

DEPARTMENT OF TRANSPORTATION

DIVISION OF PLANNING

Statutory Authority: 17 Delaware Code, Sections 132, 137 and 149; 29 Delaware Code, Section 8404 (17 Del.C. §§132, 137 & 149 29 Del.C. §8404)
2 DE Admin. Code 2311

PROPOSED

PUBLIC NOTICE

2311 Long-Term Lease Policies and Practices

Background

The Delaware Department of Transportation (DelDOT), through its Division of Planning, is seeking to adopt regulations to manage its real estate leasing practices and policies.

On occasion, circumstances involving parcels of land under DelDOT's control may present an appropriate opportunity for leasing, as a means of managing the Department's property assets until they are either needed for implementation of the State's transportation program, or are determined to be no longer necessary for such purposes, and made available for disposition under the provisions of 17 Del.C. §137.

Public Comment Period

The Department will take written comments on the proposed Leasing Policies and Practices Regulations from July 1, 2010 through July 31, 2010. The proposed Regulations appear below.

Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

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2311 Long-Term Lease Policies and Practices

1.0 Long-Term Leases

Any future lease of DelDOT-owned property for a term of five (5) years or more inclusive of any renewal option shall be deemed a "long-term lease", and DelDOT shall follow the regulation below to determine the value of the leasehold interest. This regulation shall not apply to any leaseback transactions; i.e. any lease by and between DelDOT and the owner /tenant in legal occupancy on the date the property was originally acquired by DelDOT.

2.0 Competitive Sealed Bid Process

Unless DelDOT seeks to proceed under 3.0 below, DelDOT will provide an opportunity for parties to publicly bid on the lease of the property through a competitive sealed bid process. DelDOT shall retain the right to reject all bids. Notice of the proposed leasing will be advertised at least twenty (20) days

prior to bid opening in a newspaper of general circulation in the county in which the parcel is located. Conspicuous notice shall also be displayed on the property in question at least 20 days prior to bid opening. The second notice will be published approximately ten (10) days prior to bid opening in a newspaper of general circulation in the county in which the parcel is located. DeIDOT shall offer the property for lease at not less than 85 percent of the approved market value rent established by a licensed appraiser.

3.0 Economic and Civic/Benevolent Purpose Consideration.

- 3.1 In the event DeIDOT should be asked by a party or otherwise consider entering into a long-term lease for economic development consideration or civic/benevolent purposes, DeIDOT will first determine market value rent through a licensed appraiser. For purposes of this regulation, an economic development or civic/benevolent purpose proposal is defined as changes to material conditions under the lease that result in less direct monetary value to DeIDOT in exchange for the development of jobs, economic growth and/or the furtherance of a civic/benevolent purpose. The purpose of this value determination is to allow for a fair, thorough and transparent consideration of the proposed incentive or grant being considered.
- 3.2 In cases where the request involves a potential economic development opportunity, DeIDOT, after making the value determination referenced above, shall refer the matter to the Delaware Economic Development Office ("DEDO") for its determination of whether the economic development benefits justify the value of the reduced lease. To the extent DEDO recommends moving forward with the lease transaction, DEDO and DeIDOT shall first present such proposal to the Council on Development Finance ("CDF") for CDF review and approval, following the required notice provisions for CDF proceedings. In addition, DeIDOT shall provide conspicuous notice on the property in question at least 20 day prior to the CDF meeting where the proposal is considered. If approved by the CDF, DeIDOT may enter into the lease agreement on the condition that the nature of the lease, terms of rent and other material conditions are consistent with the recommendations of DEDO and approval of CDF. DeIDOT will continue to manage the properties during the lease term.
- 3.3 In the cases where the request involves a potential civic or other benevolent purpose, DeIDOT shall hold a public meeting in the general vicinity of property in question. The notice shall clearly state the proposed lessee, the proposed lease term, the estimated value of the reduced lease terms and such notice will be advertised at least twenty (20) days prior to the hearing in a newspaper of general circulation in the county in which the parcel is located. Conspicuous notice shall also be displayed on the property in question at least 20 days prior to bid opening. A second notice will be published approximately ten (10) days prior to bid opening in a newspaper of general circulation in the county in which the parcel is located. In addition, DeIDOT shall notify in writing and seek input from the elected State Representative and Senator of the district where the property is located. Upon conclusion of the hearing and a period of 10 days for additional written comments, the Secretary will determine whether or not DeIDOT will lease the property as proposed.

4.0 General Policies Governing Long-Term Leases of DeIDOT Owned Property

- 4.1 Form leases shall be prepared by in-house legal counsel.
- 4.2 All long-term leases or modifications thereof shall require the review of in-house legal counsel and the signature of the Secretary or the Secretary's designee.

14 DE Reg. 21 (07/01/10) (Prop.)