REQUEST FOR PROPOSALS IN COMMERCIAL REAL ESTATE LEASES: WHY TENANTS USE THEM AND HOW LANDLORDS RESPOND

1. What is a RFP?

Commercial real estate lease transactions are generally initiated by a letter of intent, which “outlines” the key business issues for the lease. Though a great starting point, letters of intent leave many business and legal issues open to be resolved during the negotiation of the lease. Since most lease forms are prepared by landlords, they routinely resolve issues not addressed in the letter of intent in favor of the landlord. Notwithstanding this “edge” landlords have in the letter of intent process, letters of intent work well and are used for most lease transactions.

Some tenants, when leasing a significant amount of space in the marketplace, attempt to “level the playing field” by using a request for proposal (RFP). A RFP contains a detailed description of the tenant’s position on a broad range of business and legal issues, and is sent by a tenant to a landlord, or a select group of landlords. The RFP asks landlords to accept, or provide specific comments to, tenant’s proposed terms when responding to the RFP.

2. Why Tenants use RFP’s.

Since many economic issues exist in the details of a landlord’s lease form, vetting and resolving these hidden issues early on in the RFP process can provide tenants with significant economic “wins” when landlords are competing for a tenant to select their building as its new home. If a RFP is submitted to a select group of landlords, it creates a bidding process among landlords for a tenant’s lease and allows a tenant to compare competing properties on an “apples-to-apples”
basis. RFP’s often contain proposed lease language for specific lease provisions and request detailed information relevant to the tenant’s evaluation of the premises. A sample of a detailed questionnaire for an office building transaction can be found at the end of this article.

3. Starting the RFP Process.

To best implement a RFP process for commercial real estate leases, a tenant should first select a real estate broker knowledgeable in the desired market area to start the process of identifying tenant’s needs and a potential pool of properties that will satisfy those needs. Once this process has commenced, but before tenant begins negotiations with any particular landlord, tenant should select its legal counsel for the negotiations. Once counsel is selected, the tenant, its broker and attorney should meet to discuss tenant’s refined needs and prepare a RFP for distribution to the identified group of qualifying landlords. This upfront investment is not necessarily duplicative, since most of this work would have to be performed later on during the actual lease negotiations. Once prepared, the RFP is sent by the real estate broker to a landlord or a select pool of landlords.

4. How Should Landlords Respond to RFP’s?

Landlords often respond to RFP’s with mild anguish and apprehension. This is because responses to a RFP generally require more time, effort and expense than is involved in responding to a letter of intent. Landlords must quickly assess if it is worth the effort to respond.

This assessment is hastened by information that the tenant should be prepared to share with the landlord.

- How many landlords will be involved in the RFP process?
- Will the tenant select the best RFP response and negotiate with the winner. Or, will there be multiple rounds in the selection process.
- General information about the tenant’s business, operational history, business plan and finances (subject to a confidentiality agreement).
- Tenant’s proposed use. Will tenant use hazardous materials?
- Any other high level requirements/information pertinent to landlord’s decision to proceed.

If a landlord decides to prepare a response to a RFP, it must determine how detailed to make its response. Should the landlord respond to every aspect of the RFP? Or, can it stay in the running by providing responses to tenant’s material concerns, such as (i) the amount and configuration of available space, including expansion space, (ii) lease term, including early termination rights and options to extend, (iii) base rent, free rent and rent escalations, (iv) operating expenses history and projections, (v) load factor, (vi) landlord improvements and/or tenant improvement allowance,
(vii) signage rights, (viii) parking rights, and (ix) relevant information about the plumbing, electrical, mechanical and life safety systems relevant to the tenant’s occupancy.

If the landlord response is more skeletal in nature, then the landlord should also clearly convey its willingness to address the detailed business and legal issues raised in the RFP if it is selected.

5. Some Key Issues Tenants Can Address in a RFP.

RFP’s can be used to flesh out a landlord’s positions on issues. Key issues to cover in a RFP include:

● Improvement Allowances/Work Letters.

  1. Tenant improvement allowances (including rights of tenant, if any, to use excess funds for space planning and architect fees, attorney’s fees, furniture, fixture and equipment and to cover future rent obligations);
  2. Limitations on landlord’s right to charge a supervision or construction management fee;
  3. Defining base building work and improvements that landlord, at its expense, will deliver to tenant;
  4. If the cost of landlord’s work will be charged to tenant or against the tenant improvement allowance, competitive bidding requirements for work performed by landlord; and
  5. Specific time periods and standards for landlord’s approval of tenant plans.

● Rent, Concessions and Lease Term.

  1. Rental rate (including escalation provisions, parking charges, etc.);
  2. Free rent, including operating expenses;
  3. Moving allowances, lease takeover obligations and other landlord inducements;
  4. Lease and rent commencement dates (including penalties, if any, for landlord delays or late delivery of the premises); and
  5. Options to extend the term, terminate the lease or expand the premises.
• **Operating Expense and Maintenance.**

  1. Creating limitations on landlord’s right to pass through operating expenses, including caps on increases for controllable operating expenses, and the types of expenses landlord will agree to limit or exclude from operating expenses (e.g., the pass through of capital improvements and landlord management fees);

  2. Requiring that landlord gross-up variable expenses in the base year and subsequent years; and

  3. Defining landlord’s specific maintenance/repair obligations, including janitorial specifications; and

  4. Establishing self-help remedies and rent offset rights if landlord defaults.

• **Assignment and Subletting.** Establishing tenants’ rights to assign or sublet the premises, including rights to freely assign or sublet to an affiliated entity and the right for tenant to retain all or a portion of the profits from assigning or subletting, which can be a valuable right when the lease is executed in a depressed market.

• **SNDA’s.** Establishing landlord’s willingness/ability to provide a subordination, non-disturbance and attornment agreement from landlord’s secured lenders, which will protect tenant from eviction in the event landlord loses its building through foreclosure.

Using a RFP enables a tenant to secure the best business/legal deal for its lease by obtaining landlord’s position on a broad range of detailed business and legal issues early on in the negotiations. When a RFP is submitted to a group of landlords, it creates a bidding environment among landlords for tenant’s lease and allows a tenant to gather information so it can compare different deals. Though responding to a RFP is often more time consuming and costly for a landlord than a letter of intent, it may be a necessary investment to secure a tenant in a competitive market.

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DETAILED OFFICE BUILDING QUESTIONNAIRE

This form will be used by tenant in evaluating a building. All information provided shall pertain to the space that is currently under consideration by tenant.

1. **BUILDING NAME & LOCATION**
   a. Name __________________________
   b. Contact __________________________

2. **BUILDING INFORMATION**
   a. Completion Date __________________________
   b. Number of floors in building __________________________
   c. Total building rentable SF (BOMA definition) __________________________
   d. Total building usable SF (BOMA definition) __________________________
   e. Total rentable SF per floor (BOMA definition) __________________________
   f. Usable SF per floor (BOMA definition) __________________________
   g. Common area factor (BOMA definition) __________________________
   h. Ceiling height (finished) __________________________
   i. Slab to slab height __________________________
   j. Parking ratio (spaces/RSF) __________________________
   k. Exterior signing/signage rights __________________________

3. **ELECTRICAL SPECIFICATIONS**
   a. Lighting __________________________
   b. Additional electrical power service capacity __________________________
   c. Type of electrical distribution (under floor duct, cellular deck, “poke through”) __________________________
   d. Emergency lighting Generator _____ with Automatic Start _____ Battery Pack _______

4. **VOICE & DATA**
   a. No. of future trunklines available __________________________
   b. Service to building __________________________
   c. Risers __________________________
   d. Fibre Optics Available? YES NO

5. **HVAC**
   a. Describe HVAC System __________________________
   b. Type __________________________
   c. Capacity __________________________

Click links at top of page to visit website
California: (310) 477-6071
Colorado: (303) 448-8848
b. **Heating**
   Capable of maintaining a minimum of __°F degrees?

c. **Cooling**
   Capable of maintaining a maximum of __°F degrees?

d. **Supplemental (Spot) Cooling:**
   Please attach a description of the availability of additional supplemental cooling including type, capacity and time constraints.

6. **PLUMBING**
   a. Nominal pressure of domestic hot and cold water at lavatories (PSIG _________)
   b. Per code, the rest rooms can accommodate on each floor
      Women ________________
      Men ________________

7. **ELEVATORS & DOCKS**
   Passenger Elevators
   Floors served per bank _________ Cabs per bank _________
   Capacity per cab (pounds) _______ Freight cab capacity ___

8. **STRUCTURAL**
   Total live load capacity _______ (Partition load _________ + live load _________)

9. **LIFE SAFETY**
   a. **Fire Towers/Stairs**
      Number of rated enclosures: Smoke proof ____________ Pressurized ____________
      Number of Towers that lead directly to the exterior or through rated areas directly to the exterior
      Number of Towers ____________ Number of Towers to add ____________
   b. **Sprinklers**
      Building sprinklered? Full ____________ Part ____________
      Are Fire Department connections provided? YES NO
   c. **Standpipe and Hose System**
      Standpipe and hose connections installed in the building? ____________
   d. **Alarms**
      1. Automatic Fire/Smoke detection provided?
      2. Are manual pull stations provided at all exit routs? YES NO

10. **SECURITY PROTECTION**
    Attach description of the type of security system.

11. **DISABLED ACCESS**
    Does the building completely comply with the ADA Accessibility Guidelines?
    YES NO If not, attach explanation of exceptions.

12. **ASBESTOS**
    Building is asbestos free YES NO If no, attach explanation of exceptions.

13. **PCB**
    Electrical equipment does not contain PCB? YES NO If so, attach explanation.