

GOVERNMENT CODE
CHAPTER 2167. LEASE OF SPACE FOR STATE AGENCIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2167.001. APPLICABILITY. (a) This chapter applies to:

- (1) office space;
- (2) warehouse space;
- (3) laboratory space;
- (4) storage space exceeding 1,000 gross square feet;
- (5) boat storage space;
- (6) aircraft hangar space other than hangar space and adjacent space leased by the State Aircraft Pooling Board at Austin-Bergstrom International Airport and operated for the purpose of providing air transportation services for the State of Texas;
- (7) vehicle parking space; and
- (8) a combination of those kinds of space.

(b) This chapter does not apply to:

- (1) radio antenna space;
- (2) residential space for a Texas Department of Mental Health and Mental Retardation program;
- (3) residential space for a Texas Youth Commission program;
- (4) space to be used for less than one month for meetings, conferences, conventions, seminars, displays, examinations, auctions, or similar purposes;
- (5) district office space for members of the legislature;
- (6) space used by the Texas Workforce Commission;
- (7) residential property acquired by the Texas Department of Housing and Community Affairs or the Texas State Affordable Housing Corporation that is offered for sale or rental to individuals and families of low or very low income or families of moderate income; or
- (8) except as provided by Section 2167.007, classroom and instructional space for an institution of higher education.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 980, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1286, Sec. 1, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 309, Sec. 4.01, eff. June 18, 2003.

Sec. 2167.002. PREREQUISITES FOR LEASING SPACE. The commission may lease space for a state agency in accordance with this chapter and the agency's specifications if:

- (1) state-owned space is not otherwise available to the agency; and
- (2) the agency has verified it has money available to pay for the lease.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Sec. 2167.0021. BEST VALUE STANDARD FOR LEASE OF SPACE. (a) The commission shall lease space for the use of a state agency on the basis of obtaining the best value for the state.

(b) The commission shall adopt rules establishing guidelines for the determination of best value in a lease contract. In determining the best value, the commission may consider:

- (1) the cost of the lease contract;
- (2) the condition and location of lease space;
- (3) utility costs;
- (4) access to public transportation;
- (5) parking availability;
- (6) security;
- (7) telephone service availability;
- (8) indicators of probable lessor performance under the contract, such as the lessor's financial resources and the lessor's experience;
- (9) compliance with the architectural barriers law, Article 9102, Revised Statutes; and
- (10) other relevant factors.

(c) This section does not prohibit the commission from leasing space from the offeror that offers the space at the lowest cost if the commission determines that doing so obtains the best value for the state.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 10.01, eff. Sept. 1, 2001.

Sec. 2167.003. FIRST CONSIDERATION TO HISTORIC STRUCTURE. (a) In leasing space for the use of a state agency, the commission or the private brokerage or real estate firm assisting

the commission shall give first consideration to a building that is designated as a historic structure under Section 442.001 or to a building that has been designated a landmark by a local governing authority, if:

- (1) the building meets requirements and specifications; and
- (2) the cost is not substantially higher than the cost for other available buildings that meet requirements and specifications.

(b) When it considers leasing space for a state agency, the commission or the private brokerage or real estate firm assisting the commission shall notify each individual and organization that is:

- (1) on a list furnished to the commission by the Texas Historical Commission under Section 442.005; and
- (2) in the county in which the commission is considering leasing space.

(c) Repealed by Acts 2003, 78th Leg., ch. 309, Sec. 4.07(1). Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.08(b), eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1422, Sec. 10.02, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 309, Sec. 4.07(1), eff. June 18, 2003.

Sec. 2167.004. LEASING SPACE FOR HEALTH AND HUMAN SERVICES AGENCIES. (a) Notwithstanding any other provision of this chapter or of Subchapter C, Chapter 2165, the commission may not lease office space to serve the needs of any health and human services agency unless the Health and Human Services Commission has approved the office space for the agency.

(b) Repealed by Acts 2003, 78th Leg., ch. 309, Sec. 4.07(2).

(c) In this section, "health and human services agency" has the meaning assigned by Section 531.001. Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.09(a), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1460, Sec. 3.12, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 309, Sec. 4.07(2), eff. June 18, 2003.

Sec. 2167.005. DELEGATION OF AUTHORITY TO STATE AGENCIES. (a) The commission may delegate to a state agency, including an institution of higher education, the authority to enter into lease contracts for space.

(b) Any reports on the lease contracts made under this delegated authority shall be required annually.

(c) If information to be included in the report is also included in another report to be made by the institution of higher education to another state agency, the commission, the agency receiving the other report, and the institution of higher education shall enter into a memorandum of understanding concerning the information to be reported in order to enable the institution of higher education to provide the required information in the most cost-effective manner taking into account the costs to each affected agency.

(d) The commission may revoke a delegation of authority made under this section.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.10(a), eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 188, Sec. 4.02, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1422, Sec. 10.03, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 309, Sec. 4.02, eff. June 18, 2003.

Sec. 2167.0051. CLASSROOM AND INSTRUCTIONAL SPACE. (a) An institution of higher education may not lease classroom and instructional space unless the portion of the building to be used by the institution complies with the applicable standards and specifications under the architectural barriers law, Article 9102, Revised Statutes.

(b) An institution of higher education may lease classroom and instructional space through competitive bidding in accordance with Section 2167.053 or through competitive sealed proposals in accordance with Section 2167.054 or may negotiate for that space on making a determination that competition is not available and shall include provisions to obtain a lease contract for classroom and instructional space in accordance with Section 2167.055.

Added by Acts 1999, 76th Leg., ch. 1286, Sec. 2, eff. June 18, 1999.

Sec. 2167.006. ELIMINATION OF BARRIERS TO PERSONS WITH DISABILITIES IN LEASED BUILDINGS. (a) The commission may not enter

a lease contract under this chapter unless it complies with the architectural barriers law, Article 9102, Revised Statutes.

(b) A state agency, including an institution of higher education, may not enter a lease contract under Section 2167.005 unless the agency complies with the architectural barriers law, Article 9102, Revised Statutes.
Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 10.04, eff. Sept. 1, 2001.

Sec. 2167.007. LEASING SERVICES TO STATE AGENCIES. (a) This chapter does not prohibit the commission from providing leasing services to a state agency otherwise excluded from its requirements.

(b) Services performed under Subsection (a) are not subject to the interagency cooperation law, Chapter 771.

(c) The commission may establish a system of charges and billings to assure the recovery of the cost of providing services under Subsection (a) and may submit, after the close of each month, a purchase voucher or journal voucher to an agency for which services were provided.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 309, Sec. 4.03, eff. June 18, 2003.

Sec. 2167.008. RULES. The commission shall adopt rules necessary to administer this chapter.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2167.009. CONSIDERATION TO MILITARY INSTALLATION. In leasing space for the use of a state agency, the commission or the private brokerage or real estate firm assisting the commission shall give consideration to a federally owned or operated military installation or facility.

Added by Acts 2003, 78th Leg., ch. 149, Sec. 8, eff. May 27, 2003.

SUBCHAPTER B. PROCEDURES FOR LEASING SPACE; LEASE CONTRACT

Sec. 2167.051. LEASING SPACE FROM ANOTHER GOVERNMENTAL ENTITY. Space may be leased:

(1) through an interagency contract from another state agency; or

(2) through a negotiated contract from:

(A) the federal government;

(B) a political subdivision, including a county, municipality, school district, water or irrigation district, hospital district, council of governments, or regional planning commission;

(C) a statewide Texas public retirement system in a commercial building that is completely owned, directly or indirectly, by the retirement system; or

(D) a children's advocacy center established under Subchapter E, Chapter 264, Family Code.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 341, Sec. 1, eff. Sept. 1, 1997.

Sec. 2167.052. LEASING SPACE FROM PRIVATE SOURCE. (a) Space may be leased from a private source through:

(1) competitive bidding;

(2) competitive sealed proposals under Section 2167.054; or

(3) direct negotiation.

(b) The commission may negotiate for space on making a written determination that competition is not available.

(c) The commission shall use the method for leasing space that provides the best value for the state.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 10.05, eff. Sept. 1, 2001.

Sec. 2167.053. LEASING SPACE THROUGH COMPETITIVE BIDDING. (a) When space is leased through competitive bidding, the commission shall determine the bid that provides the best value for the state after considering moving costs, the cost of time lost in moving, the cost of telecommunications services, and other relevant factors.

(b) The commission shall send to the leasing state agency:

(1) a copy of all bids received; and

(2) the commission's recommended award.

(c) If, after review of the bids and evaluation of all relevant factors, the leasing state agency's opinion is that the

bid selected by the commission is not the bid that provides the best value for the state, it may file with the commission a written recommendation that the award be made to a bidder other than the commission's recommended bidder. The leasing state agency's recommendation must contain the agency's justification for its recommendation and a complete explanation of all factors it considered.

(d) The commission shall fully consider the leasing state agency's recommendation and, if it does not agree, shall notify the agency of its disagreement in writing. The leasing state agency and the commission shall attempt to agree on the award.

(e) If the commission and the leasing state agency do not agree within 30 days, all bids and pertinent documents shall be sent to the governor. The governor shall designate the bidder to which the award shall be made.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 10.06, eff. Sept. 1, 2001.

Sec. 2167.054. LEASING SPACE THROUGH COMPETITIVE SEALED PROPOSALS. (a) The commission may lease space using competitive sealed proposals.

(b) The commission shall solicit proposals by publishing a notice of request for proposals in:

(1) the Texas Register; and

(2) a newspaper of general circulation in the county in which the space is to be leased.

(c) The commission shall open each proposal in a manner that does not disclose the contents of the proposal during the process of negotiating with competing offerors.

(d) As provided in a request for proposals and under rules adopted by the commission, the commission may discuss acceptable or potentially acceptable proposals with offerors to assess an offeror's ability to meet the solicitation requirements and to obtain the most advantageous lease contract for the state. The commission may invite a leasing state agency to participate in discussions and negotiations conducted under this section. After receiving a proposal but before making an award, the commission may permit the offeror to revise the proposal to obtain the best final proposal.

(e) The commission may not disclose information derived from proposals submitted from competing offerors in conducting discussions under Subsection (d).

(f) The commission shall provide each offeror whose proposal meets the minimum requirements in the request for proposals a reasonable opportunity to discuss and revise its proposal.

(g) The commission shall make a written award of a lease to the offeror whose proposal provides the best value for the state, considering price and the evaluation factors in the request for proposals. The commission shall state in writing in the contract file the reasons for which an award is made.

(h) The commission shall refuse all proposals if it determines that none of the proposals is acceptable.

(i) If the competitive sealed proposal procedure for leasing space is used by a state agency that has been delegated leasing authority under Section 2167.005, the agency shall follow the procedures outlined by this section and any rules adopted by the commission.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 10.07, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 309, Sec. 4.04, eff. June 18, 2003.

Sec. 2167.0541. USE OF PRIVATE FIRMS TO OBTAIN SPACE. (a) The commission may contract with one or more private brokerage or real estate firms to assist the commission in obtaining lease space for state agencies on behalf of the commission under this chapter.

(b) A private brokerage or real estate firm with which the commission contracts under Subsection (a) may assist the commission in leasing facilities under this chapter.

(c) The commission may establish a system of charges and billings to recover the costs of contracting with a private brokerage or real estate firm under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 10.08, eff. Sept. 1, 2001. Amended by Acts 2005, 79th Leg., ch. 223, Sec. 1, eff. May 27, 2005.

Sec. 2167.055. CONTRACT FOR LEASE OF SPACE. (a) In a

contract by the commission for the lease of space under this chapter, the state, acting through the commission, is the lessee.

(b) A lease contract entered into under Section 2167.053 or 2167.054 must reflect the provisions contained in the invitation for bids or request for proposals, the successful bid or proposal, and the award of the contract.

(c) A lease contract may:

(1) provide for an original term that does not exceed 10 years; and

(2) include options to renew for as many terms that do not exceed 10 years each as the commission considers to be in the state's best interest.

(d) A lease contract that does not contain an option to renew may, on agreement of the parties, be renewed under terms to which all parties to the contract agree.

(e) A lease contract is contingent on the availability of money appropriated by the legislature to pay for the lease.

(f) The obligation of the lessor to provide lease space and of the commission to accept the space is binding on the execution of the lease contract.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 10.09, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 309, Sec. 4.05, eff. June 18, 2003.

Sec. 2167.056. OPTION TO PURCHASE. (a) If the commission considers it advisable, the commission may lease space for a state agency under a contract that contains an option for the commission to purchase the space subject to the legislature's appropriation of money for the purchase.

(b) A lease contract containing the option must indicate:

(1) the amount that will accumulate and be credited toward the purchase at various times during the lease term; and

(2) the purchase price of the property at the beginning of each fiscal biennium during the lease term.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER C. COMMISSION AND STATE AGENCY POWERS AND DUTIES RELATED TO LEASED SPACE

Sec. 2167.101. CERTIFICATION OF AVAILABLE MONEY. A state agency occupying space leased under this chapter shall certify to the commission, at least 60 days before the beginning of each fiscal biennium during the lease term, that money is available to pay for the lease until the end of the next fiscal biennium.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 4.06, eff. June 18, 2003.

Sec. 2167.102. REMEDIAL ACTION AGAINST LESSOR. (a) When a state agency occupying leased space is aware of circumstances that require remedial action against the lessor, the agency shall notify the commission.

(b) The commission may investigate the circumstances and the lessor's performance under the contract.

(c) The attorney general on the commission's request shall assist the commission in protecting the state's interest under a lease contract.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2167.103. RECORDS. To efficiently maintain a space management system, the commission shall maintain records of the amount and cost of space under lease by the commission and may collect other information that it considers necessary. A state agency shall cooperate with the commission in securing this information.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2167.104. SUBLEASE TO CHILD CARE PROVIDER. (a) Subject to restrictions imposed by a lease or other enforceable contract, the commission, at the request of the occupying agency, shall sublease part of a space leased under this chapter to a child care provider for the operation of a child care facility.

(b) Chapter 663 applies to the establishment and operation of the child care facility, except as provided by this section.

(c) This section does not affect the duties of the commission regarding child care facilities in state-owned buildings and potential child care facility sites in state-owned buildings under Chapter 663, 2165, or 2166.

(d) The occupying agency and the commission may agree to:

(1) procedures relating to the selection of the child care provider;

(2) granting some preference in enrollment to children of officers and employees of the occupying state agency; and

(3) any other matter regarding the operation of the child care facility.

(e) The commission shall sublease space under this section to a child care provider approved by the commission under Chapter 663 at a rate set by the commission.

(f) In leasing space under this chapter, the commission shall, whenever possible, enter into a lease contract that allows for subleasing space to a child care provider.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 761, Sec. 13, eff. Sept. 1, 2001.

Sec. 2167.105. REPORT ON NONCOMPLIANCE. If the commission determines that a state agency has not complied with the commission's rules or with other state law related to leasing requirements, the commission shall report the noncompliance to the members of the state agency's governing body and to the governor, lieutenant governor, and speaker of the house of representatives. The commission shall include in its report an estimate of the fiscal impact resulting from the noncompliance.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 10.10, eff. Sept. 1, 2001.