623 Lease Standards

Approved by President

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Dr. Sidney A. McPhee

Effective Date: ________________, 2023

Responsible Division: Business and Finance
Responsible Office: Campus Planning
Responsible Officer: Assistant Vice President, Campus Planning

I. Purpose

This policy sets forth real property leasing procedures for Middle Tennessee State University (MTSU or University).

II. Approval of Leases

A. University as Lessee or Lessor. These agreements shall be approved by the President, including any amendment or cancellation, and, as applicable, by the State Building Commission (SBC), in accordance with T.C.A. § 12-2-114 and § 12-2-115 and the Tennessee Higher Education Commission (THEC).

B. Required signatures include:

1. The Lessor/Lessee (signature shall be acknowledged by a notary public).
2. President (signature shall be acknowledged by a notary public).
4. Commissioner of General Services, if procured by STREAM.
5. Governor (signature is required for lease-outs).

III. Leases where University is Lessee

A. Leases involving consideration of greater than two hundred fifty thousand dollars ($250,000.00) per year or where the term of the lease, including all renewal and extension options contemplated in the lease is for term greater than five (5) years:
1. All proposed leasing actions shall be submitted to THEC and the SBC by the University for review and analysis prior to issuance of advertisement.

2. After review and analysis, THEC and the SBC shall provide comments to the University (SBC Policy).

3. Leases approved during the annual budget review process will not require prior approval of the SBC Executive Sub-Committee (SBC Policy).

4. Leases for which operating funds will be requested for more than five (5) years, or in which the total of the consideration, maintenance costs, utility costs, and/or custodial costs are estimated to exceed two hundred fifty thousand dollars ($250,000.00) per year, and funding for same is requested through state appropriations, shall be approved by THEC (THEC Policy).

   B. Leases for two hundred fifty thousand dollars ($250,000.00) or less per year, or for a five (5) year term or less shall be approved by the President, or his designee, using one of the following approved forms: MTSU Standard Lease Agreement, Mutual Use Agreement, Transient Use Agreement, or Tenant Use Agreement.

   C. Amendments to leases originally submitted to, and recommended by, the SBC shall receive SBC approval prior to execution of such amendments. Any amendment to a lease which was not submitted and approved by the SBC because the term was less than five (5) years, or the annual rent due to the lessor was less than two hundred fifty thousand dollars ($250,000.00), but due to the amendment or the aggregate effect of amendments now exceed those limits, shall be submitted to THEC and the SBC for approval prior to the execution of the lease amendment.

IV. Leases where the University is Lessor

   A. It shall be first determined and reported to the SBC that the interest being conveyed will not hamper the future operations of the State.

   B. The University shall seek consideration for such conveyances based on their fair market value but shall consider lesser consideration or a grant in cases where the conveyance is for a public purpose.

   C. In the case of disposal leases that benefit a private person, persons or entity, the State shall publicly advertise the availability of the property and receive proposals by interested parties. Where it is not feasible to require public advertisement, the interest may be conveyed to a requesting party for consideration at no less than fair market value as determined by appraisal, unless otherwise approved by the SBC (SBC Policy).
D. Leases for two hundred fifty thousand dollars ($250,000.00) or less per year, or for a five (5) year term or less, shall be approved by the President, or his designee, using one of the following approved forms: MTSU Standard Lease Agreement, Mutual Use Agreement, Transient Use Agreement, or Tenant Use Agreement.

V. Non-Discrimination

The University, engaging in a real estate transaction, including sale, rental, or lease, shall not discriminate on the basis of race, color, creed, religion, sex, disability, familial status, or national origin. T.C.A. § 4-21-601.

VI. Recording of Leases

Leases in which the University is the Lessee, which require SBC approval, shall be recorded by the Commissioner of General Services in the county(ies) where the property is located. T.C.A. § 12-2-105.

VII. Advertising for Leased Space

A. Where the University is the Lessee, advertising shall be required in all transactions involving new, succeeding, or superseding leases or lease renewals in compliance with T.C.A. § 12-2-114 except if one of the following exceptions is satisfied:

1. Where the annual rent is less than fifty thousand dollars ($50,000.00), or where the term of the lease is one (1) year or less;

2. The property to be leased is owned or otherwise controlled by a State agency; city, county or other political subdivision of the State; or the federal government; or

3. Where the space required by the entity has special and unique requirements, as determined by the SBC and outlined in SBC By-laws, Policy and Procedure Item 7.

B. When it becomes necessary for the University to amend a lease where it is the lessee, advertising shall not be required for:

1. Lease renewals where the right to renew the lease and the terms of the rental rate for the renewal term were included in the original lease;

2. Extensions to the term of a lease by one (1) year or less beyond the expiration date set forth in the original lease; or

3. Other amendments to a lease, unless required by the policy of the state building commission.
C. Where the University is the Lessor, advertisement, when applicable, shall comply with T.C.A. §12-2-114). A minimum of (2) two weeks shall be allowed for responses to such advertisement.

VIII. Forms and Documentation Required

As applicable, the following forms must be submitted to the President:

A. Space Action Request Form. One (1) copy required with initial submittal of request for leased space.

B. University Standard Lease Agreement Form. Minimum of three (3) copies required after approval has been given to enter into a lease agreement.

C. Statement of Financial Interest for Leased Property. For all leases subject to SBC approval, when the University is the Lessee, the Lessor shall identify persons with a financial interest in the leased property on the Statement of Financial Interest for Leased Property when submitting the lease agreement.

D. Conflict of Interest

1. No individual, company, or other entity involved in the evaluation or negotiation of proposals should have a financial interest or have the appearance of a conflict of interest unless disclosed and addressed in accordance with SBC Policy.

2. A written conflict of interest disclosure documenting the independence of each person involved must be completed and retained as part of the procurement file.

E. Office Space Requirements Analysis, Finance and Administration Form RSM-1A for all leases subject to SBC approval. Document space needs on this form, adapting as necessary to include classroom and class laboratory space needs and submit with initial submittal of request for leased space.

F. Supplemental Data Questionnaire, Finance and Administration Form RSM-1B for all leases subject to SBC approval. Document space needs on this form and submit with initial submittal of request for leased space.

G. Certification of Funds Available. For all leases subject to SBC approval, a letter signed by the President certifying that funds are available must accompany the lease proposal.

H. Summary of Analysis of Lease Proposals Received. If advertising and receipt of lease proposals is performed by the University, a summary of analysis of lease proposals must accompany the lease proposals including cost analysis.
I. Enrollment Projections and Program Documentation for all leases subject to SBC approval. Provide historical enrollments, enrollment projections, and documentation of programs to be offered at the site of the proposed leased facility shall accompany the lease proposal as justification for the need to lease space.

Forms: none.

Revisions: June 12, 2018 (original) to be effective July 1, 2018; ______, 2023.

Last Reviewed: ______________ 2023.