

Summary of DSS Processes for Provider Lease Reviews

New York City Department of Homeless Services (DHS) Shelter providers work with landlords that use a variety of leasing and ownership arrangements at their shelter buildings. All leasing and ownership arrangements in buildings where DHS contracts for shelter provision must conform to relevant laws and regulations, and Department of Social Services (DSS) policies. There are four different points at which providers must undergo a lease review:

1. When they submit a proposal for a new site.
2. When they request a modification to their existing contract due to a change in the underlying lease (e.g., a new needs rent increase).
3. When their contract with DHS for the existing location has expired and the provider has submitted a proposal for the same site under a new contract.
4. Upon Agency request, in circumstances not covered by (1), (2), or (3) above.

DSS will reach out to the provider directly if/when any additional materials are needed beyond what was submitted through the open-ended Request for Proposals (RFP) process. Providers can reach out to the DHS Capacity, Planning, and Development (CPD) or Contracting Office contacts with any questions related to this procedure.

DSS reviews the leasing structure at each site to ensure that providers have adequate site control for the duration of the contract, that lease terms provide a fair value to the city, that all leases are legally sufficient as to the city's interests, and that any subleases, sale-and-leaseback transactions, and/or less-than-arms-length transactions adhere to relevant City, State, and Federal laws and regulations. All leases submitted for lease review should be submitted to DHS prior to execution.

Shelter provider responsibilities for Lease Review Process

As described in the RFP excerpt below,¹ shelter providers responding to the Open-Ended RFP are required to provide proof of site control for at least the initial duration of the contract. Note that providers are not required to have a direct lease with the owner of the property but must demonstrate site control for at least the duration of their contract term. DSS also reserves the right to request additional documentation.

¹ Available on PASSPort. Each DSS building-related RFP has this language.

Proposers should submit proof of site control for a minimum of the initial term of contract. For the purposes of this RFX, "site control" would include, but not be limited to, (i) Letter of intent from owner or landlord; (ii) other proof of ownership or site control, such as a deed, executed contract of sale, site control letter for City-owned property, and/or executed long term lease; and (iii) other documents showing that the owner of the property has provided permission to the proposer, either directly or indirectly, to utilize the property. Note that if the owner of the property is not engaging directly with the proposer, the proposal should include any and all documents showing property interests from the property owner to the proposer, which shall include but not be limited deeds, master leases, subleases, contracts, options, and/or any other information which demonstrates appropriate real estate interests in the subject property. Proposals will not be accepted unless the proposer can clearly demonstrate that the landlord of the property either i) owns the property or ii) has a lease with the owner of the property which has a duration at least as long as the proposers lease term, and for which subleasing to a non-profit provider is a permitted use.

DSS/DHS/HRA reserves the right to request any additional information required to demonstrate both site control and pricing reasonability including pricing associated with the documents required for demonstration of site control.

As described above, providers must show complete site control before DSS deems the proposal responsive and sends to the review committee. As part of contract finalization and award, all providers must undergo a review of the underlying lease(s) for the sites in their proposal. The substantive lease review will occur post-selection.

Note that DSS will work directly with the *contracted or proposing shelter provider* to review these leasing arrangements and resolve any outstanding issues. During the procurement process, DSS will reject direct inquiries from building owners, landlords, or their representatives and will require all questions or concerns regarding leasing arrangements or any other issues to their shelter provider tenant for resolution with DSS.

Materials that Providers must submit as part of lease review

All providers undergoing a lease review must submit documentation described in this section. In some instances, providers will submit all necessary documentation as part of their RFP response. In cases where additional documentation is needed, DSS will reach out to the provider directly. Providers undergoing a lease review must provide:

1. Complete, un-redacted lease (including riders if any) between the provider and the landlord (before they execute the lease).
 - a. If the provider's landlord is an LLC, DSS will require the provider to submit the identity(ies) of the landlords, including first and last names. DSS will not move forward with any new proposals unless the identities of LLC owners are established.

2. If the provider is not leasing directly with the owner of the property, the provider must submit the complete lease between their landlord (with whom the provider has a lease) and the owner of the property. As part of this review, DSS will be requesting completely unredacted copies of the Masterlease.²
 - a. If the property owner is an LLC, DSS will require the provider to submit the identity(ies) of the LLC owners, including first and last names. DSS will not move forward with any new proposals unless the identities of LLC owners are established.
 - b. If the landlord is any other entity, DSS will require the provider to submit the identity(ies) of the landlords, including first and last names of any corporate officers, court ordered receiver, trustee, estate, etc.

The materials provided must be sufficiently detailed and complete to allow DSS to determine each party's responsibility for key lease terms (e.g., maintenance, service provision, insurance, etc.) and (in the case of a sublease) any cost differentials between provider's rental costs and their landlord's rental costs. The materials provided must also be sufficient to allow DSS to determine the identities of all parties involved.

Note also that leases cannot include any requirements that building services (e.g., maintenance, cleaning, security) be provisioned by any particular company, especially any company owned by or affiliated with the building owner or landlord. These services are to be bid-out by the Provider, in accordance with the Cost manual.

Review of Rental Amounts in a Lease

DSS requires providers to comply with relevant guidance in the NYC Cost Manual, and Federal Guidance related to reasonableness of rental costs, which include cost limitations on sale-and-leaseback transactions and less-than-arms-length transactions. The NYC Cost Manual section, "Rental Costs of Real Property and Equipment" includes section defining allowable costs for rent, which are excerpted and summarized below:³

Allowable Costs: Allowable Rental Costs are as follows:

- 1) Rental Costs are allowable to the extent that the rates are reasonable in light of such factors as Rental Costs of comparable real or equipment property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased; rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

² DSS will accept written requests to redact rental cost amounts from Master lease submissions. DSS will evaluate these requests on a case-by-case basis.

³ City of New York Health and Human Services Cost Policies and Procedures Manual ("Cost Manual"). (2024). Page 51. <https://www.nyc.gov/assets/hra/downloads/pdf/HHSCostPoliciesProceduresManual.pdf>. Note that the relevant Federal guidance is found in Code of Federal Regulations (CFR) § 200.465 Rental costs of real property and equipment.

- 2) Rental Costs under “sale and leaseback” agreements are allowable only up to the amount that would be allowed had the Provider continued to own the real property or equipment; this amount would include expenses such as depreciation, maintenance, capital expenses associated with building acquisition and/or building improvements (including all financing for such improvements), and insurance. Otherwise, any rent costs may be determined to be “unallowable”.
- 3) Rental Costs under leases that are required to be treated as capital leases under Generally Accepted Accounting Principles (GAAP) are allowable only up to the amount, as explained in paragraph (2) of this section, that would be allowed had the Provider purchased the property on the date the lease agreement was executed. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest Costs related to capital leases are allowable to the extent they meet the criteria in the IRS rules (2 CFR § 200.449, Interest)
- 4) Rental Costs of Real Property and Equipment owned by the Provider would be considered as unallowable; this includes, but is not limited to, affiliates, subsidiaries, branches, or holding companies established by the Provider for the purpose of renting real estate previously owned by the Provider. This provision may be subject to the allowances described in paragraph (2) above.

Conclusion

DSS appreciates providers’ continued partnership to ensure that all leasing and ownership arrangements in shelters conform to relevant laws and DSS policies while providing the critical service of sheltering New Yorkers in need.