

State of Washington

# **REAL ESTATE LEASING POLICIES NATIONAL SURVEY**

Responses Report

Office of Financial Management  
Facilities Oversight

April 2014



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## SUMMARY

Section 1085 of the enacted 2013–15 capital budget (Engrossed Substitute Senate Bill 5035) requires the Office of Financial Management (OFM) to review and recommend real estate policies related to lease renewals, requests for proposals, cancellation clauses, backfill policies and other related items. The study must document improvements to the state’s real estate policies that ensure that cancellation clauses are used in a financially advantageous way and renewal practices minimize unnecessary relocation costs. To make informed recommendations, OFM surveyed facilities administrators from other states to ascertain trends and best practices. Their policies and procedures will be used, along with in-state survey responses and forum feedback, to inform the analysis and recommendations in the Real Estate Leasing Policies Study. This report summarizes responses from 43 survey participants.

The national survey drew participation from all regions of the country. Survey results show that 88 percent of respondents help state agencies find space for programs and operations. Lease portfolios range from 150 leases encompassing 2 million square feet in one state to 1,742 leases covering 15 million square feet in another state.

The authorizing environment for real estate functions affects how states develop and implement real estate policies and practices. The authorizing environment creates centralized, decentralized or a hybrid system for managing a state’s physical footprint. Centralized states such as Minnesota and Nebraska are characterized by one agency being responsible for all real estate leasing activities. Decentralized states such as Arizona are where most agencies have direct responsibility for leasing activities. Hybrid systems such as Florida and Washington are where a centralized agency manages leasing activities for some agencies, and other agencies and institutions have direct authority to manage their real estate portfolios.

The authorizing environment affects state relationships with private sector real estate professionals; states with centralized real estate leasing functions have engaged private sector brokers in market searches, lease negotiations, renewals and solicitations. One state engages brokers in lease renewals in urban markets. Another indicates it has a unilateral right expressed in all lease contracts to terminate leases. All states temper their use of certain authorities, especially cancellation clauses. Some have at-will cancellation language in all leases. Others have, but rarely use that authority because their state legislature provides funding for facilities. One state has exercised its cancellation due to nonappropriations authority only twice in the past 20 years. The majority of respondents maintain that a cancellation for lack of appropriations is policy language necessary to protect the interests of the state.

The survey results indicate that 51 percent of states have policies and 45 percent of states have procedures for backfill, and that 85 percent of states have cancellation clause policies and 90 percent have cancellation clause procedures. Further, 82 percent of states have lease renewal policies and 90 percent have lease renewal procedures. Further, 82 percent have request for proposal (RFP) policies and 81 percent have RFP procedures. Less than one-third of the responding states post those policies and procedures on their websites.

Washington is unique among other states in a number of ways as it is the only state that:

- Prioritizes space for backfill in this manner: Department of Enterprise Services space, then space in other state facilities and finally space in privately owned facilities.
- Uses a charter process for lease renewals.
- Has a two-year lease renewal schedule. The average lease renewal schedule across responding states is six months.
- Has a preferred leasing area. Most states have policies to locate state facilities in central business districts and in areas that are proximate to agency clientele and are served by public transit.

While the authorizing environment is a significant factor in how states develop and implement leasing policies and procedures, several notable trends emerged from the responses:

- Advance planning contributes to timely and cost-effective negotiations for space.
- Consistently applying real estate policies and procedures across all real estate leasing activities provides certainty to agencies and private sector property owners.
- Flexibility in response to changing appropriations and market conditions serves agencies and private sector property owners well.
- Clarity, transparency and accessibility of policies and processes are goals all states strive for but with great variance in execution.
- Private sector brokers can be effective partners in market searches and lease renewal negotiations.
- Training is used to assist agencies in modifying space needs, aligning projects with budgets and promoting completion of leasing activities that are on-time, on-budget and in the best interests of the state.

## SURVEY OVERVIEW

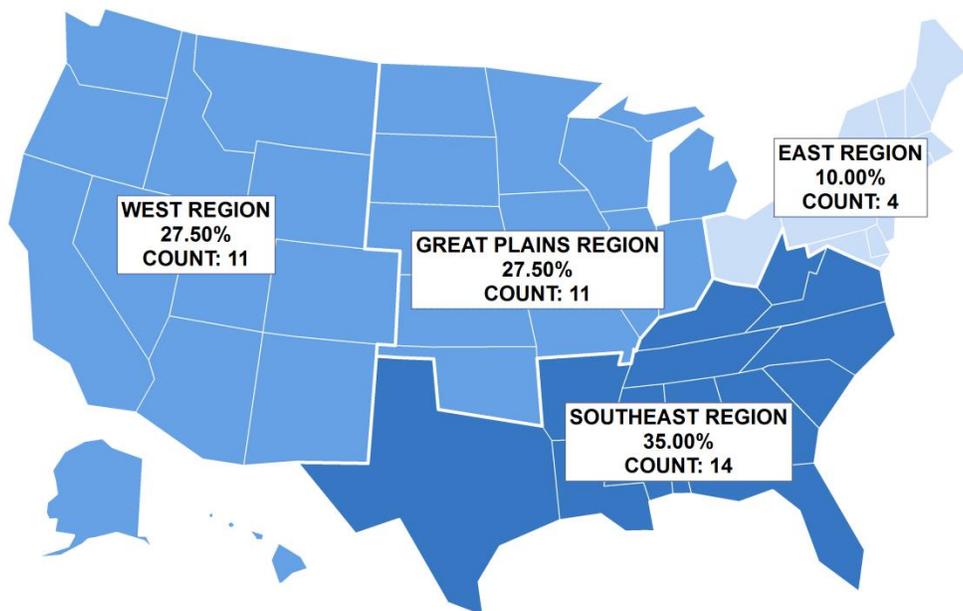
The national survey of state real estate leasing policies and practices was developed and conducted using SurveyMonkey™. The National Association of State Facilities Administrators (NASFA) board of directors supported the study by notifying its membership and disseminating survey information.

The survey was designed in five parts. Part One ascertained where the respondents work across four NASFA regions and determined their role in facilities leasing and management. Part Two asked questions about policies and procedures related to backfill. Part Three focused on cancellation clauses, Part Four on lease renewal and Part Five on solicitations, including RFPs.

The survey was conducted during the months of January and February 2014. The survey closed Feb. 15, 2014.

Of 43 survey responses, 40 identified which state they work in. The following map illustrates the distribution of responses by NASFA region.

### DISTRIBUTION OF NATIONAL SURVEY RESPONSES



## DEMOGRAPHICS OF RESPONDING STATES

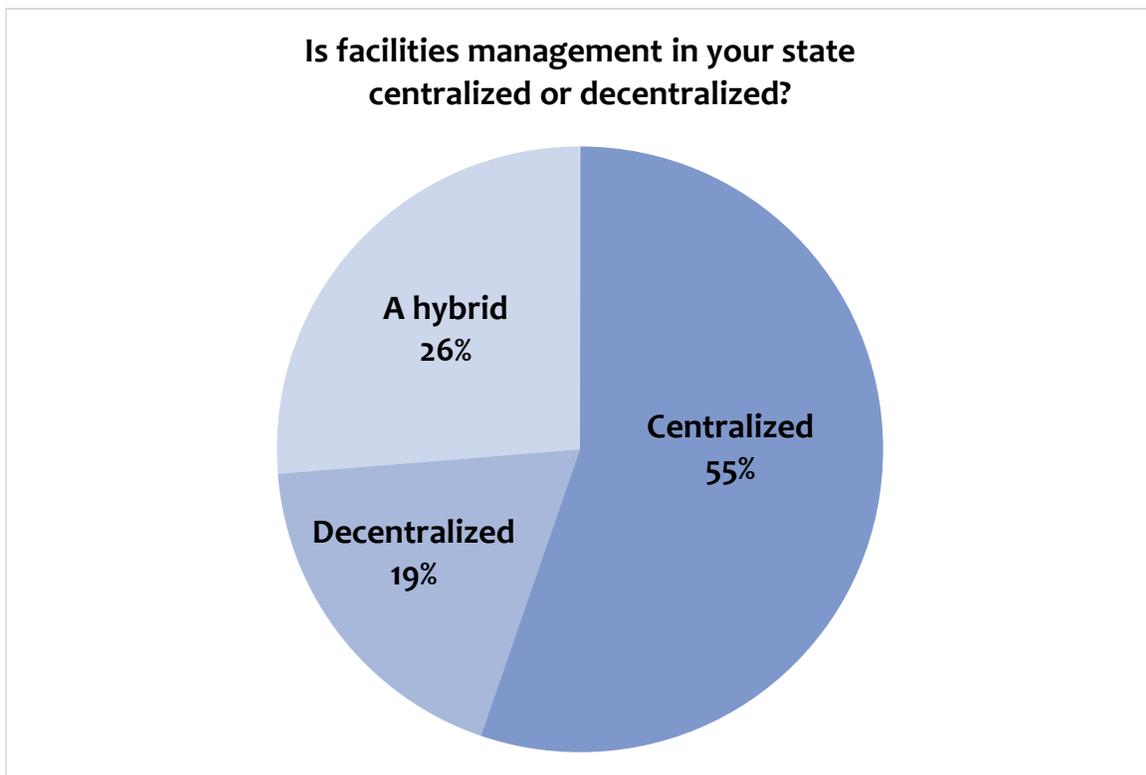
### Roles and responsibilities of survey respondents

All respondents to the survey represented public sector agencies, departments or institutions. Their roles include agency and division director, lease portfolio manager and real property specialist. The three largest cohorts of respondents included lease specialists (23), facilities managers (10), property managers (nine) and project managers (nine). Real estate brokers, facilities planners, budget analysts and market analysts also participated in the survey. Lease portfolios ranged from 150 leases covering 2 million square feet in one state to 1,742 leases covering 15 million square feet in another state. One respondent included land in its portfolio.

States indicated that they renewed from two to 370 leases annually. In addition to renewing 370 leases annually, one respondent also reviews 500 leases.

The survey asked whether leasing functions are managed by a centralized agency; managed through a decentralized system, where agencies handle their real estate transactions independent of a centralized agency; or managed through a hybrid model, where responsibilities for leasing are shared by multiple agencies, with some functions centralized and some decentralized. For example, leases in state-owned facilities are centrally managed, but leases of privately held facilities or facilities owned by other units of government are regionally distributed.

The following chart displays the distribution of these systems across the nation.

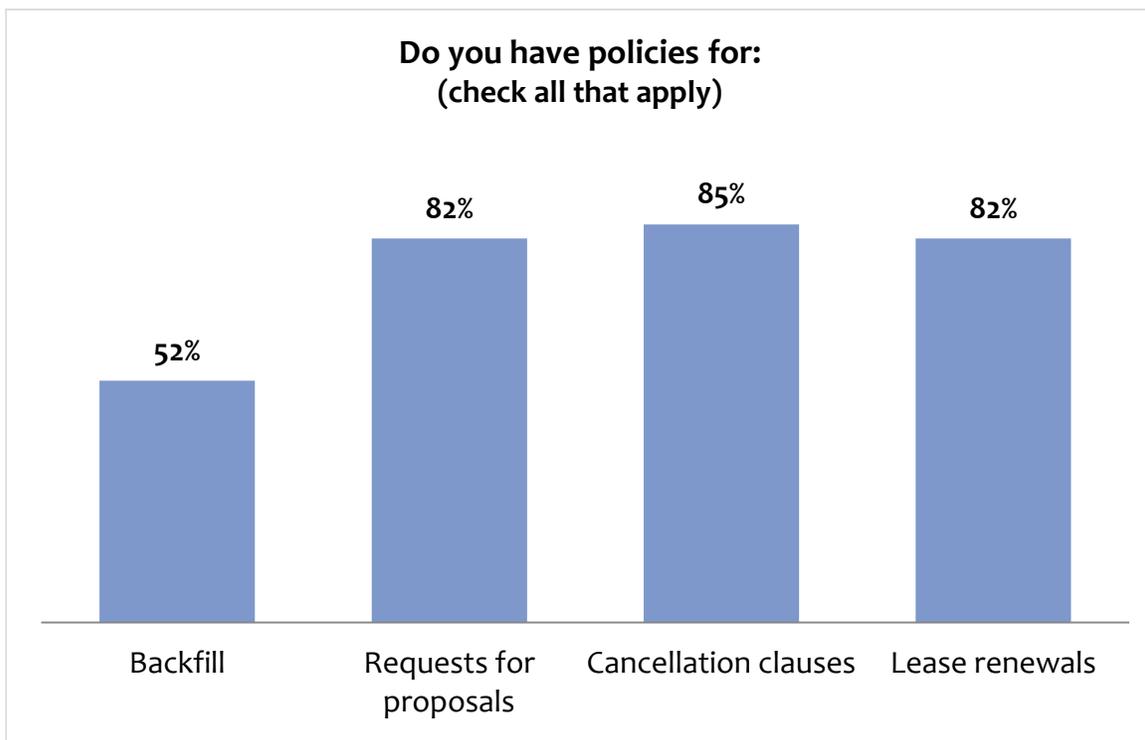


Respondents provided clarifying comments, including:

- “Owned facilities are centralized and leased facilities are decentralized by occupying agencies.”
- “Leases are coordinated out of a central office but negotiated and managed regionally.”
- “Leases are all processed through one office. Property management, however, is done by the tenant, with the Leasing Department only getting involved as an escalation point prior to enforcing the terms of the lease.”
- “Contracting is centralized.”
- “Leases are procured at the individual Agency-level, but all leases must be approved by a governing board and standard policies.”
- “Facilities Management is typically centralized per policies outlined in the Code of State Regulations. Leasing actions are centralized per statute RSMO 34.030 which states ‘the commissioner of administration shall negotiate all leases.’”
- “ADAO manages its owned facilities; 25 other agencies manage their own state-owned facilities.”

## Policies and practices of other states

The survey asked if states have policies on backfill, cancellation clauses, lease renewals and RFPs with these results:

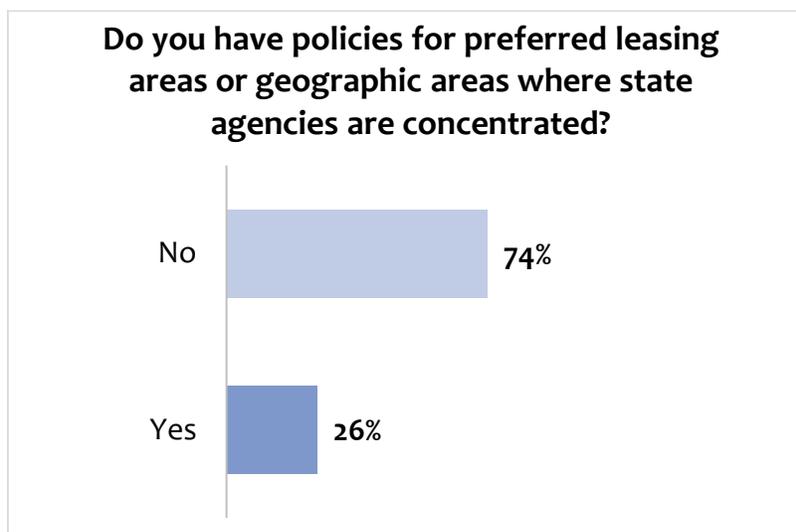


The majority of respondents have policies directing their leasing functions. When asked if they had procedures for these leasing activities, 90 percent of states reported that they have procedures guiding application of cancellation clauses, 84 percent have RFP procedures and 81 percent have procedures for lease renewals. Nearly half of survey respondents (45 percent) noted that they have backfill procedures.

The survey posed questions to learn how accessible policies and practices are to the public, agencies and others active or interested in leasing facilities. The first question in this section of the survey asked which policies are posted on the respondent agency’s website. Of the responding agencies, 28 percent reported that all policies are posted, 28 percent reported that some policies are posted and 45 percent reported that none are posted to their website. For some states, policies are part of the statutory code and are available elsewhere; others collect their policies in manuals that are posted online. Several states post specific policies online.

When asked which procedures are posted online, 48 percent of respondents reported that none are posted, 31percent reported that some procedures are available online and 21percent reported that all procedures are posted online. One state indicated that it provides guidelines for other agencies to follow, and those agencies have their own internal procedures. Some states rely on posted statutes to convey information. Several have policy and procedure manuals on their websites.

The survey asked if states have anything similar to the Preferred Leasing Area policy active in Thurston County for the cities of Lacey, Olympia and Tumwater. The majority of respondents (74 percent) indicated that they do not have such policies. Most respondents indicate their policy is to locate agencies along transit lines in urban areas and central business districts, depending upon the business need of the agency and the clients served. One state has a policy requiring use of a state broker in most urban areas.



When asked what triggers an update to leasing policies, the majority (54 percent) responded that they change policies as needed, based upon changing market conditions. Survey results show that 39 percent change policies per legislative action, while 7 percent change policies as a result of feedback from state agencies.

The final survey question in this section sought information on whether states have revised their leasing practices applying Lean<sup>1</sup> principles. Many had not; some were just starting a Lean effort. The respondent for one state that recently refined its process wrote: “Our process and method of procuring space is very streamlined with an average of 81 days turnaround time.”

The following pages summarize state agency policies and practices.

<sup>1</sup> <http://www.kaizen.com/consulting/process-improvement-lean-project.html>

## **SURVEY REPONSES ON BACKFILL**

This section addresses policies and procedures related to backfill. The Washington Facilities Oversight Program’s backfill strategy is to use the assets we have before expanding the state’s facilities portfolio. Backfill is not synonymous with collocation and consolidation, for which state policy is defined in RCW 43.82.010.

### **Policies related to backfill**

The survey asked agencies to comment on their backfill policies. These are some of the responses:

- “When a space demand need is received, we research locations in state-owned or leased space prior to looking for space in private owned buildings.”
- “Policy applies to state-owned buildings in the Capitol complex. Private leases in the capitol city may be terminated to backfill vacancies in state-owned buildings. [This] policy has been implemented once.”
- “We don’t have a backfill policy. However, if an agency needs to relinquish space then we do try to find another agency to backfill.”
- “Prefer to use existing state-owned space or existing lease prior to renewing or seeking new space. We provide notice to every agency when there is a need for space.”

One state has consistently maintained full occupancy of state-owned property. Another state indicated its backfill policy is relatively new, and the responder wrote that “as long as we are within our rights of a lease contract to terminate we may choose to do so to consolidate programs or to backfill if the current tenant is moving to other space.”

These next comments indicate the range of backfill policies among the responding states, from informal to statutory:

- “It is informal only, but our intent is to backfill where we recognize the possibility; a more formal strategic program may be developed.”
- “The backfill policy applies to owned space.”
- “Backfilling into vacant stated-owned space is required by statute unless an agency can demonstrate that the space will not support its core mission.”

### **Whether backfill is financially advantageous to the state**

The majority of survey respondents (92 percent) consider backfill policies as being financially advantageous to their states. For some, having a backfill policy is common sense. Others see a budgetary benefit:

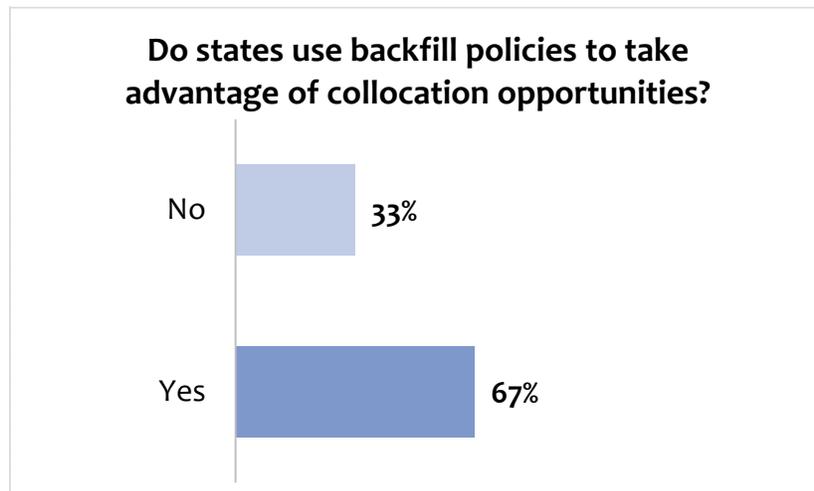
- “Full occupancy spreads costs over maximum billable square footage.”
- “It is part of the standard lease and can be used in negotiations to the state’s advantage when necessary or appropriate.”
- “As a result of maintaining full occupancy within state owned facilities, the leasing budget has been reduced.”
- “Lease costs savings are a priority and advantageous wherever we can identify them.”

Many recognize that implementing backfill policies requires discretion and judgment:

- “Yes, to ensure the state owned building is fully occupied; and, No, some agencies pay lower rent than our state owned space rent and some stated owned space is not located in an area where the taxpayers live who are served by the agency requesting the space.”

## Procedures related to backfill

When asked if states saw a correlation between backfill and collocation, 67 percent replied they did.



Some states have a collocation mandate. For others, collocation is insignificant to backfill. One state that sees a strong correlation between backfill and collocation offers that it “recently moved nine agencies into one location and backfilled the remaining space with a non-state services provider. This ensured all of the leasable SF was occupied and leased.”

Just because space is available in a state-owned building does not make it suitable for occupancy. Agency business and customer needs impact backfill and collocation decisions. One state collocates as appropriate and as possible, adding that “usually that process is directed by tenant agencies rather than the leasing department.” Another adds, “If agencies are compatible backfill can work very well.”

The condition of vacant facilities impacts their suitability for backfill and collocation. Florida assessed the condition of vacant state-owned facilities, finding facility upgrades were in order. After securing a \$400,000 state appropriation to improve these facilities, Florida could then pursue backfill and collocation opportunities.

## SURVEY RESPONSES ON CANCELLATION CLAUSES

This section address policies and procedures related to cancellation clauses. Cancellation clauses are an element of lease agreements often used to terminate a lease or downsize the footprint of an agency in leased space. Present language in Washington state does not address cancellation due to either non-appropriations or because of opportunity for collocation.

### Policies related to cancellation clauses

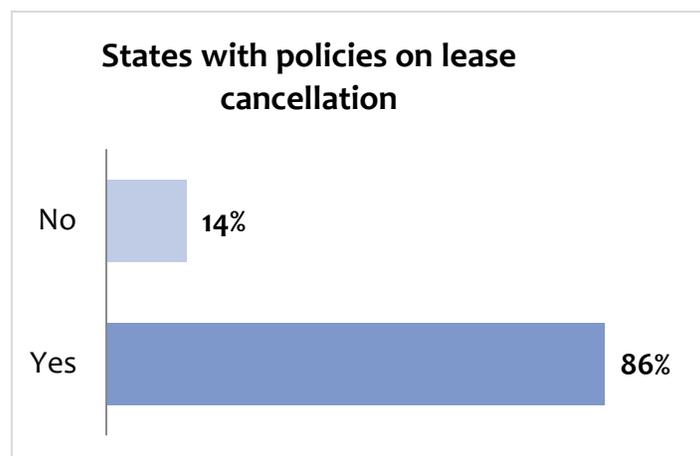
Eighty-six percent of respondents indicated they have policies related to cancellation clauses. In some states, cancellation clauses are allowed only for fiscal necessity when funds are not appropriated by the legislature. In some states, use of cancellation clauses is defined in statute. In other states, cancellation clauses are unilateral rights in all leases. Even states with no official policy state report they are within their rights of the lease should they choose to cancel.

Criteria for exercising cancellation clauses include:

- Reduction in federal and/or state funding
- Space becoming available in a state-owned building (independent of backfill opportunities)
- By mutual consent of the landlord and tenant agency
- Cancelling for default
- Lessor found guilty of criminal activity
- Agency consolidation or reductions in staffing resulting in surplus space

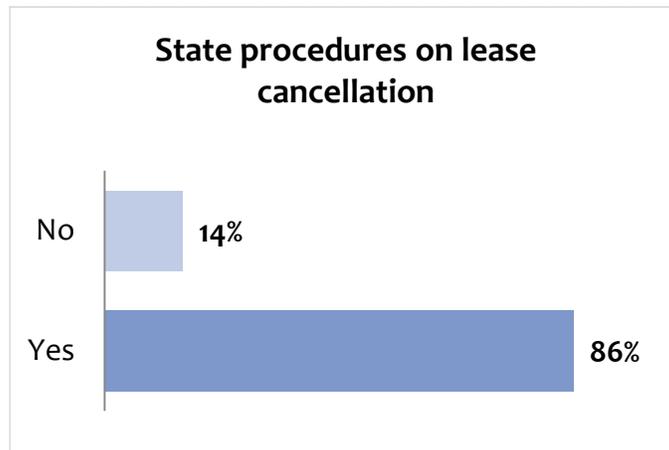
In the states that have three or four criteria for exercising cancellation clauses, the criteria are specified in administrative code or in statute. In several states, the exercise of a cancellation clause requires a determination by the governor.

Some states attempt to negotiate liberal termination rights. Others seek to add cancellation clauses to lease agreements but acknowledge that landlords will not agree to them. Very few states have at-will cancellation clauses. Where such policies exist, they are rarely used. For example, a state with 770 leases at 500 locations has exercised a cancellation clause in less than 1 percent of all leases over the past six years. This agency renews approximately 200 leases annually.



## Procedures related to cancellation clauses

According to survey results, 86 percent of respondents have cancellation procedures. Practices vary from state to state. One state requires an affidavit of nonappropriations from the cabinet-level official responsible for the agency. Another state with a hybrid facilities management environment requires a 60-day notice for lease cancellation. This hybrid state has used its authority twice in the past 20 years. A third approach is found in a state with centralized facilities management that renews 107 leases in state-owned facilities and 45–50 in commercial space leases every two years. This state considers cancellation as early termination and requires serving the lessor with a 30-day notice letter. This state has used this provision a few times in the past four years.

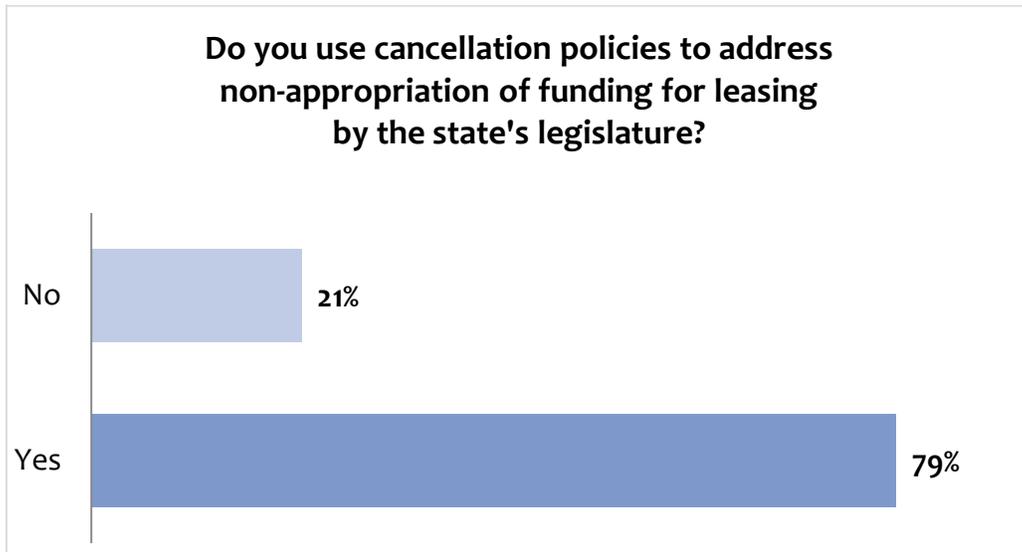


Respondents in a number of states mentioned the importance of communicating termination notices as early as possible to landlords and tenant agencies. For one state, lease size correlates with the amount of notice “for terminations due to available space in a state building, notice of termination varies depending on the lease size — the larger the lease, the more required notice for termination.”

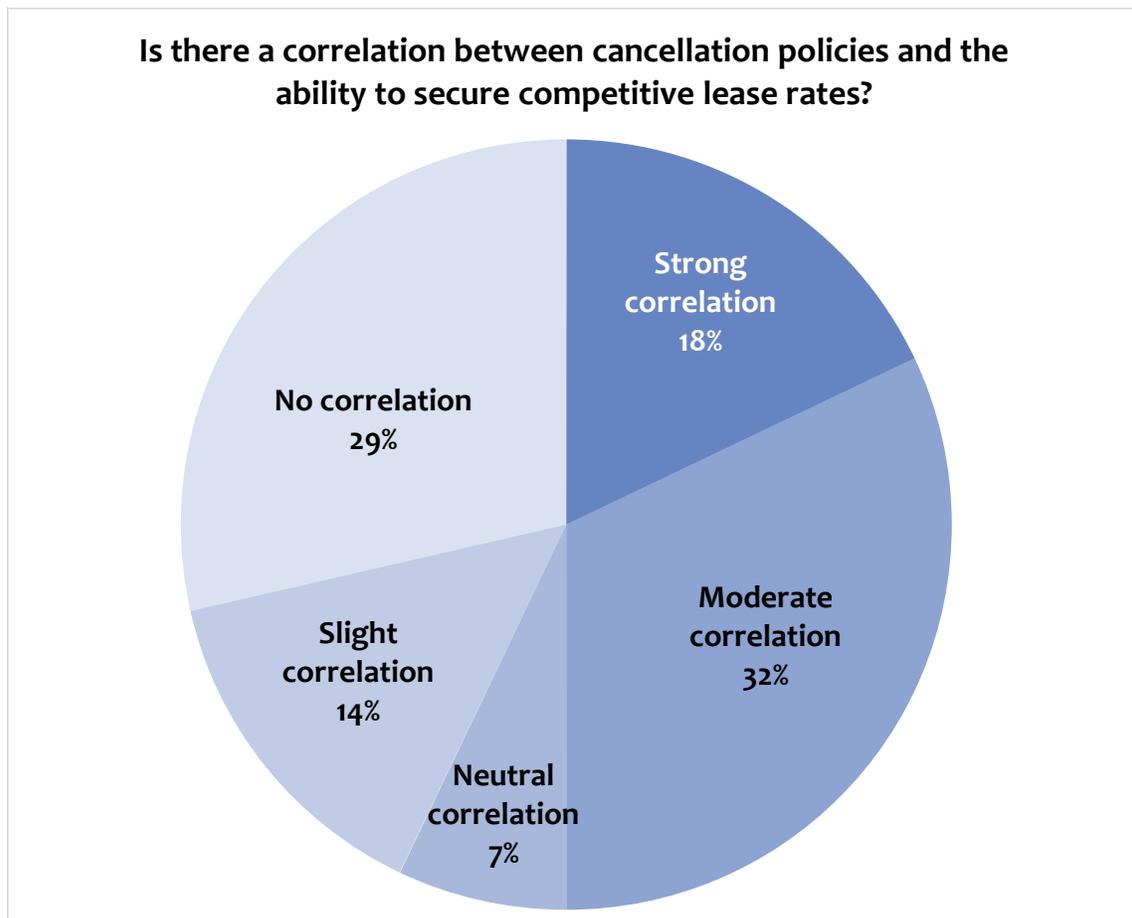
A state in the Southeast increased communications and technical support to agencies to assist with terminations.

## Cancellation due to nonappropriation

Several questions related to nonappropriations policies were in this section. The first questions asked if states use cancellation policies to address nonappropriation by the state legislature of funding for leasing. Responses indicate that 79 percent of states have such policies. In some states, cancellation due to nonappropriation language is codified in administrative rules or state statutes. One state has a non-negotiable right in its standard lease form to terminate the lease due to lack of funding. Another does not have a cancellation-due-to-nonappropriation clause. This agency seeks legislative action to terminate a lease in an appropriations bill; at agency request, the legislature inserts language prohibiting expenditure for a specific lease. The lease contract number becomes part of that legislative action.



When asked if states see a correlation between cancellation clauses and the ability to secure competitive lease rates, respondents were nearly equally divided between moderate correlation (32 percent) and no correlation (29 percent). Some respondents saw a strong correlation (18 percent) while others saw a slight correlation (14 percent). A small number of responding states indicated a neutral correlation (7 percent) between the two issues.

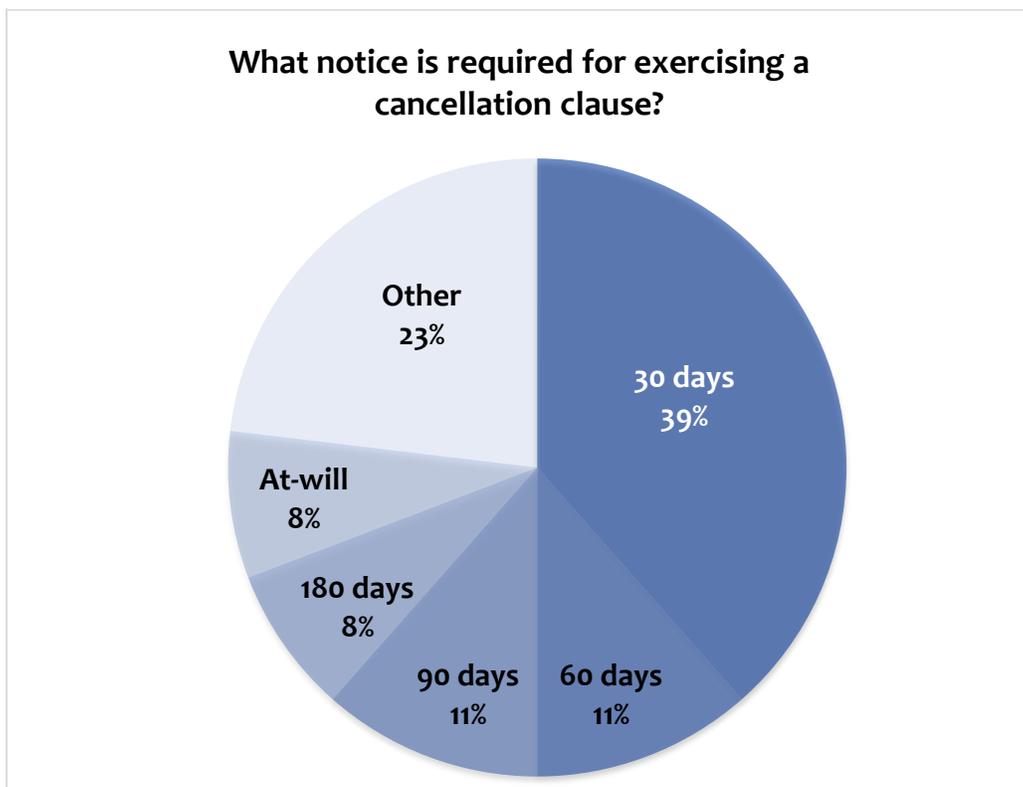


Fourteen states commented on cancellation clauses and the correlation with leasing rates. Many recognize the risks that cancellation clauses present to private sector lessors, yet others said that having cancellation clauses has not affected their ability to secure competitive lease rates. These are examples of comments provided:

- “The possibility that cancellation rights affect our ability to secure new lease space or competitive space is real and of concern but we do not have documentation of incidents where this has happened. With soft commercial real estate markets we are concerned that the number of responses to RFPs is somewhat low; that could also be due to outmoded publishing of the RFP.”
- “Our lack of funding clause presents an element of risk to the Lessor, therefore often affects the pricing of the lease. Some landlords, however, do not view it as a substantive risk, partially depending on the tenant agency involved.”
- “Cancellation provisions give prospective landlords a bit of heartburn, especially if they are providing a turn-key finish. We are usually able to alleviate their concerns.”
- “Recent solicitations for build-to-suit leased space have indicated that as a result of recent cancellations, rental rates have increased and the availability of Lessors willing to submit proposals has reduced significantly.”
- “It [cancellation] happens so rare that is not a factor.”
- “We thought it would have a negative effect on finding competitive pricing; bidders do express the concern of their lender, we continue to lease below market value per square foot.”
- “The more cancellation abilities you have, the more risk to lenders, which in turn, provides more risk to the building owner. Thus, you have higher lease rates and higher interest rates to the owner on the loans themselves.”
- “It is not known for certain, but suspected that low response rate to RFPs for space in a very weak private sector commercial real estate market has something to do with our early termination clause.”

## **Notice required for exercising a cancellation clause**

When asked what notice is required to exercise a cancellation clause, the majority of respondents indicated 30 days, followed by 60 and 90 days, respectively. The least-used notices are 180 days and at-will cancellations. Some terms are stipulated in statute while others are defined in terms of individual leases.



Comments on cancellation clauses include:

- “The notice is dependent on language in the specific lease.”
- “Historically it has been 30-days across the board, but we are modifying for cancellation due to available state space.”
- “Our leases require payment of rent in the month that the termination takes place and then no future obligation.”
- “Ten days for non-appropriation; 90 days if state-owned facility is available.”

Partial termination, or downsizing, allows for vacating unused leased space. While 72 percent of respondents said they do not have policies that allow for partial termination, 80 percent said there are circumstances where having such a policy would be advantageous.

Some states have policies in place that allow for partial termination while others use the policy on a case-by-case basis. Comments on this topic include:

- “We are committed to space management and the partial cancellation of space allows us to ensure all space is used ‘in the best interest of the state’.”
- “Maybe. We try to work with landlords and don’t make a practice of leaving them with space we committed to.”
- “Some leases allow us to cancel a certain floor as part of a building. It is helpful when multiple agencies occupy the building.”
- “Though no official partial termination exists, we do try to negotiate partial terminations with landlords where needed. Although not obligated to comply, many times landlords accommodate us.”

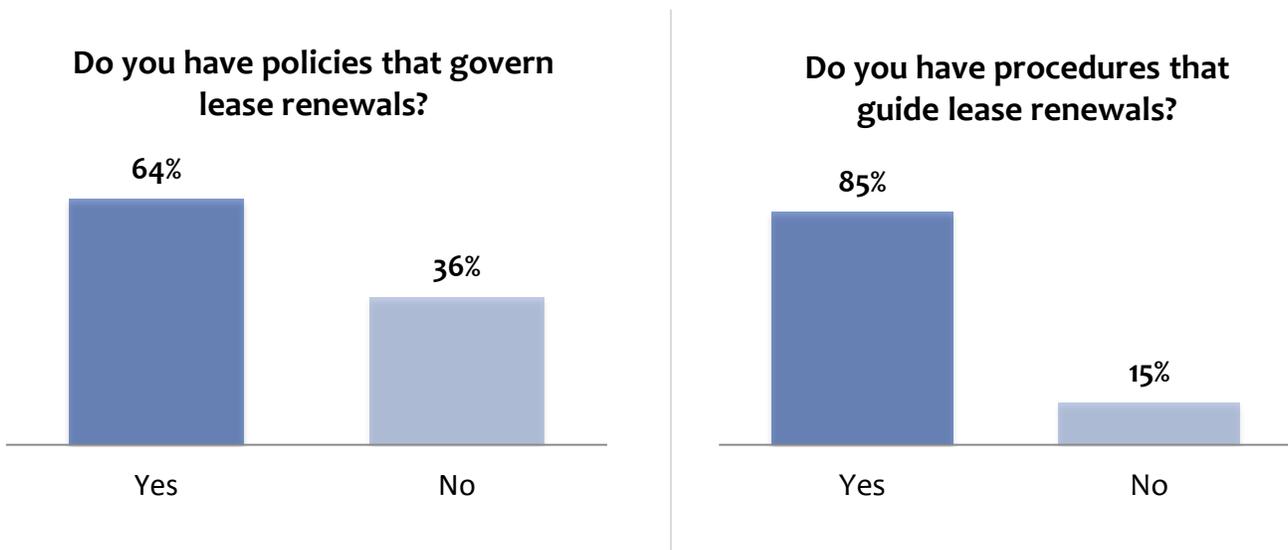
- “Many agencies downsize because of funding or program reductions. We also often have restructuring and combining of one or more agency (legislatively mandated) that results in reduced space need.”
- While partial cancellation is great for the state (due to downsizing of staff or moving to a state owned building) it does not benefit the landlord. Florida law prohibits the state from spending state funds on private property so the state cannot pay to demise partially vacated spaces.”
- “If it is possible for the space to be reduced in size it would avoid disruption to the agency to move.”

Most states acknowledge that cancellation clauses are necessary but exercised infrequently. One respondent has used the cancellation clause for non-funding twice. This state works with agencies and encourages them to request “authorization to receive and expend ... dollars sufficient to meet the tenant’s obligation” under the lease. Many acknowledge that cancellation clauses are needed tools. Their use must be documented and justification provided to preserve credibility and not affect a building owner’s ability to secure funding from private lenders.

## SURVEY RESPONSES ON LEASE RENEWAL

The next set of questions in the national survey concerned lease renewal policies and procedures. Lease renewals are an act of negotiating a contract for a facility where an agency remains in its currently rented space.

Of respondents, 64 percent have policies guiding lease renewals and 85 percent have procedures for lease renewals. Further, 52 percent of respondents indicate that agencies initiate lease renewals while 33 percent of respondents report that leases are initiated by the central real estate agency. Square footage and cost of the lease are not factors that affect where leases originate.



Initiation of lease renewals is linked to how centralized or decentralized real estate authorities are in any state, varying from situations where one agency initiates and executes all lease renewals on behalf of all agencies to a hybrid where an administrative agency manages leases for executive branch agencies and independent agencies manage their own leasing activities.

The capacity of agencies seems to be a consideration in lease renewal process. Some states' agencies initiate the lease renewal process and the administrative agency manages negotiations. In other states, the administrative agency initiates negotiations to achieve a strategic market advantage. Respondents from yet other states mention that their process for lease renewals needs revision, given the differences in capacity from agency to agency.

Most agencies (77 percent) use a database to receive notice that a lease is up for renewal. Timing of notices varies from state to state — from 6 months to one year in advance of the expiration date. One state renews all leases on July 1 of odd years. Another state does not renew leases; all expiring leases must be re-advertised to the public.

## Lease renewal policies

Survey participants were asked to describe a policy change that contributes to their being able to negotiate favorable terms and conditions for leased facilities. Several described actions during the recent economic downturn — gubernatorial requirements to renegotiate all leases or freezing all rent increases for a period of 18 months.

Responses included:

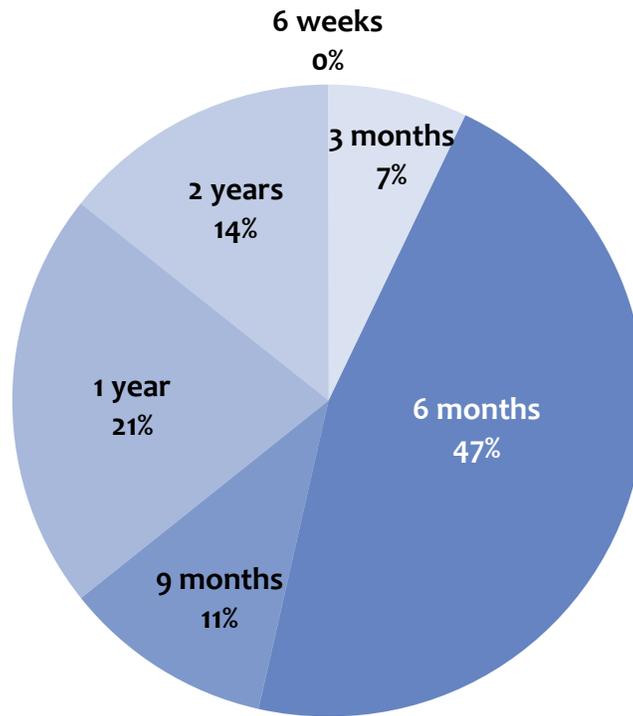
- “We asked for full-services leases, and have succeeded in converting over 70 percent of our portfolio to full service. This makes budgeting much easier for the agencies. We also negotiate rent increases to coincide with fiscal years, if possible, to also help with the budgeting process.”
- “Bringing a third party vendor broker on board to assist in negotiations because they have a good understanding of markets and rates.”
- “Modifying cancellation policy options.”
- “The policy of enabling negotiators to consider alternate space and not blindly adhere to agency preferences. Landlords are more willing to seriously negotiate when they understand that the State is able and willing to exercise its judgment in selecting appropriate facilities as would a private entity.”

## Lease renewal procedures

The survey sought answers to a series of questions about lease renewal practices from timing of lease renewal negotiations to terms considered during lease negotiations to space as a factor in lease renewals. Findings are described below.

The majority (48 percent) of respondents begin lease negotiations six months prior to expiration of a lease. A minority begin negotiations three months prior to lease expiration. Two states, including Washington, begin the lease-renewal process two years prior to expiration of a lease. No respondent indicated it renews leases in six weeks. The following chart illustrates these results.

### How far in advance of the end-date of a lease do you begin lease negotiations?



While the majority of respondents address performance on corrective actions (83 percent) and deferred maintenance (84 percent) during lease negotiations, mid-term renegotiations of leases are relatively rare. When they do happen, the most common triggers are changes in needed space (92 percent), followed by condition of the leased facility (73 percent) and changes in appropriations (65 percent). The respondent for one state commented that it renegotiated leases for changes in market conditions when directed by its governor; it did so for all leases. The most recent application of this was during the great recession.

Results show that 73 percent of respondents indicated that space is a factor in lease renewals. Others expressed the opinion that it makes little sense to rebuild a space once an agency is already an occupant. Still for others, space standards are crafted as statewide policies in state administrative manuals. Several states review space needs against staffing changes to determine if the square footage per employee falls within their guidelines. One respondent reported that agencies must justify space needs according to a statewide formula, and lease renegotiations must meet their new standard or the agency must justify it cannot meet the new standard.

When asked about tools, 68 percent of respondents do not use lease charters or consultations as part of the lease renewal process. Some use the same approach for renewals as for new leases. Some ask agencies to verify square footage and space needs with a lease requisition form.

Use of a form or standardized basic terms and conditions are considered important to securing favorable rates and terms at the time of lease renewal by 85 percent of survey participants. A boilerplate and accompanying guidelines allow all involved in negotiations to know the rules in advance and reduces negotiating “after the fact.” For the majority of respondents (88 percent),

multiple factors influence the rate and terms of a renewed lease. Most commonly cited factors include market rates, agency budget considerations, existing rate, condition of the facility and whether any improvements, maintenance or upgrades are required, the nature of and need for tenant improvements, changes in square footage requirements and the overall mandate for space, as exemplified in these responses:

- “If there is justification to ask for lease reduction we will. If not we will pay a lease increase in order to keep the landlord profitable. We need him in a positive cash flow in order to care for the building we lease.”
- “Typically we have been negotiating lease rates at a 15 percent reduction — however, depending upon the current rate, the improvements that are needed, the agency requirements and the market conditions, the rates may vary.”
- “We attempt to renegotiate under the same terms and conditions; if the landlord seeks to modify those, we require advertisements and solicitations for new space.”
- “It can only really depend upon market rate, your options and costs to go elsewhere and the landlord’s ability — real or perceived — to lease the space if you leave.”
- “Market rates, agency budget considerations, building owner’s goal and expectations. Every lease renewal is negotiated on a case-by-case basis.”

Thus, while a standardized approach and template facilitate negotiations, each lease renewal is unique.

The complexities of lease renewals may contribute to respondents saying they would retain a private brokerage or real estate firm to assist with certain processes. Further, 100 percent of survey respondents would use a brokerage or real estate firm for acquisition of new leased space and 79 percent would engage the services of a broker or real estate agent for renegotiation of lease terms. Two states already have provisions in place to do this. Another is working on a procedure to do so. Still others use the services of a broker or real estate agent on long-term and/or large leases. Some who have used private brokerage services report that the costs for renewal or acquisition of new space would increase. The respondent for one state reports having used a private brokerage service but found it lacking customer service and follow-up.

The majority (88 percent) of respondents negotiate renewals prior to lease expiration. Those who do not typically continue leasing on a month-by-month basis with the same terms of the expiring lease. Some states (42 percent) do not place a limit on this month-to-month lease, while others limit its application from six to 12 months, depending on the state.

States were asked to describe a procedural change that contributed to an improved lease renewal process. These changes include:

- “In order to decrease the amount of time from space request to closeout, we have implemented a space request closing timeline that outlines the step-by-step process and respective time to complete.”
- “In 2009, we moved to an all-inclusive lease, this reduced the need for agencies to review numerous utility and other services bills, the Lessor calculates into the lease all costs of operation and we process one rent payment per month using ACH ... no more paper warrants.”
- “Requiring agencies to do a total cost benefit analysis (hard costs — rent and soft costs — moving, phone, etc.) to determine if staying in place is really the best financial decision.”

- “Partially automated renewal document processing.”
- “Requiring state tenants to use the services of a tenant broker.”
- “We have become much more proactive in communicating our progress with tenant agencies.”
- “The management analyst for the department is contacted to assure funding.”
- “Forcing agencies to think about and commit to renewals with sufficient time remaining so the owner takes us seriously about relocating ... with insufficient time remaining, the owner knows we could not relocate before a lease expires.”
- “The majority of our leases have an automatic annual renewal clause.”

Some common themes among respondents are:

- **Planning** – being proactive about lease renewal requirements, needs and negotiations.
- **Communicating and building capacity** – providing training so agencies understand and use a renewal process.
- **Context** – understanding the authorizing mandate, agency needs and financial conditions, and motivations of owners.

As stated by one respondent, “Lease renewals are normally an opportunity for everyone to save money and continue an advantageous relationship when public facilities are not available.”

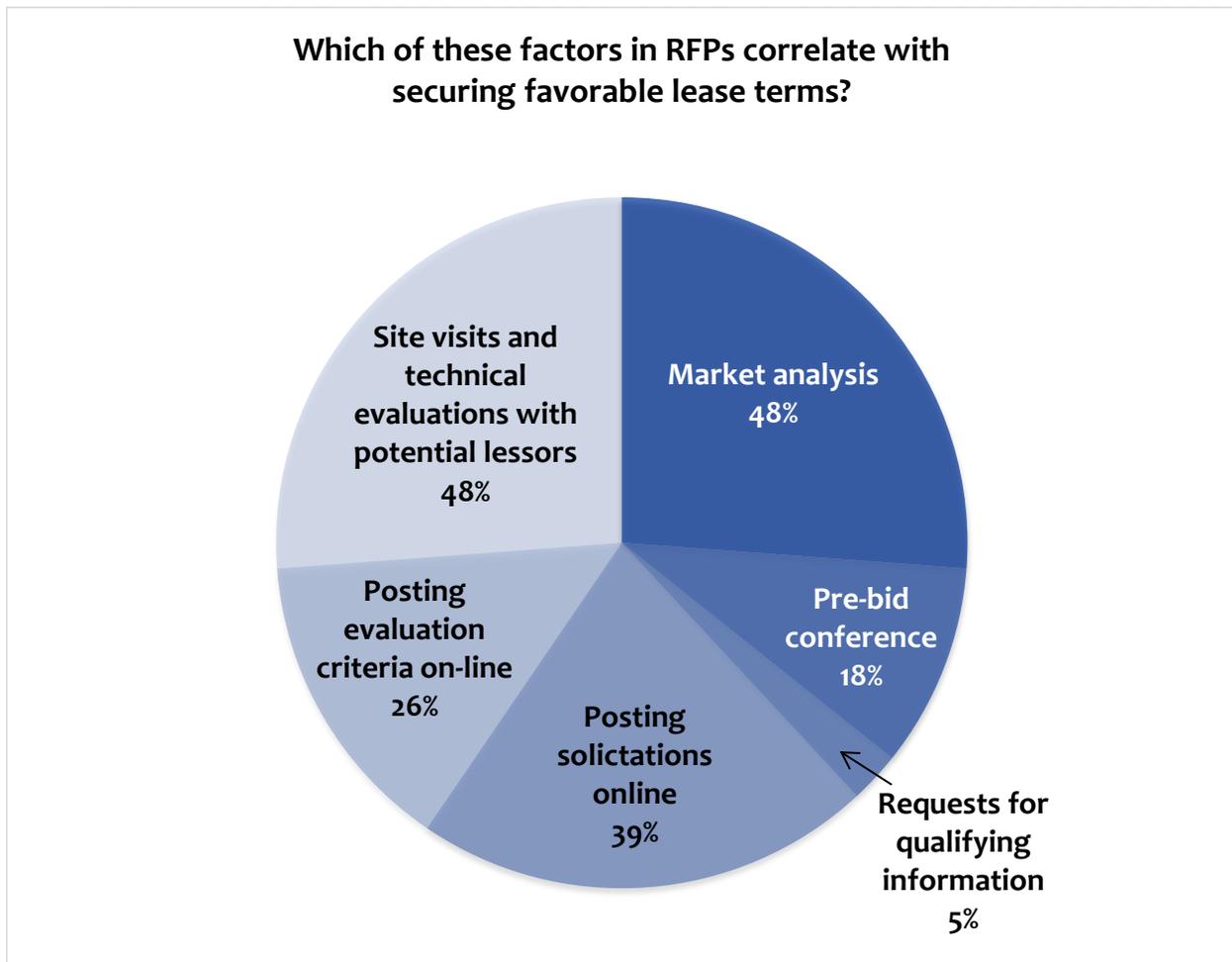
## SOLICITATION PRACTICES

Solicitation is the process of seeking new space to house state agency operations and staff. Solicitation tools include market searches and RFPs.

The final section of the national survey addressed RFPs and other approaches for soliciting space to house state agencies, programs and operations. The first set of questions asked broadly:

- **Do you issue RFPs for all leased space requests?**  
54 percent said no, 35 percent said yes and 12 percent said not for all because some agencies have delegated or statutory authority to pursue their own leases.
- **Is your process for issuing RFPs the same for all types of facilities?**  
65 percent said yes.
- **Are RFPs an effective tool for securing competitive lease rates?**  
86 percent agree.

When asked to correlate factors with the ability to secure favorable lease terms, most respondents ranked market analysis (48 percent) and site visits with technical evaluations with potential lessors (48 percent) as most strongly correlated, followed by posting solicitations online (39 percent). The factor with the weakest correlation is requests for qualifying information (5 percent).



Respondent comments include:

- “We strive to maximize competition which is the most important factor in securing favorable lease terms.”
- “The public competition, in and of itself, provides favorable terms. The current real estate market is still a buyer’s market at this time — the competition has driven rates down.”
- “Site visits are conducted at the end of the bidding process to help determine the top three bidders.”
- “We have a weighted ranging system which evaluates a variety of leases, costs, as well as location, condition of the building, etc.”

When asked what steps they have taken to improve requests for proposals, respondents for several states indicated they are currently evaluating or revising their RFP processes. Others described various improvements, including:

- “Shorten the boilerplate and standardize the form.”
- “Post solicitations on the web.”
- “Consistency.”
- “Making generic types of RFPS that fit different situations.”
- “Minimize parochial concerns and maximize competition.”
- “Provide more detailed specifications required of the space. Tenant Improvement (TI) allowances are often proposed with leases; the difficult part is comparing “apples to apples.” While a property owner might provide over \$20 per square foot (PSF) in TI, the space may really need \$35 PSF. In these instances, it is difficult to compare without doing a full cost analysis of each property. Disclosing as many specifications as possible on the front end, the knowledge helps formulate a more solid price without a built-in allowance.”
- “Added a requirement that has proposers show the cost of upgrading to meet state space standards and what the difference in rent will be.”
- “Meeting with the agency to evaluate space needs and to apprise them how their facility choices will impact their facility cost.”

The final survey question asked agencies to share closing comments about RFPs and solicitations in broad terms. The respondent for one state indicated that its RFP solicitations to the market are handled by a broker. Another wrote, “Although we are not bound by our state’s procurement code, we attempt to adhere to its tenants to provide a level playing field to maximize competition in a transparent process for the benefit of all — the private and public sectors.”

## CONCLUSIONS

The Real Estate Leasing Policies Survey was conducted over a six-week period in early 2014. There were 43 responses from all regions of the United States: the Northeast, Southeast, Great Plains and West Coast, including Hawaii and Alaska.

Most respondents indicated direct involvement in managing facilities and properties and in administering facilities leases. Respondent roles included facilities planner, facilities policy analyst, real estate broker and budget analyst. Several responded as tenant agencies in their respective states.

For most states, the recession of the mid-2000s presented opportunities to revisit real estate leasing policies. In one instance, real estate leasing policies and practices were consolidated in a central agency as part of a gubernatorial initiative to contain costs and reduce the physical footprint of leased facilities. In another instance, applying Lean analytics to leasing practices resulted in a 67 percent improvement in lease processing time and accuracy.

Those states with centralized real estate functions are able to execute real estate policies and practices — and engage the private real estate market — in ways that states with decentralized or hybrid functions cannot. Indeed, the authorizing environment for real estate functions is the genesis for the range of policies, procedures and practices documented in this report.

### Backfill

Most states describe a priority for filling state-owned space first. While states implement backfill policies differently, most agree that where agencies are compatible, backfill works well.

### Cancellation clauses

Policies and procedures related to cancellation clauses are correlated to the authorizing environment for real estate functions — how centralized or decentralized facilities management is. One state does not have an official policy for cancellations, but can cancel if it is within its rights of the lease terms. Another state has nonappropriation language in all its leases. Note on the following chart how authorizing environments relate to the number of cancellation tools available in a state.

Nebraska (centralized)	Arizona (decentralized)	Mississippi (hybrid)
1. A “no-cause” clause	1. Nonappropriation of funding; no penalty	1. Federal or state funding reduction
2. A nonappropriation clause		2. Ability to relocate to space in a state-owned building
3. Cancellation for default		
4. Lessor found guilty of criminal activity		

One state with a centralized facilities management structure has a unilateral right to terminate leases expressed in all lease contracts. Some states can cancel at-will while others require 30-day, 60-day or 90-day notification.

Each state respondent recognizes that cancelling a lease requires justification. Cancellation clauses are necessary to protect the state's interest, but must be exercised according to the established statutory or policy framework.

## **Lease renewals**

The majority of responding states begin lease renewal negotiations six months prior to the expiration date. Washington begins negotiations 24 months prior to lease expiration. Some states engage private-sector brokers in lease renewal activities, especially if that renewal may involve negotiating rates and terms and may result in looking for new space.

The majority of respondents address deferred maintenance issues and performance on corrective actions during renewal negotiations. A majority (73 percent) apply space standards during the renewal process.

A majority of respondents indicated that standardized basic terms and conditions are important to securing favorable rates and terms at the time of lease renewal. They recognize that consistency "allows everyone to know the rules in advance, and reduces negotiating 'after the fact.'"

## **Solicitations**

This survey focused on policies related to RFPs, although many respondents acknowledged the role that market searches play in soliciting space to house state agency operations, programs and staff.

Few states issue RFPs for all leased space requests. Results from this survey show that 86 percent of respondents see that RFPs are effective tools for ensuring that tenants receive competitive rates. Many states have recently updated their RFP processes and tools, and are streamlining steps, editing documents and updating formats for clarity.