TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 5 PUBLIC PROPERTY MANAGEMENT
PART 25 STATE AGENCIES LEASE-PURCHASING OF REAL PROPERTY

1.5.25.1 ISSUING AGENCY: General Services Department, Property Control Division.
[1.5.25.1 NMAC - N, 01/01/11]

1.5.25.2 SCOPE: This rule applies to all lease-purchases by executive branch agencies except the state land office.
[1.5.25.2 NMAC - N, 01/01/11]

1.5.25.3 STATUTORY AUTHORITY: Section 9-17-5 NMSA 1978, 15-3B-4 NMSA 1978. Sections 15-10-1 and 15-10-2 NMSA enable state agencies to enter into lease-purchases.
[1.5.25.3 NMAC - N, 01/01/11]

1.5.25.4 DURATION: Permanent.
[1.5.25.4 NMAC - N, 01/01/11]

1.5.25.5 EFFECTIVE DATE: January 1, 2011, unless a later date is cited at the end of a section.
[1.5.25.5 NMAC - N, 01/01/11]

1.5.25.6 OBJECTIVE: The objective of this rule is to establish a fair, uniform, clear and effective process to regulate the lease-purchasing of real property constructed by public or private entities as office, warehouse or special use facilities for state executive agencies under jurisdiction of the property control division.
[1.5.25.6 NMAC - N, 01/01/11]

1.5.25.7 DEFINITIONS:

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

B. "Agency 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 lease-purchase process to act on behalf of the agency as the sole contact for information from and about the agency during the process.

C. "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.

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

E. "Desirable" means the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor (as opposed to "mandatory").

F. "Determination" means the written documentation of a decision of a procurement officer, including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

G. "Evaluation committee" means a body appointed by the property control division director to evaluate proposals and make selection recommendation and or selection. The evaluation committee consists of at least three members. The committee should collectively possess expertise in the technical requirements of the project, design, construction, leasing, and contracting. The committee may use independent consultants or agents to support the committee, provided appropriate precautions are taken to avoid potential conflicts of interest. The PCD staff architect or designee serves as staff to the evaluation committee.

H. "Facilities" means buildings and the appurtenances and improvements associated with them, including the real property upon which a building is constructed; suitable parking for use of the building; utilities, access roads and other infrastructure; and related real estate. "Facilities" can also mean undeveloped real estate that is transferred or leased with the intent that a new building or improvement be constructed thereon.

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

J. **"Leasable square feet (LSF)"** means usable area, plus interior office circulation, plus prorated common space, if applicable, which is what the overall lease-purchase payments are based on and which defines the purchase boundaries.

K. **"Lease-purchase document"** means the standard New Mexico lease-purchase of real property form provided by PCD.

L. **"Lease-purchase agreement"** means a financing agreement for the leasing of facilities by the state or a state agency from a public or private entity with a option to purchase the leasehold property for a price that is reduced according to the payments made pursuant to the financing agreement.

M. **"Leasehold property"** means facilities that are subject to a lease-purchase agreement.

N. **"Lease revenues"** means the amounts payable pursuant to a lease-purchase agreement.

O. **"Mandatory"** means 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.

P. **"Performance bond"** means a bond required of the successful offeror to ensure conformation of space required by the lease-purchase agreement is successfully completed. The performance bond is returned when the lease-purchase space is approved and accepted for occupancy.

Q. **"Principal individual owners"** means all majority stockholders, members of board of directors, officers and partners.

R. **"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-purchase of space in buildings by state executive agencies other than the state land office.

S. **"Request for Proposal" (RFP)** means all documents, including those attached or incorporated by reference, used for soliciting proposals.

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.

[1.5.25.7 NMAC - N, 01/01/11]

1.5.25.8 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 initiate the lease-purchase process from any other public or private entity.

B. **Lease-purchase agreements:** the PCD director shall have final signatory of all lease-purchases, lease-purchase amendments, lease-purchase extensions, 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, (on a PCD approved lease-purchase form) 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.

[1.5.25.8 NMAC - N, 01/01/11]

1.5.25.9 COMMENCEMENT OF LEASE-PURCHASE PROCESS:

A. **Sufficient resources to evaluate and implement project:** a lease-purchase contract can be very complex and involve multiple professional disciplines.

(1) The agency/department seeking to implement a lease-purchase project shall collaborate with the property control division in seeking sufficient resources and expertise to at the minimum analyze, evaluate and negotiate the following to be consistent with the guidance document approved by the CBPC:

(a) baseline costs;

(b) market/feasibility studies;

(c) architectural and engineering specifications;

(d) construction/development budgets;
(e) developer qualifications;
(f) legal aspects of developer agreements;
(g) comprehensive financial modeling including alternative finance scenarios.

(2) To the extent these resources do not exist within the agency/department, the agency/department in consultation with the property control division shall engage those third party resources deemed necessary to implement said transaction. The costs of these third party resources may be paid directly by the agency/department or factored into and become a part of the total project cost funded through the lease-purchase project.

B. Develop baseline cost model: the user agency/department in concert with PCD shall develop a baseline cost model by which to compare the lease-purchase scenario. The baseline cost model should be forecast for the anticipated useful life of the new facility. Costs should include but not be limited to:

(1) all third party leasing costs as escalated over the proposed term including pass-through of operating expenses;

(2) debt service/capital costs for owned facilities that are to be vacated or replaced;

(3) anticipated deferred maintenance expenses for owned facilities; and

(4) ancillary costs that will be eliminated by acquisition of new facility for example, third party parking expenses, special meeting spaces, external storage facilities, etc;

(5) for comparison purposes, the total baseline cost as well as the cost of the lease-purchase scenario shall be discounted to a net present value using the state's then applicable cost of tax exempt borrowing.

C. Comprehensive space needs assessment: the agency/department shall have prepared and submitted to the property control division for approval a comprehensive space needs assessment. The space needs assessment will reflect the current space standards for all state employees as well as take into consideration the special space needs of the agency/department including but not limited to meeting rooms, hearing rooms, storage and technology requirements.

[1.5.25.9 NMAC - N, 01/01/11]

1.5.25.10 LEGISLATIVE APPROVAL: Review by capitol planning building commission (CPBC). In accordance with Sections 15-10-1 and 15-10-2 NMSA 1978 the CBPC will review state agency lease-purchase agreements for facilities or other real property prior to the lease-purchase agreements being submitted to the legislature for approval pursuant to Section 15-3-35 NMSA 1978.

[1.5.25.10 NMAC - N, 01/01/11]

1.5.25.11 SOLICITATION OF LEASE-PURCHASE PROCUREMENT:

A. General.: the provisions of 1.5.25 NMAC set forth specific procedures that shall apply to all procurements of real property made by lease-purchase.

B. **Regulation to use sealed proposal:** the regulations applicable to the use of competitive sealed proposals pursuant to 1.4.1.29 NMAC through 1.4.1.47 NMAC, as well as other existing rules applicable to competitive sealed proposals and procurement generally, e.g., 1.4.1.64 NMAC through 1.4.1.92 NMAC, shall apply to procurements made by lease-purchase for real property to the extent that they do not conflict with the provisions of 1.5.25 NMAC.

C. Fair and open process: to promote a fair and open process and to foster maximum participation and competition from the development community the property control division shall acquire lease-purchase facilities through a three phased procedure. During phase one, and prior to solicitation, the following shall occur:

(1) a procurement plan shall be prepared describing the conduct of the lease-purchase procurement;

(2) the procurement plan shall be approved by the PCD director and shall include rationale for the procurement, key personnel involved in the procurement, procurement schedule, key evaluation factors, and criteria for providing a stipend to cover some expenses, if offered;

(3) documents shall be prepared for a "request for proposals"(RFP);

(a) the documents shall include minimum qualifications, scope of work statement and schedule, evaluation criteria and a description of the selection process, the composition of the selection committee, and a description of the subsequent phases' requirements, program statements for the facility that describe space needs, design goals and specific objectives so that all respondents can be comparably evaluated;

(b) the phase two RFP documents shall include program statements for the facility that describe space needs, design goals and specific objectives, building specifications, proposed transaction structures, schedule and other important project and contract terms; building performance specifications shall be prepared to describe the quality of building sought by the state; the narrative description shall include but not be limited to expected base building materials and standards (roof, windows, cladding, etc), interior finishes and quantities, HVAC specifications, vertical conveyances, parking, sustainability standards, etc.

D. Evaluation of proposals: PCD shall evaluate proposals and select a lease-purchase team in three phases:

(1) In phase one, the evaluation committee shall evaluate statements of qualifications and performance data submitted by all responsive businesses in regard to the particular project, and select, ranked in the order of their qualifications, up to three firms deemed to be the most highly qualified to perform the required services. The selection criteria should include but are not limited to:

(a) experience, organization and reputation of the respondent's team on similar projects, based on relevant factors such as:

(i) history of on-time and on budget projects;

(ii) design excellence of completed projects;

(iii) clear lines of authority and responsibilities;

(iv) team and key personnel qualifications;

(v) availability of key team members;

(vi) ability to work with the state of New Mexico;

(vii) litigation and compliance record;

(viii) health and safety record.

(b) financial capacity of the respondent based on relevant factors such as:

(i) ability to raise and commit funds for the project and continuing operations and maintenance;

(ii) reasonableness of the cash flow analysis.

(2) In phase two, PCD shall invite the short listed firms to submit their response to the phase two RFP documents including detailed specific technical concepts of solutions, costs and scheduling, as well as their financial proposal.

(a) A mandatory pre proposal conference will be conducted to allow short-listed firms the opportunity to submit questions of clarification.

(b) Unsuccessful phase two offerors submitting a responsive proposal may be paid a stipend to cover proposal expenses.

(c) The evaluation committee may conduct interviews with, and may require public presentation by, all offerors responding to the RFP regarding their qualifications, their approach to the project, and their ability to furnish the required services. The evaluation committee may also choose to visit examples of one or more of the responding offeror's completed projects.

(d) The evaluation committee shall evaluate the short listed offerors with selection criteria stated in the phase two RFP documents including the weight given to each criterion. The selection criteria should include but are not limited to:

(i) phase one qualifications;

(ii) quality of proposed design, including response to RFP objectives, and clarity in sustainability proposals;

(iii) strength of financial proposal, including detailed description of project costs, and detailed description of the rent calculation methodology;

(iv) financial analysis will be discounted for similar lengths of term back to a net present value at the state's then existing cost of tax exempt capital.

(e) Presentation requirements to properly judge the offers should be stated in the RFP and should include but are not limited to:

(i) the maximum number and size of drawings or technical submittals allowed;

(ii) types of media that can be used in the presentation;

(iii) the format allowed for the financial proposals.

(f) Upon completion of the evaluation process, the selection will be made and the highest ranked offeror will be invited to negotiations.

(3) During phase three, PCD will conduct negotiations with the selected offeror.

(a) PCD should consider the offeror's overall project plan, schedule, financial proposal, benefits and risks to the state.

(b) The lease-purchase agreement and related documents for the lease-purchase agreement in a final form approved by name's office will be negotiated incorporating specific terms, including the state's and offeror's respective responsibilities, the economic parameters, development standards and requirements, and a performance schedule. The agreement shall not become effective until it has been ratified and approved by the legislature.

(c) The offeror, with PCD cooperation, will complete the project approval processes and any required environmental or historic board review.

E. Ownership disclosure: any proposal that is submitted in response to an RFP shall indicate the ownership of the facility offered for lease-purchase. 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.

F. 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.
[1.5.25.11 NMAC - N, 01/01/11]

1.5.25.12 PROPERTY CONTROL DIVISION FEE SCHEDULE: PCD charges by the page for copies of GSD Rules, documents, forms, drawings, lease-purchase 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. Some or all documents may be made available electronically.
[1.5.25.12 NMAC - N, 01/01/11]

HISTORY OF 1.5.25 NMAC: [RESERVED]