

# Supreme Court of Kentucky

ORDER

2006-08

## ORDER AMENDING ADMINISTRATIVE PROCEDURES OF THE COURT OF JUSTICE (AP) PART V: REAL PROPERTY LEASES

**AP PART V: REAL PROPERTY LEASES**, is hereby repealed, and replaced with the following:

### **PART X, SECTION V. REAL PROPERTY LEASES.**

#### **Section 1. Definitions.**

As used in these sections, unless the context otherwise requires:

- (1) "AOC" means the Administrative Office of the Courts, the agency created to serve as the staff for the Chief Justice in executing the policies and programs of the Court of Justice.
- (2) "Director" means the chief administrative officer of the Administrative Office of the Courts who serves at the pleasure of the Chief Justice of the Kentucky Supreme Court.
- (3) "Department" means the Department of Court Facilities of the Administrative Office of the Courts.
- (4) "General Manager" means the General Manager of the Department of Court Facilities who serves at the pleasure of the Director of the Administrative Office of the Courts and the Chief Justice of the Kentucky Supreme Court.

**Section 2. Administrative Office of the Courts responsible for leasing property for Court of Justice use.**

The Administrative Office of the Courts, by and through its Director and General Manager, is authorized to enter into and shall be responsible for the lease of all real property rentals required for the purpose of housing Court of Justice offices. As provided in KRS Chapter 26A, such leases shall be limited to necessary and suitable space which is unavailable in publicly-owned buildings. No lease of real property shall be binding against the Court of Justice unless made and entered into as provided in AP Part X, Section V.

**Section 3. Procedure when Court of Justice officials/managers request space.**

- (1) When a Court of Justice official or AOC Manager determines the need for new or additional space, a request for acquisition of space shall be submitted to the Director or General Manager. The request shall be in writing on a form prescribed by the Department. The form shall be submitted to the AOC Office of Budget and Policy for completion of funding information. If the General Manager determines that new or additional space is necessary and that it is appropriate to lease said space, the General Manager shall acquire the space required by lease as provided in these rules.
- (2) The Department shall review each space request to determine whether space suitable to meet the reasonable needs of the Court may be available in a county, city, urban-county government, metro government, or state-owned or occupied building.
- (3) If it is determined there is no suitable space available in a county, city, urban-county government, metro government, or state-owned or occupied building, the Department shall comply with the procedures set forth in this section in the leasing of space, except as otherwise directed by the Chief Justice of the Kentucky Supreme Court or the Director.
- (4) The Department shall draw up general requirement specifications for the space required in accordance with AP Part X, Section I. These specifications

shall not be altered except at the discretion of the Director. The general requirement specifications shall be kept on file by the Department.

(5) In soliciting for property in a county where space is sought, the Department shall give adequate public notice to reasonably inform persons having available property within the county of the type of space required, the general location of the property, and the number of square feet needed. The notice may include, but not be limited to, posting on the Internet or newspaper advertisements. Each notice shall contain general information concerning requirements for the space sought and shall state the time, date, and place that written responses shall be received. The Department may use any means available to publish the notice.

(6) A property owner, or his or her agent or legal counsel, shall respond in writing on or before the time and date designated in the notice and shall state in writing the type and location of the property, the name and address of the property owner, and the date of availability of the property. The Department shall deal only with individuals that have submitted written responses on or before the time and date designated in the notice unless no response has been submitted by that deadline. If no response has been submitted by the deadline, the Department shall re-advertise following the requirements identified in this Section.

(7) All written responses received on or before the time and date designated shall be opened and read at the time and place designated and kept on file by the Department.

(8) Except as provided in subsection (4) of this section, the Department may negotiate with persons who submitted written responses on or before the time and date designated. If in the course of negotiations, a person proposes lease terms and conditions different from those contained in the Court of Justice standard lease form which are determined to be in the Commonwealth's best interest to accept, but no mention of the acceptability thereof has been made in the notice given pursuant to subsection (5) of this section, all other persons who submitted timely written responses and who reasonably meet the requirements of the public notice shall be notified of the terms and conditions and shall be allowed to incorporate said terms and conditions in written proposals when

submitted pursuant to subsection (11) of this section. A copy of each notice shall be kept on file by the Department.

(9) The Department shall inspect each space proposed to be leased which reasonably meets the requirements of the public notice to determine its suitability to the needs of the entity for whose use the property is sought. The owner of the property, or his or her agent or legal counsel, shall provide access to the property for the inspection. A site evaluation report of the findings for each property inspected shall be kept on file by the Department.

(10) In determining suitability, the following factors shall be taken into account: the location and accessibility of the property; its condition and state of repair; its conformity with occupational health and safety regulations; regulations of the fire marshal; health and sanitation regulations; proposed rental rates; conformity of each property to the advertised requirements; and close proximity to other Court of Justice space.

(11) The Department shall inform each owner of property that meets the general specifications of the work needed to bring the property into compliance with the requirement specifications and shall invite each person whose property meets the requirements of subsection (10) of this section, to submit a written proposal on a form created by the Department. The written proposal shall constitute a best-and-final offer. A written proposal submitted after the designated time and date shall not be considered.

(12) All written proposals submitted on or before the time and date designated shall be opened at the same time and identified by the name of the property owner and the location of the property and kept on file by the Department.

(13) From the time that written proposals are opened until the awarding of a lease, the Department shall not negotiate or agree to changes in the terms of written proposals except to correct technical errors; and, shall log all contacts between Department employees and any person with an interest in the awarding of a lease. The log shall state the time, date and a summary of the substance of each contact. After the lease is awarded, the log shall be kept as a Department record.

(14) The General Manager shall assess the proposals, taking into account factors including, but not limited to: consultation with the Court of Justice official or Manager for whom the space is sought; the location and accessibility of the property; its condition and state of repair; its conformity with the requirements of occupational health and safety regulations; its conformity with applicable state fire, health, safety and sanitation requirements; the proposed rental rates; utility and janitorial costs; agency moving costs; and, whether the property proposed is in substantial conformity with the general and specific requirement specifications, including the proximity of the space to other Court of Justice space.

(15) The Director, or his or her designee, relying exclusively on his or her assessment made pursuant to subsection (14) of this section, shall choose the best proposal in the interest of the Commonwealth; be permitted to negotiate with a potential lessor if he or she was the only responsive and responsible potential lessor who submitted a proposal; or except as provided in subsection (16) of this section, reject all proposals when none is in the Commonwealth's best interest to accept; and may, in his or her discretion, initiate the lease process again.

(16) The lease shall be awarded to the person whose property, in the sound discretion of the Director, or his or her designee, most nearly satisfies the requirements. Upon the Director's, or his or her designee's, authority the General Manager shall award or decline to award a lease to the potential lessor who submitted the best proposal in accordance with this Rule. His or her recommendation shall be submitted to the AOC Office of Budget and Policy for concurrence. If after negotiations the potential lessor's proposal is not in the Commonwealth's best interest, the General Manager may make a recommendation to the Director and shall not award the lease if so authorized by the Director. Reasons for the decision made pursuant to subsections (14) and (15) of this Rule shall be in writing and kept on file by the Department.

(17) The General Manager, any Department employee who performed a site evaluation or negotiated a lease agreement, the Court of Justice official or AOC department that will occupy the leased space, and any Court of Justice employee

who was directly involved with a site evaluation or lease negotiations, shall certify that, to the best of his or her knowledge, he or she is either aware or unaware of circumstances that may constitute a violation of AP Part X, Section V. Said certifications shall be on a form prescribed by the Department and shall be kept on file by the Department.

(18) The Department shall give notification of the award of a lease to each person who submitted a written response, but who was not awarded the lease, on or before the time and date designated in the public notice. A copy of the notice shall be kept on file by the Department. Records relevant to the lease that was awarded shall be available for inspection upon written request.

(19) Prior to finalization of the lease, the Department or the Court of Justice occupant shall inspect the property to ensure that any changes necessary to bring the property up to specifications have been completed in a satisfactory manner. At the conclusion of the inspection, the owner shall be advised in writing by the Department that the property is approved for Court of Justice occupancy pending a letter of substantial compliance from the Department of Housing, Buildings and Construction, and the lease may be finalized, or that there remain changes to be completed or corrected before the lease may be finalized.

**Section 4. Conditions under which proposals to lease, lease-purchase, or exercise options to purchase new construction may be considered.**

(1) A proposal for new construction shall not be considered by the Department when soliciting for procurement of leased office space under the provisions of Section 3, if it contains a provision for a lease-purchase or an option to purchase.

(2) The Department shall consider a proposal for construction of leased office space containing a provision for lease-purchase or option to purchase only if the proposal is submitted in response to a solicitation for proposals for built-to-suit leases in accordance with this Rule.

(3) A building constructed and leased to the Court of Justice under this section shall be constructed in accordance with all applicable local, state and national

safety, building and construction code requirements; and shall be built to last a minimum of thirty (30) years.

**Section 5. Lease of space in building owned by the federal government or space required because of emergency.**

(1) Notwithstanding the provisions of Section 3, this section shall govern the leasing of space in a building owned by the federal government or if the space is required as the result of a bona fide emergency.

(2) When the Director, or his or her designee, determines it is in the Court of Justice's best interest to negotiate a lease in a building owned by the federal government, he or she shall do so. The Director, or his or her designee, shall state in writing his or her justification for the determination, and the writing shall be kept on file by the Department.

(3) A bona fide emergency shall be deemed to exist only in cases where:

- (a) leased premises have been damaged or destroyed by fire, windstorm, or other casualty; or,
- (b) leased premises are found to be in violation of regulations of the Kentucky Occupational Safety and Health Review Commission, and the violations cannot be remedied within thirty (30) days after the issuance of a citation to the lessor of the premises; or,
- (c) leased premises are found to be unsafe or unfit for occupancy due to any condition constituting a violation or infraction of fire or health laws and regulations and cannot be made safe within a reasonable time; or,
- (d) the necessity for leased premises arises from the enactment or adoption of federal legislation or regulations, state legislation or Supreme Court projects authorized pursuant to Section 110(5)(b) of the Kentucky Constitution, the effective date of which mandates the commencement of programs to be housed in leased space before there is time for space to be acquired by public notice; and, Court of Justice functions will be impaired or discontinued unless other

quarters to house the Court of Justice operations are immediately located and occupied by the agency; or,

- (e) an emergency, other than one described in paragraph (a), (b), (c), or (d) of this subsection, exists; and,
- (f) the Chief Justice of the Kentucky Supreme Court has given his or her express written authorization of an emergency lease.

(4) The Department shall take action to locate and negotiate for the lease of space meeting the needs of the Court of Justice upon receipt of the Chief Justice's written authorization or notice of an emergency defined in paragraph (a), (b), (c), (d) or (e) of subsection (3) of this section,

**Section 6. Terms of lease -- Calculation of rent -- Option to purchase -- Lease-purchase agreement -- Right to cancel lease.**

(1) Except when another lease term is approved by the Director or General Manager, the terms of all leases entered into pursuant to this rule may provide for an initial lease term beginning on a date certain and ending on June 30 of each year in which the General Assembly has convened in an even-numbered-year regular session and appropriated funds for the operation of the Judicial Branch during the next biennium. The leases may be automatically renewed upon the same terms and conditions for additional renewal periods of twenty-four (24) months each, not to exceed three (3) automatic renewal periods. The renewal shall also provide that the Court of Justice may, upon written notice given to the lessor on or before April 15 of the year in which the initial or automatic renewal term expires, elect not to exercise its option for the automatic renewal of the lease term. Subject to the agreement of the lessor, when the final renewal period has expired or will expire as of the end of the then-current term, the lease may be renewed upon the same terms and conditions, provisions of Section 3 to the contrary notwithstanding.

(2) The Department shall comply with the provisions of AP Part X, Section II, Court Facilities Criteria, when calculating rentable area for the purposes of a lease, which requires the following:

- (a) If the Court of Justice is the only tenant on a single floor of a multi-story building or the only tenant in a one (1) story or multi-story building, the rentable area shall be the net functional areas and non-functional (factored) areas excluding walls and partitions. Examples of non-functional areas are mechanical rooms, janitorial storage, public lobbies, public corridors, public restrooms, stairways, and elevator shafts among other space.
- (b) If the Court of Justice shares a floor with other tenants, the rentable area shall be 100% of Court of Justice functional areas and proportionally non-functional (factored) areas of public areas excluding walls and partitions.

(3) The Court of Justice may include in a lease an option to purchase the leased property or a lease-purchase of the leased property.

(4) If the Court of Justice exercises an option to purchase leased property, the option price shall not exceed the fair market value of the leased property as of the time the lessor and the Commonwealth enter into the option. Two (2) Appraisal Institute MAI-certified real estate appraisers shall each determine the fair market value. Each appraiser shall be selected by the AOC and shall employ an accepted appraisal technique.

(5) (a) Except as provided in paragraph (b) of this subsection, if the AOC includes in a lease the option of a lease-purchase of the property, the fair market value of the property as of the time the parties enter into the lease shall be determined, independently, by two (2) Appraisal Institute MAI-certified real estate appraisers. Each appraiser shall be selected by the AOC and shall employ an accepted appraisal technique. The lease shall provide for an initial lease term ending June 30 of the second year of the current fiscal biennium of the Commonwealth. It shall also include an option of the Court of Justice to extend the lease term for additional two (2) year terms until the original term of the lease has been extended for a total number of years agreed upon by the parties. The fair market

value of the leased property at the time the lease executed into shall be amortized over the original term and the extended terms of the lease. The lease shall provide that the Court of Justice may, at the expiration of the original term or any extended term, purchase the leased property at a stated price, which shall be the balance of the fair market value of the leased property as of the time the lease was executed which has not been amortized by the payments of rent previously made by the Court of Justice.

- (b) If the AOC includes a lease-purchase option of property leased from the federal government, the terms of shall be negotiated between the Court of Justice and the federal government.

(6) An option to purchase and lease purchase shall be recorded by the lessor with the deed in the office of the County Clerk of the county in which the property is located.

(7) The Court of Justice shall reserve the right to cancel a lease upon written notice within thirty (30) days except in the instance of a lease-purchase option pursuant to subsection (5) of this section.

**Section 7. Disclosure of Ownership -- New disclosure required under certain conditions.**

(1) When the lessor is a corporation, partnership, business trust, or organization, a disclosure statement providing a list of the names of all persons owning five percent (5%) or more of the shares in such entities and the names of all partners, including silent and limited partners, shall be furnished to the Department prior to execution of the lease agreement.

(2) Any person, corporation, partnership, business trust, or organization that receives income from the lease of real property to the Court of Justice and then, by way of assignment, transfer, or any other direct or indirect means, conveys some part of that income to any other person, corporation, partnership, business trust, or organization shall file a disclosure statement with the Department. The disclosure statement shall identify each recipient of the income and the amount

received by each recipient.

(3) A new disclosure statement shall be furnished to the Department upon:

- (a) Any change or transfer of ownership involving persons, including silent or limited partners, owning five percent (5%) or more of the shares in the corporation, partnership, business trust, or organization; or,
- (b) Any change in the distribution of income from the leased property by way of assignment, transfer, or any other direct or indirect means.

(4) The Department shall maintain each disclosure statement obtained pursuant to this section in the appropriate lease file and shall make all lease files available for public inspection upon written request.

**Section 8. Request for additional space -- Improvements in premises -- Amendment or modification of leases -- Emergency modification.**

(1) If the Court of Justice determines there is need for additional space, the current lease may be amended to increase the leased space, with agreement of the lessor. The rental rate paid for the additional space shall not exceed the square foot rental rate fixed by the original lease. A lease may also be modified to decrease the number of square feet leased and the rent shall be appropriately reduced, with agreement of the lessor.

(2) (a) The Director and the General Manager, jointly, may approve improvements deemed necessary in leased premises at an estimated cost. Their approval is required before the lessor makes the improvements. If the improvements cost more than one thousand dollars (\$ 1,000), the Director and General Manager, jointly, shall approve to amortize the cost of the improvements in full over the life of the lease. No other financing method shall be used. If the improvements cost one thousand dollars (\$ 1,000) or less, the General Manager may approve the amount necessary to pay for the cost of the improvements as a direct Court of Justice

expense. No other financing method shall be used. No improvement shall be divided so as to qualify under the provisions of this subparagraph.

- (b) Any rent increase necessary to amortize a cost pursuant to paragraph (a) of this subsection shall not extend beyond the period required to accomplish the agreed amortization.
- (c) The Department shall amend a lease to reflect a rent increase necessary to amortize a cost pursuant to paragraph (a) of this subsection, and the amendment shall state that the rent increase is for the purpose of amortizing this cost.

(3) Any modification to an existing lease which is required because of an emergency as described in Section 5, shall be made pursuant to Section 5 and this section.

**Section 9. Employees forbidden to disclose information prior to advertisement.**

(1) No Court of Justice official or employee shall engage in any act or make any representation or commitment to any person relative to the lease of real property by the Court of Justice without specific written authorization from and approval by the Director and neither the Court of Justice, nor AOC, shall be bound by any such act, representation, or commitment unless so authorized and approved.

- (2) (a) Prior to the public notice, no Court of Justice official or employee shall disclose to any person or firm any approved plans by the Department for the lease of real property for which public notice is required under Section 3 of this Rule. Discussions of approved leasing plans may be held after public notice with persons interested in submitting a proposal pertaining to the space requirements.
- (b) If all of the proposals submitted in response to the advertisement are rejected, the requirements of paragraph (a) shall govern

disclosure before, and discussions after, new advertisements are placed.

**Section 10. Determination that Court of Justice is entitled to acquire space using built-to-suit procedures.**

If the Director determines additional space is necessary and that built-to-suit on private property or built-to-suit on state-owned land is the most economically advantageous method for acquiring that space, the Director shall set forth the determination in a written finding which shall be approved by the Chief Justice.

**Section 11. Built-to-suit selection committee.**

- (1) A built-to-suit selection committee is hereby created in the AOC.
- (2) The selection committee shall participate each time the Court of Justice acquires space through the built-to-suit process.
- (3) The initial selection committee shall be appointed by the Director and shall consist of the following four (4) members:
  - (a) The Deputy Director of AOC;
  - (b) The General Manager of Court Facilities or his or her designee;
  - (c) The Director of the AOC Office of Budget and Policy; and,
  - (d) The AOC General Counsel.

**Section 12. Administrative support for selection committee.**

For administrative purposes, the selection committee shall be attached to the AOC. The AOC shall provide the selection committee with the following: suitable quarters in Frankfort, Kentucky, in which to conduct its business; staff support necessary for the expeditious conduct of the selection committee's duties and responsibilities; and, office supplies.

**Section 13. Requests for proposals -- Procedures for awarding built-to-suit.**

- (1) The General Manager shall prepare a request for proposals if so directed by the Chief Justice of the Kentucky Supreme Court or the Director.
- (2) The request for proposals shall indicate the relative importance of evaluation factors.
- (3) A request for proposals may be amended at any time prior to the deadline for the submission of proposals.
- (4) In soliciting the interest of respondents to carry out a built-to-suit lease, the Department shall comply with the procedures established in this subsection.
  - (a) The Department shall provide adequate public notice of a request for proposals and shall specify a time and date for written response. Materials shall be provided to assist those interested in responding to said request and shall include, but not be limited to, the request for proposals and the proposal evaluation sheet to be used by the selection committee.
  - (b) The Department may use any means available to notify respondents that a notice has been given.
- (5) A respondent, or its representative, shall respond to the notice on or before the time and date designated. The response shall be in a format determined by the Department and shall provide, at a minimum, the respondent's name and address.
- (6) All written responses submitted on or before the time and date designated shall be opened at the same time, publicly read or posted, and kept on file by the Department. A respondent that fails to meet the deadline will not be given consideration.
- (7) The Department shall transmit a request for proposals to all respondents that responded by the stated deadline.
- (8) After the request for proposals has been transmitted, but before written proposals are submitted, the General Manager, and staff, may hold meetings, discussions, or negotiations that are deemed appropriate with the respondents.

- (9) (a) The General Manager shall invite each respondent to submit a written proposal, in a format created by the Department, on or before the time and date set forth in the invitation.
- (b) Consideration will not be given to a respondent that does not submit a written proposal in a format specified by the Department on or before the deadline.
- (c) Employees of the Department and the members of the selection committee shall keep the written proposals confidential until the lease is awarded.

(10) The General Manager shall arrange for the designation of an AOC employee to determine which respondents have filed a response to the public notice by submitting a written proposal in a format specified by the Department. The designated employee shall create a list of the respondents that have done so and certify the list as being accurate and complete.

(11) The Department shall organize the selection committee's first meeting. At that meeting, the selection committee shall:

- (a) Elect from its members a chair and vice chair who shall hold their positions for the duration of the selection process; be provided with
- (b) The certified list of respondents;
- (c) The respondents' written proposals;
- (d) The request for proposals;
- (e) The notice of request for proposals;
- (f) The proposal evaluation sheets;
- (g) A notice from the Director informing the committee that the selection process is governed by AP Part X, Section V; and,
- (h) Discuss the future conduct of its affairs.

(12) The selection committee shall meet in executive session to evaluate the materials provided; select, but not rank, the three (3) most qualified respondents based upon the evaluation factors set forth in the request for proposals; and, notify the Department of the three (3) finalists.

(13) The Department shall notify each respondent on the certified list of the three (3) finalists.

(14) The selection committee shall interview the three (3) finalists, preferably on the same day. The finalists shall be interviewed one (1) at a time, and each interview shall be attended only by representatives of the finalist and members of the selection committee, along with any support staff whose presence is deemed necessary by the General Manager. Members of the selection committee and support staff shall keep confidential the substance of an interview.

(15) The selection committee shall meet in executive session to rank the three (3) finalists based on the weighted evaluation factors in the request for proposals, and forward the ranking to the Department.

(16) (a) The Director shall award the built-to-suit lease to the top ranked finalist, or request best-and-final offers.

(b) If the Director requests best-and-final offers, the request shall only be made to the three (3) finalists, and the request shall be administered as follows:

1. The Director's written request shall include the reason for requesting best-and-final offers, and shall state a time and date by which all such offers must be received.
2. A respondent that does not submit a best-and-final offer by the deadline shall not be awarded the built-to-suit lease.
3. Employees of the Department and the members of the selection committee shall keep the best-and-final offers confidential until the lease is awarded.
4. The selection committee shall meet in executive session to assess all the materials provided pursuant to subsection (11) (b) of this section, as well as the request for best-and-final offers, and the actual best-and-final offers.
5. The committee shall rank the best-and-final offers of the three (3) finalists based on the weighted evaluation factors in the request for proposals.

6. If the committee determines that the top ranked best-and-final offer is adequate, the committee shall forward the name of the respondent that submitted the top ranked best-and-final offer to the Department.
7. The Director shall award the built-to-suit lease to the respondent chosen by the selection committee, if any. If the committee determines that the top ranked respondent's best-and-final offer is inadequate, the process shall end.

(17) After a respondent has been selected, the Department shall notify the finalists, informing them which respondent has been selected for the proposed lease; and the rest of the procedure that will be followed in the awarding of the lease.

**Section 14. Certification by selection committee members.**

(1) After the AOC has awarded the proposed built-to-suit lease to a respondent, the Director, or his or her designee, shall supply a copy of the proposed lease to each member of the selection committee.

(2) The Director, the General Manager, and each member of the selection committee shall sign separate certificates, devised by the Department, which shall provide the signatory with the option of certifying that, to the best of his or her knowledge, he or she is either aware or unaware of circumstances which have arisen in the procurement process which may constitute a willful violation of these Rules.

**Section 15. Respondent not to be considered when committee member or member's family employed by the respondent or has interest in the respondent's business.**

(1) A selection committee shall not consider a respondent for a built-to-suit lease when a member of the committee, his or her spouse, parents, or any of his or her children is employed by that respondent, or has a financial interest in that respondent's business.

(2) For a period of one (1) year after a person ends his service on a selection committee, the Court of Justice shall not consider a respondent for a built-to-suit lease when the person, his or her spouse, parents, or any of his or her children is employed by that respondent or has a financial interest in that respondent's business.

**Section 16. Built-to-suit involving construction on private property --**

**Option to purchase.**

When a built-to-suit lease is awarded to a respondent that owns the land upon which the building shall be built, the Court of Justice shall be granted an option to purchase the leased buildings, land, and any appurtenant facilities. The option price shall not exceed its fair market value as of the time the option is exercised. The fair market value shall be determined by an Appraisal Institute MAI-certified real estate appraiser selected by mutual agreement of the parties, employing the reproduction cost new or other accepted appraisal techniques; provided, however, that in no event shall the option price be less than a sum equal to the remaining balance of any mortgage lien encumbering the property and securing the repayment of moneys advanced to the owner for the original construction of the building, plus an amount not to exceed ten percent (10%) of such mortgage balance.

**Section 17. Execution of built-to-suit agreements -- Recording of agreements.**

All built-to-suit lease agreements shall be executed for the Court of Justice by the Director and be approved as to form and legality by the AOC Office of General Counsel before the lease shall be binding against the Court of Justice. All built-to-suit leases shall be recorded by the lessor with the deed in the office of the County Clerk of the county in which the property is located. Leases shall also be logged for record and recorded in the office of the County Clerk of the county in which the leased property is located.

**Section 18. Building and construction code requirements.**

A building constructed and leased to the Court of Justice under a built-to-suit lease agreement shall be constructed in accordance with all applicable local, state and national safety, building, and construction code requirements; and are designed and constructed to last, at a minimum, for a period of thirty (30) years.

**Section 19. Collusion among lease proposers prohibited.**

Any agreement or collusion among lease proposers or prospective lease proposers which restrains, tends to restrain, or is reasonably calculated to restrain competition by agreement to propose a lease with certain terms, or to refrain from proposing a lease with certain terms or otherwise, is prohibited.

**Section 20. Procedure upon change in ownership of leased premises.**

(1) When there is a change in ownership in leased premises, the new owner shall furnish to the Department a copy of the deed or other instrument of conveyance by which the new owner acquired title to the property or the right to payment under the lease and other evidence in support of his or her claim to the payment of rent under the lease. The Department shall change its records and redirect rent payments accordingly.

(2) When AOC learns that a change in ownership is underway or has occurred, payments of rent shall be suspended. Rent payments to the appropriate owner(s) shall resume when the Department receives a copy of the deed, other instrument of conveyance, or other evidence in support of his or her claim to the payment of rent under the lease.

**Section 21. Construction on state-owned land under built-to-suit lease agreements.**

(1) This section shall apply when the built-to-suit process involves the construction of a building on state-owned land.

(2) Upon the execution of a lease awarded under this section, the Commonwealth shall convey to the respondent awarded the lease, in fee simple with covenant of general warranty of title, the real estate upon which the building is to be constructed. The lease shall provide for an initial lease term commencing on the date the building is accepted for occupancy by the Court of Justice, but not later than thirty (30) days after a Certificate of Occupancy has been issued by the Department of Housing, Buildings and Construction. The lease shall end on June 30 of the second year of the current fiscal biennium of the Commonwealth, with an option by the Court of Justice, as lessee, to extend the lease for additional two (2) year terms until the total number of years agreed upon by the parties in the original lease has been reached. The total cost of building construction and appurtenances shall be amortized through rent paid under the original lease term and lease renewals when leased for the full number of years agreed upon in the original lease. The rent shall be paid under the specific terms of the lease and the lease shall provide that the Court of Justice may, at the expiration of the original or any extended term, purchase the premises at a stated price, which shall be the balance of the total cost of building construction and appurtenances not amortized by the payments of rent already made by the Court of Justice. The lease shall provide that when the option to purchase the leased premises is elected, or the lease has been fully extended under the original terms with all rents and payments provided for having been made, the lessor shall convey the premises to the lessee in fee simple with covenant of general warranty of title. The lease may provide that the Court of Justice shall pay all taxes assessed against the premises, and the cost of insuring the building erected thereon against loss or damage by fire and windstorm, and in certain areas flood and/or earthquake, in such sum as may be agreed to by the parties, if determined by the AOC to be necessary after consultation with the Department of Insurance.

**Section 22. Lease records are public records.**

Records relating to leases shall be a matter of public record, except as otherwise provided by law. Requests for these records shall be made in writing to the Department which shall provide access within a reasonable period of time.

**Section 23. Limited judicial review.**

Judicial review of the action of the AOC, its Director, or General Manager in the awarding, or modification of a lease pursuant to AP Part X, Section V, shall be limited to determining whether a lease or modification to a lease was procured by fraud or was awarded arbitrarily or capriciously.

**Section 24. Protests.**

(1) The Director, or his or her designee, shall have authority to determine protests and other controversies of actual or prospective bidders or offerors in connection with the solicitation or selection for award of a contract.

(2) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with solicitation or selection for award of a contract may file a protest with the Director. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing.

(3) The Director shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

(4) The decision by the Director shall be final and conclusive.

**Section 25. Appeals.**

Any appeal or other legal action brought by a party who is aggrieved in connection with solicitation or selection for award of a contract that may arise out of any built-to-suit proposal shall be filed in the Franklin Circuit Court in the Commonwealth of Kentucky and the parties shall submit to the jurisdiction of this

court for this purpose and waive any other preferential jurisdiction by reason of domicile or location.

ENTERED: September 25, 2006.



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CHIEF JUSTICE