



Department of Defense INSTRUCTION

NUMBER 4165.71
January 6, 2005

USD(AT&L)

SUBJECT: Real Property Acquisition

References: (a) DoD Directive 4165.6, "Real Property," October 13, 2004
(b) DoD Directive 4275.5, "Acquisition and Management of Industrial Resources," October 6, 1980
(c) Joint Publication 1-02, "DOD Dictionary of Military and Associated Terms," current edition
(d) DoD Directive 5110.4, "Washington Headquarters Services (WHS)," October 19, 2001
(e) through (n), see enclosure 1

1. PURPOSE

This Instruction:

1.1. Implements policy and assigns responsibilities for the acquisition of real property under reference (a).

1.2. Redelegates various statutory and regulatory authorities and responsibilities relating to real property acquisition.

2. APPLICABILITY AND SCOPE

This Instruction applies to:

2.1. The Office of the Secretary of Defense, the Military Departments (including their Reserve components), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

2.2. All DoD real property holdings except:

2.2.1. Civil works projects (unless relating to mineral exploration and extraction).

2.2.2. The acquisition and management of defense industrial plants that are governed by DoD Directive 4275.5 (reference (b)).

3. DEFINITIONS

3.1. Terms used in this Instruction are defined in Joint Pub 1-02 (reference (c)).

3.2. Military Department. As used in this Instruction and in accordance with DoD Directive 5110.4 (reference (d)), for purposes of the Pentagon Reservation, Washington Headquarters Services shall be considered a Military Department and its Director shall be considered the Secretary thereof.

4. POLICY

This Instruction implements policy established by reference (a) with regard to the acquisition of real property.

5. RESPONSIBILITIES

Pursuant to reference (a):

5.1. The Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) shall establish overarching guidance and procedures regarding the acquisition of real property.

5.2. The Deputy Under Secretary of Defense (Installations and Environment):

5.2.1. Shall provide additional guidance and procedures for implementing DoD real property acquisition policy and this Instruction.

5.2.2. Is hereby delegated, with authority to re-delegate, all those authorities and responsibilities delegated or re-delegated, as the case may be, to the USD(AT&L) under subparagraph 5.1.3. of reference (a) that relate to the acquisition of real property.

5.3. The Heads of the DoD Components shall establish guidelines to prepare and communicate their requirements for real property acquisition to the supporting Military Department.

5.4. The Secretaries of the Military Departments shall:

5.4.1. Establish programs and procedures to acquire real property that conform with applicable law and to the policies, guidance, and procedures provided by and pursuant to reference (a) and this Instruction.

5.4.2. Perform all needed accounting functions, including recording acquisitions, dispositions, and associated depreciation expenses, in accordance with chapter 6 of Volume 4 of DoD 7000.14-R (reference (e)), to properly report real property on the audited financial statements applicable to their Department.

6. PROCEDURES

In addition to the requirements set by statute, the following guidance applies to acquiring real property:

6.1. Land Acquisition Approval. Proposals for the acquisition of 1,000 or more acres of land, or land with an estimated purchase price or annual lease price that exceeds \$1 million, must be approved by the USD(AT&L) prior to any public announcement, request for proposals, notice of intent to perform environmental analysis, request for legislation or budget line item, press release, or other official notice, in accordance with Secretary of Defense Memorandum (reference (f)).

6.1.1. Any such land acquisitions within the Washington D.C. area must be approved by the Secretary of Defense or the Deputy Secretary of Defense. For purposes of this requirement, the Washington D.C. area is defined as the geographic area that falls within 100 miles of the Pentagon.

6.1.2. National Guard land acquisitions federally funded in whole or in part are subject to the requirements of this paragraph 6.1.

6.1.3. Renewals of real property agreements such as existing leases, withdrawals, permits, or other use agreements (other than those at bases being closed or realigned) are not subject to the requirements of this paragraph 6.1.

6.1.4. For purposes of this paragraph 6.1.:

6.1.4.1. An acquisition includes purchase, withdrawal from public domain, lease, permit, or any other type of use agreement from individuals or governmental entities.

6.1.4.2. The acquisition value is calculated using the cost of the real property interest being acquired, without regard to offset by associated disposals.

6.1.4.3. Acquisition of real property includes acquisition of any interest in real property, including facilities.

6.2. Economic Analysis. An economic analysis, as prescribed by DoD Instruction 7041.3 (reference (g)), shall be used to help decide among the alternative methods to acquire real property.

6.3. Financial Accounting. Financial accounting for real property shall be in accordance with reference (e) to include the following:

6.3.1. Accounting for the full-cost value of assets acquired, and the asset category and type, using a full costing approach for the accumulation of all direct and indirect costs associated with the acquisition of land and/or real property structures.

6.3.2. Recording and maintaining financial and cost accounting records of the asset acquisition in accordance with accepted acquisition, receipt, policies, and practices for real property assets placed in service, for substantiating the original cost bases of the acquired property.

6.3.3. Prescribing the asset life cycle for the acquired asset based on established real property regulations and policies applicable for the functional or contractual use of the acquired property.

6.4. Location of New Real Property

6.4.1. When acquiring real property, the DoD Components shall comply with the provisions of Section 601 of the Rural Development Act of 1972 (reference (h)) and the General Services Administration's (GSA) implementing regulations and give first priority to the location of new offices and other facilities in rural areas.

6.4.2. When acquiring real property and facilities in urban areas, the DoD Components shall comply with the provisions of Executive Order 12072 (reference (i)), to conserve existing urban resources and encourage the development and redevelopment of cities.

6.4.3. When acquiring real property, the DoD Components shall comply with the provisions of Executive Order 13006 (reference (j)), to encourage the location of Federal facilities in U.S. central cities, provide leadership in the preservation of historic resources, and use space in suitable buildings of historic or cultural significance.

6.4.4. Suitability for enhanced security and force protection, reduced travel time for employees or business representatives, reduced transportation costs, environmental impact, or preference for single-unit offices over split locations near one another should be considered in evaluating potential real property acquisition locations.

6.5. Source of New Real Property. Before acquiring real property by purchase or lease, a DoD Component shall determine that the requirement cannot be satisfied by:

6.5.1. Excess, under-utilized, or otherwise available property held by other Military Departments or Federal Agencies.

6.5.2. Exercise of existing DoD authorities or those of the GSA for the exchange of DoD-controlled real property or surplus Federal property for privately-owned property.

6.5.3. Acquiring title to, or use of, State or local government real property by donation or use through long-term nominal cost lease.

6.6. Acquisition of New Real Property. Real property requirements that cannot be satisfied under the provisions of paragraph 6.5. shall be acquired by one of the following methods that will satisfy the DoD requirement economically with as little impact as practicable on the civilian economy:

6.6.1. Acquisition of Fee Title. Acquisition of fee title to real property, including all mineral rights and improvements, shall generally be considered in the best interest of the Government when:

6.6.1.1. The Government's requirement could not be reasonably met by acquiring a lesser interest. The advisability of acquiring fee title to property currently held under lease shall be studied in those instances where the cost to the Department of Defense of restoration or decontamination of the land exceeds the current fair market value.

6.6.1.2. A terminal date for the requirement is projected but the land would be used long enough so that any money spent for rentals and restoration would exceed 50 percent of the fair market value of the fee title.

6.6.1.3. The cost of acquiring a lesser interest approaches 75 percent of the current fair market value of the fee title, unless the requirement is of the type normally only acquired as an easement, such as roads or pipelines.

6.6.2. Leases

6.6.2.1. Leases should provide for the right of cancellation in whole or in part, at the option of the Government, giving the shortest possible notice to the lessor.

6.6.2.2. Leases shall be for "Government purposes" rather than for specific purposes (e.g., Defense-Naval-Flying-Reserve) whenever possible. If the Government plans to construct facilities, then the lease must address transfer of the facilities at the end of the lease, so as to avoid disposal issues.

6.6.2.3. Before a leasehold can be acquired, it must be shown that the activity to be accommodated is essential to an assigned mission and suitable Government-owned property is not available.

6.6.3. Withdrawal, Reservation, or Restriction of Public Land. Public domain lands may be withdrawn or reserved for specific military purposes pursuant to Sections 115 and 1714 of title 43, United States Code (U.S.C.) (reference (k)).

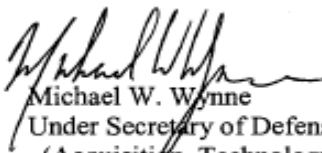
6.6.4. Encroachment Partnering Agreements. A Military Department may enter into an agreement with an eligible entity, as authorized and provided for by Section 2684a of title 10, U.S.C. (reference (l)), to address the use or development of real property in the vicinity of a military installation.

6.7. Force Protection. Regardless of acquisition strategy, the DoD Components shall apply antiterrorism standards pursuant to DoD Instruction 2000.16 (reference (m)) as a key consideration when evaluating the suitability of real property for Government acquisition.

6.8. Consultation. State, regional, and local officials at all levels shall be consulted early in the planning for real property acquisition and included in the real estate acquisition process in accordance with DoD Directive 4165.61 (reference (n)).

7. EFFECTIVE DATE

This Instruction is effective immediately.


Michael W. Wynne
Under Secretary of Defense
(Acquisition, Technology and Logistics)

Enclosures - 1

E1. References, continued

E1. ENCLOSURE 1

REFERENCES, continued

- (e) DoD 7000.14-R, "Department of Defense Financial Management Regulation," Volume 4, Chapter 6, current version
- (f) Secretary of Defense Memorandum, "Land Acquisition and Leasing of Office Space in the United States," November 17, 2002
- (g) DoD Instruction 7041.3, "Economic Analysis for Decisionmaking," November 7, 1995
- (h) Section 2204b-1 of title 7, United States Code
- (i) Executive Order 12072, "Federal Space Management," August 16, 1978
- (j) Executive Order 13006, "Locating Federal Facilities on Historic Properties in Our Nation's Central Cities," May 21, 1996
- (k) Sections 155 and 1714 of title 43, United States Code
- (l) Section 2684a of title 10, United States Code
- (m) DoD Instruction 2000.16, "DoD Antiterrorism Standards," June 14, 2001
- (n) DoD Directive 4165.61, "Intergovernmental Coordination of DoD Federal Development Programs and Activities," August 9, 1983