

This rule was filed as GSD 86-504.

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 5 PUBLIC PROPERTY MANAGEMENT
PART 16 LEASING REAL PROPERTY: USE OF PROPERTY CONTROL DIVISION REAL
PROPERTY

1.5.16.1 ISSUING AGENCY: General Services Department, Property Control Division.
[7/10/86; Recompiled 11/30/01]

1.5.16.2 SCOPE: The purpose of this regulation is to establish procedures for the management of buildings and land under the control of the property control division of the general services department, including use of property by non-state organizations or individuals, where the division is the lessor.
[7/10/86; Recompiled 11/30/01]

1.5.16.3 STATUTORY AUTHORITY: This regulation is based on Section 15-3-2 A (2) NMSA 1978, which provides for the director of the property control division to regulate the use and occupancy of buildings and real property under his control and make reasonable requirements for the continuation of that use or occupancy and Section 15-3-14 NMSA 1978.
[7/10/86; Recompiled 11/30/01]

1.5.16.4 DURATION: Permanent
[7/10/86; Recompiled 11/30/01]

1.5.16.5 EFFECTIVE DATE: July 1, 1986 [unless a later date is cited at the end of a section.]
[7/10/86; Recompiled 11/30/01]

1.5.16.6 OBJECTIVE: The policy of this regulation is to insure that the public and non-state agency governmental units have an equitable opportunity to obtain the privilege to lease division buildings and land.
[7/10/86; Recompiled 11/30/01]

1.5.16.7 DEFINITIONS:

- A. **“Agency”** means any unit of state government including, but not limited to boards, commissions, bureaus, agencies, councils, divisions and departments.
- B. **“Director”** means the director of the property control division of the general services department, or his designee.
- C. **“Division”** means the property control division of the general services department.
- D. **“Premises”** means the real property under the control of the division and all improvements and structures thereon that is the subject of the regulation governing the use of such real property.
- E. **“Request for proposals”** (RFP) means all documents, including those attached or incorporated by reference, used for soliciting proposals.
[7/10/86; Recompiled 11/30/01]

1.5.16.8 ORGANIZATIONS AFFECTED: This regulation affects the general public and all state agencies using land and buildings under the control of the property control division, general services department. This includes all executive state departments, boards, commissions, councils, agencies and divisions of state government.
[7/10/86; Recompiled 11/30/01]

1.5.16.9 LEASE OF DIVISION REAL PROPERTY:

- A. **Scope:** Use of division premises by a non-state government entity shall be by lease entered into pursuant to the procedures required in this regulation.
 - (1) **Exception:** Use of Premises pursuant to (1) a designation of use by the director pursuant to Section 15-3-2 A NMSA 1978, or (2) the terms of a joint powers agreement (as defined in Section 11-1-1 through 11-1-7 NMSA 1978) with the director where such joint powers agreement, pursuant to the occupancy designation

procedure required in Section 15-3-2 A(1) and (2) NMSA 1978, (A) allows an agency the management powers over a premises and/or, (B) includes the agency's right to contractually require contractors with the agency to occupy such premises in performing services for the agency, and not as a lease of real property, are exempt from this regulation.

(2) **Exception:** This rule shall not apply to use of premises for charitable purposes as regulated by GSD 86-503.

(3) **Employee housing:** Agency employees required to live on division premises as a condition of employment shall occupy such premises as their dwelling (A) under a contract of employment and such contract shall recite that the employee's compensation (salary) includes the fair market rental value of such dwelling; or, (B) pursuant to a lease, and such lease and the rent charged therein shall be approved by the state board of finance, provided however, that no RFP shall be required. Lessee selection shall be by the agency and approved by the director; or, (C) pursuant to a standard rental rate and lease, pre-approved by the state board of finance. Records of actual rentals shall be provided to the state board of finance and the director, giving rental period, amount of rent, name of Lessee and unit rented.

B. **Determination of need:** Whenever the director makes a written determination that no agency has a use for a premises, and that no use exists as defined in Section 6.1 [Subsection A of 1.5.16.9 NMAC], the director may, at his option, issue an RFP from non-state entities for the leasing of such premises from the division. The RFP process required in this regulation shall be the only method of selection of lessee.

C. **Requests for proposals (RFP):**

- (1) The director shall require in the RFP that the proposal state details regarding:
 - (a) the amount of rent, if any, that will be paid to the division,
 - (b) any consideration (services) to the state of New Mexico or the community in which the premises is located that may be offered in lieu of all or part of direct rental payment,
 - (c) length of lease,
 - (d) responsibility for maintenance of premises,
 - (e) payment of utilities,
 - (f) amount of insurance coverage, and
 - (g) such other subjects as the director may require.
- (2) All RFP's shall be in writing.
- (3) **Contract (lease) requirements:** The RFP shall state that all who submit proposals must state that they agree to meet the following requirements:
 - (a) the provisions of the lease attached hereto as appendix 7.1 [Section 1.5.16.10 NMAC], insofar as they are applicable,
 - (b) insurance coverage, as required in the RFP,
 - (c) the provision that the division may require early termination of the lease if the director determines there is (state) agency need for use of the premises,
 - (d) janitorial and daily maintenance requirements of the RFP,
 - (e) up-grading the premises to meet building code requirements, including handicapped accessibility requirements and other building code requirements of the RFP,
 - (f) the requirements in division regulations GSD 86-506 [1.5.17 NMAC], Clean Indoor Air Regulation; GSD 86-505, Concession Sales Regulation; and GSD 86-504 [1.5.16 NMAC], Charitable Use of Property Regulation and
 - (g) such other requirements as the director may deem appropriate.
- (4) **Selection criteria recited in RFP:** The RFP shall state what weight or ranking each factor of the RFP shall be given. The director may give preference or limit proposals to proposals from non-profit organizations providing charitable services to the community or state.
- (5) **Other RFP information:** The RFP shall state:
 - (a) the time and day (deadline) for submitting proposals,
 - (b) the place for submitting proposals,
 - (c) whether the premises is available for inspection, and if so, the procedure for gaining access,
 - (d) that the division reserves the right to reject any and all proposals or any part of any proposal,
 - (e) the time and place of any pre-proposal conference, and
 - (f) such other information the director deems appropriate.

D. **Publication of notice of RFP:** The director shall cause to be published in a daily newspaper of

general circulation, in the community in which the premises is located, notice of the RFP. Such publication shall be for a minimum of once a week for two consecutive weeks. If no daily newspaper of general circulation exists in the community in which the premises is located, such publication shall be in a daily newspaper within the county in which the premises is located. If no such newspaper exists, publication shall be in a daily newspaper with state-wide circulation.

(1) **Contents of notice of RFP: The notice of RFP shall state:**

- (a) location of premises,
- (b) that the division is seeking proposals from those wishing to lease the premises, (c) that all submitting proposals must obtain the RFP and respond to its requirements,
- (d) the name, address and telephone number of the person or persons from whom copies of the written RFP may be obtained,
- (e) the deadline and place for submitting proposals,
- (f) the date of the pre-proposal conference, if any, and
- (g) a statement that all proposals must be submitted in an envelope clearly labeled as a "sealed proposal".

E. **Pre-proposal conference:** The director may, at his option, hold a pre-proposal conference. If such a determination is made, the time and place of the conference shall be given in the RFP and notice of RFP. All pre-proposal conferences shall be held at least five (5) working days prior to the deadline for submitting proposals. Any verbal representation made at any pre-proposal conference is not binding. All questions and requests for clarification shall be presented in writing. Responses shall be in writing and issued as an addenda to the RFP.

F. **Amendments (addenda) to RFP and eligibility to submit proposals:**

- (1) All amendments to RFP's shall be in writing and shall be mailed to all eligible to submit proposals.
- (2) No one shall be eligible to submit a proposal in response to the RFP unless first signing an acknowledgment of receipt of the RFP. The acknowledgment shall require the name and mailing address of the person authorized to receive all amendments to the RFP.
- (3) Amendments issued prior to the deadline for submitting proposals shall be mailed no later than five (5) days prior to that deadline.
- (4) Amendments issued by the director after the deadline for submitting proposals shall be mailed only to those who submitted proposals and shall provide no less than five (5) work days for response.

G. **Selection of proposals:** The director shall evaluate all proposals and obtain further information on proposals and/or negotiate with the proposer if the director deems such further steps are necessary.

(1) **State board of finance (the "board") approval:** The director shall evaluate the proposals and make a recommendation of best proposal (or a ranking of the proposals shall be submitted) to the board along with appropriate documentation in support of the evaluation for the board's review and approval. Submission of the proposed lease shall be pursuant to the board's procedures.

(2) **Leases:** A proposed lease shall be submitted to the board at the time the initial presentation is made under Section 6.6.1 [now Paragraph (1) of Subsection F of 1.5.16.6 NMAC]. No signatures shall be affixed to the proposed lease until the board has approved that lease. All leases shall be approved prior to submission to the board as to form and legal sufficiency by the office of the general counsel of the general services department and shall be in a form substantially similar to the form attached hereto as appendix 7.1 [now 1.5.16.10 NMAC].

(3) **Execution of lease:** Four multiple originals of the lease shall be signed by the director (as lessor), the lessee, the director of the state board of finance, the secretary of the general services department and such other signatures as the board may require.

H. **Payment of rent:** Leases of premises shall require all rental payments be made to the division. Agencies paying costs related directly to the premises may be reimbursed by the lessee for their actual cost. Such payment by lessee shall be identified and calculated in the lease as being separate from rental payment, and be paid directly to the agency entitled to such reimbursement, pursuant to the terms of the lease.

I. **Improvements to premises:** All leases shall require lessee to obtain advanced written approval by the director for any improvements or alterations lessee makes on the premises.

[7/10/86; Recomplied 11/30/01]

[Compiler's note: Subparagraph (f) of Paragraph (3) of Subsection C of 1.5.16.9 contains a reference to GSD 86-505, Concession Sales Regulations that were not filed in accordance with the State Rules Act.]

1.5.16.10 APPENDIX: Standard Lease Form (for Non-Profit/Charitable Organization Lessee).

LEASE AGREEMENT
(Non-Profit/Charitable
Organization Lessee)

THIS LEASE is made by and between the State of New Mexico, Property Control Division, General Services Department hereinafter ("Lessor"). and _____, (hereinafter "Lessee").

WHEREAS, Lessor through the _____ Department, previously used _____ (Name of Building or Land) in _____ (Location of Land) New Mexico, and for several years has not had any use of this real property; and,

WHEREAS, the _____ (Name of Building or Land) described hereinafter is not needed for the operation of any state agencies and constitutes an economic drain because of the necessity of cleaning and policing such land without receiving any benefit to the Lessor; and,

WHEREAS, Lessee proposes to _____ (general description of use or proposed use of land), without any cost to lessor for construction, maintenance, or any upkeep whatsoever, for the purposes of providing _____ (general description of Lessee's program) _____ (area served) in _____, New Mexico.

NOW, THEREFORE, in consideration of the foregoing, the rent herein reserved, the covenants herein contained, and for the good and valuable consideration, Lessor does hereby lease, demise and let unto Lessee the property herein described for the term and in accordance with the conditions herein set forth. The parties agree as follows:

1. **Description:** The _____ (acreage, buildings, etc.) Leased herein is designated on the (survey, map, drawings, etc.) attached hereto as Exhibit "A" and incorporated herein as though set forth in full, consisting of (give location and size of building or land) _____ in _____, New Mexico, more particularly described (give legal description, if available) _____.

2. **Term:** The base term shall be for _____ years, beginning the _____ day of _____, 19____, and ending the _____ day of _____, 19____.

3. **Rent:** Lessee agrees to pay Lessor, and Lessor agrees to accept as rent for the Premises, the sum of _____ dollar(s) (\$____) per year payable annually (insert monthly fees if applicable), the first installment to be paid on or before the 10th day of the first month of the lease year, and each succeeding installment to be paid (annually or monthly) thereafter throughout the term of this lease.

4. **Condition of Premises:** Lessee hereby acknowledges that Less has made an on-site inspection and knows the conditions of said Premises, that no representations as to the condition of the Premises have been made by Lessor, and Lessee hereby accepts the demised Premises in their present condition.

5. **Ownership of Improvements:** All improvements on the Premises shall be owned by Lessee during the term of this lease; upon expiration of the term they shall be owned by Lessor, [provided however, (insert list of exceptions, if any.)] _____.

6. **Utilities:** Lessee will pay for the extension of all necessary utilities to the Premises and will pay promptly all utility charges which may be incurred in connection with Lessee's use of the Premises, and will save Lessor harmless therefrom. Lessee will pay all costs associated with the acquisition of utility meters and utility service to the Premises.

7. **Maintenance.** Lessee shall, at Lessee's sole expense keep and maintain the Premises and all improvements thereon in a reasonable state of repair and preservation, and shall not suffer or permit any continuing nuisance thereon.

8. **Assignment and Subletting:** Lessee may not assign, sublet, mortgage, subordinate, alienate or hypothecate the Premises, or any part thereof, without the express written consent of Lessor.

9. **Signs and Personal Property:** Lessee may place signs on the Premises only with the advance written approval of Lessor. Such approval shall not be unreasonably withheld by Lessor. All personal property, signs and improvements of Lessee, its employees, agents, customers and invites kept on the Premises shall be at the sole risk of the Lessee, and Lessor shall not be liable for any damage thereto.

10. **Taxes:** Lessee assumes and agrees to pay, before they become delinquent, all taxes, including but not limited to, taxes assessed by the _____ (Name of Conservancy District or other specific tax), which may be lawfully levied and assessed against either the Premises, the improvements constructed thereon, or the contents therein, or all of these, during the term of this lease; provided that Lessee may in good faith contest the amount or validity of such taxes and, in such event may permit the taxes to remain unpaid while contested unless, because of the delay in payment, the Premises will be subject to loss. Lessor shall forward all tax billings received to lessee.

11. **Inspection:** Lessee will permit Lessor to come upon the Premises at all reasonable times in order to inspect the condition, use, safety or security of the Premises and any improvements thereon.

12. **Laws:** Lessee will comply with all applicable federal, state and local laws and ordinances and with all applicable rules and regulations of Lessor, and will insure that those persons using the Premises so comply. Lessee shall indemnify Lessor and hold it harmless from and against any and all claims, damages, loss and liability (including, but not limited to attorney's fees and costs of litigation) suffered by Lessor by reason of Lessee's failure to comply with the foregoing terms of this paragraph.

13. **Non-Discrimination:** Lessee, with respect to employment of staff and to those persons using the Premises and/or receiving services from Lessees, shall not discriminate unlawfully with respect to race, sex, national origin, age, physical handicap, religion or as to any other class protected against discrimination by applicable state or federal laws.

14. **Indemnity:** Lessee shall defend, indemnify and hold Lessor harmless from action, proceedings, loss, costs, damages, liability and all other liabilities and expenses, including but not limited to attorney's fees, and cost of litigation, incurred by Lessor by reason of any claim against Lessor arising out of this lease and/or the operation of the Premises, except those claims arising out of the active conduct or negligence of Lessor's employees acting in the course of their employment for the benefit of Lessor and not Lessee.

15. **Notice:** All notices relating to this lease shall be in writing and shall be delivered to the following addresses and, if mailed, sent certified or registered mail: LESSOR: Property Control Division
General Services Department 715 Alta Vista, Santa Fe, New Mexico 87503. LESSEE: (Name:)
_____(Address:) _____ or to such other addresses as either party may give to the other party by written notice as set forth above.

16. **Waiver:** No failure on the part of Lessor to exercise, and no delay in exercising, any right, power or privilege hereunder shall preclude other or further exercise thereof, or the exercise of any other right, power or privilege. The rights or limitations herein provided are cumulative and not exclusive of any rights and remedies otherwise provided by law or equity.

17. **Expiration:** Upon termination of this lease by reason of the expiration of the term, Lessee will peaceably surrender to Lessor possession of the Premises and all improvements thereon in good condition and repair, reasonable wear and tear excepted.

18. **Insurance:** Lessee shall carry and maintain in full force and effect during the term of this lease and any extension thereof at Lessee's sole cost and expense and as additional rent hereunder, public liability insurance covering bodily injury, disease, illness or death and property damage liability, in a form and with an

insurance company acceptable to Lessor, with limits of coverage not less than \$300,000 for each person and \$500,000 in the aggregate for bodily injury, disease, illness or death with respect to any one occurrence, and \$100,000 for each accident for property damage liability, for the benefit of both Lessor and Lessee as protection against all liability claims arising from the Premises, causing Lessor to be named as an additional-names insured on such policy of insurance, and delivering a copy thereof to Lessor upon the commencement of the term of this lease.

19. **Default of Lessee and Remedies of Lessor:** If any of the following events, "Events of Default", shall occur:

(A) Lessee's failure to pay any tax or special assessment which Lessee is obligated to pay pursuant to this lease lawfully assessed against the Premises so that it becomes delinquent for a period of ninety (90) days, unless the payment thereof is contested in good faith by Lessee with such period of time in the manner stated in paragraph 10 hereof;

(B) Lessee's abandonment of the Premises for a period of thirty (30) continuous days;

(C) Lessee's breach or default under any other term, covenant or condition of this lease;

(D) Lessee's failure to pay when due any insurance premiums required to be paid hereunder;

then Lessor may give Lessee written notice by certified or registered mail specifying what Event of Default has occurred. Unless the Event of Default is remedied or obviated by Lessee within ninety (90) days after its receipt of such notice, or unless within such ninety (90) day period Lessee shall have commenced and shall continue to take action for the purpose of remedying or obviating such Event of Default and shall thereafter in good faith prosecute such action to completion, Lessor may declare the forfeiture of the interest of Lessee in this lease by giving Lessee written notice thereof by certified or registered mail, and this lease shall terminate forthwith.

Upon receipt of such notice of forfeiture, Lessee shall immediately peacefully surrender the Premises, together with all improvements, building (except as otherwise provided herein) and fixtures thereon. If Lessee fails to surrender the Premises, Lessor may forthwith take possession of the Premises, together with all improvements, buildings and fixtures thereon, either by force, summary proceedings or by any other suitable action or proceedings at law or otherwise, without being liable for damages. Lessee agrees that in the event of forfeiture hereunder it shall, upon request of Lessor, assign, convey and transfer to Lessor the title to all improvements, buildings and fixtures on the Premises. Under this remedy Lessee shall be liable for the costs, expenses and attorneys' fees of Lessor in enforcing its rights under this lease, including injunctive relief or the obtaining of possession, and Lessor shall have a lien on all property of Lessee on the Premises as security for the payment of such rental, costs, expenses and attorneys' fees. Lessee shall not be liable for any future rental from the date of termination if this remedy is pursued, and Lessor shall have no further obligation to Lessee under this lease.

20. **Uses to be Made of Premises:** The Premises shall be used for the conduct and operation _____ (insert a description of Lessee's activities/program) and for such other lawful purposes to which the Lessor shall consent in writing. In no event shall Premises be used for any unlawful purpose or other purpose constituting or creating a public or private nuisance.

21. **Approval of State Board of Finance:** This lease shall not be binding or effective until approved by the State Board of Finance of New Mexico and the Secretary of the General Services Department.

22. **Succession:** This agreement shall extend to and be binding upon the heirs, successors and assigns of the parties.

23. **Condemnation:** In the event that all or any portion of the Premises is condemned by any governmental body or agency, Lessor shall be entitled to all compensation awarded or paid without participation by Lessee.

24. **Early Termination of Lease:** Lessor may terminate this lease in the event that Lessor determines that the Premises is needed by any agency or other unit of the State of New Mexico for the conduct of state business. Should determination be made, Lessee shall be entitled to _____ (time period) notice, in writing, from Lessor of early termination of this lease.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals.

LESSOR:

By: _____
(Name)
Property Control Division Director

ACKNOWLEDGMENTS

STATE OF NEW MEXICO)
)ss.
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me, the undersigned authority, this _____ day of _____, 19_____, by _____, Property Control Division Director, General Services Department, State of New Mexico. Notary Public
My commission expires: _____

LESSEE:
BY: _____
(Name:)
(Title:)

STATE OF NEW MEXICO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me the undersigned authority, this _____ day of _____ 19_____, by _____(Name) _____ (Title).

Notary Public

My commission expires: _____

APPROVED: _____

SECRETARY
GENERAL SERVICES DEPARTMENT

BY: _____
DATE: _____

STATE BOARD OF FINANCE:
BY: _____
DIRECTOR

[7/10/86; Recompiled 11/30/01]

HISTORY OF 1.5.16 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:
GSD 86-504 Leasing Real Property Regulation: Use of Property Control Division Real Property, 7/10/86.

History of Repealed Material: [RESERVED]