

**STATE OF COLORADO
OFFICE OF THE STATE ARCHITECT
REAL ESTATE PROGRAM - POLICIES AND PROCEDURES**

CHAPTER 6 TENANT BUYER BROKER PROCEDURES

LEASING PROCEDURES TO BE FOLLOWED BY STATE TENANT-BUYER BROKERS

The Real Estate Program, through its authority under C.R.S. § 24-30-1303, and C.R.S. § 24-82-102, has contracted with real estate brokers in the seven county Denver metro area (Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson) and in El Paso and Pueblo counties to be the State's sole source agents for acquiring real estate interests, individually and collectively referred to herein as "Broker(s)". Additional information about the State's contracts with these agencies can be found in Chapter 4 of this manual.

Initial Contact Originating from Broker on Existing Leases

Twelve to fifteen months prior to the expiration of any lease, within a geographical area served by a broker, the broker should contact the lessee state agency or institution of higher education to alert the relevant agency/institution personnel about the upcoming expiration. The Real Estate Program will also use its best efforts to alert agencies and institutions of any pending lease expirations 12 months before the expiration date of the lease term. The broker should send each agency and institution the Tenant Agent Authorization Letter and the Project Representative Authorization letter which should be signed and returned to the broker. The purpose is to arrange an appointment for the broker to meet with the agency/institution Project Representative to discuss the needs and project objectives of the agency/institution, i.e. interest in lease renewal, expansion of the present leased premises or relocation of the leased premises, etc.

a) Tenant Agent Authorization Letter

The Tenant Agent Authorization Letter (TAA or TAAL) must be signed by the agency's Executive Director or someone delegated to do so by the Executive Director. (The Institution of Higher Education 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 C.R.S. § 12-61-805, the broker may not "engage the market" and 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.

A Tenant Agency/Institution Authorization Letter should not be executed by an agency/institution for a period exceeding 15 months in advance of the anticipated need for lease space unless there is a demonstrated need to do so. In such cases, the Real Estate Program personnel shall be consulted prior to execution of the Tenant Agency/Institution Authorization Letter. All agency/institution questions regarding Tenant Agency/Institution Authorization Letters should be referred to the Real Estate Program personnel.

b) The Project Representative Authorization

In conjunction with the Executive Director/Institution President signing of the Tenant Agent Authorization Letter, the Executive Director/Institution President will also be requested by the broker to sign a Project Representative Authorization letter. One of the essential keys to achieving the objectives of the agency/institution is establishing good communication between the agency/institution and the broker. This is achieved by appointing a single point of contact within the brokerage company (the "project manager") and within the agency/institution (the "project representative") who will be responsible throughout the project to fulfill the respective roles of each party. On each assignment, the broker should appoint a project manager to oversee and/or conduct all aspects of the project which

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are the responsibility of the broker as generally outlined below. Likewise, the Executive Director/Institution President should appoint, via the Project Representative Authorization letter, a project representative to speak, with full authority, for the agency/institution in regard to all issues of the project. The project representative should have:

- Familiarity with the current lease commitment.
- 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.
- Qualifications to coordinate and schedule moving, telephone, computer, copy and other equipment contractors, as required.

In regard to the State's policy related to the American's with Disabilities Act (ADA), it is also the responsibility of the project representative, working with the agency/institution's ADA coordinator, to see that ADA requirements are met. Required modifications to any buildings under consideration should be specifically identified by the Project Representative to the broker subsequent to the tours and inspection of the properties.

With respect to an asbestos response action, if necessary, the project representative should also ensure that any space under consideration to lease has been thoroughly tested for asbestos pursuant to the requirements set forth in Section V of Part B of CDPHE's Regulation 8.

Other persons within the client agency/institution who have input, questions and concerns about the project are expected to communicate with the project representative, rather than the broker. The project representative should then communicate these issues or arrange a meeting with those persons and the broker.

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 project representative.

Initial Contact Originating from Agency/Institution

The first step in leasing property for State use is to notify the Real Estate Program of the intended acquisition of lease space. This notification also applies to renewals of existing leases.

In those instances, where an agency's or 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 Real Estate Program and the contracted brokerage firm as soon as it knows of the possible new space requirement in order to allow as much time as possible for the

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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.

In some instances, an agency/institution may wish to engage one of the 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/institution and the 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 on a fully executed 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 "topset" 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 constitutes the affirmation of such Buyer 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 Buyer 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."

Whether the leasing requirement arises from the expiration of an existing lease or the need for additional space, the agency/institution SHOULD NOT begin looking for space or discussing 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.

If an agency/institution is planning to lease or purchase property in a part of the State outside of the counties for which the brokers are contracted, the agency/institution may contract with a Colorado licensed real estate broker of its choice.

Leasing Procedure for Broker and Agency/institution

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 project representative and by working in conjunction with relevant State personnel from the Statewide Planning Program and the Real Estate Program, must 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"). The project representative must provide to the Broker the job classification codes for each employee that is or will be housed in the leased facility. REP may require the client agency/institution to complete requests for exceptions to the Space Standards, when appropriate. If a relocation of the agency/institution is contemplated, the broker will

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assume that the cost of relocation should not exceed \$3.50 per rentable square foot (which includes costs for such things as telephone and computer wiring and installation, furniture and equipment relocation, printing, etc.) unless the Project Representative determines and specifies to the broker a different budget.

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) Physical Inspection of the Property

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

After the tour, the project representative should identify roughly three buildings from which the broker will solicit offers. The project representative 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.

[Policy on ADA Compliance - A paramount goal of REP policy is that all properties under consideration meet and comply with all applicable sections of the Americans with Disabilities Act ("ADA"). These requirements must be considered in every step during the completion of a lease agreement and possible build-out of space. If the potential preferred property is not ADA compliant, the concerned parties must obtain from the lessor a timetable for completion of necessary building modifications in the course of finalizing the lease. In addition, all State requested tenant improvements to the leased space must be constructed so that they are ADA compliant. While alternate program delivery may be utilized in the interim, it should be noted that with certain exceptions of job classifications that require State FTEs to be independently mobile (State Patrol, Military Affairs etc.), Office of the State Architect written approval must be obtained for any exception to the general policy that the leased space and building MUST be able to accommodate a wheelchair bound individual.]

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. (The broker should prepare a memo to the file indicating the review efforts made.) 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; moving budgets versus moving allowances, if available; and base rent, and project additional rent based on building operating costs with an assumed escalation of 3.5% to 4% annual increase. The proposals and the analysis should be reviewed with the

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project representative. 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 project representative should meet with or assemble 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. For instance, if the total cost of a new location is only slightly lower than remaining at the existing location, the agency/institution may decide that the costs of moving, such as changing stationery, business cards and telephone numbers coupled with "soft costs" such as reduced employee output due to the disruption and disrupted service delivery do not justify changing location. The Real Estate Program policy provides that if the overall costs between two locations differ by less than five percent (5%), the costs are considered essentially equivalent and either choice is justified and reasonable. However, if an agency/institution chooses a location where the total cost is more than five percent above the lowest cost option, the Real Estate Program policy requires the agency/institution to prepare a written justification signed by the Agency Executive Director or Institution President which states the justification for such choice prior to considering approval of the lease.

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.

In particularly difficult negotiation situations where the lessor (typically through its attorney) immediately starts out requesting numerous changes to the State standard lease form, the broker may arrange a negotiation session where the broker, the project representative and concerned agency/institution personnel, lessor's representatives and a Real Estate Program representative work together to arrive at the final language in a particular lease.

The broker is responsible for actually drawing up the lease document in conformance with the agreed upon terms and conditions, regardless of whether the standard language was modified or not. The broker will submit hard copies to the lessor for original signature or a digital draft if the document will be signed electronically. (The agency/institution should advise the broker if the agency/institution needs more than one original signature copy for its files.) Once executed by the lessor, the broker will deliver all hard copies of the lease to the agency/institution for signature. The agency/institution then commences the document through the State's approval process. The agency/institution should always see that, at a minimum the lessor's original and one verified original of the lease is returned to the broker for distribution to the lessor.

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Transactions in which the State Broker is Utilized

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 and 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. This means that all other executive branch agencies and institutions must request the broker's services, and the broker must provide those services, when the agency/institution is acquiring real estate interests within the broker's geographical area.

The broker's contract requires that the broker be utilized not only in an entirely new lease but also in the instance of needed expansion space, as this will necessitate a lease amendment to the current lease (and an increase in rental payment) if appropriate space is available in the same building where the current premises are located. If space isn't available in the same building, a new lease will need to be prepared as discussed above. 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.

The Real Estate Program may, under special circumstances, permit an agency/institution to proceed with a transaction without using the broker. This is rarely done and when it occurs, no other broker representing the State in the proposed transaction may be used. This routinely occurs in interagency transactions (e.g. between CDPHE and DOLA) and intergovernmental transactions, such as the State's leasing space in a county-owned facility. In most of these cases, no commission is available to any broker even if a broker did participate in the transaction. An exemption from using broker's services must be requested from the Real Estate Program **in advance** of undertaking any activity on the assignment.

Compensation for the State Broker

The broker's contract covers the matter of compensation as follows:

“. . . Agent shall accept as compensation for its services to the State, real estate commissions payable by the landlord/owner and or the landlord/owner's agent of each relevant property."

Please note that not only is no particular rate of commission mentioned in the contract, there is also no assurance by the State that any commission at all will be paid on any particular transaction. The agency/institution and the Real Estate Program's contracted responsibility is to give the broker their "full support" in the negotiation and procurement of a commission. The commission, therefore, on any particular transaction is only what the broker negotiates with the appropriate party to the particular transaction within the parameters of a "full fair market commission" as referred to in the brokers' contract. The broker's contract also provides for consulting services at an hourly rate.

The Relationship between the Broker and the State

State personnel should keep well in mind that the broker, by a controlling State contract, is the State's primary contact with the lessor and the lessor's representatives. Therefore, the State's project representative or any other State staff that are involved with a real estate transaction must never deal or communicate directly with lessor or the lessor's attorney or other lessor representatives except through the State's broker. Direct contact between State personnel and lessors and or their representatives may violate the "full support" provision of the brokers' contract.

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Communication Is the Key

Open, thorough and complete communication between all of the relevant State personnel and the brokers and their internal staff is essential to a smooth working relationship. The above process sets out the absolutely required Tenant Agency/Institution Authorization Letter from the agency/institution to the broker, and designation of the authorized representative of the agency/institution with whom the broker can reliably communicate in the course of the transaction. There will, however, be many instances where the broker and the representative will wisely determine that a conference between not only those two parties but also several other concerned agency/institution persons and/or a Real Estate Program representative will be extremely helpful. Only by the project representative (and other appropriate State personnel) communicating their concerns early and completely to the State's own broker, and by both the State and the broker regularly communicating during the leasing process, will the broker be in the most advantageous position to achieve the result that best serves the State's interests.

The broker is responsible for keeping the Real Estate Program staff apprised of projects which vary from the normal procedures or which may be, for whatever reason, controversial. If an agency/institution has a concern regarding the process or conduct of any of the State's brokers or their staff, the agency/institution should immediately contact the Real Estate Program at 303-866-5458.

6.1 Tenant Agent Authorization Letter

COMMENTS: Refer to REP website at www.colorado.gov/pacific/osa/reforms to access this form.

The letter authorizes the broker to represent the agency/institution as its exclusive Tenant Agent in lease negotiations.

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

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A Tenant Agency Authorization Letter should not be executed by an agency for a period exceeding fifteen months in advance of the anticipated need for lease space unless there is a demonstrated need to do so. In such cases, the Real Estate Program personnel shall be consulted prior to execution of the Tenant Agency Authorization Letter. All agency questions regarding Tenant Agency Authorization Letters should be referred to the Real Estate Program personnel

6.3 Project Representative Authorization Letter

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The letter appoints a single point of contact within the brokerage company (the "project manager") and within the agency/institution (the "project representative") who will be responsible throughout the project to fulfill the respective roles of each party.