

This rule was filed as 1 NMAC 5.21.

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 5 PUBLIC PROPERTY PROCUREMENT AND MANAGEMENT
PART 21 STATE AGENCIES LEASING REAL PROPERTY

1.5.21.1 ISSUING AGENCY: General Services Department Property Control Division
[12/31/98; Recompiled 11/30/01]

1.5.21.2 SCOPE: All executive branch agencies except the state land office.

A. **General applicability.** This rule applies to all leases and rentals of space in public and private buildings, for periods exceeding ninety (90) days, by state executive agencies other than the state land office.

B. **Land leases:** Leases of vacant land and leases of parking space only are not covered by this rule.
[12/31/98; Recompiled 11/30/01]

1.5.21.3 STATUTORY AUTHORITY: Section 15-3-2 NMSA 1978, enacted by Laws 1968, Chapter 43, Section 2 and amended in subsequent years thereafter, requires the Property Control Director to control the lease or rental of space in private buildings and applies to all state executive agencies other than the land office. (1978 Comp., Section 15-3-2; 1953 Comp., Section 6-2-26; enacted by Laws 1968, Chapter 43, Section 2; amended by Laws 1971, Chapter 285, Section 2; Laws 1973, Chapter 209, Section 1; Laws 1977, Chapter 247, Section 69; Laws 1977, Chapter 385; Section 14; Laws 1978, Chapter 166, Section 14; and Laws 1980, Chapter 151, Section 16.)
[12/31/98; Recompiled 11/30/01]

1.5.21.4 DURATION: Permanent.
[12/31/98; Recompiled 11/30/01]

1.5.21.5 EFFECTIVE DATE: December 31, 1998 unless a later date is cited at the end of a section or paragraph.
[12/31/98; Recompiled 11/30/01]

1.5.21.6 OBJECTIVE: The objective of this rule is to establish a fair, uniform, clear and effective process to regulate leasing property owned by private entities as office space or special use facilities for state executive agencies under jurisdiction of the property control division.
[12/31/98; Recompiled 11/30/01]

1.5.21.7 DEFINITIONS:

A. **"Agency"** means a state executive agency other than the state land office seeking to lease space.

B. **"Agency cost ceiling"** means the estimated first-year annual cost which an agency determines it can budget for a lease. The agency shall provide this information to PCD using the appropriate GSD form.

C. **"Agency RFP representative"** means a person who serves on the selection committee and who has been designated, in writing, by the agency head at the beginning of each RFP to act on behalf of the agency as the sole contact in for information from and about the agency during the RFP process.

D. **"Agency on-site lease monitor"** means a person who has been designated by the agency to fulfill the duties described in 1 NMAC 5.21.19.1 [now Subsection A of 1.5.21.19 NMAC].

E. **"Bid bond"** means a negotiable security instrument required when proposals are submitted to ensure a proposal for space can be delivered by the top-ranked offeror. Bid bonds are returned to all unsuccessful offerors when the top-ranked offeror selection is approved. (See 1 NMAC 5.21.9.8) [now Subsection H of 1.5.21.9 NMAC]

F. **"BOMA method"** means the current, industry standard methodology for calculating usable square footage (by the building owners and managers association).

G. **"Desirable"** The terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor (as opposed to "mandatory").

H. **"General services department (GSD)"** means the cabinet agency established in Chapter 9, Article 17 NMSA 1978.

- I. **"Leasable square feet (LSF)"** means usable area, plus interior office circulation, plus prorated common space, if applicable, which is what the overall lease payments are based on and which defines the lease boundaries.
- J. **"Lease"** means the standard New Mexico lease of real property form provided by PCD.
- K. **"Lease record drawings"** means drawings prepared in accordance with PCD requirements that address the agency lease requirements, building code requirements, accessibility and applicable state and federal regulations.
- L. **"Mandatory"** The terms "must", "shall", "will", "is required", "are required", "requires", identify a mandatory item or factor (as opposed to "desirable"). Failure to meet a mandatory item or factor will result in the rejection of the offeror's proposal.
- M. **"Performance bond"** means a bond required of the successful offeror to ensure conformation of space required by the lease agreement is successfully completed. The performance bond is returned when the lease space is approved for occupancy. (See 1 NMAC 5.21.14.6) [now Subsection F of 1.5.21.14 NMAC]
- N. **"Principal individual owners"** means all majority stockholders, members of board of directors, officers and partners.
- O. **"Property control division (PCD)"** means the division of the general services department established in Chapter 15, Article 3 NMSA 1978 which is statutorily responsible for controlling the lease or rental of space in buildings by state executive agencies other than the state land office.
- P. **"Selection committee"** means a group of five (5) individuals, including a PCD staff member and four (4) people assigned by an agency to develop RFP evaluation criteria, review lease proposals, develop recommendations for the agency, and select the top-ranked offeror. If an agency presents a compelling reason in writing for less than four (4) agency representatives, the PCD director may approve a selection committee of a total of three (3) individuals, one (1) from PCD as the chair and two (2) assigned by the agency.
- Q. **"Short-term lease"** means a lease for a period that does not exceed one year, including any renewal options.
- R. **"Special use facility"** means a facility other than an office building, warehouse or storage space, which is unique, distinctly different and provides for needs beyond those previously listed. Examples include reintegration centers and hospitals.
- S. **"Storage space"** means space which is used for the bulk storage of materials and which does not exceed 1,000 usable square feet or house employees.
- T. **"Usable square feet (USF)"** means the amount of specific floor area needed to provide an employee or function of an agency with adequate space to perform effectively. Usable square footage is calculated using the BOMA method. Usable square footage can be described as the area within the four walls which defines a work space.
- U. **"Warehouse"** means a space used to store bulk products, materials or supplies or storage space in excess of 1,000 usable square feet. A warehouse may include space to house employees required for operation of the warehouse.
- [12/31/98; Recompiled 11/30/01]

1.5.21.8 PROPERTY CONTROL DIVISION RESPONSIBILITIES:

- A. **Adequacy of existing state facilities:** The PCD director shall determine whether existing state facilities are adequate for an agency's needs before an agency is allowed to lease from any other governmental entity or the private sector.
- B. **Lease agreements:** The PCD director shall have final approval of all the leases, lease amendments, lease extensions, exercise of options-to-renew and all other agreements subject to this rule. No such agreement shall be valid or binding on the state of New Mexico or any of its agencies unless it is in writing, signed by the appropriate parties and approved in writing by the PCD director. The PCD director's signature shall not signify that PCD is a party to an agreement, but only that PCD has authorized, approved, and validated the agreement in compliance with statute and this rule.
- C. **Director's designee:** The PCD director may assign a designee to act on his or her behalf in carrying out his or her duties under this rule. Any such designation shall be in writing.
- [12/31/98; Recompiled 11/30/01]

1.5.21.9 COMMENCEMENT OF LEASE PROCESS:

A. **Competitive sealed proposals:** Except to the extent that this rule conflicts with the Procurement Code and except for leases excluded by this rule from the requirement of solicitation through competitive sealed proposals, all leases shall be solicited in accordance with the Procurement Code and applicable GSD regulations.

B. **PCD notice to agency:** Approximately one year prior to the expiration of an existing lease, PCD will notify an agency that its lease is due to expire and will direct the agency to perform procedures required by this rule.

C. **Drafting the RFP:** The agency shall initiate the lease process for office or warehouse space by submitting a space needs questionnaire (GSD form) to PCD. PCD will prepare the RFP draft to be considered by the selection committee. For new leases, the agency should begin the RFP process six (6) to eighteen (18) months prior to occupancy, depending on the size of the facility.

D. **Selection committee:** The selection committee is chaired by a PCD staff person, who shall guide the RFP process to conform with this rule, provide lease process expertise to the agency members, and vote in the case of a tie. The selection committee will remain in effect until a lease is signed and the performance bond is returned to the lessor.

E. **Agency cost ceiling (GSD form):** The agency shall submit its agency cost ceiling, as defined in 1 NMAC 5.21.7.2 [now Subsection B of 1.5.21.7 NMAC], on the proper GSD form to PCD at the same time it submits its space needs questionnaire. Thereafter, if the agency changes its cost ceiling for any reason, the agency shall notify PCD immediately using the proper GSD form.

F. **RFP review:** PCD will review an agency's proposed RFP and will require changes when the RFP is prepared incorrectly. PCD will return the proposed RFP to the agency for revisions.

G. **RFP approval:** PCD will review the selection committee's recommendations and return the final approved RFP to the agency.

H. **Bid bond:** A bid bond is bid security in the dollar amount of five percent (5%) of the agency cost ceiling, not to exceed \$2,000. Submittal of a bid bond is required with submittal of the lease proposal form. Form and sufficiency of the bid bond is subject to PCD approval.

[12/31/98; Recompiled 11/30/01]

1.5.21.10 SOLICITATION OF PROPOSALS:

A. **RFP approval required:** The agency shall not solicit proposals until PCD has approved the agency's final RFP in writing and has scheduled a proposal opening. Only copies of the RFP showing PCD's approval may be issued.

B. **Public notice (GSD form):** After approval of the agency's RFP, GSD shall provide a copy of the public notice to potential offerors on the public notice mailing list (see 1 NMAC 5.21.24.1 [now Subsection A of 1.5.21.24 NMAC]). Potential offerors are responsible for requesting approved RFP's and any amendments to the RFP from PCD.

C. **Advertising:** The agency shall advertise in the "legal notice" section of a local newspaper, in the area in which proposals are requested, at least once within the week prior to release of the RFP. The agency shall utilize the standard public notice (GSD form) for its advertisement.

D. **Pre-proposal conference:** When an agency seeks to lease 5,000 USF of space or more, PCD shall conduct a pre-proposal conference in the city in which it seeks to lease space. The pre-proposal conference shall be held no less than ten (10) calendar days prior to the proposal deadline.

E. **Amendments to the RFP:** Amendments to the RFP shall be in writing and shall be issued in a timely manner in accordance with the Procurement Code. The selection committee shall submit amendments to PCD in writing which require PCD approval before distribution by the selection committee to all entities who requested copies of the RFP. Amendments will be issued no later than five (5) working days prior to the deadline for proposal submission, except an amendment withdrawing the RFP or one which includes postponement of the date for proposal submission.

F. **Proposal submission deadline:** Offerors shall submit each proposal in a sealed envelope, clearly labeled with the RFP name and number, on or before the date and time stated in the RFP. All proposals received after the deadline shall be deemed non-responsive and returned unopened by PCD. All proposals will be opened at the same time by more than one (1) PCD staff person, with a log of proposals opened which is witnessed by at least two (2) PCD employees.

G. **Ownership disclosure:** Any proposal that is submitted in response to an RFP shall indicate the ownership of the facility offered for lease. If the facility is owned by a corporation or other legal entity, the proposal shall also indicate the principal individual owners and percentages of their ownership.

H. **Proposal modifications:** After a proposal is submitted, an offeror shall not withdraw a building that has been offered or attempt to substitute buildings or building sites on non-contiguous properties. However, an offeror may substitute locations within a building or building sites on contiguous properties so long as the substitution is in the best interest of the agency and the proposed cost is less than or equal to the original proposed cost. This is the only allowable substitution in the original proposal.

I. **Confidentiality of proposal contents:** Proposal contents are confidential until an award is made.

J. **Cancellation of RFP:** Only PCD may cancel an RFP when it is in the best interest of the state to do so, by providing written notice to all potential offerors of record.

K. **Costs:** Any costs to the offerors associated with responding to the RFP and/or reaching final approval of a lease shall be borne solely by the offeror.

[12/31/98; Recompiled 11/30/01]

1.5.21.11 EVALUATION OF PROPOSALS:

A. **Mandatory requirements:** PCD shall review proposals to ensure all mandatory requirements are met, and will forward all responsive proposals to the selection committee for evaluation.

B. **Evaluation criteria:** The RFP will contain and describe all evaluation criteria, and at least the following standard criteria: "cost", "utilities", "lease term", "geographic preference", and "quality of lease space". It may contain "other needs" and/or "proposal incentives", which must be defined specific to that RFP. Geographic preference must contain a statement showing how the specifics of this criteria are relevant to the service delivery requirements of the user agency.

C. **Evaluation points:** Each RFP will contain a total of 100 points. PCD will assign at least 80 points for the evaluation criteria, and the agency may choose to assign up to 20 points to the standard criteria, or to "other needs" and/or "proposal incentives".

D. **Evaluation:** The selection committee shall evaluate each proposal, taking into consideration the criteria set forth in the RFP. The committee shall conduct on-site inspections and interviews with each offeror who submits a responsive proposal as part of its evaluation. The committee may request clarification from any or all offerors. All clarifications shall be requested and submitted in writing to the selection committee, within deadlines set by the committee. The director may waive, in writing, any irregularity based on written proof that the irregularity is technical in nature.

E. **Ranking:** After the selection committee has completed on-site inspections and received any clarifications requested, the committee shall rank proposals based upon the evaluation points in the RFP.

F. **Ranking report:** The selection committee shall submit the results of the ranking in a report to PCD. The report shall include the following information and attachments:

(1) **Information:**

- (a) names of selection committee members;
- (b) copies of any amendments to the RFP;
- (c) name of each offeror;
- (d) address of each proposed facility, including suite and/or floor number;
- (e) usable square footage of each facility;
- (f) leasable square footage of each facility;
- (g) annual and total term cost of each facility;
- (h) lease term;
- (i) agency cost ceiling amount;
- (j) description of the review process, including any clarifications, and the rating process;
- (k) a certification that the selected facility meets the agency's space needs; and
- (l) a justification for the recommendation.

(2) **Attachments:**

- (a) proposal rating and ranking form for leased office space (GSD form);
- (b) rating and ranking summary form (GSD form); and
- (c) agency cost evaluation form (GSD form).

G. **Nonresponsive proposals:** If PCD receives only nonresponsive proposals, PCD may re-solicit proposals. Before re-solicitation, PCD may require that the RFP be modified in order to assure a competitive process.

H. **Ranking approval:** PCD shall review and approve in writing the selection committee's ranking

report. PCD may request additional information from the selection committee to complete its review.

I. **Offeror notification:** After the selection committee has received written approval from PCD of the ranking report, the selection committee shall notify each offeror of the ranking. The top ranked offeror shall be notified by the selection committee to proceed with record drawings in accordance with 1 NMAC 5.21.13 [1.5.21.13 NMAC]. The notification shall be in writing and within fifteen (15) calendar days of receipt of PCD's approval.

J. **Protests:** Any offeror who is aggrieved in connection with the solicitation or award of a lease may protest to the director of PCD. All protests to PCD shall be in writing. Protests shall be governed by the New Mexico Procurement Code Sections 13-1-172 through 13-1-176 and 13-1-183 NMSA 1978 and applicable GSD regulations. [12/31/98; Recompiled 11/30/01]

1.5.21.12 EXEMPTIONS FROM COMPETITIVE SEALED PROPOSAL PROCESS:

A. **General:** The types of leases that are listed in this section are exempt from the competitive sealed proposal process. They are not exempt, however, from building code or accessibility requirements.

B. **Storage leases:** The agency is not required to solicit competitive sealed proposals for storage leases. The agency shall attempt to receive a minimum of three (3) written quotations and shall submit the following information for each quotation along with the proposed lease, for PCD's approval:

- (1) agency cost ceiling form (GSD form);
- (2) proposed lessor's name;
- (3) address of facility;
- (4) size of facility;
- (5) cost of facility per month or year;
- (6) lease term; and
- (7) recommendation and justification by the agency.

C. **Leases for less than \$10,000 per year, not to exceed \$50,000 total term or less than 2,000 usable square feet:**

(1) The agency is not required to seek competitive sealed proposals for leases when the annual lease cost, less janitorial and utility expenses, will be less than \$10,000 or when the size of the facility will be less than the 2,000 usable square feet. The annual lease cost for any year of the lease shall not exceed \$10,000, and the total term shall not exceed \$50,000. The agency shall complete the RFP form and submit it to PCD for review and approval. The RFP form will be used by the agency as the basis for negotiations with the proposed lessor. The agency shall request PCD approval of the lease pursuant to 1 NMAC 5.21.13 and 5.21.14 [now 1.5.21.13 and 1.5.21.14 NMAC], by recommending the facility which the agency deems to be the most satisfactory for its needs. The agency shall attempt to receive a minimum of three (3) written quotations and justify the selection to PCD by providing, at a minimum, the following information for each facility that the agency has considered:

- (a) agency cost ceiling form (GSD form);
- (b) description of the agency's needs;
- (c) proposed lessor's name;
- (d) address of facility, including suite or floor number;
- (e) size of facility;
- (f) annual and total term cost of facility; and
- (g) selection criteria and justification for selecting the facility.

(2) A diagram of the floor plan, with dimensions showing USF, adequate for PCD review shall be submitted for the top-ranked facility to PCD. The diagram may be submitted to PCD after the agency's recommendation.

D. **Short-term leases:** For short-term leases, as defined in 1 NMAC 5.21.7.14 [now Subsection Q of 1.5.21.7 NMAC], an agency shall proceed in accordance with 1 NMAC 5.21.12.3 [now Subsection C of 1.5.21.12 NMAC].

E. **Special use facilities:** The agency may submit a written request to PCD to designate a facility as a special use facility, as defined in 1 NMAC 5.21.7.15 [now Subsection R of 1.5.21.7 NMAC]. PCD will determine if the facility is appropriately defined as a special use facility and if accessibility is required. Only unoccupied and non-public special use facilities will not require compliance with accessibility requirements. The agency may then select a facility appropriate to its needs and submit its selection and justification in accordance with 1 NMAC 5.21.12.3 [now Subsection C of 1.5.21.12 NMAC].

F. **Lease with any other governmental entities:** The agency may lease space from another

governmental entity without soliciting competitive sealed proposals. The agency shall request authorization from PCD to lease space from another governmental entity. PCD shall evaluate whether the proposed facility complies with applicable building codes and accessibility standards. A diagram of the floor plan, with dimensions showing USF, adequate for PCD review shall be submitted for the facility to PCD. If PCD approves the agency's request, the agency may utilize the standard New Mexico lease of real property form or the other governmental entity's form, if approved by PCD. The PCD Director's signature is not required on the lease. However, a copy of the lease shall be maintained on file at PCD.

G. **Leases outside the state of New Mexico:** For leases outside the boundaries of the state of New Mexico, agencies shall proceed in accordance with 1 NMAC 5.21.12.3 [now Subsection C of 1.5.21.12 NMAC], except that applicable local building codes shall apply.
[12/31/98; Recompiled 11/30/01]

1.5.21.13 RECORD DRAWINGS:

A. **Submittal to PCD:** After the selection committee has notified each offeror of its ranking in accordance with 1 NMAC 5.21.11.9 [now Subsection I of 1.5.21.11 NMAC], the first ranked offeror shall develop record drawings for review by PCD. Prior to the submittal, the selection committee may meet with the offeror or the architect to develop a partial layout which best meets its needs. If after ninety (90) calendar days the offeror has failed to provide record drawings, the proposal shall be deemed nonresponsive. In that event, the selection committee shall proceed to the second-ranked offeror or recommend cancellation of the RFP.

B. **PCD review:** PCD shall review record drawings with respect to layout, applicable codes, accessibility standards and general compliance with the RFP. If the selection committee, an offeror or architect chooses, he or she may request a meeting with PCD's plan review staff to review drawing contents and required graphic information. PCD may make recommendations as necessary.

C. **Insufficient for review:** Record drawings which are insufficient for review shall be returned to the selection committee along with any pertinent information the agency should provide to the offeror or architect. The offeror shall resubmit the revised drawings within thirty (30) calendar days of receipt of the insufficient drawings, or the proposal shall be deemed nonresponsive.

D. Disapproval:

(1) If record drawings do not comply with applicable codes or accessibility standards, PCD will disapprove them and return them to the selection committee. The selection committee must then decide on one of the following courses of action:

- (a) continue considering the first-ranked proposal;
- (b) deem the first-ranked proposal nonresponsive and request the second-ranked offeror to develop record drawings; or
- (c) recommend PCD cancel the RFP.

(2) If the agency requests the first-ranked offeror to correct the deficiencies, the offeror shall modify the record drawings and resubmit them for review. Either the selection committee or PCD may recommend a meeting with the various parties to resolve any outstanding issues.

E. **Building codes:** If an existing condition does not appear to comply with an applicable building code, PCD may require submittal of a copy of the building permit issued by the local code authority and certificate of occupancy or other documentation as required prior to approval of the lease.
[12/31/98; Recompiled 11/30/01]

1.5.21.14 FINAL APPROVAL AND PROCESSING OF LEASE:

A. **PCD authorization to enter lease:** PCD shall give written authorization to the agency to proceed to enter into a lease before the agency may enter into a lease agreement.

B. Lease:

(1) After receiving written authorization to enter into a lease, the agency shall complete three (3) originally-signed standard New Mexico lease of real property forms (GSD forms) and submit them to PCD for review and approval. Each lease shall include, as a minimum, the following attachments:

- (a) RFP and amendments to the RFP;
- (b) proposed lessor's proposal and any clarifications or certifications;
- (c) certificate of insurance;
- (d) approved record drawings; and

(e) performance bond.

(2) An agency that does not regularly perform leasing tasks may request PCD to complete the lease forms. The agency will be responsible for acquiring all signatures, notarizations, and copies of all attachments and forms.

C. **Performance bond:** A performance bond in the amount equivalent to twenty-five percent (25%) of the lessee's total first year lease payment shall be submitted by the lessor with the signed lease. The performance bond secures the lessor's performance to provide lease space in conformance with the approved lease record drawings and lease agreement. The bond shall be returned to the lessor upon agency and PCD acceptance of the lease space for occupancy. In the event that the lessor fails to provide the lease space conforming to the lease record drawings in the time period specified in the lease agreement, the bond shall be forfeited to the agency.

D. **Conflict of interest:** Any lease which may violate the Conflict of Interest Act, Sections 10-16-1 through 10-16-15 NMSA 1978, shall be reviewed and approved by the attorney general prior to approval by the PCD director.

E. **Final approval:** Once the PCD director approves a lease, PCD will keep one copy of the lease and provide one copy to the agency and one copy to the lessor.

F. **Occupancy:** No agency shall occupy the leased premises until a lease or lease amendment, approved by PCD, has been executed.

[12/31/98; Recompiled 11/30/01]

1.5.21.15 LEASE TERM:

A. **Minimum:** No minimum lease term is required. Leases for less than ninety (90) days are exempted from this rule.

B. **Maximum:** PCD will not approve any lease which exceeds a total term of twenty (20) years, including all options-to-renew (examples of acceptable terms are ten (10) years with one ten-year (10) option, or twenty years with no option).

C. **Options to purchase:** Any proposal which includes an option to purchase shall be deemed nonresponsive and shall be rejected.

[12/31/98; Recompiled 11/30/01]

1.5.21.16 LEASE AMENDMENTS:

A. **General:** Any lease may be amended, except as described below.

B. **Limitations:** No lease may be amended

(1) to increase the usable square footage by more than

(a) fifty percent (50%) for leases greater than 5,000 usable square feet;

(b) sixty percent (60%) for leases less than 5,000 but greater than 1,000 usable square feet; or

(c) seventy-five percent (75%) for leases less than 1,000 usable square feet.

(2) by more than the initial term, and no total amended term, including all extensions and options to renew, shall be more than a total of twenty (20) years.

(3) No lease may be amended three (3) months prior to its expiration without the agency beginning the RFP process.

C. **Building codes and accessibility:** The PCD Director may disapprove any amendment when existing leased space does not comply with building code requirements or accessibility standards.

D. **Time frame:** All amendments shall be submitted to PCD for approval at least fifteen (15) working days prior to the effective date of the amendment.

[12/31/98; Recompiled 11/30/01]

1.5.21.17 MONTH-TO-MONTH TENANCIES AND OPTIONS-TO-RENEW:

A. **Month-to-month tenancies:** Whenever the agency requires a month-to-month tenancy because the agency is unable to complete the RFP process in a timely manner, the agency shall request and receive written approval for a month-to-month tenancy from PCD. **Term:** No month-to-month tenancy shall exceed six (6) months from the date of expiration of a lease without the agency beginning the RFP process, unless the agency has submitted and PCD has approved a written justification.

B. **Options-to-renew:** The agency with an option-to-renew in its lease may renew the lease upon approval by PCD which may include building code compliance and accessibility. If PCD disapproves a building for

failure to meet any requirement, the agency shall solicit proposals as required by this rule.

(1) **Requests:** In order to exercise an option-to-renew, the agency shall submit a written request to PCD which certifies that the existing lease continues to meet the requirements of the agency. Approved record drawings shall be submitted if they are not on file with PCD.

(2) **Time frame:** The agency shall submit a written request to PCD six (6) months prior to expiration of the lease for review of the request.

(3) **Approval:** Upon approval by the PCD director, an agency shall notify the lessor at least thirty (30) days prior to the expiration of its lease that the agency is exercising its option-to-renew.

(4) **Insurance:** When the agency exercises an option-to-renew, the lessor shall submit an updated certificate of insurance to PCD.

[12/31/98; Recompiled 11/30/01]

1.5.21.18 INSURANCE AND INDEMNIFICATION:

A. **Insurance provisions:** All leases between the agency and a private lessor shall contain insurance provisions that have been approved by GSD's risk management division.

B. **Indemnification:** No lease governed by this rule shall contain any provision whereby the agency agrees to defend, indemnify or provide tort liability insurance for any lessor.

C. **Lease provisions void:** Any insurance or indemnification provision in any lease executed in violation of this section shall be void and of no effect.

[12/31/98; Recompiled 11/30/01]

1.5.21.19 OCCUPANCY:

A. **Agency on-site lease monitor:** Upon occupancy, the agency shall designate an employee as the agency on-site lease monitor. The agency on-site lease monitor shall be the local liaison with PCD and shall be responsible for at least the following:

- (1) compliance of lease terms;
- (2) maintenance and janitorial agreements;
- (3) internal employee complaints;
- (4) monthly inspections; and
- (5) maintenance of records of correspondence.

B. **Requests to a lessor:** All requests to a lessor shall be in writing and refer to specific provisions of the lease.

C. **Maintenance:** The lessor shall be responsible for interior and exterior maintenance, unless otherwise specified in the lease.

(1) **Monthly inspections:** The agency should inspect the entire facility monthly using the PCD lease facility inspection form (GSD form) to determine maintenance compliance.

(2) **Report:** The agency should notify a lessor in writing of any problems and should request that the lessor initiate appropriate action within a specified time frame.

(3) **Refusal:** If a lessor does not agree to perform required maintenance, the agency shall document in writing the refusal and any reasons given.

(4) **Second opportunity:** An agency may offer a lessor a second opportunity, if appropriate, and again follow the procedures of 1 NMAC 5.2.19.4.2 [now Paragraph (2) of Subsection D of 1.5.2.19 NMAC].

(5) **Failure:** If, after written notification, the lessor fails to perform required maintenance, the agency may abate rent, or perform the maintenance and withhold the cost of the maintenance from the lessor, in accordance with the standard New Mexico lease of real property form (GSD form).

D. **Legal counsel review:** PCD recommends that the agency consult legal counsel before abating rent.

E. **PCD notification:** The agency shall submit copies to PCD of all correspondence and documents.

[12/31/98; Recompiled 11/30/01]

1.5.21.20 EARLY TERMINATION:

A. **Agency request:** An agency that wishes to terminate a lease before the end of the lease term shall make a written request to PCD. The request shall include copies of all correspondence and documents which relate to the matter.

B. **PCD approval:** The PCD director shall have final approval of any early lease termination by the agency. No early lease termination shall be effective unless it has been approved by the PCD director, and no approval shall be effective unless it is in writing.
[12/31/98; Recompiled 11/30/01]

1.5.21.21 FAILURE TO COMPLY WITH THIS RULE:

A. **Agency:** If the agency fails to comply with this rule, PCD may reject and disapprove a proposed lease until the rule has been followed properly.

B. **Firm:** Any business, whether an individual or firm, that violates any provision of this rule or violates the provisions of a lease may be suspended or debarred in accordance with Sections 13-1-177 through 13-1-180 and 13-1-183 NMSA 1978.
[12/31/98; Recompiled 11/30/01]

1.5.21.22 WAIVERS:

A. **Authorized waivers:** The PCD director may grant full or partial waivers, in writing, of any section or provision of this rule, except as noted in 1 NMAC 5.21.22.3 [now Subsection C of 1.5.21.22 NMAC], when the agency certifies, in writing, that an emergency condition exists. When an agency certifies to an emergency condition, it must include a written description of what the emergency is and why it is recommending a waiver. An emergency condition is one that creates an immediate and serious need that cannot be met through normal leasing methods and that would seriously threaten:

- (1) the functioning of government;
- (2) the preservation or protection of property; or
- (3) the health and safety of any person.

B. **Short-term lease:** When PCD grants a waiver, PCD may require that the lease be a short-term lease, as defined in 1 NMAC 5.21.7.14 [now Subsection Q of 1.5.21.7 NMAC]. An agency's application for a waiver shall include written justification for the length of the proposed lease.

C. **Waiver conditions:** The PCD has no authority to waive federal requirements under the American with Disabilities Act.
[12/31/98; Recompiled 11/30/01]

1.5.21.23 STANDARD GSD FORMS: PCD will develop and adopt standard forms for use in the lease process. PCD will provide each agency a copy of these forms as they are adopted. Standard forms shall be utilized by an agency during the lease process, unless written approval is given by PCD to modify a form.
[12/31/98; Recompiled 11/30/01]

1.5.21.24 MAILING LIST:

A. **Method:** Any potential offeror may submit an application (GSD form) to GSD's state purchasing division for placement on the public notice mailing list. The state purchasing division sends all potential offerors who are on the mailing list copies of the public notice for all RFP's issued in the counties for which they have applied.

B. **Fee:** GSD's state purchasing division charges for each application at the rates established by that office.
[12/31/98; Recompiled 11/30/01]

1.5.21.25 PROPERTY CONTROL DIVISION FEE SCHEDULE: PCD charges by the page for copies of GSD rules, documents, forms, drawings, lease inventory, and other printed material associated with this rule. The charge shall be based on a fee schedule issued by PCD and based on costs to PCD.
[12/31/98; Recompiled 11/30/01]

HISTORY OF 1.5.21 NMAC:

Pre-NMAC History: The material found in this part was derived from that previously filed with the State Records Center and Archives under:

GSD Rule 84-501, State Agencies Leasing Non-State Property, filed 4/4/84.

GSD Rule 84-502, State Agencies Leasing Non-State Property, filed 11/27/84.

GSD Rule 85-502, State Agencies Leasing Real Property, filed 9/11/85.
Amendment No. 1 to GSD Rule 85-502, filed 10/24/86.
GSD Rule 88-501, State Agencies Leasing Real Property, filed 8/18/88.
GSD Rule 92-501, State Agencies Leasing Real Property, filed 12/16/92.

History of Repealed Material: [RESERVED]