreement, such as the lessor’s financial resources and the lessor’s experience;
9. compliance with the state [Architectural Barriers Act](https://www.tdlr.texas.gov/ab/1994abtas1.htm), [Article 9102, Vernon’s Texas Civil Statutes](https://statutes.capitol.texas.gov/Docs/SDocs/VERNON%27SCIVILSTATUTES.pdf); and
10. other relevant factors.

02.04 The proposed lease agreement is prepared for award to the recommended lessor by the real estate and planning manager.

1. If the lessor’s lease agreement form is used, or the lessor requests modifications or additions to the approved Texas State Lease Contract template, the real estate and planning manager shall forward the draft agreement or proposed terms to the TSUS Office of General Counsel for review of, and concurrence to, the lessor’s proposed lease terms.
2. The real estate and planning manager shall make internal distribution, as appropriate, and transmit a copy of the executed lease agreement to the lessor. If the agreement requires the lessor to sign the agreement to execute, the real estate and planning manager shall transmit the agreement to the lessor.
3. Upon receipt of the executed lease agreement, the real estate and planning manager shall distribute copies of the lease, as appropriate.
4. **PROCEDURES FOR ENCUMBRANCE OF FUNDS TO PAY LEASE EXPENSES**
	1. Annually, the responsible account manager shall encumber sufficient funds in the university’s financial system to cover estimated lease payments and any associated expenses for the fiscal year.

03.02 The account manager, as directed by the Procurement and Strategic Sourcing office, shall prepare and approve a purchase requisition to encumber the funds. When a requisition is prepared:

1. the requisition is to include the salient terms of the lease (i.e., monthly lease amount, payment and terms, notes on escalations within the fiscal year, etc.); and
2. an electronic copy of the executed lease agreement should be attached to the requisition.

03.03 Prior to the beginning of the new fiscal year, when the university’s financial system allows encumbrances for the next fiscal year, the responsible account manager shall prepare and approve an encumbrance to cover the next fiscal year’s anticipated lease payments and any associated expenses.

03.04 It is the responsibility of the account manager to notify the assistant director of Contract Compliance, or a designee, of any increase or decrease in lease payments or associated incidental lease expenses so that an adjustment may be made to the encumbrance (e.g., ePO or FC).

**04. LEASE PAYMENT PROCEDURE**

04.01 Accounts Payable shall automatically process a lease payment on the 25th of each month as a pre-payment authorized by the encumbrance (PO) and the lease contract. Authorization for payment shall come from the executed lease agreement, including any executed amendments.

**05. LEASE AMENDMENT PROCEDURES**

* 1. It is the account manager's responsibility to notify the real estate and planning manager, in writing, of any required changes to the lease and furnish sufficient documentation to justify the requested change.
1. The real estate and planning manager will transmit the amendment request to the TFC if the lease was issued by the TFC. If acting under delegated authority, the real estate and planning manager shall prepare a lease amendment.
2. Upon written notification of a transfer of title to the lease space by the lessor, the real estate and planning manager will prepare a "Notice of Change of Lessor" amendment and obtain the necessary approvals.
3. Upon approval of a lease amendment by the vice president for Finance and Support Services, the real estate and planning manager shall transmit the lease amendment to the lessor for execution.
4. Upon receipt of the executed lease amendment from the lessor, the real estate and planning manager shall make the necessary internal distribution of the amendment, including a copy to Accounts Payable.

e. If the amendment impacts the total value of the annual lease payments, the responsible account manager shall request the Procurement and Strategic Sourcing office to revise the encumbrance (PO) to reflect the change.

05.02 Texas State, as lessee, may renew a lease for one additional term in accordance with the standard terms and conditions of the lease agreement.

1. It is the account manager's responsibility to notify the real estate and planning manager, in writing, at least 180 days prior to the lease agreement's termination date to request a lease renewal.
2. Subsequent renewals to the lease may not be exercised unless specified in the original terms and conditions of the lease agreement.
3. **CONFLICT OF INTEREST**
	1. Any Texas State employee intending to submit a competitive bid on space to be leased by the university should review [UPPS No. 01.04.02](https://policies.txstate.edu/university-policies/01-04-02.html), Ethics Policy. Also, the employee must provide written notification to the Texas Building and Procurement Commission, as well as the employee's supervisor, stating an intention to bid, affiliation to the university, and state that submittal of a bid does not conflict with university policy.

**07. REVIEWER OF THIS UPPS**

07.01 Reviewer of this UPPS includes the following:

Position Date

 Real Estate and Planning Manager February 1 E6Y

1. **CERTIFICATION OF STATEMENT**

This UPPS has been approved by the following individuals in their official capacities and represents Texas State policy and procedure from the date of this document until superseded.

Real Estate and Planning Manager; senior reviewer of this UPPS

Associate Vice President for Finance and Support Services Planning

Vice President for Finance and Support Services

President