



STATE OF WISCONSIN
Department of Employee Trust Funds
Robert J. Conlin
SECRETARY

801 W Badger Road
PO Box 7931
Madison WI 53707-7931

1-877-533-5020 (toll free)
Fax (608) 267-4549
<http://etf.wi.gov>

CORRESPONDENCE MEMORANDUM

DATE: February 8, 2013
TO: Budget and Operations Committee,
Employee Trust Funds Board
FROM: David H. Nispel
SUBJECT: Master Lease for TIM Funding

I am writing as a follow-up to meetings with Deputy Secretary Rob Marchant regarding this matter. I was asked to prepare a memorandum for the Budget and Operations Committee to explain the Wisconsin Master Lease Program and address potential legal concerns about using the Master Lease Program to fund the Department of Employee Trust Funds' (ETF) Transformation, Integration and Modernization (TIM) initiative since the funds for this initiative would be drawn from the Public Employee Trust Fund.

My research and analysis lead me to the conclusions that there is no legal reason not to proceed with using the Master Lease Program for this purpose and that case law concerning legislative and executive branch use of Trust Fund dollars are not applicable to this matter. I believe using the Master Lease Program and Trust Fund dollars to fund the TIM initiative is appropriate.

Master Lease Program: A Description and Application to TIM

The Wisconsin Master Lease Program is an agreement entered into by the Department of Administration (DOA) on behalf of state agencies to obtain property or services and for which DOA makes periodic payments to the other party to the agreement. The program, which began in 1992, is a capital lease/lease purchase agreement for capitalized assets.

The Master Lease Program is available for financing equipment and intangibles associated with the purchased equipment. The program also finances IT systems development projects, such as ETF's TIM initiative. If this program was used for TIM, ETF would work with DOA and its Division of Enterprise Technology and Capital Finance Office.

Reviewed and approved by Robert J. Conlin, Secretary

Electronically Signed 2/14/13

Board	Mtg Date	Item #
BUD	3.7.13	3A

Among the documents required under this program are: 1) a schedule of deliverables; 2) a risk identification and mitigation plan; and 3) a detailed business case justification/business drivers/benefits enumeration/return on investment.

The payment terms of the Master Lease Program cannot exceed the expected useful life of the financed equipment or asset. The interest rate charged under the Master Lease Program is very low, which is one of the principal attractive features of this program. Lease payments are made to US Bank, which is the trustee under this program. Lease payments are made from an account identified by the agency on the "Request For Use and Approval" form as the appropriation from which all payments will be made.

It appears that Section 20.515 (1) (t), Wis. Stats., is the most appropriate ETF account for funding TIM under the Master Lease Program. That provision allows for appropriations to "fund the design and implementation of an automated operating system."

Leasing is an advantageous financing option for TIM for several reasons: 1) the costs for the equipment acquisitions are spread over the expected useful life of the equipment or asset; 2) leasing addresses unanticipated or large one-time purchases; and 3) financing costs can be matched to depreciation or the replacement cycle of the equipment or asset.

The Master Lease Program is a favorable approach for ETF's TIM initiative for several other reasons including the following: 1) the program is centralized and requires minimal paperwork by the agency; 2) the legal documents contain provisions that are allowed by Wisconsin Statutes; 3) the program has security features that result in receiving competitive rates; and 4) prepayments may occur at any time without penalty.

Master Lease Program: Procedures

The principal procedures for using the Master Lease Program are as follows:

- Complete the program's "Request for Use and Approval" form (attached) (the proposed funding source must be identified (GPR, SEG, other))
- Send the completed form to DOA's Capital Finance Office
- DOA approves or denies the request to use the program
- Prepare the Master Lease Purchase Order
- Process invoices for Master Lease Payment (complete "Notice of Equipment Acceptance" form - attached)
- Semi-annual lease payments are made (automatically deducted from the agency's identified appropriation)
- Changes to the payment appropriation must be approved by the program

Any Legal Concerns Using Master Lease Program

As noted above, my research and analysis lead me to the conclusions that there is no legal reason not to proceed with using the Master Lease Program for this purpose and previous cases concerning legislative and executive branch use of Trust Fund dollars are not applicable to this matter. Those cases primarily focus on issues involving unconstitutional taking of property, impairment of contract, usurping the ETF Board's authority, and a Wisconsin Retirement System participant's property interest in his or her annuity or individual account. In my opinion, those issues do not exist in a situation where ETF utilizes the Master Lease Program to fund the TIM initiative.

By taking this action, ETF would be properly exercising its authority and responsibility under Section 40.01, Wis. Stats., which in applicable part provides that: "The public employee trust fund is a public trust and shall be managed, administered, invested and otherwise dealt with solely for the purpose of ensuring the fulfillment at the lowest possible cost of the benefit commitments to participants, as set forth in this chapter, and shall not be used for any other purpose." The TIM initiative certainly satisfies that statutory requirement.

I do not believe that, by utilizing the Master Lease Program to fund the TIM initiative, ETF will be setting a precedent that will allow DOA to use that program to obtain access to the Public Employee Trust Fund without ETF's consent. The Master Lease Program is available to agencies as a financing mechanism, but is not a required financing tool. It is the agency which files a 'Request for Use and Approval' form with DOA in order to use the program and it is the agency which identifies the proposed funding source (GPR, SEG or other). Also, the "Notice of Equipment Acceptance" form must be filed with DOA by the agency in order for payment to be issued. Finally, I believe that existing case law would support ETF's defense of the Trust Fund in resisting any access without our consent.

I will be at the Committee meeting to answer any questions.

Attachments: A) Request for Use and Approval
B) Notice of Equipment Acceptance

**Master Lease Program
 REQUEST FOR USE & APPROVAL**

Request Date												
Requesting Agency						Program Name						
Division / Bureau						Contact Person						
Agency Address Zip & 4						Phone No. ()						
						Fax No. ()						
Equipment to be Financed						Use / Purpose of Equipment						
Total Amount of Equipment				Amount (if any) to be paid up front								
Proposed Vendor(s)						Proposed Delivery Date						
Master Lease Purchase Order Number(s)						Proposed Acceptance Date						
Requested Payment Period In Number of Years						Are anticipated lease payments part of base budget? <input type="checkbox"/> No <input type="checkbox"/> Yes						
Preferred Starting Date Feb 1, 19 _____ OR Aug 1, 19 _____			Final Payment Date Feb 1, 19 _____ OR Aug 1, 19 _____			Proposed Funding Source <input type="checkbox"/> GPR <input type="checkbox"/> SEG <input type="checkbox"/> Leg Other _____						
						Proposed Statutory Appropriation for lease payments: <input type="checkbox"/> Alternative Financing Options attached						
WiSMART Accounting Codes (from which lease payment will be made)		Agy.	Org.	Sub Org	App r	Actv.	Obj.	Sub. Obj.	Rptg. Cat.	Proj #	FY	\$ Amount OR %
If different from contact listed above, person to receive Updated Lease Schedules.		Name				Phone No.				Fax No.		
FOR DOA USE ONLY											Special Conditions	
Master Lease Program Approval						Date						
State Budget Analyst Approval						Date						
DOA Secretary's Office Preliminary Approval						Date						

Master Lease Program NOTICE OF EQUIPMENT ACCEPTANCE

Date	This Notice and ORIGINAL invoice (s) must be returned to the Master Lease Program for payment to be issued.
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Agency	Division / Bureau
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Vendor	Master Lease Purchase Order No.
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Invoice Number(s)

Equipment <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>

The equipment listed above has been delivered, installed according and accepted to agency specifications. The Department of Administration is advised that corresponding invoices can be paid.

Agency Authorized Representative

Type or Print Name

Title

Signature

Date