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**RULE ADOPTIONS**

**OTHER AGENCIES**

**FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY**

*44 N.J.R. 1281(a)*

**Adopted New Rules: *N.J.A.C. 19:31C-1***

**Real and Personal Property Leasing**

Proposed: January 17, 2012 at *44 N.J.R. 145(a)*.

Adopted: March 21, 2012 by the Fort Monmouth Economic Revitalization Authority, Bruce Steadman, Director.

Filed: March 21, 2012 as R.2012 d.078, **without change**.

Authority: *N.J.S.A. 52:27I-18* et seq., specifically *N.J.S.A. 52:27I-26kk*.

Effective Date: April 16, 2012.

Expiration Date: February 21, 2019.

**Summary of Public Comment and Agency Response:**

**No public comments were received.**

**Federal Standards Statement**

The adopted rules are not subject to any Federal standards or requirements; therefore, a Federal standards analysis is not required.

**Full text** of the adoption follows:

CHAPTER 31C

FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY

SUBCHAPTER 1. REAL AND PERSONAL PROPERTY LEASING

19:31C-1.1 Applicability and scope

The Fort Monmouth Economic Revitalization Authority is promulgating this subchapter to govern the lease of real property and accompanying personal property as part of its mission in planning and implementing the redevelopment and reuse of Fort Monmouth and pursuant to authorization under P.L. 2010, c. 51 (*N.J.S.A. 52:27I-18* et seq.).

19:31C-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Authority" means the Fort Monmouth Economic Revitalization Authority.

"Board" means the Board of the Fort Monmouth Economic Revitalization Authority.

"Director" means the Director of the Fort Monmouth Economic Revitalization Authority.

"FMERA" means the staff responsible for carrying out the policies, mission, and purpose of the Fort Monmouth Economic Revitalization Authority.

"Market rent" means the rental rate, commonly expressed as a rate per square foot, as determined by a professional licensed appraiser or a valuation consultant retained by the Authority.

"Plan" means the Fort Monmouth Reuse and Redevelopment Plan prepared and adopted by the Authority's predecessor authority, the Fort Monmouth Economic Revitalization Planning Authority.

"Public agency" means a branch or office of the Federal government, State departments, agencies or authorities, public institutions of higher education, the county, and the host municipalities.

19:31C-1.3 Advertising process

(a) FMERA shall publicly advertise a notice of each opportunity for the lease of real and accompanying personal property on the Authority's website, on the New Jersey State business portal and place an advertisement for same in the "Public/Legal Notice" section of the Star Ledger, the Asbury Park Press and, if FMERA deems it appropriate, in other regional newspaper(s) or publications.

(b) In addition to (a) above, FMERA may contact potential lessees directly to seek to increase the number of proposals received in response to an advertised opportunity to lease.

19:31C-1.4 Proposal request

(a) The public notice of opportunity to lease shall request proposals for a lease of a particular parcel or building, which shall include the time, date, and format in which the proposal is to be submitted. The notice shall also include a name and phone number or other contact information potential lessees can use to obtain additional information about the leasing opportunity.

(b) Each public notice of opportunity to lease shall specify material terms of the lessor-lessee relationship that are to be proposed by potential lessees and material terms that are required for the particular lease and not subject to bidding shall be specified either through the advertisement for notice of opportunity to lease, a specimen form of lease agreement, or on the Authority's website.

(c) Proposals will be opened on the date specified in the public notice. After proposals have been publicly opened, FMERA may seek best and final proposals from one or more potential lessees that timely submitted a responsive proposal for the particular real property and accompanying personal property.

19:31C-1.5 Proposal submission

(a) All proposals shall be submitted on or before the specified time and date required by the public notice and contain all information requested by FMERA. Unless otherwise specified in the notice, a proposal shall not be submitted by telephone, facsimile, or other electronic means.

(b) All proposals shall include a certified, cashier's, or bank check made payable to the Authority in the amount of 10 percent of the first year's rent, which shall be held by the Authority as a deposit and applied to the rental payments for the accepted proposal, and returned to all others.

(c) Deposit checks shall be deposited by FMERA into an FDIC-insured interest bearing account with interest accruing to the benefit of the potential lessee. Deposits paid by unsuccessful potential lessees, with accrued interest, shall be returned when FMERA issues its notice of intent to award a lease in accordance with N.J.A.C. 19:31C-1.14(c).

(d) Proposals received by FMERA shall be held unopened until the close of the proposal submission period, at which time all proposals received shall be publicly opened and the identities of the potential lessees, but not the substance of the proposals, will be read.

#### 19:31C-1.6 Extension of time to submit proposal

The Director may extend the time for opening proposals at the request of a potential lessee who notifies FMERA that he or she intends to submit a proposal and gives valid reasons why he or she will not meet the proposal opening date. The potential lessee making this request shall do so in writing and specify the length of additional time requested. The written request must be received by FMERA no later than one week prior to the proposal submission deadline. If granted, extensions of time for opening of proposals shall be applicable to all potential lessees and shall be posted on the Authority's website. All proposals shall be held and remain sealed until the expiration of the time extension granted by the Director.

#### 19:31C-1.7 Prices

(a) A proposal shall include all material price information required by the public notice. Prices shall be typewritten, photocopied, or written in ink or some other indelible substance.

(b) Unless the public notice states otherwise, the prices submitted shall remain effective for 90 days after the opening date, subject to any negotiations conducted in accordance with N.J.A.C. 19:31C-1.13.

#### 19:31C-1.8 Withdrawal of proposal

(a) Prior to the time for opening proposals, a potential lessee may, for any reason, request the withdrawal of his or her proposal. The request shall be made in writing to FMERA and shall be signed by a person authorized to submit the proposal (such as the owner or owner's designated representative, or an attorney or real estate broker with written permission to negotiate and act as attorney-in-fact for owner). Proof of authorization shall accompany the request.

(b) After the opening of the proposals, if either the potential lessee or FMERA discover a material error in a proposal, the potential lessee may request the withdrawal of the proposal. If the error is discovered by FMERA, the potential lessee will be notified in writing, and the potential lessee will have five business days from receipt of the notice to request withdrawal of the proposal. Any request to withdraw from the potential lessee shall be addressed to FMERA, which will return the proposal if the potential lessee can demonstrate that he or she exercised reasonable care in preparing and submitting the proposal, and that it would be unconscionable for FMERA to enforce the proposed lease agreement. The decision to grant or deny any such request shall be at the sole discretion of the Director.

#### 19:31C-1.9 Correction of pricing error

(a) FMERA shall correct a pricing error in a leased space proposal under the following circumstances:

1. Unless the public notice states otherwise, or the result would be unconscionable, where a leased space proposal contains a discrepancy between a unit price and a total price based on those units, the unit price shall govern. Where the proposal contains any other price discrepancy, FMERA shall determine the price if the leased space proposal contains clear evidence of the intended price.

19:31C-1.10 Verification of proposal

FMERA may seek information outside of the proposal to verify the accuracy and responsiveness of the proposal, and whether the potential lessee is responsible. FMERA may request such information from the potential lessee, from public records, or from others familiar with the potential lessee or the space. Such information may clarify, but not modify, a lease proposal. Such investigation may include, but shall not be limited to, contacting the potential lessee's surety companies, financial institutions, and prior lessees, or visiting the potential lessee's place of business and property sites.

19:31C-1.11 Rejection of all proposals, re-advertisement and termination

FMERA reserves the right to reject all lease proposals and to either re-advertise or terminate an advertised opportunity to lease if FMERA determines that insufficient competition results from the initial advertisement, the price is unfavorable in the current market, or for any other reason in the best interests of the Authority or the redevelopment plans for Fort Monmouth.

19:31C-1.12 Evaluation

(a) FMERA shall evaluate each lease proposal received in accordance with this subchapter and shall identify the proposal(s) determined to be responsive to all material elements set forth in the notice, including, but not limited to:

1. The rent rate per square foot;
2. The lease term;
3. The total tenant investment during lease term;
4. The estimate of jobs to be created or relocated to the parcel;
5. The potential lessee's financial capacity to meet the proposed terms of the lease;
6. The use of leased space;
7. The impact to the host municipality; and
8. Confirmation that the potential lessee's proposed use is consistent with the Plan.

(b) Evaluation of proposals will be made based on the best interests of the Authority and the redevelopment plans for Fort Monmouth, price, and other factors.

19:31C-1.13 Negotiations

FMERA may seek to obtain business terms that better suit the interests of the Authority and the redevelopment plans for Fort Monmouth by negotiating with the one or more potential lessee(s) that submit the best lease proposal(s) in accordance with the above noted evaluation criteria. FMERA reserves the right to negotiate with some, but not all, potential lessees who submitted a proposal based on the initial submissions.

19:31C-1.14 Recommendation, review, and award

(a) The Director and FMERA shall recommend to the Board the one potential lessee who will provide the lease agreement which is in the best interests of the Authority and the redevelopment plans for Fort Monmouth considering price and other factors. The Director and FMERA may decide not to recommend any lease proposals to the Board.

(b) The Board shall determine whether to issue a notice of intent to award a lease agreement and reject competing proposals or to take other appropriate action.

(c) Upon approval by the Board of an award of lease, FMERA shall issue a notice of intent to award a lease agreement and send it to all potential lessees that submitted a proposal. The notice of intent to award a lease agreement shall set forth all of the material terms of the lease agreement. FMERA shall finalize the lease agreement which shall be executed by the Director.

19:31C-1.15 Challenges

(a) After the date of the notice of intent to award a particular proposed lease agreement, potential lessees who submitted a proposal may review:

1. Proposals submitted by other potential lessees;
2. FMERA's comparative summary of proposals received; and
3. Records of the negotiations, if any.

(b) Challenges to the notice of intent to award a particular proposed lease agreement shall be submitted in writing to the Director within 10 business days from the date of the letter giving notice of intent to award issued in accordance with N.J.A.C. 19:31C-1.14(c) and shall state with specificity all arguments, materials, and/or other documents that may support the challenger's position that the proposed award should be overturned. The Director may extend the time for submitting a challenge on good grounds shown to the satisfaction of the Director in his or her sole discretion.

(c) If a challenge is timely received, the Director shall assign a hearing officer to review the challenge and make a final recommendation to the Board. The Director, in consultation with the hearing officer, has sole discretion to determine if an oral presentation by the challenger is necessary to reach an informed decision on the merits of the challenge. Challenges of the type described in this subchapter, for the purpose of this chapter, are not contested cases subject to the requirements of the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq., and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*.

19:31C-1.16 Documents considered public information

After FMERA's issuance of notice to all potential lessees of intent to award the particular lease proposal approved by the Board, the documents submitted by potential lessees (excluding those items exempt from public access pursuant to *N.J.S.A. 47:1A-1* et seq.) shall be considered public information, notwithstanding any disclaimers submitted by the potential lessees to the contrary.

19:31C-1.17 Lease with public agency

(a) Notwithstanding the advertising process set forth in N.J.A.C. 19:31C-1.3, FMERA, in response to a solicitation for proposals by a public agency, may make a proposal to the public agency to lease a parcel of land or a building and accompanying personal property without publicly advertising the particular property as being available for lease when the Board determines that the proposed lease with the public agency is in the best interests of the Authority and the redevelopment plans for Fort Monmouth considering price and other factors or that the particular property offers a unique benefit to the public agency.

(b) The Director and FMERA may recommend to the Board the making of a lease proposal to a public agency if the proposal is in the best interests of the Authority and the redevelopment plans for Fort Monmouth considering price and other factors or the particular property offers a unique benefit to the public agency. The rental rate for a lease proposed to a public agency may be discounted below market rent based on an evaluation formula approved by the Board taking into consideration elements that may include, but not be limited to: job creation; economic or community benefit(s) that would not be realized from a lease to a private party; service provided to municipality or county; and improved community development or educational services to the region. Any recommendation to make a lease proposal to a public agency shall also identify any solicited or unsolicited lease or purchase proposal that the Authority may have received for the particular property.

(c) FMERA may respond to a request for a refined proposal or a counter-proposal from the public agency that received a proposal by negotiating minor changes to the Authority's proposal provided that changes to the Authority's proposal do not materially change the benefits of the lease to the Authority and the redevelopment plans for Fort Monmouth, price and other factors considered, based upon the above noted evaluation criteria.

(d) Upon acceptance by a public agency of a lease proposal made by the Authority with no changes or only minor changes to the Authority's proposal or the approval by the Board of a refined proposal by FMERA or a counter-proposal from a public agency, FMERA may enter into a lease agreement for the particular property with the public agency to whom FMERA had made an offer.

(e) If, in the period of time between when the Board approves the making of a proposal to a public agency pursuant to (a) above and FMERA entering into a lease agreement with the public agency, the Authority is notified by some other public agency that it is interested in leasing the particular property, FMERA shall advertise the property as available for lease pursuant to N.J.A.C. 19:31C-1.3 and award a lease as set forth in N.J.A.C. 19:31C-1.14. In such instances, the notice for proposals advertised by FMERA may specify that only public agencies are eligible bidders for leasing the particular property.