The Florida Senate

Interim Project Report 2007-125 *December 2006*

Committee on Governmental Operations

LEASING AUTHORITY OF THE DEPARTMENT OF MANAGEMENT SERVICES

SUMMARY

As part of its general initiative to centralize administration of the state's leasing of space in privately owned buildings, the Department of Management Services (DMS) has engaged the services of The Staubach Company- North Florida, LLC, as the exclusive tenant agent to negotiate leases on behalf of agencies of the State. Reports by the Auditor General and OPPAGA have identified areas of concern with the contract with Staubach. The DMS has promulgated an administrative rule claiming the ability to use invitations to negotiate to procure leases of privately-owned space, though there is no statutory authority to procure leased space by using invitations to negotiate. The Joint Administrative Procedures Committee subsequently voiced the opinion in an objection report to DMS that DMS lacked the statutory authority for the rule.

The recommendation by a legislative task force that the authority for all state private sector lease responsibilities be consolidated and placed within DMS has not been statutorily implemented.

This report recommends that if the Legislature believes it appropriate to provide agencies with the authority to conduct procurements of leased space using invitations to negotiate, it should expressly provide that authority in law, and condition its use upon the necessity for achieving best value for the state.

BACKGROUND

According to the DMS,[1] the state leases a total of 8.4 million square feet in private sector leases with an annual rent of $140 million. Of that total, 7.3 million square feet requires competitive solicitation;[2] the annual rent for the competitively solicited leases is $119 million.[3] The total amount of leased space in the private sector is 95% office space and 5% warehouse-type space.

Statutory Provisions:

Agency leasing of privately owned space, and the role of DMS within the lease acquisition and management process, are governed by statutory provisions which have evolved over time.

Legislative History of the Department of Management Services' Role in Agency Leasing: The Reorganization Act of 1969 created the Department of General Services and the division of building construction and maintenance within it, and provided that "[n]o state agency shall lease a building or any part thereof for state use unless approval of the lease conditions and of the need therefore is first obtained from the division of building construction and maintenance."[4]

Section 255.25, F.S., was amended in 1975 to rename the division as the division of building construction and property management and to provide that approved leases could include options to purchase or renew, "upon such terms and conditions established by the division subject to final approval by the head of the Department of General Services."[5] New language provided that no state agency could enter into a lease of 5,000 square feet or greater in a privately owned building "except upon advertisement for and receipt of

[1] 2006 Annual Leasing Report and email of October 12, 2006.

[2] Section 255.25(3)(a), F.S., requires that leases for 5,000 square feet or more may be entered only upon "advertisement for and receipt of competitive bids and award to the lowest and best bidder."

[3] The "master leases" in Tallahassee (Koger, Winewood, Northwood and Ft. Knox) constitute $23.1 million annually in rent.

[4] Section 3, ch. 69-106, L.O.F.

[5] Section 5, ch. 75-70, L.O.F.

competitive bids and award to the lowest and best bidder."[6]

In 1978, s. 255.25, F.S., was amended to provide that the approval of the division of building construction and property management need not be obtained for leases of less that 2,000 square feet in privately owned buildings, provided the agency head certified compliance with applicable leasing criteria and determined that the lease was in the best interest of the state. Also, the threshold at which leases had to be competitively bid was lowered from 5,000 square feet to 2,000 square feet.[7]

In 1985, the Division of Facilities Management was created within the Department of General Services, and the Division of Building Construction and Property Management was renamed the Division of Building Construction,[8] which bifurcated the duties relating to buildings. The Division of Facilities Management was given the duties relating to approval of lease conditions in subsections (2) and (3) of section 255.25, F.S.[9]

The Department of Management Services was created in 1992 by the merger of the Department of Administration and the Department of General Services.[10] Amendments to DMS' statutory authority and duties with respect to leasing were made through 2001.

Current Statutory Provisions: Pursuant to s. 255.25(2)(a), F.S., no state agency may lease a building or any part thereof unless prior *approval* of the lease conditions and of the need therefor is first obtained from the Department of Management Services. Any approved lease may include an option to purchase or an option to renew the lease, or both, upon such terms and conditions as are established by the department subject to final approval by the head of the Department of Management Services and s. 255.2502, F.S.

The approval of DMS, except for technical sufficiency, need not be obtained for the lease of less than 5,000 square feet of space within a privately owned building, provided the agency head or the agency head's designated representative has certified that all criteria for leasing have been fully complied with,[11] and has determined such lease to be in the best interest of the state.[12] Such a lease which is for a term extending beyond the end of a fiscal year is subject to the provisions of ss. 216.311, 255.2502, and 255.2503.[13]

The DMS has the authority to *approve* leases of greater than 5,000 square feet that cover more than one fiscal year by operation of s. 255.25(3)(a), which provides that except as provided in s. 255.25(10), F.S., for emergency space needs[14], no state agency shall enter into a lease as lessee for the use of 5,000 square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive bids and award to the lowest and best bidder, subject to the provisions of ss. 216.311, 255.2501,[15] 255.2502, and 255.2503, if such lease is, in the judgment of the department, in the best interests of the state.[16] Section 255.25(3)(a), F.S., does not apply to buildings or facilities of any size leased for the purpose of providing care and living space for persons.

Section 255.449(4)(b), F.S., requires the DMS to promulgate rules providing procedures for soliciting and accepting competitive proposals for leased space of 5,000 square feet or more in privately owned buildings, for evaluating the proposals received, for exemption from competitive bidding requirements of any lease the purpose of which is the provision of care and living space for persons or emergency space needs as provided in s. 255.25(10), F.S., and for the securing of

[6] *Id.*
[7] Section 3, ch. 78-166, L.O.F.
[8] Section 25, ch. 85-349, L.O.F.
[9] Section 35, ch. 85-349, L.O.F.
[10] Chapter 92-279, L.O.F.

[11] Pursuant to s. 255.249(4)(k), F.S.
[12] Section 255.25(2)(b), F.S.
[13] Relating, respectively, to statutory provisions concerning unauthorized contracts in excess of appropriations, contingency statements in contracts which require annual appropriations, and certain prohibited provisions in contracts for the leasing of buildings.
[14] Section 255.25(10), F.S., provides that the DMS may approve emergency acquisition of space without competitive bids if existing state-owned or state-leased space is destroyed or rendered uninhabitable by an act of God, fire, malicious destruction, or structural failure, or by legal action, if the chief administrator of the state agency or designated representative certifies that no other agency-controlled space is available to meet this emergency need, but in no case shall the lease for such space exceed 11 months.
[15] Relating to leases of space financed with local government obligations.
[16] The size at which a leased space must be competitively bid was raised in 1990 from 2,000 square feet to 3,000 square feet by s. 3, ch. 90-224, L.O.F., and raised in 1999 to 5,000 square feet by s. 22, ch. 99-399, L.O.F.

at least three documented quotes for a lease that is not required to be competitively bid.

In sum, while DMS is responsible for prior approval of lease terms for leases over 5,000 square feet, the lease is executed between the landlord and the agency. For leases less than 5,000 square feet, approval by the DMS is not necessary, except for technical sufficiency, so long as the agency head or their designee has certified compliance with applicable leasing criteria and has determined the lease is in the best interest of the state. Leases under 5,000 square feet need not be competitively bid.

General Initiatives Relating to Leasing:

The legislative and executive branches of state government have periodically undertaken initiatives and studies to ensure that lease procurement and management procedures are efficient and effective.

The Legislative Real Property Lease Procurement Task Force: Section 2 of ch. 94-333, L.O.F., created the Real Property Lease-Procurement Task Force, charged with studying the efficiency and effectiveness of the state's real property lease procurement process. The Task Force released a report in December 1994, with the following recommendations:

- The authority for all state private sector lease responsibilities should be consolidated and placed within DMS.
- The number of market rate zones used by DMS in evaluating private sector lease rates should be increased to 31 from the original 12.
- DMS should use the Consumer Price Index as a basis for evaluating proposed rental rate increases.
- The Legislature should appropriate the funds necessary for DMS to acquire the services of a market consultant to provide the department with private sector market rate data.
- DMS should continue to encourage state agency efforts to reduce office space needs through techniques such as telecommuting and combining agency services.
- In order to more equitably provide a level playing field in analyzing the delivery of office space by the state and by the private sector, it is recommended that section 216.044, Florida Statutes, be amended to read: *In determining the cost to the state of constructing facilities on property presently owned by the state or the cost of acquiring property on which to construct facilities, the Department of Management Services shall include taxes (excluding federal income taxes) and any other governmental fee or assessment cost which would be incurred by a private person in acquiring the property and constructing the facility.*
- The Legislature should establish a revolving fund capitalized from a small surcharge on publicly leased space to provide for reimbursement of appraisal fees, condition assessments, environmental audits, and other forms of preliminary analyses; and for securing options and other forms of encumbrances on particularly good real property offerings.

DMS Initiatives to Reduce Leasing Costs: The DMS and agencies had been realizing cost avoidance savings in leasing as far back as 1997. In 1997, the DMS recognized agency cost avoidance of $3.4 million, accomplished through lease renegotiations.[17] For fiscal year 1998-99, a DMS memorandum recognized $19.8 million in cost avoidance savings realized by agency staff.[18]

In 2000, the DMS undertook a space-saving initiative dubbed the "WorkSmart Initiative," which sought to achieve a ten percent reduction in office and warehouse space through the elimination and consolidation of leases. At the midpoint of this initiative, state agencies reported to the DMS year-to-date reductions of 109,390 square feet with approximately $1.5 million savings in annual rental obligations.[19]

The 2003 Strategic Plan: The Legislature in 2002 directed DMS to "conduct a justification and utilization assessment of public-sector and private-sector office

[17] Memorandum of September 3, 1997, from Chief of Bureau of Real Property Management to Facility Leasing Managers.

[18] Memorandum of October 6, 1999, from Chief of Bureau of Real Property Management to Director of Agency for Health Care Administration.

[19] Memorandum of September 22, 2000, from Chief of Bureau of Real Property Management to Secretary of the department.

space leases," and present the assessment to the Senate and House Appropriations committees by September 30, 2003.[20] The department had previously released an invitation to negotiate to solicit responses from providers for the development of a Real Estate Analysis for the State, and subsequently awarded a contract to CLW to "analyze the State's real estate inventory and provide a complete and comprehensive recommendation on what action is most appropriate for each asset."[21]

CLW created a Portfolio Strategic Plan for each of the five regions in the state, and made the following eleven recommendations in regard to the DMS-managed northwest[22] region portfolio:

- DMS should become the centralized facilities services provider for all agencies of the State, and engage the services of a tenant representative.
- DMS should prepare, with the assistance of private sector consultants, an analysis of DMS-directed standards and their relationship and correlation with comparable private sector standards to determine if more efficient standards might be created.
- DMS should engage a third party consultant to accurately measure the gross square footage of each state-owned building and then calculate the actual net rentable square footage of each agency/tenant therein.
- DMS should engage a third party service provider to work in conjunction with DMS staff with each agency to perform a needs analysis for each agency.
- DMS should perform a complete and thorough analysis on all state-owned buildings, utilizing private sector services, to reveal deferred maintenance, capital requirements, and operating efficiencies.
- DMS should create a "centralized purchasing department."
- DMS should, with a third party provider or state university, complete a study of the "balanced" ratio of leased properties to state properties.
- DMS should, in conjunction with an architectural consulting firm, create a state prototype building exemplifying revised efficiency standards.
- DMS should analyze some state-owned properties as possible candidates for sale/leaseback.
- DMS should consider outsourcing storage areas and call centers.
- DMS should prepare a capital improvement plan for state owned buildings.

DMS' Workspace Management Initiative: Subsequent to the receipt of the CLW plans, DMS undertook what it calls the Workspace Management Initiative, which consists of three components - Workspace Standards, Centralized Leasing, and Asset Management. The Workspace Management Initiative incorporates many of the suggestions made in the CLW report and the Real Property Lease-Procurement Task Force report, though mostly by procedure and rule, not by codification in statute.

Executive Order Number 04-118: On June 3, 2004, Governor Bush signed Executive Order Number 04-118, which requires each executive agency to "seek to reduce private sector space leasing costs, improve work-space quality, or improve delivery of services by utilizing DMS as the State's central leasing agent." It further directed each agency to "utilize the professional services provided by DMS, or its private tenant broker, in order to accomplish the goals of obtaining savings, improving workspace, or improving service." Executive agencies were directed to enter into inter-agency agreements with DMS to "procure and manage" all leases of 5,000 square feet or more, and "encouraged" to enter into inter-agency agreements with DMS to manage and procure all leases less than 5,000 square feet.

Though the Governor is the chief executive officer of the executive branch of state government, under s. 20.05(1), F.S., each head of a department, except as

[20] Proviso language for appropriations 2744 through 2746 of the Sate Appropriations Act of 2002, Chapter 2002-394, L.O.F.

[21] Exhibit A, Scope of Services, from the contract between CLW and DMS.

[22] The northwest region includes Escambia and Leon counties.

otherwise provided by law, is specifically assigned the duty to ". . . plan, direct, coordinate, and execute the powers, duties and functions vested in that department . . ." In interpreting s. 20.051(1) a Florida Attorney General Advisory Legal Opinion[23] noted that "the direction, control, and execution of an agency's powers, duties and functions is exclusively limited to the head of the agency and such assistants and deputies as may be designated by the agency head…." The opinion further advised that the Governor may not by executive order give binding directions to any of the departments created in ch. 20, F.S., to implement and comply with statute, or to exercise any rulemaking authority, absent specific statutory authority to do so.

Another issue with Executive Order Number 04-118 is that in proscribing the procedure for an agency to follow, the Executive Order appears to meet the definition of "rule" in ch. 120, F.S. Each agency statement defined as a rule by s. 120.52, F.S., must be adopted by the rulemaking procedures of the Administrative Procedure Act.[24] The definition of "agency" includes the Governor in the exercise of all executive powers other than those derived from the constitution.[25] [26] A "rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency…."[27] It appears that the requirement in Executive Order Number 04-118 that agencies use DMS as a central leasing agent, and use the services of its tenant broker, amounts to a rule not properly adopted pursuant to ch. 120, F.S., and possibly subject to the procedures in s. 120.54(7), F.S., regarding petitions to initiate rulemaking.

The Procurement of a Private Tenant Broker:

As part of its Workspace Management Initiative, on July 16, 2003, the DMS released an invitation to negotiate[28] seeking the support of a service provider to "strategically plan and manage the State's real property assets." The ITN specified neither a more specific work plan, which was to be developed during the negotiation process, nor the specific tasks or deliverables. The DMS commenced negotiations with the highest ranked of the nine offerors, and signed a contract with The Staubach Company-North Florida, LLC on October 15, 2003. Though the ITN contained no specific tasks or deliverables, the resulting contract with Staubach contained specific compensation terms relating transactions that Staubach "negotiates and closes" on behalf of the State.[29]

Rulemaking: In 2004, the DMS, through the rulemaking process of ch. 120, F.S., added a definition to Rule 60H 1.001(13), F.A.C., that a "competitive solicitation" means an invitation to bid (ITB), a request for proposal (RFP), or an *invitation to negotiate* (ITN). The Joint Administrative Procedures Committee (JAPC) sent the DMS an Objection Report on March 17, 2005, noting that the rule is an invalid exercise of delegated legislative authority, because it enlarges the specific provisions of s. 255.25(3)(a), F.S. JAPC deferred consideration of the rule during the 2005 Session, when the DMS suggested it would seek legislative authority for conducting lease procurements using ITNs. Though legislation was introduced during the 2004 session specifically authorizing the DMS to use ITNs in the leasing of space, that legislation failed to pass. During the 2005 and 2006 legislative sessions, the Legislature did not enact legislation giving agencies or the DMS the authority to use ITNs in leasing. Pursuant to JAPC Rule 7.2, the DMS rule must be placed on a future JAPC meeting agenda for a committee vote on the proposed objection.

ITN as Procurement Method: According to the DMS, the main advantage in using an ITN over an ITB or RFP is flexibility, and the maximization of competition, which are important when dealing with a unique and specialized item like real estate. Specifically, the DMS believes that using an ITB or RFP would not allow for enough flexibility to achieve best value to the state in transactions involving multiple vendors, and evaluations of tenant improvement dollars compared with rental rate.

The invitation to negotiate is a recently authorized procurement method in ch. 287, F.S., which governs procurement of personal property and services.[30] An agency must document in writing that an ITB or RFP will not result in the best value to the state, and the determination must specify reasons that explain why negotiation may be necessary and must be approved in

[23] Op. Atty. Gen. 81-39. .
[24] Section 120.54(1)(a), F.S.
[25] Section 120.52(1)(a), F.S.
[26] The specifically enumerated constitutional powers of the Governor are delineated in Article IV, Section 1 of the Constitution of the State of Florida.
[27] Section 120.52(15), F.S.
[28] Real Estate Strategic Planning and Management, ITN # 1-973-700-M
[29] Section 2.3 of the contract between the DMS and Staubach.
[30] Sections 8 and 15, Ch. 2002-207, L.O.F.

writing by the agency head or his or her designee.[31] Training materials from the DMS suggest that ITNs offer the greatest flexibility of the three procurement methods, but are also the most complex and most time consuming.[32]

Results from using the Tenant Broker: According to the DMS, use of Staubach as the tenant broker has resulted in a cost avoidance of $76,229,586 for the period from March 1, 2004, to June 30, 2005, and cost avoidance of $5,386,227 for the period from July 1, 2005, to June 30, 2006. Total commissions paid to Staubach for those periods are $12,078,232 and $2,278,408, respectively. These cost avoidance figures have not equated to direct savings realized in the budgetary process and available for redirection by the Legislature.

Audit Reports on the Staubach Contract:

The procurement process, by which DMS engaged the services of Staubach, and the contract between DMS and Staubach, has been scrutinized by legislative auditing entities.

Though the DMS and other agencies have used ITNs in the procurement of commodities and services, particularly for larger and more complex procurements, concerns have been raised in Auditor General reports relating to agency use of ITNs and contracts resulting from ITNs.[33] Among the issues raised in the reports are: lack of documentation for justifying the use of an ITN instead of other procurement method; inconsistent application of evaluation criteria, inconsistent documentation of the negotiation process; contract terms determined after the signing of the contract; inadequate documentation of baseline data; and inadequate documentation of the qualifications of evaluators and negotiators.

Auditor General Report 2005-015: Released in July 2004, Auditor General Report 2005-015 is an operational audit of the Real Estate Planning and Management Contract. The report made findings and five recommendations:

Finding: The contract termination clause does not appear to provide reasonable limitations on the liability of the state in the event of termination of the contract.

Recommendation #1: DMS should amend the contract with the service provider to provide prices for any services to be provided by the service provider and paid by the state. Also, the pricing of services to be provided and paid by the state should be considered in any future procurement of services and set forth in the negotiated contracts for services.

Recommendation #2: DMS should amend the contract to provide specific information as to its responsibilities in the event it terminates the contract with the service provider.

Finding: Many of the deliverables required to be provided to DMS by the service provider within the first 90 days of the term of the contract were not documented as having been provided or were not within the deadlines established in the contract.

Recommendation #3: DMS should establish a procedure for the formal review of deliverables provided by the service provider and documenting acceptance of those deliverables as meeting the contractual requirements.

Finding: DMS and the service provider mutually agreed upon changes to the contract, generally with respect to deliverables required to be provided to DMS; however, the changes were not documented by properly authorized change orders.

Recommendation #4: Any agreed-upon changes to the deliverables or other items provided for in the contract be documented by the execution of change orders using the process described in the contract.

Finding: We were not provided with monthly service provider reports required by the terms of the contract to be submitted to DMS.

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[31] Section 287.057(3)(a), F.S.

[32] *Procurement Methods*, a PowerPoint presentation revised 9/6/05, located on 10/11/06 at http://dms.myflorida.com/business_operations/state_purchasing/florida_s_public_purchasing_training_and_certification/presentations_and_materials.

[33] See *Real Estate Strategic Planning and Management Contract*, Department of Management Services, Report No. 2005-015, July 2004; *MyFlorida Alliance, State* Technology Office, Report No. 2005-008, July 2004; *People First*, Department of Management Services, Report No. 2005-047, October 2004; M*yFloridaMarketPlace*, Department of Management Services, Report No. 2005-116, February 2005; *Procurement Process for Commodities and Contractual Services and Other Administrative Matters*, Agency For Workforce Innovation, Report No. 2006-027, September 2005.

Recommendation #5: DMS and the service provider should agree upon a set of reports as required by the contract and DMS should implement procedures to assure that appropriate reports are received and reviewed.

In its response to the report, the DMS did not concur with three of the findings/recommendations, and claims to have subsequently addressed recommendations relating to payment structure, change orders, and reporting in Amendment No. 3 to the contract, signed on December 15, 2005.

OPPAGA Report No. 06-06: Released in January 2006, OPPAGA Report No. 06-06, addressed whether the Workspace Management Initiative was benefiting the state, made three primary findings:

Finding #1: The tenant broker has produced savings but long-term value is uncertain.

- Method used to calculate savings is questionable.
- Several lease safeguards have been modified, which could increase future state costs.
- Lease analyses not performed.
- State agency leasing staff not regularly surveyed.

Finding #2: Limited efforts have been made to implement workspace allocation standards.

Finding #3: New leases may not improve the quality of facilities.

The DMS did not concur with the released report, and contended in its response that the Workspace Management Initiative was producing long-term savings, reducing rental rates, reducing square footage under lease and the number of leases, and improving space utilization.

METHODOLOGY

Staff reviewed The Florida Statutes and rules of the Florida Administrative Code, and relevant Auditor General and OPPAGA reports. Staff reviewed public records relating to state agency leasing efforts. The DMS assisted in providing information relating to the procurement by other states of leased space, which it had obtained by surveying other states and the federal government.

FINDINGS

There is no explicit statutory authority for using a tenant broker to negotiate leases on behalf of DMS or any other agency. The DMS suggests that s. 287.057(3)(a), F.S., provides the authority "for the use of a tenant broker," but that section merely proscribes when and how invitations to negotiate may be used in the procurement of commodities or contractual services. The procuring of leases is governed by an entirely different chapter in the Florida Statutes, which, as discussed above, does not provide the authority to use a tenant broker in lease negotiations.

There is no explicit statutory authority for DMS acting as the centralized leasing agent for state agencies, nor is there specific statutory authority for the use of a tenant broker.

Though the DMS has claimed that cost avoidance savings are being achieved by use of the tenant broker, it is unclear whether the transaction fees charged to landlords to pay the tenant broker are being passed back to the state in rental rates, and if so, if state employees could achieve similar cost avoidance savings.

Though use of invitations to negotiate provides flexibility in procurements, their use in recent complex procurements has not always been without complication.[34]

Other States and the Federal Government: An informal survey of other states reveals considerable variation in the procurement of leased space. Some states have a centralized entity for leasing and property management (Wisconsin), some are totally decentralized (North Dakota). North Carolina law requires the Department of Administration to advertise for proposals for leases to exceed $25,000 per year or a term exceeding three years, using specifications supplied by the requesting state agency.[35] Virginia has operational requirements similar to Florida's, in that agencies must receive approval by a bureau within the Department of General Services for leases above 2,500 square feet, and then advertise for proposals.[36] In Georgia, the State Properties Commission acts as a centralized property management and leasing

[34] See footnote 19 of this report.
[35] Sections 146.25 and 146.25.1, North Carolina Statutes.
[36] Section 6.5.2, Commonwealth of Virginia, Department of General Services, Real Property Management Manual

authority.[37] In New York, the Office of General Services, sometimes working with a contracted tenant broker, leases space for the departments, commissions, boards and officers of the state government.[38]

Absent other authority, the General Services Administration (GSA) leases space on behalf of federal agencies.[39] The GSA is required to acquire supplies and services, including leased space, through the use of full and open competitive procedures.[40] Negotiation is a part of the Solicitation for Offers process utilized in leasing space. In 1995, GSA entered into a National Broker Contract with four brokers to provide market expertise and assist with transactions; the contract is "no cost" in that the brokers are paid via transaction fees paid by the landlords.

RECOMMENDATIONS

The use of flexible procurement methods, including ITNs, is well documented among the states surveyed and Florida practice with such means has had notable accomplishments and troubles. If the Legislature wishes to consider providing agencies with this means as an ordinary method of doing business it is certainly not without practical precedent. It is, however, for the specific purposes used by the DMS, without legal precedent.

If the Legislature finds that this means is so compelling for the purposes of producing efficiencies on a large scale, it should be authorized by statute and predicated upon a written finding that it produces best value for the state. That predicate would establish the objective finding within each specific lease procurement and would validate the result when subject to payment review and post-audit analysis.

Furthermore, if the Legislature wishes to centralize all or a portion of organizational leasing functions, the logical host for that would be the DMS, and the medium for that result should be the enactment of a specific statute.

[37] Section 50-16-41, Georgia Code.
[38] NY Public Lands s. 3.12
[39] Reorganization Plan No. 18 of 1950 (40 U.S.C. §490 note)
[40] 41 U.S.C. §§251-260