

Developing laboratory space for biotechs

BY JOHN H. CUNNINGHAM, KENNETH R. MEADE AND STEVEN S. SNIDER

Hale and Dorr LLP

CAMBRIDGE
KNOWLEDGE, PERSISTENCE AND INTEGRITY

WHEN DEVELOPING laboratory space, there are myriad issues that a life sciences company faces, especially in today's real estate market which is rife with high vacancy rates and landlords hunting desperately for tenants.

Below are several key factors for biotechs to consider when seeking space, including possible layout conundrums, environmental and permitting matters, and various leasing and business issues.

DESIGN

A build-to-suit space offers the most flexibility in creating the optimal lab facility, provided the tenant has sufficient time and financial wherewithal. But given the need for funds for their core businesses, few life science companies desire to buy these buildings.

Instead, they seek landlords who understand the life science industry, the stages of product development, and the cost of developing lab space. Designing, permitting and constructing a build-to-suit can take between 18 and 24 months, depending on the jurisdiction and complexity of the lab space requirement.

To avoid significant development delays, many life science companies lease space in existing buildings, with landlords attempting to secure lab users for their buildings, whether their space is appropriate or not. Therefore, potential tenants must quickly evaluate the characteristics of each potential building to verify its true suitability.

Single-story buildings are perceived to be the best fit for laboratory space in this region. However, mid-rise buildings are the norm around the country and are a growing trend here due to land coverage and density

requirements. Floor-to-deck clear heights determine the interstitial space critical to a laboratory's unique mechanical requirements, a primary consideration in any building and a drawback to those not specifically designed for lab use. Other considerations include structural capacities, HVAC systems, column spacing, building configuration, access to loading docks, and above- and below-ground utilities.

Often, modifications necessary to accommodate lab space in an existing building require a site plan modification to satisfy new building codes and significant structural changes to address parking, sprinkler systems, ADA requirements, environmental matters and roof screening issues. In certain jurisdictions, addressing these issues can take as long as developing a build-to-suit. Thus, beware: while a building may already exist and meet the fundamental criteria to accommodate lab use, addressing these additional issues can seriously affect the timing of delivery of the lab space.

ENVIRONMENTAL AND PERMITTING ISSUES

These must also be considered at an early stage for build-out purposes to make sure sufficient time is built into the process for getting required permits and approvals.

Certain equipment to be located in a laboratory may require federal, state and/or local air permits. For example, air permits may be needed for lab hoods or on-site power generation, whether primary power or emergency back-up power sources. Air permitting requirements vary according to location, the type of pollutants to be emitted, and the size of the operation. While air permitting for these facilities will likely be subject to the jurisdiction of state

agencies, unique federal and/or local requirements may apply. Even if the level of air emissions from the lab operations is not significant enough to require that add-on pollution control equipment be installed, significant time may be required to obtain air permits. In most cases, construction of air emission sources may not begin until the requisite permits have been issued.

Permits and licenses may also be required from the local sewage treatment plant to discharge wastewater from the facility, including for sinks around the research and development and production areas, as well as non-contact cooling water and boiler blowdown from heating/cooling systems. The evaluation of wastewater discharges must begin with the type of limits and requirements that will be established by the local sewage treatment plant. Based on that evaluation, a tenant has to then determine whether it will need to install an on-site pre-treatment or neutralization system, and also whether it must install monitoring access points within the building.

If the laboratory facility will use either radioactive materials or sealed sources and devices (i.e., gauges or monitors) that contain radioactive materials, it will likely need one or more licenses. While the Nuclear Regulatory Commission has delegated the authority to issue these licenses to most states, there are certain states that don't have this authority. In these states, a facility may be subject to dual license programs.

The management and disposal of hazardous materials—including raw materials, fuel for power sources, infectious/medical/biological agents, and waste that may be considered hazardous

under federal and/or state laws—must also be considered. Applicable federal, state and local rules will likely contain design standards or requirements that dictate where and in what amounts these materials can be stored and managed.

LEASING/BUSINESS MATTERS

The real estate business is fraught with significant risks. As a result, a life sciences company should focus on limiting its financial exposure in developing lab space by transferring as much of the real estate risk as possible to the landlord or lender. This can be accomplished by limiting security deposits, non-recourse or limited recourse provisions in leases and/or loan documents, retaining the ability to sublease (and retain the profits from) any unused portion of the lab space, staged increases in rent payments to conform with the product development cycle and, possibly, issuing warrants to the landlord in lieu of a portion of the rent.

Cash is a precious commodity to a life sciences company. In light of current vacancy levels, tenants are a precious commodity to landlords. Life sciences companies should take advantage of this period in the real estate cycle to develop new lab space, provided they have carefully addressed the issues they face in doing so. ■

John H. Cunningham (jcunningham@cambridgeus.com) is the president of Cambridge Development Group.

Kenneth R. Meade (ken.meade@haleanddorr.com) and Steven S. Snider (steven.snider@haleanddorr.com) are both senior partners of Hale and Dorr LLP.

AS SEEN IN THE WASHINGTON BUSINESS JOURNAL ADVERTISING SUPPLEMENT "THE BUSINESS OF BIOTECHNOLOGY" ON NOVEMBER 8, 2002