

**STATE OF COLORADO
OFFICE OF THE STATE ARCHITECT
REAL ESTATE PROGRAM - POLICIES AND PROCEDURES MANUAL
CHAPTER 5 - WORKING WITH THE STATE SERVICE BROKER**

The following summary will help clarify the principal points set out in the real estate brokerage contracts, including the State's relationship with its contracted real estate brokers and the resulting rights and responsibilities of those State agencies expecting to acquire interest in real estate.

Principal Points of the State Real Estate Brokerage Contracts

The present State Real Estate Service Brokers are:

Jones Lang LaSalle Brokerage (JLL)

1225 17th Street, Suite 1900

Denver, CO 80202

Office: 303-260-6500

~Patrick Bolick, Executive Vice President / National Director

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~Eric Carlbom, Managing Director

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SOCO Commercial Real Estate, LLC

17 S. Wahsatch Avenue

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Real Estate Brokerage Services

In furtherance of the fulfillment of its statutorily assigned responsibilities, the Real Estate Program uses the services of private sector real estate brokerage firms to provide services to State agencies in various counties. With limited exceptions, all State agencies and institutions **MUST** utilize contracted real estate brokerage services when leasing or purchasing property in any of the nine counties covered by the contracts. Regardless of the contractual obligation to utilize the brokers' services, the Real Estate Program has found that assistance from professional real estate brokers provides significant advantages to State agencies and institutions.

In a leasing situation the broker's assistance up-front can save the agency/institution time, money and frustration by assisting with needs assessment and space programming. In addition, the brokers' knowledge of the real estate market can help agencies find locations that meet their needs while assuring that State dollars are spent wisely. The brokers, in collaboration with the tenant agency or institution, will conduct the negotiations with the landlord and/or its agent. In addition, the brokers will draft the lease agreement.

The State's contract with its designated Broker specifies that the Broker will provide, within the assigned geographical area, all real estate acquisition services (defined as acquisition of any real estate interest such as lease, lease with option to purchase, out-right property purchase) to all State executive branch agencies including institutions of higher education. Statutory exceptions exist for Department of Transportation right-of-way transactions, Department of Natural Resources and Colorado Parks & Wildlife, and the State Land Board.

The Broker must also be used in lease term extensions, although a determination that takes into account the advantages and disadvantages of such extension should be made prior to pursuing the extension.

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Broker Coverage within Select Counties

At the time of this writing, Jones Lang LaSalle (JLL) serves as the State's contract real estate broker in the Denver metro area which comprises the seven counties of Adams, Arapahoe, Broomfield, Boulder, Denver, Douglas, and Jefferson. SOCO Commercial Group is the State's real estate broker for El Paso and Pueblo Counties. The current contract commenced on July 1, 2024 and has yearly options at the State's discretion that can take the current contract through June 30, 2029. Copies of the contract with these firms can be obtained by calling the Real Estate Program.

Appropriate Real Estate Broker Arrangements in Other Counties

Any state agency or institution of higher education may, within the confines of the usual guidelines applicable to the general procurement of personal services, contract with a Colorado licensed real estate broker for required real estate brokerage services in counties other than those previously noted. The previously mentioned brokerage firms are within that category, so, on an assignment-by-assignment basis, State agencies/institutions can and do occasionally request one of the State brokers noted above to perform brokerage services in a county not covered by the brokerage contract. This is often a beneficial choice because these brokers are already thoroughly familiar with the State's relatively unique (compared to the private sector) real estate leasing procedures. Contact the Real Estate Program for assistance or guidance.

Exceptions to use of Brokers within the Contracted Counties

Generally, the real estate brokerage contracts apply to real estate acquisition by all executive division State agencies, including all institutions of higher education. The only exceptions are rights-of-way acquisitions by the Department of Transportation (DOT), certain rights-of-ways and easements, and vacant land leases and acquisitions by the Department of Natural Resources (DNR), Colorado Parks and Wildlife (CPW), and all transactions by the Colorado State Land Board.

The Real Estate Program has the authority to exempt from the real estate brokerage contract any real estate acquisition assignment covered by the contract, if requested by the relevant

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agency/institution **in advance** of any activity on the assignment. An exemption will be considered, if, from a business judgment perspective or from a practical standpoint, it would be appropriate to do so.

As a matter of working reality, real estate acquisitions involving two State agencies (such as interagency leases) or two levels of government, are nearly always exempted from the real estate brokerage contracts. Any other acquisition transactions are virtually never exempted from the contracts. When such exceptions are made, no other real estate broker may be retained to represent the State, agency/institution, and the State entity must accomplish the transaction with no real estate brokerage service.

Benefits of using the State Contract Broker:

- Familiarity with the current lease commitment
- Full understanding of the nuances of working with the State, and the ability to communicate them adequately during negotiations
- The availability to meet and discuss project issues in a timely manner
- The ability to coordinate meetings between the Broker's staff and State personnel
- The ability to obtain information from the Agency/Institution's management and staff
- Familiarity with the mission of Agency/Institution and its unique requirements
- The ability to define the selection criteria for the space including location, financial and operational criteria
- The ability to obtain authorization on the letter of intent, lease document and other related documentation
- The ability to develop a budget for relocating the Agency/Institution, if required
- Qualifications to direct the project architect in the development of space plans and construction documents
- The ability to manage the progress of the lease as it is routed for execution through the State contract approval system
- The ability to be the agency/institution's representative on construction issues which may arise in any modifications to the selected facility

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- Qualifications to coordinate and schedule moving, telephone, computer, copy and other equipment contractors, as needed

Initial Contact

12 to 18 months prior to the expiration of any lease within the geographical areas serviced by the State's contract brokers, contact should be made between the lessee state agency or institution of higher education and the appropriate broker to alert the relevant agency/institution personnel about the upcoming expiration, and to arrange an appointment for the Broker to meet with the agency/institution delegate to discuss the needs and project objectives of the agency/institution, i.e. interest in lease renewal, expansion of the presently leased premises, or relocation of the leased premises, etc.

In those instances, where an agency/institution's particular leasing or acquisition needs do not arise from the expiration of an existing lease, but rather from a new or expanded program, it is the agency/institution's responsibility to notify the Broker as soon as it knows of the possible new space requirement in order to allow as much time as possible for the Broker to work at the job of locating suitable space. The Broker will initiate these types of projects in the same fashion as described above by obtaining authorization letters.

Whether the leasing requirement arises from the expiration of an existing lease or the need for additional space, the agency/institution SHOULD NOT begin a search or discuss the requirement with a present or potential lessor. The first discussion about these issues must ALWAYS be with the State's own Broker. The Broker's position becomes much more difficult and the service it provides will become much less effective when agency/institution personnel have discussed even on a preliminary basis, the possible lease terms and conditions prior to the State's own Broker having entered the picture.

Tenant Agent Authorization Agreement

The Tenant Agent Authorization Agreement must be signed by the agency's Executive Director or personnel delegated to do so by the Executive Director. (The Institution of Higher Education

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authorization letter must be signed by the President or Chancellor or someone delegated by the Chancellor to do so.) Generally, any person delegated to sign leases also has the authority to sign a Tenant Agent Authorization Letter.

In accordance with § 12-10-405, C.R.S., the Broker will not begin to actively work on the leasing requirement until the State and the Broker sign the Tenant Agent Authorization letter. A properly executed Tenant Agent Authorization Letter is a precondition of any right to perform or earn any commission by the Broker, and when executed creates an obligation on the part of the agency/institution to utilize the Broker's services for negotiation of the leasing need described in the Tenant Agency/Institution Authorization Letter.

The letter authorizes the Broker to represent the agency/institution as its exclusive Tenant Agent in lease negotiations. The Broker shall have authority, upon obtaining signature to the appropriate authorization letter(s), to proceed with carrying out the leasing assignment and work with the named Delegee.

Broker Leasing Procedures

The following steps are to be taken by the Broker, with the full cooperation of the agency/institution, on all typical leasing assignments in a geographical area assigned to a State Broker. In outlying or rural Broker-assigned areas (and in unassigned areas) and on expansions, short extensions and abnormal leasing or building acquisition assignments such steps will be modified or eliminated, depending on the nature of the assignment and the availability of space to be leased.

a) Needs Assessment

The Broker, through interviews with the Delegee and the relevant State personnel, will compile a needs assessment of the agency/institution, including type and amount of space to be acquired, term of lease, location of facility, parking requirements for State vehicles and visitors, requirements for tenant improvements, etc. In the determination of the amount of space an agency/institution may lease, the Broker shall apply the then-current State's Office Space Standards for Leased Office Space (the "Space Standards").

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b) Market Survey

It is the Broker's responsibility to be fully familiar at all times with the geographical area's overall market and its local sub-markets. Based on this knowledge, and in conjunction with the Broker's network with other brokers in the market area, it is the Brokers' responsibility to develop a list and brief description of the available properties that best fulfill the requirements as determined by the agency/institution.

c) Tours & Physical Inspection of Candidate Properties

The Broker will set up and conduct a tour for potential buildings as identified by the Broker which best fulfill the client agency/institution's needs. The Delegee should arrange for all concerned agency/institution personnel, including the ADA coordinator, to be present for the tour.

Following the tour, the Delegee should identify the buildings from which the Broker will solicit offers. The Delegee must specify for the Broker any modifications to each of the selected buildings/sites in order for the buildings/sites to be in compliance with the Department's ADA requirements.

d) Solicitation of Offers to Lease

Generally, the Broker will solicit no less than three offers to lease from the buildings identified by the Project Representative as suitable alternative facilities for the client agency/institution. If the size of the market does not allow three offers to lease, the Broker will solicit offers on those spaces that are available. In the event the agency/institution directs the Broker to look at less than three buildings, e.g. a sole source, the agency/institution should write a memo to the Real Estate Program stating the reason(s) for the request to sole source, for instance, expansion of current lease premises.

e) Cost Analysis

Upon receiving proposals in response to the Broker's request, the Broker should prepare a comparative cost analysis of the proposals. The analysis should compare and contrast costs in each of the buildings based on the planned or proposed square footage; the related design and construction budgets versus design and construction allowances, if available;

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moving budgets versus moving allowances, if available. The proposals and the analysis should be reviewed with the Delegee. One or two of the most appropriate buildings should then be selected to prepare space plans and obtain construction pricing on the related work.

f) Space Planning and Construction Pricing

The analysis of space requested as determined in the needs assessment phase of the project, will be the basis for the space planner to prepare the preliminary space plan. The Broker will assist in assembling the appropriate staff to meet with the space planner to provide information relating to adjacency, workflow, furniture systems, equipment, etc. Typically, the preliminary space plan will be presented to the agency/institution for review and one minor revision made before it is sent to contractors for preliminary pricing by the landlord's space planner. The construction pricing will assist the Broker in refining the cost analysis and further the negotiations.

g) Final Determination of Site

The Broker's analysis of the potential sites, together with the knowledge gained from the inspection tour should be the agency/institution's basis of the final selection from among the various candidates. While an agency/institution is generally expected to select the lowest cost alternative among the various options, there may be particular circumstances that justify a different decision.

h) Execution of Lease

The State's standard lease forms are to be used and typically the Broker will submit a lease form to the lessor for review by lessor and/or lessor's attorney. In those instances, where the wording of the standard lease is expected to be significantly varied to accommodate the agreement arrived at between the parties, the proposed language must be sent by e-mail to the Real Estate Program for review and pre-approval prior to starting the document through the signature process. Any variations from the State's standard forms must be kept to a minimum since much of the language is required by the State Constitution or State statute or policy and therefore cannot be changed at all.

Compensation for the State Broker

There is no established rate of commission mentioned in the contract and there is no assurance by the State that the broker's fee and/or commissions will be paid for a particular transaction. Generally, broker compensation is negotiated and payable by the landlord for lease transactions. In most cases, the State is not directly responsible for broker fees for leasing services.

Therefore, the commission paid for a particular transaction is negotiated separately by the Broker with the appropriate party to the particular transaction. The Broker's contract also provides for Consulting Services at an hourly rate.

State Service Broker Consulting Services

In some instances, an agency may wish to engage one of the State's real estate brokers as a consultant for services such as needs assessment or market research prior to program approval or appropriation of funds for a specific lease ("Consulting Services"). Agreements between the agency and the state service broker for Consulting Services must be set out in a written document that takes one of two forms:

1. Either such agreement must be a State Contract as defined in State of Colorado Fiscal Rule 3-1 or,
2. Such agreement must be fully executed using the State of Colorado Purchase Order Form, which has attached to it a detailed proposal that describes the services to be provided at the respective applicable hourly rates (along with any "top set" figure applicable to the project) and which form bears the following language on the face thereof:

"Execution of this document by or on behalf of the stated buyer/tenant constitutes the affirmation of such Buyer/Tenant that all funds required for payment of this Purchase Order during the current fiscal year are and will be available for such payment, and that

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Buyer/Tenant will make every good faith effort to see to it that such funds are also available for any further payments required on this Purchase Order in subsequent fiscal years."

The Relationship between the Broker and the State

The contract Broker, by a controlling State contract, is the State's primary contact with the lessor and the lessor's representatives. Therefore, State officials, employees, and delegates must not interact or communicate directly with lessor or the lessor's attorney or other lessor representatives during the course of a transaction except in the presence of the State's Broker.