

SLGLLM Committee Questions for Department of General Services (DGS) with follow-up questions produced at/after meeting 04/05/2022

1. How are licensees selected from a group of bidders? Do you have to select the highest bid, or the best qualified applicant? And if the latter, how is that determined?

The State has a sole sourcing policy and in order to select a successful bidder the RFP must provide a scoring criterion and the best score is the successful bidder.

Follow-up Questions:

- What are the scoring criteria? *The scoring must be developed for each lease.*
 - How can we avoid “cherry-picking” a bidder? Include guidance to avoid these situations as much as possible. *If the RFP is written appropriately we usually obtain 2 or 3 qualified people*
 - Does the contract scoring process consider past contracts with a given grazier? That is, if there is a “bad actor” that did not comply with the requirements of a grazing license, will that be considered in the assessment of their applications for future grazing contracts? *Yes if a successful bidder has not complied with the lease terms and not a good actor we can reject their bid on future projects.*
 - How are license fees calculated? Are they based on the contract length, Animal Unit Months (AUMs) utilized (with a maximum AUM designated for dry, average, or above average rainfall years), or other? *All of these items are considered due to the range of sites*
 - On a related note, many contracts have a ± 2 week turn on/off date; is that the most flexibility that can be accommodated?
 - A month would be much more realistic, particularly with increasing fluctuations in inter- and intra-annual variability in rainfall and range conditions; in fact, a turn on/off date based on rainfall, productivity, and/or range condition would be even more realistic. Can anything like that be accommodated in a grazing license contract? (note, we understand that hunting date ranges are inflexible, so the flexibility, *We can give flexibility because of the diversity in sites some are very wet and should not be grazed for months*
- 2. Are turn on/off dates required to be ground-truthed to check range condition to ensure goals are being met? E.g., to ensure fine fuels levels (e.g. residual dry matter) are within a pre-determined range/goal? *This is usually completed by an environmentalist***

3. Can 5-year leases be renewed or extended, and if so, under what conditions/caveats?

DGS utilizes the Government Code under section 14670 to write leases. This code provides for a 5 year term to coincide with the 5 year plan for the agencies. This code does not provide for options to extend the term of the lease. A new lease can be written under the same code for another 5 years.

Follow-up Questions:

- When we [Kristina Wolf, Board staff with Tony Psihopaidas, DGS Program Director] spoke, there was mention of the possibility of an extension in 5-year increments for up to 20 years total if both parties were in compliance with the license agreement. In what context does this apply, or not apply? This is addressed in SAM and recently changed. If the site goes through the RFP process and the successful bidder pays his rent and complies with the terms and conditions of the lease we can offer a 5 year extension for only 3 times. Then it must be bid again

- *It sounds like a 5-year term is the maximum. Is there anything that allows for a first right of refusal for the tenant if both parties agree at the end of the contract term, or does it have to go back out for an RFP I previously answered this*
- *Livestock feed (forage) needs to be lined up 6–12 months in advance, so the lessee would need to know far enough in advance to plan for that. How is that navigated in terms of the timeline for extensions or contract awards? That is, how far in advance does notification occur that the license has been awarded, and does it accommodate this 6–12 month timeframe? The lease can provide for a 6 month notice*
 - *Further, how much notice is given if the license is NOT going to be renewed? The lease provides for the notice period*

4. Is there ever an option to extend a license by one year (or more) due to severe drought or fire, and if so and there is non-use (in the interest of the land) by the lessee, do they still have to pay for that year?

This practice has not been employed during my tenure of 20 years. This would be a legal question at the time.

Follow-up Questions:

- *Is there any way to address this question hypothetically, to provide an example of the considerations and processes that would need to be followed in such a case? At this point in time the lease term cannot be extended past the 5 years unless we are employing the SAM for another 5 year extension. Rent must be paid during the entire term and if he wants out of rental payments he must terminate the lease. This issue was vetted very well during COVID. Businesses on state ground were closed by the Governor without compensation.*
- *In the US Forest Service, grazing permits allow for up to 3 sequential years of non-use, generally done for the benefit of the resource (e.g., drought, fire, etc. such that grazing would potentially have detrimental effects for a period of time), at the request of the permittee. This time can be recuperated by tacking it on at the end of the contract date. Could something like this be accommodated, with some kind of decision-making framework (based on biological status, range condition, rainfall, etc.) that would assist licensees and managers to assess if/when this should occur? The state does not employ this type of variant.*

5. Can existing licenses and management plans be changed to, e.g., shift from set stocking rates and rotation schedules to assessment criteria that focus on the outcomes/effects of grazing?

This type of change would require a lease amendment and be approved by both parties.

6. Can the licensee be given credits against the license fees for work? i.e., Fee-for-service, or value of services rendered, in lieu or partial lieu of payment? This was brought up because many sheep and goat graziers are contract graziers, providing a fee-for-service; whereas, cattle graziers are often paying to graze the land.

This is a sensitive area when it comes to off setting rents or more commonly known as in-lieu benefits. The benefits must be quantified, and a justification must be sent to DGS for review and if approved in-lieu benefit can be applied. This needs to be done at the inception of the lease.

Follow-up Questions:

- *Is there any way to address this question hypothetically, to provide an example of the considerations and processes that would need to be followed in such a case? This cannot be done hypothetically because we need to review the in-lieu benefits to make such a determination*

- *Has this been done in the past, and can you provide any examples? This has not been done in grazing leases*
- *Can permanent improvements made by the licensee be credited toward fees? Any improvements temporary or permanent must be something the state would have needed for the site and was willing to pay for. I cannot see an example of a permanent improvement the state would construct on a grazing site as the tenant is responsible for any improvements for the operation.*

7. Related to above: Can you provide clarification on the possessory use tax, which applies if you are licensing the ground to graze, but does NOT apply if This is more of a fee-for-service situation?

A lease can trigger a possessory interest tax by the county of jurisdiction whether it is a fee or service or not. This question should be asked to the county. We at the state cannot regulate the taxation in the lease.

Follow-up Questions:

- *So at the State level, any potential taxes associated with the license will NOT be stated in the license contract, is that correct? There is a clause in the lease stating this lease may cause a possessory interest tax and the tenant will be responsible for payment of said tax.*
- *In federal grazing leases, and associated RFPs, possessory use tax is addressed; do you know why it is not at the State level? Possessory taxes are assessed by the counties. The state gives all the counties information on all of the state owned leases every year.*
- *If the licensee does NOT have exclusive right of possession (as is often the case on State lands), why/when WOULD a possessory-use tax actually be levied? That is a question for the county*

8. Are licensees able to utilize NRCS to make capital improvements? (i.e., via EQIP, CSP programs?)

There is a question that because this would be state lands that licensees cannot access federal funds for capital improvements. I do not have an answer to this question as Federal programs have a significant amount of rule and regulations for federal funds.

- a. **If yes, they can utilize federal funds, would that then authorize federal agencies to come onto the land during the project? Would DGS have an issue with supervision rights on state ground in that case?**

A right of entry or license agreement would need to be written for this purpose and it would be dependent on how restrictive the conditions of use are in their contract.

Follow-up Questions:

- *It sounds like the answer to this is no, and that a licensee on a State parcel could NOT utilize federal funds for capital improvements. Is that interpretation correct, and if so, in what case would the answer to 1.a (above) apply? I would not say no, if a tenant wanted to use Federal funds the state would need to review what strings are attached to the funding. The State would not give up control and possession if that was one of the conditions.*

9. What does DGS think of the license outline?

The outline covers many of the issues needed to be included in a comprehensive lease or license agreement for the purpose of grazing. The cattlemen's association is very familiar with prescriptive grazing and land conservation methods which makes their members very good tenants.

10. What are the "thorniest" issues DGS encounters with such licenses?

The agreements need to be written with very strict terms and conditions regarding animal husbandry, fencing, water, salt licks, ground preservation, animal waste management, death of animal management etc. Non-compliance with the terms and conditions such as fencing which is not maintained allowing cattle to roam onto local streets is a serious liability situation.

Follow-up Questions:

- Does DGS have any boilerplate language that describes codes for fencing? That is, to what level must fencing be maintained, and are there clear definitions for who is responsible for maintenance (labor, cost, materials, and who is responsible for each)? The state does not have codes for fencing we just say the tenant is responsible for installing, maintaining, paying for any needed fencing.