

CHAPTER 13

LEASE OF REAL PROPERTY FOR USE
BY THE DEPARTMENT OF THE NAVY

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CHAPTER 13

LEASE OF REAL PROPERTY FOR USE BY THE DEPARTMENT OF THE NAVY

SECTION I GENERAL

1. BACKGROUND, PURPOSE AND SCOPE

a. This chapter deals with the acquisition of real property for Navy use through a lease. A lease is "a contract for exclusive possession of lands, (or) tenements (improvements). . .for life, for term of years, at will, or any interest less than that of lessor, usually for a specified rent or compensation." (Black's Law Dictionary, Sixth Edition, 1991). Such contracts under which an ownership or other interest in real property is acquired are different from contracts for the procurement of goods and services and are treated differently under the law. For instance, the leasing of land is specifically exempt from the competitive requirements that apply to the procurement of goods and services under the provisions of [10 U.S.C. §2303](#). Conversely, the leasing of an entire building or space in buildings without particular reference to the land itself would likely fall under those competitive requirements.

b. This chapter also prescribes the authority, limitations, definitions, regulations and the operating procedures involved in the Department of the Navy's acquisition of real property for temporary use including the following:

(1) Assignment of general purpose space in urban centers from the General Services Administration (GSA) except in the National Capital Region, including the leasing of general purpose space through lease contracts acquired by GSA pursuant to Federal Management Regulation ([41 CFR Chapter 101-17](#));

(2) Direct leasing of general purpose space for terms of up to 20 years regardless of geographic location pursuant to and under the requirements of the Administrator of General Services' Delegation of Leasing Authority Memorandum to the Heads of Federal Agencies dated 25 September 1996, (Navy leases, however, are limited to one-year firm terms due to annual appropriations;

(3) Direct leasing of certain categories of space as more particularly described in Federal Management Regulation ([41 CFR Chapter 101-18](#));

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(4) Direct leasing of land authorized by [10 U.S.C. §2672 \(reference \(a\)\)](#);

(5) Direct leasing of family housing authorized by [10 U.S.C. §2828 \(reference \(b\)\)](#);

(6) Direct leasing of specified facilities authorized by [10 U.S.C. §2809 \(reference \(c\)\)](#);

(7) Direct leasing in foreign countries of structures and real property other than for military family housing purposes authorized by [10 U.S.C. §2675 \(reference \(d\)\)](#); and

(8) Direct leasing of facilities for reserve activities authorized by [10 U.S.C. §18233 \(reference \(e\)\)](#).

2. **REFERENCES**

- (a) [Title 10 U.S.C. §2672](#)
- (b) [Title 10 U.S.C. §2828](#)
- (c) [Title 10 U.S.C. §2809](#)
- (d) [Title 10 U.S.C. §2675](#)
- (e) [Title 10 U.S.C. §18233](#)
- (f) [Title 10 U.S.C. §2304](#)
- (g) [Federal Management Regulation \(41 CFR Chapter 102\)](#)
- (h) [48 CFR 570](#)
- (i) 63 Stat. 203 Reorganization Act of 20 June 1949
- (j) Reorganization Plan Number 18 of 1950
- (k) [Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 \(40 U.S.C §471 et seq.\)](#)
- (l) [Title 40 U.S.C. §606\(f\)](#)
- (m) [SECNAVINST 11011.47 of 20 June 1983](#)
- (n) [Title 10 U.S.C. §2662](#)
- (o) DOD Directive 4165.6 of 13 Oct 2004
- (p) [Title 10 U.S.C. §2303](#)
- (q) (Reserved)
- (r) NAVFACINST 11000.40 of 22 Oct 2003 Seismic Safety
- (s) [OPNAVINST 5530.14C, Navy Physical Security Manual](#)
- (t) [OPNAVINST 11010.20 F of 7 June 1996](#)
- (u) [Title 10 U.S.C. §2852](#)
- (v) [Title 10 U.S.C. §18239](#)
- (w) OMB Circular No. A-104
- (x) [DOD Instruction 7041.3 of 7 November 1995](#)

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- (y) [Public Building Act of 1959, as amended, 40 U.S.C. §601 et seq.](#)
- (z) [SECNAVINST 5910.7A](#)
- (aa) [10 U.S.C. §2805](#)
- (bb) [SECNAVINST 7000.21C of 10 November 1994](#)
- (cc) [Federal Acquisition Regulations \(FAR\) \(y\) 48 C.F.R. 570](#)
- (dd) [Title 40 U.S.C. §257 \(25 Stat. 357\) {40 U.S.C. 3113}](#)
- (ee) [Title 10 U.S.C. §2663](#)
- (ff) [NAVFAC P-930 Housing Manual](#)
- (gg) [Title 10 U.S.C. §2396](#)
- (hh) [Title 7 U.S.C §2204b-1, Rural Development Act, as amended](#)
- (ii) [SECDEF Memo of 17 Nov 2002](#)

3. **DEFINITIONS**

The following definitions are applicable to provisions of this Chapter:

a. Competitive Lease. "Competitive lease" is a lease that is entered into using full and open competition procedures as required under the provisions of [Title 10 U.S.C. §2304 \(reference \(f\)\)](#).

b. General Use Space. "General use space", as defined by [41 C.F.R. \(FMR\) 102-85.35 \(reference \(g\)\)](#), means all types of space other than warehouse, parking, or unique space as defined in the above reference. It includes office and office-related space such as files areas, libraries, meeting rooms, etc. It also includes storage space that contains different quality and finishes from typical general use space, but that is in a building where predominately general use space is located.

c. Lease. . A lease is "a contract for exclusive possession of lands, (or) tenements (improvements). . . for life, for term of years, at will, or any interest less than that of lessor, usually for a specified rent or compensation." (Black's Law Dictionary, Sixth Edition, 1991).

d. Space Assignment. "Space assignment" as defined by [41 C.F.R. \(FMR\) 102-85.35 \(reference \(g\)\)](#), means a transaction between GSA and a customer agency that results in the customer agency's right to occupy certain GSA-controlled space, usually in return for customer agency payments to GSA for the use of the space.

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e. Special Space. "Special space", as defined by [41 C.F.R. Chapter 102 \(FMR 102-85.35\) \(reference \(g\)\)](#), means space that has unusual architectural/construction features; requires high or low construction, maintenance, or operating costs as compared to office or storage space; or requires the installation of special equipment. See also FMR 102.73-175 for types of "special purpose space" leasing delegations to DOD.

f. Simplified Lease Acquisition Threshold (SLAT) means an average annual rent for the term of the lease, including option periods, not exceeding \$100,000 (not exceeding \$200,000 average annual rental for facilities supporting a contingency, peacekeeping or humanitarian operation), excluding the cost of operational services, such as heat, light, and janitorial services, whether such operational services are furnished by the lessor, the Government, or both.

g. Simplified Lease Acquisition Procedures. Subpart [48 CFR 570.2 of reference \(h\)](#) describes the procedures for awarding leases at or below the SLAT of \$100,000, including options.

h. Real Estate Contracting Officer (RECO) means a warranted individual authorized to enter into, modify, renew, or terminate real estate contracts. A RECO also performs, or is responsible for the performance by their authorized designees, of related duties including contract administration.

i. Administrative Contracting Officer (ACO) means a warranted individual at a Shore Activity authorized to perform real estate contracting functions related to post-award lease administration.

j. Lease Administrator means an unwarranted individual at a Shore Activity charged by the RECO with the administration of an awarded real estate lease, but not empowered to perform contracting functions.

4. DELEGATIONS OF AUTHORITY

a. Reorganization Plan Number 18. Prior to enactment of the Reorganization Act of 1949 (*reference (i)*) and the issuance of Reorganization Plan Number 18 effective 1 July 1950 (*reference (j)*), the Navy had exclusive responsibility for leasing. Section 1 of this plan effectively transferred to the Administrator of General Services all functions of the Navy with respect to the acquisition of space in buildings by lease. The Plan expressly excluded the following categories of space:

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(1) Space in buildings located in any foreign country;

(2) Space in buildings that are located on the grounds of any fort, camp, post, arsenal, navy yard, naval training station, airfield, proving ground, military supply depot, school, or any similar facility, of the Department of Defense, unless and to such extent as a permit for its use shall have been issued by the Secretary of Defense or his duly authorized representative;

(3) Space in other Government-owned buildings which the Administrator of General Services finds are wholly or predominantly utilized for the special purposes of the agency having the custody thereof, and are not generally suitable for the use of other agencies (including but not limited to hospitals, housing, laboratories, mints, manufacturing plants, and penal institutions) and space acquired by lease for such purposes." The Administrator was authorized to delegate to the heads of other departments or agencies of the Government the authority to perform any of the functions transferred to him by the plan. Further, the Administrator of General Services was authorized to perform all functions with respect to acquiring general-purpose space in buildings within the metropolitan areas of each of 128 selected cities, or urban areas. With the exception of specific delegations for certain projects, this situation remained until the Administrator delegated general leasing authority to the heads of federal agencies in 1996 as discussed in subparagraph b. below.

b. Delegation of Leasing Authority by General Services Administration. Pursuant to the authority vested in the Administrator of General Services by subsections 205(d) and 210(h)(1) of The Federal Property and Administrative Services Act of 1949, (reference (k)), the Acting Administrator of General Services, by letter dated 25 September 1996, delegated authority to the heads of all Federal agencies to perform all functions related to the leasing of general purpose space for a term of up to 20 years regardless of geographic location. This delegation of authority allows Federal agencies the option of either using GSA when a new lease is necessary or conducting lease procurement themselves. The delegation is in addition to other leasing delegations in Subchapter C (FMR 102-72.30) of the Federal Management Regulation (reference (g)), that covers "categorical" and "administrative contracting officer" delegations. The delegation is subject to the following conditions:

(1) Prior to instituting any action under the delegation, the appropriate GSA, Assistant Regional Administrator

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for Public Buildings Service (ARA/PBS) must be notified of the agency's need for general-purpose space and the agency's intent to exercise the delegated leasing authority. The agency may exercise this authority when the ARA/PBS determines that suitable Government-controlled space is not available to meet the agency's space needs.

(2) Before relocation of Government employees from GSA-controlled federally owned or leased space may take place, confirmation must be received from the appropriate ARA/PBS that suitable Government-controlled space cannot be provided.

(3) When the annual rental for the lease contract excluding service and utilities exceeds GSA prospectus-level, as adjusted annually in accordance with [40 U.S.C. §606\(f\) \(reference \(1\)\)](#), a prospectus must be approved by the Congressional Committees pursuant to the Public Buildings Act of 1959. GSA will prepare the prospectus in consultation with the agency.

(4) Redelelegation of the authority to lease may be made to officers, officials, and employees who have been adequately trained as lease contracting officers.

(5) Federal agencies must acquire and utilize the space in accordance with all applicable laws and regulations, including, but not limited to, the Competition in Contracting Act, Federal Management Regulation, Executive Order 12072, Executive Order 13006, Davis-Bacon Act, and GSA Acquisition Regulations.

(6) Agencies periodically provide GSA with leasing performance information.

Additional ground rules include:

-No GSA restrictions on size, cost, or type of space required.

-Lease procurements must be compatible with GSA community housing plans for new federal construction or any suitable space that will become available in federally-controlled facilities. GSA will advise the agency about any limiting factors such as length of lease term to ensure consistency with any community housing plans.

-Agencies need to notify GSA one year in advance of lease expiration so that GSA can review community housing plans

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to determine if suitable federally-controlled space is or will become available. If suitable space is available, GSA will assign it to the agency.

-Agencies will responsible for executing the lease, paying the rent and administering the contract.

c. Delegation of Authority to Commander, Naval Facilities Engineering Command. [SECNAVINST 11011.47 \(reference \(m\)\)](#) authorizes the Commander, Naval Facilities Engineering Command (NAVFACENGCOM) to perform or initiate all necessary action to acquire real property by lease, except Marine Corps leases for other than general purpose space, and thereafter renew, extend or otherwise administer such leases. As agreed to by the Commandant of the Marine Corps, NAVFACENGCOM will also perform or initiate all action to acquire real property for the Marine Corps by lease, and thereafter renew, extend or otherwise administer such leases. NAVFACENGCOM is authorized and directed to take all necessary action to acquire, administer, and release general-purpose space, except in the National Capital Region, in buildings controlled by the GSA, or required to be leased by the GSA. The national Capital Region is defined geographically as the geographic area that falls within 100 miles of the Pentagon. NAVFACENGCOM may take such actions when conditions and approvals indicated in subparagraphs (1) through (8) hereinafter are satisfied and are subject to the provisions of subparagraphs (9) through (11).

(1) Satisfy Navy policy conditions established in [paragraph 6](#). below.

(2) Obtain approval of the Commandant of the Marine Corps for all Marine Corps leases and acquisitions of general purpose space.

(3) Obtain approval of the installation, regional commander, and mission component command.

(4) Obtain approval of the Commander, Navy Installation Command (CNIC) for Navy leases where the annual rental exceeds the statutory reporting requirements of [10 U.S.C. §2662 \(reference \(n\)\)](#), or [10 U.S.C. §2828 \(reference \(b\)\)](#).

(5) Obtain the approval of the Deputy Assistant Secretary of the Navy (Installations and Facilities) for leases where the annual rental exceeds the statutory reporting requirements of [10 U.S.C. §§2662 \(reference \(n\)\)](#) or [10 U.S.C. §2828 \(reference \(b\)\)](#).

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(6) Make submission required by [Title 10 U.S.C. §2662 \(reference \(n\)\)](#). This applies also to space that GSA leases.

(7) Make submission required by [Title 10 U.S.C. §2828 \(reference \(b\)\)](#) for foreign leases that involve military family housing.

(8) The lease must provide for termination by the Government on notice not exceeding 90 days, unless the activity's mission component command approves otherwise.

(9) This delegation does not apply to leases made pursuant to [Title 10 U.S.C. §7572](#) that concerns provision of lodging accommodations for personnel on sea duty aboard ships where quarters have been rendered uninhabitable.

(10) The authority delegated to NAVFACENCOM herein will be exercised under the direction of the Chief of Naval Operations. For Marine Corps property NAVFACENCOM will exercise the authority in coordination with the Commandant of the Marine Corps.

(11) The authorities delegated herein may be redelegated with authority to further redelegate.

d. (1) Delegation of Authority to Facilities Engineering Commands (FECs). In accordance with the authority delegated to NAVFACENCOM as indicated above, authority is hereby redelegated to the Commander/Commanding Officer of Facilities Engineering Commands to take all actions necessary to consummate, modify, amend, renew, administer and terminate leases of real property, including leases for unaccompanied personnel quarters and family housing, and to take all actions to acquire, administer and release general purpose space (except general purpose space in the National Capital Region) in buildings controlled by GSA. The authority delegated herein may be redelegated.

(2) Delegation of Authority to Specified Facilities Engineering Commands to Approve other Than Competitive Procedures for Leasing of Facilities. NAVFACENCOM has delegated authority to approve other than competitive procedures for leases not exceeding \$75 million to the Commanders, Atlantic and Pacific Facilities Engineering Commands.

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5. DEPARTMENT OF DEFENSE CRITERIA

a. The Department of the Navy uses, whenever practicable, government-owned or controlled property rather than leased property. Therefore, all suitable and available government-owned real property, including property of the Department of the Navy, Army, and Air Force and other government agencies shall be surveyed to determine whether such property can be used rather than leased property.

b. 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.

c. When in the best interest of the Government, leases shall be for "Government purposes" rather than for specific purposes (e.g., Defense, Naval, Flying, Reserve).

d. Desirability of an urban location, reduced travel time for employees or business representatives, reduced transportation costs, environmental impact, or desirability of single unit offices over split locations near one another should be considered in evaluating facility acquisition strategies.

e. Before a leasehold can be acquired, it must be shown that the activity to be accommodated is essential to an assigned mission. (See reference (ii)).

f. (1) The Secretary of Defense (SECDEF) by a Memorandum dated 17 November 2002, revised, expanded, and superceded the existing land moratorium policy issued by the Deputy Secretary of Defense (DEPSECDEF) in memoranda dated 13 September 1990, and 1 December 1994. Accordingly, no major land acquisition proposals within the Washington, DC area may be made public through (1) a request for proposals; or (2) a notice of intent to perform environmental analysis; or (3) request for legislation or budget line item; or (4) press release; or (5) other official notice without the approval of the SECDEF or the DEPSECDEF. All previously approved or announced major land acquisitions within the Washington, DC area for which binding documents have not been executed, as of 17 November 2002, may not proceed until approved by the SECDEF or the DEPSECDEF, after review by the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD (AT&L)). In addition, no major land acquisition proposals outside the Washington, DC area may be made public, in the manner stated above, without the approval of the USD (AT&L).

(2) Additionally, no proposals for relocating into
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or within the Washington, DC area that exceed \$500,000 in relocation costs may be made public in the manner stated above without approval by the SECDEF or the DEPSECDEF. All previously approved or announced relocations that have not occurred as of 17 November 2002 may not proceed until approved by the SECDEF or the DEPSECDEF, after review by the USD (AT&L).

(3) The memorandum defines a major land acquisition as the purchase, withdrawal from public domain, lease or permit from individuals or government entities, or any other type of use agreement involving more than 1,000 acres, or land whose estimated purchase price or annual lease price exceeds \$1,000,000. The Washington, DC area is defined generally as the geographic area within 100 miles of the Pentagon.

(4) Exceptions. By memorandum dated 28 Jul 2005, the Under Secretary of Defense stated that the acquisition of a negative, non-possessory easement pursuant to 10 USC §2684a does not constitute a major land acquisition as herein defined. Also, renewal of existing withdrawals, leases, permits or other use agreements other than those at bases being closed or realigned are not subject to the moratorium.

6. NAVY POLICY

a. When the Department of the Navy acquires real property by lease or acquires general-purpose space through GSA, the following general requirements apply:

(1) The real property is needed to meet an approved military requirement.

(2) There is no DOD or Government-owned or controlled real property available which can adequately support the approved military requirement, or a business case analysis shows it is more advantageous to the Government to lease than to buy. In evaluating available government space, priority will be given to owned space over existing leased space.

(3) The proposed acquisition is consistent with the policies stated in [DOD Directive 4165.6 reference \(o\)](#).

(4) Priority consideration shall be given to rural areas for the location of new offices and other facilities, per reference (hh).

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b. Further, implementation of the DoD Minimum Antiterrorism Standards for Buildings, contained in the United Facilities Criteria (UFC 4-010-01) of 8 Oct 03, are mandatory for all facilities leased for Navy use and for those buildings in which Navy receives a space assignment from another government agency, except as established therein. This requirement covers all situations, including GSA space, privatized buildings, and host-nation, and other foreign government buildings. This requirement is applicable for all new leases executed on or after 1 Oct 05, and to renewal or extension of any existing lease on or after 1 Oct 09. Leases executed prior to the above fiscal years will comply with these standards where possible. Effective 29 Nov 05, GSA uses the lease security standards developed by the Interagency Security Committee (ISC) established by Executive Order 12977 of 19 Oct 95. The ISC standards, however, are less stringent than the UFC standards and as a consequence, GSA's policy is to use the UFC standards in filling all Navy lease requests.

c. The Department of the Navy may directly lease property under the following conditions:

(1) General-purpose space may be leased without regard to location pursuant to the delegation of leasing authority from the Administrator of General Services to the heads of federal agencies dated 25 September 1996.

(2) The requirement is for special purpose space or space outside urban centers or the lease is authorized by special legislation.

(3) The acquisition is accomplished by use of competitive procedures, unless one of the exceptions provided in [10 U.S.C. §2304 \(reference \(f\)\)](#) applies. Pursuant to [10 U.S.C. §2303\(a\) \(reference \(p\)\)](#), acquisition of land is exempt from the competitive procedures requirement.

(4) Except as specifically authorized by law, the term of the lease may not exceed twelve months. If the lease is for nominal consideration, the term may extend beyond twelve months. Pursuant to [10 U.S.C. §2828\(c\) \(reference \(b\)\)](#), in foreign countries, a leasehold interest may be acquired for military family housing with a term not exceeding ten years. Pursuant to [10 U.S.C. §2675 \(reference \(d\)\)](#), in foreign countries, a leasehold interest may be acquired for military uses other than military family housing with a term not exceeding five years.

(5) Leases under this section may provide for renewal at the option of the Government.

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(6) A military mission that requires a long-term use must pursue relocation into government-owned facilities or land. In the case of those activities/commands presently leasing non-government space, an evaluation shall be made prior to lease renewal or no more than every five years to determine if it is more advantageous to the government to relocate to government-owned facilities or land.

(7) Leased buildings conform to the standards prescribed by the Uniform Federal Accessibility Standards (reference (q)) to insure whenever possible that such buildings will be readily accessible to the physically handicapped.

(8) The leasing complies with the NAVFACENGCOC Seismic Hazards Mitigation Program, (reference (r)). Property shall not be considered for leasing until it has been assessed in accordance with the Program, and the activity requesting the leasing action has determined in writing that the degree of seismic risk incumbent in the specific leasing action is acceptable to the activity.

(9) All leases of land that involve a lease from individuals or governments of more than 1,000 acres, or an annual rental over \$1 million require the prior approval from the Office of the Secretary of Defense as stated in paragraph 5 above.

(10) Paragraphs 0108.a.(6) and 0123 of the [Navy Physical Security Manual, OPNAVINST 5530.14C, reference \(s\)](#), impose a physical security responsibility on Commanders at all levels to ensure that leases for Navy activities include provisions for positive physical security, including force protection measures. No solicitation for the leasing of real property in a foreign country shall be released, nor shall any real property be leased, nor shall any lease covering existing leased property be renewed, unless and until the activity requesting the leasing action has certified in writing that the security requirements of [reference \(s\)](#) were considered for the specific leasing action and the security risks incumbent in the specific leasing action are acceptable to the activity.

7. LIMITATIONS ON ALTERATIONS AND IMPROVEMENTS

There are two ways to pay for alterations or improvements to leased space:

a. The lessor amortizes the cost of the alterations or improvements over a normal period such as ten years and includes the cost in the annual rental. There is no limitation on the

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cost of alterations or improvements that can be accomplished in this manner. However, for leases that NAVFACENCOM has previously reported to Congress according to [10 U.S.C. §2662 \(reference \(n\)\)](#) or [10 U.S.C. §2828 \(reference \(b\)\)](#), ensure that the increase in rental do not exceed 15 percent of the reported lease cost. If the rental increase exceeds 15 percent of the reported lease cost, submit the lease to NAVFACENCOM to determine if Congress must have additional notification.

b. The Navy can pay a lump sum cost to the lessor, or in the case of GSA leases, the Navy reimburses GSA for the cost of the alterations or improvements. In such cases, the provisions of [OPNAVINST 11010.20 F \(reference \(t\)\)](#) apply. The pertinent section is paragraph 6.3.1. It provides that Navy appropriations available for operations and maintenance may be used to pay directly for expenses of renovation and alteration of buildings and facilities in the case of Navy leases, or to reimburse GSA for those costs in the case of GSA-owned or controlled facilities. Therefore, projects involving alterations to Navy leased or Navy occupied, GSA-owned, managed, or controlled facilities shall be authorized and funded by the mission component command of the Navy activity requiring the work. As a rule, the lessor or GSA is responsible for work that a tenant can normally expect from a landlord. The Navy is responsible for work that cannot be normally expected from a landlord and that is strictly peculiar to the needs of the Navy. When Navy appropriations are used to fund construction (including alterations) or repair of either Navy leased or GSA-owned, managed, or controlled facilities, the provisions of [OPNAVINST 11010.20 F \(reference \(t\)\)](#) apply. Operations and maintenance funds shall not be used for work in either Navy leased or GSA-owned, managed, or controlled facilities that would otherwise require Military Construction appropriation funding. For the purposes of these provisions, industrial funds are considered similar to appropriations available for operations and maintenance.

8. CONSTRUCTION ON LEASED LAND

In accordance with [10 U.S.C. §2852 \(reference \(u\)\)](#), military construction projects and family housing projects may be constructed on land held in less than a fee simple interest in a case in which the Secretary of the Navy determines that the interest in the land is sufficient for the purposes of the project. Permanent or temporary improvements for reserve components may also be constructed on land held in other than fee simple interest under [10 U.S.C. §18239 \(reference \(v\)\)](#). Approval of the Deputy Assistant Secretary of the Navy (Installations and Facilities) shall be obtained prior to entering into a contract for such construction.

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9. ECONOMIC ANALYSIS

An analysis must be made of all proposals to acquire space or family housing in the United States, its territories, possessions and overseas to help decide among the available alternative methods of meeting the real property requirement. The basic procedure for making this determination is specified in OMB Circular A-104 (*reference (w)*) and [DOD Instruction 7041.3](#) (*reference (x)*). These procedures allow the long term costs of leasing to be compared with those of acquiring the property. The following principles shall apply in preparing the analysis:

a. The discount rate for both overseas space and United States property will be set in accordance with OMB Circular A-104 (*reference (w)*).

b. Assume an occupancy period of 25 years for properties to be occupied indefinitely. A longer period has no significant effect on the outcome of the analysis. Use a shorter period where the occupancy period or useable life of the facilities is estimated to be less than 25 years.

c. Give special attention to forecasting the future costs of overseas lease payments as accurately as possible. Include prospective increases only to the extent that they exceed increases in the general price level in a particular country. Likewise, overseas rates of appreciation in the value of acquired real property may exceed the rates specified in OMB Circular A-104 (*reference (w)*), but only insofar as values increase more rapidly than the general price level in that country. Wherever this differential appreciation rate is used, specifically justify it.

10. ACCESS FOR THE HANDICAPPED

a. A Department of Defense Memorandum of 29 June 1987 provides that the same criteria and standards of accessibility for the handicapped to DOD owned or funded facilities as set forth in the Uniform Federal Accessibility Standards (UFAS) will be applied to buildings and facilities leased directly by DOD. GSA is responsible for applying similar standards and criteria to facilities it leases for DOD use. Accordingly, all leases for space, including, if possible, leases in foreign countries, shall, as a condition of the lease, be designed and constructed or retrofitted according to the accessibility criteria of the UFAS as noted in the above DoD memo to allow access for the handicapped. This includes renewals of existing leases. Housing leases or leases for space for the primary use of able-bodied military

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personnel should also conform to accessibility standards and criteria whenever possible. Pursuant to 42 USC §4154, DOD is expected to issue accessibility standards in the near future that will supersede UFAS.

b. The standards established shall not apply to the leasing of space when it is found, after receiving bids or offers not otherwise legally acceptable, that a proposal meets most of the requirements of the Uniform Federal Accessibility Standards. If no offeror or bidder meets all the requirements, then *preference* must be given to the offeror or bidder who most closely meets the standards. If the award is proposed for an offeror or bidder other than the one that most nearly meets the Uniform Federal Accessibility Standards and whose bid or offer is reasonable in price and is otherwise legally acceptable, a waiver or modification of the standards must be obtained as provided in subparagraph i. below.

c. If space leased according to the requirements of paragraphs 10a. and 10b. is subsequently altered, then the alterations shall comply with the requirements of paragraph 10b.

d. If space leased in accordance with the requirements of paragraphs 10a. and 10b. above is increased by construction of an addition, the addition shall comply with the requirements of paragraph 10a. to the extent it is leased by the Federal Government.

e. If, at the time of leasing, leased space meets past or present state or local codes or the recommended standards of the American National Standards Institute (ANSI) A117.1 for handicapped accessibility and provides the features required by that section, the space may be used as is or altered to comply with the technical requirements of paragraphs 10a. or 10b. above. This is at the option of the agency responsible for the budget for the acquisition and use of the space.

f. Once leased space in an existing building is accessible or is made accessible hereunder, no new accessibility alterations shall be required except where alterations or additions are made.

g. Exceptions.

(1) If no space complying with paragraphs 10a or 10b is available for leasing, space as available may be leased without alterations:

(a) If the lease is necessary for officials servicing natural or human-made disasters;

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(b) If the space is used on an intermittent basis;
or

(c) If the occupancy of the space is for no more than twelve months.

(2) Mechanical rooms and other space which normally are not frequented by the public or handicapped employees need not be accessible.

(3) Recruiting offices (excluding recruiting main stations where civilian workers may be employed) need not be accessible.

h. Overseas: U.S. funded facilities constructed by the Department of Defense overseas will be accessible. Facilities for which the United States contributes a portion of the construction cost but does not control design criteria (such as NATO-funded facilities) need not, but should be accessible. Facilities being constructed by or for use by the United States under the laws, codes, rules, and regulations of another country need not, but should be accessible. Facilities leased by the United States in other countries need not, but should be accessible.

i. Waiver Authority: The Architectural Transportation Barriers Act permits the modification or waiver of the Uniform Federal Accessibility Standards (*reference (q)*), on a case by case basis. The modification or waiver request should be sent to the Deputy Assistant Secretary Defense (Civilian Personnel Policy), to determine whether a modification or waiver should be granted.

11. AVAILABILITY OF FORMS

Due to the age and unavailability of some of the forms in the P-73, new forms will be researched and later added to this chapter.

SECTION II - SPACE ASSIGNMENTS AND LEASED SPACE ACQUIRED THROUGH THE GENERAL SERVICES ADMINISTRATION

12. RENT

a. Authority and Scope. Subparts 101-17 through 101-21 of

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the [Federal Management Regulation \(41 CFR Chapter 101\)](#) ([reference\(g\)](#)) implement the applicable provisions of the [Federal Property and Administrative Services Act of 1949, as amended](#) ([reference \(k\)](#)); the [Public Building Act of 1959, as amended](#), ([reference\(y\)](#)); and the Reorganization Plan Number 18 of 1950 ([reference\(j\)](#)). The subparts prescribe the policies and procedures relative to the assignment and utilization of space in Government owned and leased buildings. Assignment of GSA space inside the National Capital Region is handled by the Office of the Secretary of Defense Washington Headquarters Service (WHS) and procedures set forth in this Chapter are not applicable to such space.

b. Navy Space Assignments Inside the NCR. [SECNAVINST 5910.7A](#) ([reference \(z\)](#)) provides guidance on the assignment of GSA space for Navy activities inside the National Capital Region. By [SECNAVINST 5910.7A](#), ASN(I&E) designated the Commandant, Naval District Washington as the Department of Navy National Capital Region Space Coordinator.(DON NCRSC). The DON NCRSC is responsible for the financial administration of the DON Rent Fund both inside and outside the National Capital Region.

c. Rent Charges for Space and Services GSA Provides. All Federal agencies, unless exempted from rent by the Administrator of General Services, are subject to a rental charge ("Rent") for GSA-provided space, services and facilities. The GSA rental charges approximate commercial rates for comparable space and services. In buildings where GSA is only responsible for alterations, the charges will approximate the incurred cost.

d. Determination of Rent. The Rent Charge is established by GSA and approved by the Office of Management and Budget. The charge, based on the type, quality, and geographic location of the space provided, reflects approximate equivalent commercial rates for comparable space and related services. In buildings where there is joint-use space such as cafeterias, auditoriums, conference rooms, credit unions, visitor parking spaces not specifically assigned, and snack bars, each agency provided access to, or use of, the facilities occupying the joint-use space is charged a pro rata share of the space costs. The costs are based on the percentage of the space assigned. GSA reviews the Rent Charge annually to insure that it approximates commercial rates.

e. Recurring and Nonrecurring Services. Recurring and nonrecurring services are special services not included in the Rent, but are provided by GSA on a reimbursable basis. Examples of recurring services are heating, ventilation and air conditioning outside of normal business hours, additional guard service, daytime

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cleaning, etc. Examples of nonrecurring services are removal or installation of telephone and electrical outlets, rearrangement of walls and partitions, installation of carpets, drapes, etc. These services will be funded by the requester.

f. Facilities. The Department of the Navy is responsible for work which cannot normally be expected from a lessor. When O&MN funds are used to fund construction within GSA facilities, the cost of such construction will not exceed the minor construction limit in [10 U.S.C. §2805 \(reference \(aa\)\)](#). Construction costs that exceed the minor construction limit will be placed in the mission component command's Military Construction Program. Projects for construction or alteration of GSA controlled space may be sent via the appropriate FEC for review. For the purpose of these provisions, RDT&E,N and DBOF funds are to be considered in the category of appropriations available for Operations and Maintenance.

13. FINANCIAL ADMINISTRATION FOR GSA ACQUIRED SPACE

a. According to [SECNAVINST 7000.21C \(reference \(bb\)\)](#), the Department of the Navy National Capital Region Space Coordinator (DON NCRSC) is responsible for financial administration of the DON Rent Fund. Further, the NCRSC Federal Buildings Fund Administrator (FBFA) is specifically designated as the DON point of contact with the Office of the Secretary of Defense (OSD) for this program.

(1) The Chief of Naval Operations and the Commandant of the Marine Corps are responsible for ensuring space occupied by subordinate commands is efficiently and effectively used, and plans concerning space changes are made with due consideration of the fiscal impact. Program and budget constraints are such that the level of budgeting for these costs has a direct impact on funds available for other programs.

(2) Mission component commands are responsible for funding costs that result in overall increases in Rent. In requesting space increases, mission component commands are responsible for identifying the resources applicable to such costs and ensuring that a funding base is established in their annual budgets. Mission component commands will forward all requests for additional space, after identification of funds, to the NCRSC (FBFA) for processing.

(3) Activities which must provide their own funding. The following activities must reimburse the NCRSC (FBFA) for space occupied in GSA-controlled buildings:

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- (a) Navy industrially funded activities
- (b) The Foreign Military Sales Program
- (c) The Office of Naval Research

14. REIMBURSEMENT PROCEDURES

a. Within the National Capital Region (NCR). GSA provides computerized data on all GSA-controlled space assigned to the DON. The WHS, in turn, forwards it with the WHS-controlled space data to the NCRSC (FBFA). The DON NCRSC (FBFA) is responsible for verifying the accuracy of the data and distribution to Navy mission component commands and Marine Corps activities (copy to CMC(LFL)) occupying rented space in the NCR. The computerized data, after verification by the mission component command and CMC(LFL), is returned to the DON NCRSC (FBFA) to be used as the database for program administration.

b. Outside the National Capital Region (ONCR). GSA provides computerized data on all GSA-controlled space occupied by the DON directly to the DON NCRSC (FBFA), who is responsible for certifying the accuracy of the information and for forwarding it to Navy mission component commands and Marine Corps activities (copy to CMC(LFL)) occupying rented space ONCR.

c. Reimbursement for GSA and OSD Occupied Space. The DON NCRSC (FBFA) will distribute the Rent bills directly to the Navy mission component commands and Marine Corps activities (Copy to CMC(LFL)) and request payments in advance. The payments may be semiannual or quarterly depending on the dollar amounts.

d. Verification of Bills for DON-Occupied GSA and OSD Space. Navy mission component commands and Marine Corps activities verify the bills, e.g., proper space classifications and square footage, and send payment within five working days via NAVCOMPT Form 2275, to the DON NCRSC (FBFA) for consolidation and eventual payment to GSA. Navy mission component commands and Marine Corps activities notify the DON NCRSC (FBFA) of any perceived discrepancies and withhold payment until the discrepancy is resolved. If resolution is not possible within the normal verification and payment time, a partial payment for the agreed-to portion will be made. The unresolved portion will be resolved with a sense of urgency by all parties. Refunds from either GSA or WHS for past billing cycles will revert to the Navy mission component command or Marine Corps activity for which the billing refund pertains. If there are multiple occupants, refunds will be in proportion to the space

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occupied. The NCRSC (FBFA) address is as follows:

Navy Federal Buildings Fund Administrator
Headquarters Naval District Washington
Washington Navy Yard
Building 176, Code 61
Washington, DC 20374-1765

15. REQUESTS FOR GSA LEASED SPACE.

NAVFACENGCOM, through the FECs, is responsible for obtaining all GSA leased and owned space except, for general purpose space within the National Capital Region.

a. Space Requirements. When an approved military mission requires the acquisition of general purpose space, the activity shall review the Department of Defense criteria and Navy policy as set forth in [Paragraphs 5.](#) and [6.](#) of this chapter to ensure that all the requirements and provisions are satisfied. Additionally, the activity shall make a survey to determine that there is no suitable government-owned space available in the required area. Emphasis should be placed on other DOD controlled space.

(1) If there is no suitable DOD space or other government-owned space, the requesting activity will submit a request for space to the appropriate FEC through the regional commander/ mission component command, or the Commandant of the Marine Corps in the case of Marine Corps leases.

(2) The request will include a completed [Standard Form 81](#), Request for Space with appropriate justification for acquisition of the space and its proposed use. In the [SF-81](#) block number 8, print the address of the NCRSC (FBFA) shown in [paragraph 14.\(d\)](#) above. No appropriation data should be included for block 12. The request will state (1) the geographical boundaries within which the space should be located; (2) the estimated annual Rent (which may be obtained from the FEC); and (3) the government-owned facilities that were surveyed and the reasons for their unacceptability.

(3) If the regional mission component command approves the request, his endorsement will provide the appropriation and subhead data under which funds are available to satisfy the requirements of [Paragraph 13](#) herein. GSA can provide two types of general purpose space to government agencies; government-owned or leased. Navy budgeting and billing procedures are the same for assignment of both owned and leased space. The approvals for space assigned from GSA are the same as those required for direct leasing

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and are indicated in [paragraphs 4.b.](#) and [4.c.](#) herein

b. Action by the FEC. The FEC shall review requests for assignment of space, as defined in [Paragraph 3 b.](#) hereof, with respect to DOD criteria and Navy policy ([Paragraphs 5](#) and [6](#) hereof). The FEC should coordinate the request with representatives of the GSA regional office to determine (1) whether space is available in a Federal Building; (2) whether the estimated Rent is adequate; and (3) to alert GSA to a proposed need for space in accordance with Paragraphs 4b, and Chapter 1 of the GSA Customer Guide to Real Property at www.gsa.gov. The FEC will also obtain the necessary approvals and initiate continuing action by one of the following procedures.

(1) Estimated Annual Rent Exceeding the Threshold Set in Title 10 U. S. C. §2662. When the estimated annual rental charge, excluding maintenance and utilities, exceeds the threshold set in [10 U. S. C. §2662](#) (currently \$750,000 as of FY-04), the FEC will forward the proposed acquisition for space to NAVFACENGCOM for the submission to the Armed Services Committees of Congress as required by [title 10 U.S.C. §2662 \(reference \(n\)\)](#). In the case of Navy leases, the FEC will forward the submission through the chain of command to COMNAVFACENGCOM. Marine Corps leases must have been previously approved by the Commandant of the Marine Corps. Send a copy of the proposal to the NCRSC (FBFA). The proposal will include the (1) estimated Rent as provided by GSA; (2) proposed use; (3) a copy of the [SF-81](#) including the number of personnel to occupy the space; (4) the term of the requirement; (5) complete justification for the proposed acquisition including a statement describing the government-owned facilities that were surveyed and the reasons for their unacceptability; and (6) approval of the mission component command/region including a statement that the mission component command/region certifies that a funding base has been established in its annual budget to cover rental costs. The statement will include the accounting data necessary to transfer these funds. Submissions without this statement cannot be processed further. Pursuant to [Paragraph 9](#) hereof, if a leasehold interest is being acquired instead of new construction, an economic analysis of the project must be provided. This analysis must clearly indicate that the proposed lease is the most cost effective alternative over the life of the space requirement.

(2) Estimated Annual Rental Charge is Equal to or Less than the Threshold Set in Title 10 U. S. C. §2662. For proposed acquisitions of space where the annual Rental charge is equal to or
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less than the threshold set in [Title 10 U. S. C. §2662](#) (currently \$750,000 as of FY-04) the FEC is authorized to submit the request to the GSA regional office. Send a copy of the [SF 81](#) to the NCRSC (FBFA) and NAVFACENGCOM. Include a statement that the mission component command/region certifies that a funding base has been established in their annual budget to cover Rental costs. This statement will include the accounting data necessary to transfer these funds.

c. Action by NAVFACENGCOM. Upon receipt of a proposal outlined in paragraph 15b.(1) above, NAVFACENGCOM shall review the proposed space assignment and justification therefor. If the justification and data are in order, a request to submit an Acquisition Report to the Armed Services Committees of Congress pursuant to [Title 10 U.S.C §2662 \(reference\(n\)\)](#) approval will be submitted to the Deputy Assistant Secretary of the Navy (Installations and Facilities) via the Commander, Navy Installation Command (CNIC) for Navy space, or the Commandant of the Marine Corps for Marine Corps space, if not already approved. Upon approval of the Deputy Assistant Secretary, NAVFACENGCOM will submit the Acquisition Report to the Armed Services Committees of Congress. Acquisition Reports are submitted to the Armed Services Committees on the last Friday of each month via the Office of Legislative Affairs (OLA). The Reports must be received OLA on the Tuesday of that week in order to make that month's submission. Reports not received in a timely manner will be held until the following month's submission. By longstanding agreement, the House Armed Services Committees must approve the Report in writing before GSA can execute the lease or assign space in a federal building. Such approval is normally received within the first two weeks of the second month after the month the Report is submitted. Upon receipt of the written approval from the House Armed Services Committees, the FEC shall notify GSA to proceed with the lease.

16. ADMINISTRATION OF GSA ACQUIRED SPACE

a. Maintenance of Records. The FEC must maintain current and accurate records of the amount, type, and cost of space occupied by each activity in order to provide a data base for the NCRSC (FBFA). The FEC shall provide a copy of the GSA space assignment and other information and data applicable to the assignment to the NCRSC (FBFA).

b. Reviews and Appeals

- (1) If Navy is not satisfied with GSA's recommended
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delineated area, the FEC may request a review. GSA will not issue a solicitation until all reviews are resolved. See Chapter 1 of GSA's Customer Guide for Real Property at www.gsa.gov for further details, including where to submit the review request.

(2). In the event Navy does not agree with GSA's determination of its Rent obligation (e.g., GSA's space classification, measurement, service levels, charges pertaining to space assignment, appraised Rent, or the allocation of space), the FEC may appeal its Rent Bill to GSA. GSA will not increase or otherwise charge Rent for any assignment, except as agreed in the Occupancy Agreement (OA), in the case of errors, or when the OA is amended. The FEC may, at any time request a review directed to the appropriate GSA Regional Administrator without resorting to formal procedures. Such requests do not constitute formal appeals. If the review is not satisfactorily resolved, the matter shall be referred to NAVFACENCOM and the NCRSC (FBFA) with all required information and data, including results of the initial review. The formal appeal is subject to specified limitations contained in FMR 102-85.155(c), (Search Google for "FMR 102-85 Pricing Policy"). If a formal appeal is considered appropriate, it will be filed with the Commissioner, Public Buildings Service. The FEC will be informed of the results.

17. VACATING DON-OCCUPIED GSA AND DOD SPACE

a. GSA shall be notified by an agency occupying space assigned by GSA at least 120 days prior to the date on which the space, or portion thereof, will no longer be needed. In no event, however, shall such notice be given less than 30 days prior to the date on which a lease termination notice must be issued. Such notification shall be submitted in writing to the GSA regional office responsible for the geographical area in which the space is located, giving a description of the area involved, its location and the estimated date of release. When a portion of space is released, it must be consolidated and accessible for reassignment. Any alterations required to make such space consolidated and accessible will be borne by the agency before the space is assumed by GSA. The appropriate GSA regional office may reassign or dispose of the space.

b. Navy and Marine Corps activities occupying GSA-controlled space will notify the appropriate FEC as soon as possible, but not less than 150 calendar days before vacating space that is no longer required (Marine Corps activities will submit their notice via CMC(LFL)). Submit the notification in writing, providing a description of the space, a floor plan, and the estimated date of

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release. Upon receipt of the notification, the FEC shall promptly notify the appropriate GSA regional office. A copy of the notification letter shall be sent to the DON NCRSC.

c. Navy mission component commands/regions and Marine Corps activities will be responsible for rent (and any other related costs associated with the occupancy of the space) during the 120 calendar day notification period discussed in paragraph 17a. above or until such time as GSA accepts the vacated space, whichever is less.

18. DISTRIBUTION OF RECORDS

a. Provide copies of all correspondence and forms applicable to request for assignment, verification, and release of GSA space assignments to the following:

- (1) NCRSC (FBFA)
- (2) Mission Component Command/CMC/Region
- (3) FEC
- (4) Activity

SECTION III - DIRECT LEASING

19. SCOPE AND LIMITATIONS

a. This section provides the procedures and limitations for the acquisition of certain general purpose space, special purpose space and other real property within the United States and its possessions required for use of the Department of the Navy. Although [Section IV](#) hereof provides the procedures and limitations applicable to leasing in foreign countries, much of the information contained in this section is germane. [Section I](#) hereof contains the delegation of authority, DOD criteria, Navy policy and required approvals for various types of leasing actions.

20. COMPETITION REQUIREMENTS

a. Statutory Requirement. [Title 10 U.S.C. §2303 \(reference \(p\)\)](#) requires the use of full and open competition procedures for procuring leases, except as provided in Paragraph 20.c. below. The competitive procedures, or combination of competitive procedures that is best suited under the circumstances of the acquisition shall be used. As set forth in [10 U.S.C. §2304 \(reference \(f\)\)](#), procedures other than competitive procedures may be used only when:
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(1) The property or services needed is available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the requirement;

(2) The need for the property or services is of such an unusual and compelling urgency that the United States would be seriously injured unless the Government is permitted to limit the number of sources from which it solicits bids or proposals;

(3) It is necessary to award the lease to a particular source or sources in order (a) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization, (b) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, or (c) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution or negotiated rulemaking process, whether or not the expert is expected to testify;

(4) The terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures;

(5) A statute expressly authorizes or requires that the acquisition be from a specified source;

(6) Disclosure of the requirement would compromise national security unless the Government is permitted to limit the number of sources from which it solicits bids or proposals; or

(7) The head of the agency - (a) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular acquisition concerned and (b) notifies the Congress in writing of such determination not less than 30 days before the award of the lease. In no case may a lease

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be entered into using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the Navy for leasing.

b. Simplified Lease Acquisition Procedures. Pursuant to Subpart 570.2 of [48 C.F.R 570 \(reference \(h\)\)](#), simplified lease acquisition procedures (discussed in [Paragraph 23. a. \(7\)](#) below) should be used to the maximum extent practicable for actions at or below the Simplified Lease Acquisition Threshold (SLAT). SLAT means \$100,000 average annual rent, excluding the cost of operational services, such as heat, light, and janitorial services, whether furnished by the lessor, the government, or both, for the term of the lease, including option periods. According to section (g) of [Title 10 U.S.C. §2304 \(reference \(f\)\)](#), a proposed lease acquisition for an amount above the SLAT may not be divided into several acquisitions for lesser amounts to use the simplified procedures. Further, in using simplified procedures, competition shall be used to the maximum extent practicable. Unless the simplified procedures in Subpart 570.2 of [48 C.F.R. 570 \(reference \(h\)\)](#) are used, the competition requirements of part 6 of the [Federal Acquisition Regulations \(reference \(cc\)\)](#) apply to the acquisition of leasehold interests in real property.

c. Exception to Requirement for Competition. [Title 10 U.S.C. §2303 \(reference \(p\)\)](#) states that the requirements for competition apply to all property other than land. The term "land," as used herein, is interpreted to mean unimproved real property. However, if more than one parcel of land suitable for the Navy's purpose is available, competitive procedures are recommended. At a minimum, the requirement for land, in these cases, should be advertised to ensure that all potential properties are surveyed at the outset of the lease acquisition process before funds are expended in connection with any particular property.

d. Justification and Approvals

(1) A lease may not be executed using other than competitive procedures unless the contracting officer justifies in advance in writing the use of such procedures and certifies the accuracy of and completeness of the justification;

(2) The justification is reviewed by the contracting officer's legal counsel for legal sufficiency prior to its submission for higher level approval;

(3) The justification is approved:
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(a) In the case of a lease with a total consideration (excluding utilities and maintenance) for the full term of the lease, including all renewal options, up to \$500,000, by an appropriately warranted real estate contracting officer at one level above the contracting officer;

(b) In the case of a contract for an amount exceeding \$500,000 (but equal to or less than \$10,000,000), by the Competition Advocate for Real Estate for the FEC (without further delegation) or by an official referred to in clause (c) or (d) immediately below;

(c) In the case of a contract for an amount exceeding \$10,000,000 (but equal to or less than \$50,000,000), by the head of the procuring activity (or the head of the procuring activity's delegate designated pursuant to paragraph (6)(A)) of [reference \(f\)](#);

(d) In the case of a contract for an amount exceeding \$50,000,000, by the senior procurement executive of the Navy designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act ([41 U.S.C. §414](#)(3)) (without further delegation), or in the case of the Under Secretary of Defense (Acquisition, Technology, and Logistics), acting in his/her own capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to Paragraph (6) (B) of [reference \(f\)](#);

(4) The Justification shall be on the real estate contracting officer's letterhead and contain sufficient facts and rationale to justify the use of the specific authority/exception therein cited. At a minimum each Justification shall include -

(a) Specific identification of the document as a "Justification for Other than Full and Open Competition;"

(b) A description of the requirement and action being approved;

(c) An identification of the statutory authority permitting other than full and open competition and a demonstration, based on the proposed lessor's unique qualifications or the nature of the lease, of the reasons for using that authority;

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(d) A determination that the anticipated cost will be fair and reasonable;

(e) A description of the market survey conducted or a statement of the reasons a market survey was not conducted;

(f) A listing of the sources, if any, that expressed in writing an interest in the lease;

(g) A statement of the actions, if any, that may be taken to remove or overcome any barrier to competition before a subsequent lease is acquired;

(i) A certification that the Justification is accurate and complete to the best of the real estate contracting officer's knowledge.

e. Procedures for Negotiating Nonvoluntary Leases. In certain circumstances it may be necessary to lease a particular property because it is the only property that meets the mission requirement. In such instances the Navy will resort to condemning the leasehold interest if negotiations with the lessor fail. In these instances, the procedures for acquisition contained in P-73 Chapter 8 should be followed to the extent applicable. [Paragraph 34](#) hereof provides procedures for condemnation of leasehold interests.

21. MARKET SURVEYS AND ADVERTISING

a. Market surveys shall be made for all initial lease acquisitions, follow-on lease acquisitions, and, if appropriate, before execution of renewal options. Depending on the scope of the leasing action, the requesting activity's familiarity with local market conditions, and the availability of on-site expertise, the FEC, a FEC/activity team or the requesting activity, may conduct the market survey. When the activity conducts the survey, it must obtain prior approval of the FEC. The FEC will provide guidance on the conduct, content, and format for the survey and survey report. Failure to follow such guidance may result in a resurvey by the FEC at activity expense. When the FEC conducts the survey, the using activity will provide funding for it before survey initiation. The FECs may find [GSA Form 3627](#) (Market Survey) and [GSA Form 3628](#) (Lease Action Summary) useful in developing market surveys.

b. Market surveys shall not be used to identify one specific ([RETURN TO CHAPTER INDEX](#))

property for leasing, but rather to determine whether suitable property is competitively available and how to satisfy the lease requirement in the most competitive manner. Personnel conducting market surveys shall not negotiate price, nor take any action to intentionally or inadvertently commit the government to any obligation, nor enter into any agreement with prospective lessors.

Market surveys shall include:

(1) Placement of an advertisement if the lease is for more than 10,000 square feet of space. (Note: An advertisement may be placed for less than 10,000 square feet of space);

(2) Collection of information on the availability of space as obtained from circulars, newspaper advertisements and consultations with realtors, brokers, owners, and others as appropriate;

(3) Documentation of inspections of all offered and other available locations that meet minimum requirements regarding quantity, quality, availability, and probable cost; and

(4) A conclusion/recommendation regarding whether competition exists for the lease requirement.

c. Advertising. Because it is more effective to use local newspapers instead of the Federal Business Opportunities Website (FBOW) to advertise real estate leases, it is suggested that the FBOW only be used in case of lease/construction. All proposed acquisitions of leasehold interests for general purpose space of 10,000 or more square feet shall be publicized in local newspapers and/or periodicals unless exempt under [48 C.F.R. Chapter 5](#). Proposed leases of less than 10,000 square feet or leases involving special purpose space may be publicized in local newspapers and/or periodicals when the contracting officer determines such advertising will serve to promote competition. Funding for the advertisement will be provided by the using activity as part of the cost of the market survey. The authority to advertise proposed real estate contracts has been delegated to the FEC Commander/Commanding Officer.

22. DIRECT LEASING BY NAVY OF GENERAL AND SPECIAL PURPOSE SPACE, AND OTHER REQUIRED REAL PROPERTY

a. Determination of Requirement. The requirement for
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temporary use of real property is determined by activities and commands based on an approved military mission. The determination to pursue leasing action shall include consideration of DOD criteria, Navy policy, limitations, and prohibition as set forth in [Section I](#) of this Chapter. In addition to paying the annual rental, the activity or mission component command/region must fund the cost of obtaining an appraisal and title evidence, economic analysis, market survey, and any other supporting data.

b. Actions of Employees of Activity Requiring Space. Officials or employees of activities for which the FEC will acquire leased space shall at no time, before or after a space request is submitted to the FEC or after a lease agreement is made, directly or indirectly contact lessors, offerors, or potential offerors for the purpose of making oral or written representations, commitments or agreements concerning the terms of occupancy of the particular space, tenant improvements, alterations and repairs, or payment for overtime services, unless authorized by the contracting officer. Unauthorized contacts frequently frustrate or compromise the FECs ability to effect lease contracts that are in the best interest of the Government. Consequently, when the FEC ascertains that an unauthorized contact has been made, lease acquisition action may be deferred until its nature and impact can be determined. Whenever the responsible FEC leasing official judges an unauthorized contact to be detrimental to the Government's interest, further leasing action will be suspended for such time as may be required to eliminate or minimize the detrimental impact. Refer lessors, offerors, or potential offerors, or their agents, to the appropriate FEC.

c. Submission of Request for Leasing Action. After making a determination based on the considerations indicated in [Paragraph 21.a.](#) above that leasing is the appropriate method of satisfying the requirement, the activity shall forward a lease request to the appropriate FEC via the Regional Commander. All requests for Marine Corps leases shall be sent via the Commandant of the Marine Corps. Each request shall include the following information and data:

(1) The approved military requirement to be met by the leased facility, the proposed use, occupant(s) and functions to be accommodated, and the type and amount of space/land required based upon the criteria set forth in the [NAVFAC P-80](#) in accordance with [OPNAVINST 11010.20 F \(reference \(t\)\)](#);

(2) A description of the acceptable geographic area of [\(RETURN TO CHAPTER INDEX\)](#)

consideration, occupancy date, number of years the property is needed, special features/modifications required and related utility/services requirements;

(3) A description of other government, including DOD, facilities surveyed for availability of government-owned property to meet the requirement and a statement that no suitable government property is available;

(4) A statement that funds are available and appropriation data therefore;

(5) A description of proposed action being taken to effect permanent facilities solution to the requirement;

(6) A copy of the market survey if completed by the activity in accordance with [Paragraph 21](#) above.

(7) The estimated lease cost and the basis for the estimate which may be obtained from the FEC;

(8) Compliance with the National Environmental Protection Act;

(9) In the case of leases which are anticipated to have an annual rental in excess of \$750,000 (as of FY-04), the information needed to submit the report required by [Title 10 U.S.C. §2662 \(reference \(n\)\)](#), that may be obtained from the FEC.

d. Action by Facilities Engineering Commands. Upon receipt of a request for leasing action as set forth in subparagraph c. above the FEC shall:

(1) For direct leasing pursuant to GSA delegation of leasing authority. Where the annual rental for the lease contract, excluding utilities and services exceeds GSA prospectus-level, as adjusted annually in accordance with [40 U.S.C. §606\(f\) \(reference \(l\)\)](#), a prospectus must be approved by the Congressional Committees pursuant to the Public Buildings Act of 1959. Award of the lease contract will not be made until a prospectus for this acquisition has been approved by the Office of Management and Budget and the Congress. Such approval shall be obtained through the appropriate GSA Regional Office;

(2) Review the submission for compliance with provisions of [Section I](#) of this Chapter

(3) Conduct an independent market survey, if
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necessary, to determine availability of facilities for lease and to obtain an estimated rental cost;

(4) Obtain necessary appraisal and title evidence;

(5) In the case of non-competitive leases, obtain the approval required in [Paragraph 20](#) above; and

(6) Take the appropriate continuing action by one of the following procedures:

(a) Proposed Leases with Annual Rental of \$750,000 or Less (as of Fy-04). If all information and approvals required by paragraph 22.c. are in order, the FEC shall commence to initiate leasing the required space or facilities by the appropriate procedures set forth in this Chapter.

(b) Proposed Leases with Annual Rental in Excess of the statutory limitation in 10 U. S. C. §2662 (currently \$750,000 as of FY-04). Upon obtaining the information set forth in sub-paragraph c. above, the FEC shall prepare an endorsement that provides the estimated cost of the rental and any other information considered relevant and forward to the Commander, Naval Facilities Engineering Command. In the case of Navy leases, a letter indicating the approval of the Activity Mission Component Command and Region shall be included. For Marine Corps leases, a letter indicating the approval of the Commandant of the Marine Corps shall be included in the forwarding memo. The information required for preparation of the Acquisition Report for submission to the Armed Services Committees of Congress shall be furnished with the request. This submission shall include (a) complete justification, (b) an economic analysis of leasing versus acquisition of a permanent interest pursuant to [Paragraph 9](#) hereof if the lease is in lieu of new construction, (c) results of the survey to determine availability of suitable government-owned property, and (d) compliance with DOD criteria, Navy policy, limitations and prohibitions as set forth in [Section I](#) of this Chapter.

e. Action by the Commander, Naval Facilities Engineering Command. Upon receipt of a proposal, NAVFACENGCOM will review all material submitted for adequacy, accuracy and justification of the proposed leasing action and ascertain that all requisite approvals have been obtained and that funds are available. If the justification and data are in order, a request for approval will be submitted to the Deputy Assistant Secretary of the Navy (Installations and Facilities) via the Commander, Navy

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Installation Command (CNIC) for Navy space, or the Commandant of the Marine Corps, for Marine Corps space, if not already approved. Upon approval of the Deputy Assistant Secretary, NAVFACENGCOM will submit an Acquisition Report to the Armed Services Committees of Congress pursuant to [reference \(n\)](#). Acquisition Reports are submitted to the Armed Services Committees on the first day of each month. Reports not received by NAVFACENGCOM in sufficient time to obtain the required approvals will be delayed until the following submission. A lease transaction may be entered into at the end of the 30-day period beginning on the first of the month after submission of the report, or at the end of the 14-day period subsequent to an electronic submission. NAVFACENGCOM reports are submitted electronically. NAVFACENGCOM will advise the FEC of the results and authorize the FEC to consummate the lease as appropriate. Should the lease rental ultimately negotiated be in excess of 115 percent of the amount reported to Congress, or if any other major changes must be made in the scope of the lease transaction, NAVFACENGCOM should be advised prior to lease execution so that the Armed Services Committees of Congress can be notified.

23. COMPETITIVE LEASING PROCEDURES

a. As set forth in [Paragraph 20](#) above, unless exempted under the criteria therein, all leases shall be awarded based on full and open competition using the competitive negotiation process. In certain rare instances, the sealed bid process may be used for in-leasing purposes. In using the competitive negotiation process, the following procedures shall be followed by the FEC upon receipt of all required approvals.

(1) Preparation of Solicitation for Offers. Using the requirements provided by the activity, (see [paragraph 22.c](#) above), the FEC shall prepare a Solicitation for Offers (SFO). To expedite the process, preparation of the SFO should commence prior to receiving all approvals. The SFO shall provide:

(a) A clear and complete statement of the Navy's minimum mandatory requirements.

(b) Evaluation and award factors which will be used to determine the successful offer in order of importance.

(c) All clauses which will be included in the final lease.

(d) Specifications and standards necessary to assure that the Navy's needs are met.

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(e) Instructions, certifications, and representations necessary to complete the proposal.

(f) Any forms that must be prepared by the lessor.

(g) [GSA Form 3516A](#) (Solicitation Provisions) shall be attached to and made a part of the lease contract. [GSA Form 3516](#) includes information that may be useful.

(2) Evaluation plan. Before issuing an SFO, a plan of evaluation should be developed that outlines how the proposals will be evaluated with the specifications and award factors announced in the SFO.

(3) Guidelines for Developing Specification and Award Factors. This is the appropriate time for the using activity to insure that the building selected meets their requirements. It is important to determine the absolute minimum requirements and to insure that all factors are weighted to properly reflect activity needs. Buildings should not be rated against each other, but rather against a set of criteria. Specifications and criteria included in the SFO determine how offerors structure their proposals or whether they will choose to submit an offeror. There should be no predetermined cutoff below which offerors are automatically considered unacceptable.

(a) A specific date for submission of offers shall be stated. If an extension is granted to an offeror, an extension must be similarly granted to all other offerors. The extensions must be in writing.

(b) Offers not capable of meeting the minimum requirements should be eliminated from competition. However, offers judged as capable of being improved to meet the Government's requirements must be included.

(4) Evaluation of Offers

(a) The evaluation process is generally as follows:

(i) Determine which proposals are in the "competitive range" as discussed in subparagraph (5) below based on price analysis, cost analysis, and technical evaluation.

(ii) Negotiate with all offerors within the competitive range.

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(iii) Upon completion of negotiations, request best and final offers.

(iv) Final evaluation and award.

(b) Two fundamental guidelines must be followed in evaluating lease proposals:

(i) The evaluation must adhere strictly to the evaluation criteria and specifications set forth in the SFO.

(ii) The scoring rating methodology that has been developed and specified in the SFO must be followed.

(c) The Contracting Officer must note any deficiencies in both the acceptable and unacceptable offers and note whether or not those deficiencies might be remedied through the negotiation process.

(5) Determination of Competitive Range. The determination of the competitive range is essentially the basic in/out decision made in the selection of offerors with whom negotiations will be conducted. The following guidelines based on Comptroller General decisions should be used in making the determination:

(a) The offer should be considered within the competitive range unless it is so technically inferior that there is no possibility that discussions might result in improvement to the point where it could be selected for award. Likewise, only prices so high that it is not believed that they can be brought into an acceptable range should be eliminated.

(b) Offers should never be eliminated solely because they provide a higher quality space.

(c) When a specification or award factor is used to reject an offer, it must be used to evaluate all other offers as well.

(d) An offer which fails to comply with mandatory factors listed in the SFO can be eliminated immediately unless those mandatory factors could be corrected before award.

(e) Offerors should not be excluded from the competitive range solely because information provided in their offers is inadequate to allow evaluation. However, an offer that

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is so inadequate as to exhibit an offeror's lack of understanding of what is to be provided may be excluded.

(f) An initial determination that an offer is acceptable does not preclude a later reversal of that decision after negotiations have been conducted.

(g) It is legally permissible to eliminate all offers but one from the competitive range based on technical considerations.

(h) The discretion to determine which offers are within the competitive range, price, and other factors considered, is solely the responsibility of the Contracting Officer, unless abuse of such authority can be shown by clear and convincing evidence.

(i) In the absence of a determination that an offer is not within the competitive range, there is an obligation to negotiate with the offeror.

(j) It is improper to reject an offer because the offeror fails to meet a known design criteria, if the criteria was not stated in the SFO.

(k) The use of a point rating system for evaluating offers is permissible. However, ratings based solely on quantity of points are not by themselves an adequate basis for elimination of offerors.

(6) Negotiations. It is advisable to develop a written negotiations plan, particularly when the dollar value of the lease warrants the effort. The plan should take into account information provided by technical personnel, any functional specialists involved, and the activity that will occupy the space.

(7) Simplified Lease Acquisition Procedures (SLAT) The following procedures should be used to the maximum extent practicable for actions at or below the SLAT. Under these procedures, the Contracting Officer or his/her representative will visit the area where space is required to:

(a) Conduct a market survey to identify buildings where satisfactory space may be available for lease to the Government. The Contracting Officer may use information available from GSA or other available sources to identify locations that will meet the Government's minimum requirements.

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The solicitation of at least three sources is considered to promote competition to the maximum extent practicable. Where practicable, when repeated requirements for space occur in the same market, two sources not included in the most recent solicitation should be invited to submit offers. If only one source is solicited, document the file with an explanation for the lack of competition;

(b) Present a proposed lease to prospective offerors which describes the Government's space requirements, together with a notice identifying all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease stating the relative importance the Government places on each of the evaluation factors and/or subfactors;

(c) Ask the prospective offerors to review the proposed lease and provide an offer;

(d) Negotiate directly with the offerors while on location; and

(e) Award the lease if the negotiator is a warranted Real Estate Contracting Officer or arrange for an award of the lease by a warranted Real Estate Contracting Officer.

(f) This procedure does not eliminate the requirement for legal review of non-standard lease provisions and compliance with the lease approval requirements of [Paragraph 4](#) herein.

24. LEASES FOR FAMILY AND UNACCOMPANIED PERSONNEL HOUSING

Leases for family and unaccompanied personnel housing are essentially the same as other leases, except for certain changes in format, funding, and level of approval authority. Authority for direct leasing of family housing is provided by [10 U.S.C. §2828 reference \(b\)](#). Policy and procedures for Navy Family Housing, including assignment of lease points, limitations on, and other aspects of housing leases, are contained in NAVFAC P-930 "Navy Family Housing Manual."

a. Family Housing Leases

(1) Format. Leases for family housing are prepared on [Standard Form 2](#) by the FEC with certain additional general provisions relative to use of the premises for housing and [\(RETURN TO CHAPTER INDEX\)](#)

assignment thereto (see Paragraph 24.a.(6)) below. Multiple unit leases are permitted but should provide for Government addition/termination of individual units with a corresponding increase/decrease in the amount of the total monthly rent payable under the contract. The lease document will be forwarded directly by the FEC to the owner, or the owner's authorized representative, for signature and returned for execution by the Government.

(2) Funding. Funds for payment of rental and for restoration of premises leased for family housing are made available through the Family Housing Division at the Region. Use of these funds are restricted by a statutory maximum prescribed by law.

(3) Required Approvals. ASN distributes the authority of lease points to DON and CNIC allocates the lease points. The Activity submits a request for Navy housing actions to CNIC via the Region. Requests for leasing action for Marine Corps Family Housing must, however, be approved by the Commanding Officer of the Marine Corps activity and the Director of the Marine Corps District in which the activity is located, or other authorized Marine Corps Commander.

(4) Execution. A Family Housing Lease Request prepared by the activity will be reviewed for processing subsequent to approval by the Family Housing Division of the Navy Region. At a minimum, the Lease Request will have Sections I and II complete. If the activity has located a particular dwelling unit, Section III will contain information obtained during the pre-negotiation meeting with the owner. In such case the Lease Request will be accompanied by a Condition Report signed on behalf of the owner and the Government together with a Certification of Appropriateness signed by the activity Commanding Officer. In the interest of economy, the Condition Report may be prepared prior to the effective date of the lease. The initial occupant shall be given a copy of the Condition Report at the time of his/her occupancy for his/her certification as to its accuracy or his/her notation of any discrepancies. The activity shall resolve the discrepancies with the owner and forward, if necessary, a revised Condition Report to the FEC.

(5) Administration. Approval must be obtained from the activity and the Family Housing Division of the Navy Region prior to processing family housing lease renewals, terminations, succeeding leases, and new leases. On-site reviews of new and

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renewal leases will be randomly selected by the Family Housing Division of the Region to assure compliance with prescribed policy, procedures, and limitations. Other components of the FEC, when requested, will provide assistance. The settlement of damage claims is a responsibility of the FEC with appropriate coordination with the activity.

(6) Additional General Clauses In addition to the General Clauses, the following clauses will be added to the General Provisions in all housing leases:

(a) "It is understood and agreed that the Government will assign the demised premises to military personnel, in accordance with Executive Order No. 11063, dated 20 November 1962, which provides that housing and related facilities shall be available without discrimination among tenants because of race, color, creed, or national origin."

(b) "Lessor expressly covenants that the rental stipulated in this lease constitutes the entire consideration for the lease and that the lessor has not and will not enter into any separate agreement with the occupant of the leased premises for any financial obligation of one to the other arising out of occupancy of the premises hereunder."

(c) "The total maximum annual expenditure by the Government hereunder, including rental and the cost of utilities, maintenance, services, and operation, whether obtained by the Government through this lease or independently of this lease may not exceed the statutory ceiling established for each year of this lease or any renewal thereof, by the Congress of the United States."

b. Unaccompanied Personnel Housing. The format to be used is the same as for other leased properties with the addition of the three clauses to the General Provisions noted in Paragraph 24a.(6) above. Funds are to be furnished by the activity or its mission component command from the annual operating budget. Requests for leasing for Marine Corps quarters must be approved by the Commanding Officer of the Marine Corps activity, the Commander of the appropriate Marine Corps District, or other authorized Marine Corps Commander, and the Commandant of the Marine Corps.

25. PREPARATION OF LEASES

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a. Leases will be prepared on Standard Form 2, "U.S. Government Lease for Real Property". Attachments to Form 2 should include GSA Form 3517B (General Clauses, and for leases procured under authority delegated by the Administrator of General Services, GSA Form 3518 (Representations and Certifications). In addition, leases obtained through the use of competitive procedures should include GSA Form 3516A (Solicitation Provisions). Prepare the lease as follows:

(1) Date and Identification Number. The date on which the lease is executed on behalf of the Government shall be entered in the space provided at the top left of the lease form as the date of the lease. Each lease shall be assigned a Navy Standard Document Number which shall be entered in the space provided at the top right of the lease form. Enter the activity's UIC below the contract number.

(2) Identification of Lessor. Beginning on the first line of the Standard Form 2, the lessor or lessors shall be fully identified in the following manner:

(a) If the lessor is unmarried, as John/Jane Doe, unmarried, or alternatively, John/Jane Doe, a single man/woman.

(b) If the lessor is married, or the property is owned by husband and wife, as John Doe and Mary Doe, his wife. However, if the law of the state in which the leased property is located has no provision for dower rights or otherwise provides for a married person to own real property with no interest therein accruing to the spouse and/or does not require both husband and wife to sign deeds or other conveyance of title or rights in real property and the owner of record is one person; or, if any objection is interposed to requiring both husband and wife to execute the lease, the identification of the lessor may be indicated as the one owner of record.

(c) If the lessor is a partnership, the names of all the members of the partnership, with the names of their spouses, if any, must be included; except in those states in which a partnership is authorized by statute to hold and convey title to real property. In the latter case, the name of the partnership only need be set forth.

(d) If the lessor is a private corporation, as XYZ, a corporation organized and doing business under the laws of

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(e) If the lessor is a public corporation, the name of the public corporation is to be set forth.

(f) Where possible, the name of the lessor should be the same as it appears in the title evidence or as reflected in the public records. Thereafter, the address of each lessor will be inserted followed by the interest of each lessor in the property as, for example, fee title, life estate, or leasehold.

(3) Description of the Leased Premises and Use.

Clause 1 of [Standard Form 2](#) will contain a complete description of the leased premises, taken, whenever practicable, from the instrument through which the lessor acquired title. For land, a metes and bounds description is preferable. Attach as an exhibit to the lease, a marked map or drawing which clearly delineates the leased premises and make reference to this exhibit in the description. The preferable language to be inserted after the words "to be used for" at the end of Clause 1 is "Government use;" however, if the lessor refuses to agree to the use of such language, then the use specified should be stated in the broadest language practicable. If, however, substantial Government-owned improvements are made and such improvements are of a type which could be utilized by private interests under a sublease from the Government as permitted by Clause 2 of the general provisions, care must be exercised to assure that the language inserted will not preclude such subletting.

(4) Term. The first space to be completed in Clause 2 is the effective date of the lease or the date on which possession of the property will be surrendered to the Government. The second space of this clause will be completed by inserting the ending date of the first lease term. The first or any succeeding term may not exceed twelve calendar months unless expressly authorized by Congress.

(5) Rental. Clause 3 will be completed by inserting the agreed annual rental which should not exceed the approved annual rental as established in the Contracting Officer's negotiation plan. The rate at which rental will be paid will be inserted in the second blank space and the third space will be completed with the period covered by each payment. The party or parties to whom the rental is to be paid with their mailing address should be inserted in the space at the end of Clause 3.

(6) Termination. Clause 4 will be completed by
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inserting the agreed number of days for notice of termination. This will normally be 30 days, but up to 90 days may be used, if required.

(7) Renewal. Clause 5 will be completed by inserting the renewal terms, including the rentals therefore, the number of days prior to termination that notice of renewal must be given, and the date beyond which the lease cannot be renewed under these provisions. Ordinarily the notice of renewal will be 30, 60, or 90 days, with the shorter period preferred. The maximum period of the requirement will be obtained from the activity or mission component command, region, and this requirement will be the basis for negotiations relative to Clause 5. If, however, the right of renewal is not desired or cannot be secured, Clause 5 may be deleted. In some instances, such as family housing leases, it may be highly desirable to obtain a renewal clause but the lessor may be reluctant to provide one due to escalating costs of taxes and/or utilities.

(a) In most cases, an escalation clause can be negotiated providing for increased rental when the owner can show proof where actual costs for these items has occurred. It should be pointed out, however, that the portion of rental covering taxes and/or utilities must be separately stated and used as a basis for any increase in rental. In addition, since such clauses would be non-standard and accordingly, not authorized for use, the proposed clause must be approved by the FEC counsel. Furthermore, proposed escalation clauses which are not directly and proportionately based upon increases in taxes, utility costs, or other commonly accepted escalation indicators, must be reviewed by local FEC counsel for legal sufficiency. It should be pointed out, however, that authorization for use of such escalation clauses will not relieve the contracting officer of the responsibility for obtaining an increase in the assigned average rental for the unit from the FEC Family Housing Division and for exercise of the renewal option with the number of days notice required by terms and conditions of the lease. In addition, any increase in rental under such an escalation clause must be completely documented in the lease file for audit purposes.

(8) Service and Utilities. Clause 6 of Standard Form 2 will be completed by inserting the specific services and utilities, such as janitorial, maintenance, heat, light, water, hot and cold, gas, light bulbs or tubes and ballast, etc., that are to be provided under the lease rather than under a separate contract. The lease will also specify whether these services are to be p

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rovided during usual business hours or on a 24 hour basis, including Sundays. If an escalation clause is to be provided under Clause 5 which would cover the cost of utilities, the cost of each of these utilities furnished and included in the stated rental, must be itemized to provide a basis for any increase. If no utilities or services are to be provided by the lessor under the lease, the word "none" should be inserted.

(9) Attachments or other Provision(s) Agreed Upon.

(a) All attachments to be made a part of the lease will be listed under Clause 7.

(b) The following provision shall be inserted in each lease:

"Condition Report - A joint physical survey and inspection report of the demised premises shall be made as of the effective date of this lease, reflecting the then present condition, and will be signed on behalf of the parties." If necessary to reach an agreement, the clause may be modified or deleted. However, the deletion of this clause will in no way effect the requirement for a condition report by the Navy as set forth in Paragraph 26 below. The Navy's Condition Report shall be kept in the leasing records.

(c) Prior to the execution of the lease, any additional provisions listed as attachments and/or use of any non-standard provisions must be approved by the FEC Counsel.

(10) Changes and General Clauses. Any changes in either Standard Form 2 or the General Clauses, will be listed in Clause 8 of Standard Form 2. The following clauses may, if necessary to reach an agreement, be deleted or modified as follows:

(a) Clause 17, Damage by Fire or Other Casualty. Clause 17 of the General Clauses may be deleted if the leased premises are unimproved land.

(b) Clause 2, Subletting and Assignment. Clause 2 of the General Clauses may be modified or deleted, except in those cases where substantial Government expenditures for improvements are planned or anticipated.

(c) Clause 19, Alterations. Clause 19 of the General Clauses may be deleted from unaccompanied personnel and (RETURN TO CHAPTER INDEX)

family housing leases but must be retained in all other leases, except that the following clause may be substituted therefore if it is necessary or desirable to include a provision for restoration:

"The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect additions, structures, or signs in or upon the premises hereby leased, which fixtures, additions, or structures shall be and remain the property of the Government and may be removed by the Government prior to the expiration or termination of this lease. The lessor may, upon not less than _____ days written notice to the Government, before termination of the lease, require restoration of the leased premises. In this event, prior to the expiration or termination of this lease, or prior to relinquishment of possession, whichever first occurs, the Government shall, at its sole election, either

(i) restore the premises to the same condition as that existing at the time of entering upon the same under this lease, reasonable and ordinary wear or tear and damage by the elements or by circumstances over which the Government has no control excepted, or

(ii) pay to the lessor a sum of money representing either the diminution in the fair market value of the property due to the failure to restore, or the actual cost of restoration, whichever is the lesser amount."

(d) Clause 14, Maintenance of Building and Premises. It is highly desirable that Clause 14 of the General Clauses be included without modification. If this is not practicable, the lease should, as a rule, require the lessor to maintain the exterior of buildings, including roofs, and repair structural defects, which is a normal covenant of the landlord.

(11) Additional Requirement for Negotiated Leases. For all leases exceeding \$25,000 aggregate rental for the full term of the lease, including all renewal options, negotiated without full and open competition, except those for unimproved land, the following clause will be added to the general provisions: "This lease is entered into as a result of other than competitive procedures pursuant to [10 U.S.C. §2304\(c\)](#) ([reference \(f\)](#)) and any necessary determinations and findings or other supporting statement or justification, prescribed by the applicable Act, have been made." See [paragraphs 20.c. and d.](#) for further information relative to the required "Justification and Approval."

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(12) Execution by Lessor Leases will be executed in duplicate.

(a) Execution of the lease on behalf of the lessor will be by the parties whose names appear in the opening paragraph of Standard Form 2, except in the case of a corporation or partnership authorized by statute to hold and convey title to real property. Execution for corporations, and partnerships authorized to hold and convey title to real property, will be by the official duly authorized to do so and will be in the following manner:

XYZ Partnership

XYZ Corporation

By _____
Name and Title

By _____
Name and Title

(b) In the case of a private corporation, the authority of the corporation official to execute the lease will be certified by the Secretary or Assistant Secretary of the corporation. In some states, a private corporation may consist of only one official, in which case the normal certificate cannot be obtained. In the case of public and private corporations, a certified copy of the resolution of the proper corporate body authorizing the lease to the Government will be obtained, if practicable; and in the case of a partnership, similar proof of authorization, as well as proof of the authority of the partnership official to act in its behalf, will be obtained, if practicable.

(c) In some instances, the owner may be a corporation or partnership having members who are remotely located from the leased property and who meet infrequently to conduct business. In such cases, it may also be found that the corporation or partnership has contracted with a real estate broker or management firm to handle the management and leasing of the property. In these cases, the broker or certain officers of the management firm or their agents may be authorized to execute leases on behalf of the owner. In such events, it is suggested that a copy of the Management Contract and/or a power of attorney evidencing the authority of the official or agent of the management firm to execute the lease, be obtained.

(d) In every case, the lease must be entered into with the owner of record but may be executed by the owner's authorized agent and the best evidence available obtained to document the agent's authority to execute the lease. Execution on

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behalf of the lessor shall be witnessed or acknowledged if required by local law, and the date of execution shown. If necessary, an additional page may be attached to provide sufficient space for signature, notary acknowledgment, and appropriate certificate, if a corporation.

(13) Execution on Behalf of the United States. Execution of leases on behalf of the United States is to be by the Secretary of the Navy or by a Contracting Officer acting for him under an appropriate delegation of authority. [Chapter 10](#) sets forth the qualifications and procedures for delegating Navy real estate contracting authority and only warranted Navy Real Estate Contracting Officers can execute leases on behalf of the Navy.

(14) Appropriation Accounting Data. Accounting data shall be inserted on each lease to facilitate payment of rental and provide for fiscal accounting. No space is provided on [Standard Form 2](#) for this data. Accordingly, to provide for uniformity, this data will be inserted in the blank space at the bottom of the first page or in the left margin of the first page and contain the following elements:

- | | |
|------------------------------------|-----------------------|
| (a) Appropriation | 7 digits (O&MN Funds) |
| (b) Subhead | 4 digits |
| (c) Object Class | 3 digits |
| (d) Bureau Control Number | 5 digits |
| (e) Sub Allotment | 1 digit |
| (f) Authorized Accounting Activity | 6 digits |
| (g) Transaction Type | 2 digits |
| (h) Property Accounting Activity | 6 digits |
| (i) Cost Code | 12 digits |
| (j) Amount | rental in dollars. |

One space should be left between each of the above indicated elements and written on one line as shown below. In addition, the paying office and its location should be shown on the face page of the lease:

0000000 0000 000 00000 0 000000 00 000000 0000000000000 \$2,500.00.

26. CONDITION REPORT

a. Requirement. When possession of leased property is taken or immediately prior thereto, an inspection of the property will be made and a condition report will be prepared. The inspection will be made jointly by a representative of the FEC/activity and the owner or his authorized representative.

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If the owner refuses to participate in the inspection or in the report, the representative of the FEC/activity will make an independent inspection and his report will state that the owner refused to join therein. If the inspection on behalf of the owner is to be made by his representative, the FEC will obtain a written statement from the owner showing the authorization of the representative to make the inspection for, and on behalf of the owner, and to sign the report and file objections thereto. A copy of the authorization will be made part of the report.

b. Purpose of Condition Report. The purpose of making a joint inspection of the property and preparing a condition report is to determine and show the condition of the property at the time the Government assumes possession in order to avoid any questions as to the condition of the property at that time. This will enable the Government to properly perform any restoration obligations it has assumed, to settle any valid claims arising out of such obligations, and to defend against improper claims.

c. FEC Representative. The FEC representative designated to inspect the property and prepare the condition report on behalf of the Government will be selected from personnel qualified in the fields of construction and maintenance and have broad experience in evaluating the condition of buildings and other structures. The FEC/activity will assign additional personnel, when necessary, who are qualified to inspect and report on technical features such as boilers, elevators, sprinkler systems, piles, and air conditioners.

d. Preparation of Report. The Condition Report will be prepared on the forms provided on appropriate forms. It is recognized that the Condition Report for some leased properties will not require the same detail as other larger, or more complex properties. Accordingly, sufficient factual information and detail should be obtained and included in the report to avoid future controversies as to condition. One-word descriptions such as excellent, good, fair or poor, that are unsupported by descriptive remarks, detailing the facts, supporting such conclusions, are not acceptable.

e. Photographs. To the fullest extent possible, photographs will be made a part of the Condition Report. If only a portion of the building or property is leased, obtain detailed photographs of the actual space to be occupied. In such cases, general interior and exterior views thereof are not required. In

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cases where entire structures are leased, a few general interior and exterior views are sufficient. Photographs showing defects in detail such as cracks, broken doors and windows, faulty plumbing, overloading, etc., are especially useful and will be included. These will be referenced in the written report and where they are typical of a number of defects, this information will be incorporated in the report. Each photograph will be identified by showing the following information on the reverse side:

- (1) Name of building and location;
- (2) Date taken;
- (3) Identification of the view;

(4) Name and office addresses of the photographer. If military, his rating and serial number. Whenever possible, photographers who permanently reside in the area will be used so that they will be conveniently available to assist in resolving restoration and other claims.

f. Execution of Condition Reports. Condition Reports will be dated and signed by all personnel participating in the inspection. The original and 2 copies of the report will be prepared and completely executed. Any differences of opinion as to condition will be clearly set forth in the report. If the owner or his designated representative refuse to sign the report, this will also be indicated.

27. DISTRIBUTION OF LEASES AND CONDITION REPORTS

a. Distribution of Leases. After a lease has been fully executed, the FEC will make the following distribution:

- (1) Original FEC
- (2) Executed Copy Lessor
- (3) Conformed Copy Mission Component Command/CMC (if required)Region
- (4) Conformed Copies To Finance Office responsible for making payment.

b. Distribution of Condition Reports. After a Condition Report has been fully executed, the FEC will make the following distribution:

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- (1) Original FEC
- (2) Signed Copy Lessor
- (3) Signed Copy Mission Component Command (If
required)Region
- (4) Signed Copy Commanding Officer of Officer in
Charge of Using Activity

c. The FEC shall input the lease data into the inFADS System.

28. RECORDATION OF LEASES

The Department of the Navy, as a rule, does not record all of its leases. Leases in which the Government is granted an option to purchase the leased premises will be recorded. It may be desirable in other instances to record leases where failure to do so might prejudice the Government's rights under the lease. The FEC, in its discretion, will in such cases cause the lease to be recorded in the public records. In each case in which the lease is to be recorded, it must be executed, witnessed and/or acknowledged in accordance with state and/or county law to make it eligible for recordation. In most cases, it will be found that the original of the lease instrument must be submitted for recordation.

29. PAYMENT OF RENTAL

a. Payments of rental in accordance with the terms and conditions of the lease will be made by the Finance Center responsible for the activity for which the space was acquired. In general, the finance center will commence payments upon receipt of a copy of the lease along with payment instructions. Accordingly, the importance of placing the appropriation accounting data on all fiscal accounting copies of the lease or any renewal thereof cannot be overstressed. Delays in providing a copy of the lease with the correct accounting data thereon will result in delays in issuing rental checks by the finance center and cause the payment of interest by the Government in accordance with the Prompt Payment Act [31 U.S.C. §3901](#). In some cases, the Marine Corps may designate a Marine Corps Finance Center as the paying office for Marine Corps bachelor quarters.

b. Payment of rental via Electronic Funds Transfer (EFT) may be negotiated with the lessor using the following clause in

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the lease:

ELECTRONIC FUNDS TRANSFER PAYMENT

- (a) The Government will make payments under this lease by electronic funds transfer (EFT). After award, but no later than 30 days before the first payment, the Lessor shall designate a financial institution for receipt of EFT payments, and shall submit this designation to the Contracting Officer or other Government official, as directed.
- (b) The Lessor shall provide the following information:
 - (1) The lease number to which this notice applies.
 - (2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.
 - (3) Number of account to which funds are to be deposited.
 - (4) Type of depositor account ("C" for checking, "S" for savings).
 - (5) If the Lessor is a new enrollee to the EFT system, a completed "Payment Information Form," SF 3881.
- (c) In the event the Lessor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using EFT procedures, notification of such change and the required information specified in (b), above must be received by the appropriate Government official no later than 30 days prior to the date such change is to become effective.
- (d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Lessor or an authorized representative designated by the Lessor, as well as the Lessor's name and lease number.
- (e) Lessor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

30. RENEWAL OF LEASES

a. Leases with Annual Rental of \$1,000 or less. Prior to renewal the FEC will obtain a written recommendation from the Commanding Officer of the using activity of the need of the leased property for the renewal term. For Marine Corps Family Housing leases, approval of the Marine Corps District Director or other authorized Marine Corps Commander will also be obtained. This recommendation will also be accompanied by a NAVCOMPT Form 2276 evidencing that funds are or will be available for payment of the required rental and citing the appropriation accounting data therefor.

b. Leases with Annual Rental in Excess of \$1,000. Prior to renewal the FEC will obtain the written recommendation of the Commanding Officer of the using activity of the need of the leased property for the renewal term and the approval of the mission component command/region. This recommendation and/or approval will be accompanied by a NAVCOMPT Form 2276 evidencing that funds are

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or will be available for payment of rental and citing the appropriation accounting data therefor. For Marine Corps Family Housing leases, approval of the Marine Corps District Director or other authorized Marine Corps Commander will also be obtained. For Marine Corps leases for unaccompanied personnel quarters and all GSA related leases, approval will be obtained from the Commandant of the Marine Corps.

c. Renewal of Condemnation Leaseholds. In addition to the above procedures, renewal of condemnation leaseholds will follow the procedures in [Paragraph 34.d.](#) below.

d. Notice of Renewal of Government Lease. After obtaining the approvals and recommendations indicated above, and certification that funds are or will be available, the FEC will issue an appropriate renewal using "[Notice of Renewal of Government Leases](#)", [NAVFAC 11011/5](#). It will be noted that the spaces for appropriation data will be inserted on the Notice of Renewal utilizing the procedure set forth in [Paragraph 25.a.\(14\)](#) above.

e. Distribution of Notice of Renewal of Government Leases

(1) Distribution List. Distribution of the Notice of Renewal of Government Lease will be the same as for the basic lease as indicated in [Paragraph 27.](#) above.

(2) Delay in Receipt of Appropriation Accounting Data. All leases require a specific number of days advance notice of renewal. This notice ranges from 30 or more. In many instances, the using activity has not been provided appropriation accounting data in sufficient time to include this data on the required Notice of Renewal. However, it is not necessary for this data to be inserted on the copy of Notice of Renewal delivered to the lessor. Accordingly, the Notice of Renewal of Government Lease may be mailed to the lessor prior to receipt of the actual appropriation accounting data, provided a statement has been furnished by the activity or its mission component command that funds are or will be made available for payment of rental. If the effective date of a lease renewal notice is in the next fiscal year, a "contingent on the availability of funds" clause must be included in the funding document and the lease renewal notice; however, mailing of the renewal notice should be accomplished to provide at least one day more than the number of days notice required by the lease. The remaining copies of the Notice of Renewal will be held until the appropriation data is received and inserted thereon and then distribution will be made.

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(3) Overprinting of [NAVFAC 11011/5](#). Many notices of renewal of Government leases utilize the same information such as name and address of FEC, beginning and ending date of renewal period, description of lease except for identifying number, acreage, location, list of copy to addressee, name, position and title of official who signs on behalf of the Government, and appropriation accounting data. In the interest of reducing clerical time required to prepare these forms, it is suggested that consideration be given to overprinting these forms to include any general information which is necessary on all forms. It is also suggested that window type envelopes be utilized in mailing the Notice of Renewal.

31. MODIFICATION OR AMENDMENT OF LEASES

a. Navy leases may be modified when it appears to be in the interest of the Government to do so. (39 Op. Atty. Gen. 338 (1939)). Various decisions of the Comptroller General, cited below, have also shaped the Government's position in lease modifications:

(1) Modification of a lease that, in effect, deprives the Government of any of its rights thereunder, without additional consideration running to the Government is unauthorized. 17 Comp. Gen. 279 (1937);

(2) Express terms of a lease cannot be modified by statements or representations collaterally made. 18 Comp. Gen. 820 (1939);

(3) Officers of the Government have no authority to surrender a right vested in or acquired by the Government under a contract. 22 Comp. Gen. 260 (1942).

a. Accordingly, the Contracting Officer of the FEC may, without further approval, modify or amend a lease; provided such modification or amendment does not change the substance of the lease, detract from the rights of the Government thereunder, or increase its obligations. However, prior to the modification or amendment of a lease which changes the substance, hereof, detracts from the rights of the Government or increase its obligations thereunder, yet is still considered to be in the

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interest of the Government, the Commander/Commanding Officer of the FEC will obtain the following respective approvals:

(1) For Leases with Annual Rental of less than \$1,000. The approval of the Commanding Officer of the using activity will be obtained. For Marine Corps Family Housing leases, approval of the Marine Corps District Director or other authorized Marine Corps Commander will also be obtained.

(2) For Leases with Annual Rental of \$1,000 to \$750,000 (eff. FY-04). In addition to the above approvals, the approval of the mission component command/region and the Commander, Navy Installation Command (CNIC) shall be obtained. For Marine Corps leases of unaccompanied personnel housing, approval will also be obtained from the Commandant of the Marine Corps.

(3) For Leases with Annual Rental in Excess of \$750,000 (eff. FY-04). In addition to the above approvals, the approvals of the Commander, Navy Installation Command (CNIC) or Commandant of the Marine Corps, as appropriate, will be obtained.

(4) Distribution of Modifications or Amendments to Leases. Modifications or amendments to leases after final execution and insertion of appropriation accounting data will be distributed as indicated for original leases in [Paragraph 27](#) above.

32. TERMINATION OF LEASES

a. No standard format is prescribed for the termination of leases, therefore, a letter addressed to the lessor at the address indicated in the lease should be used for this purpose. This letter must be signed by a contracting officer of the FEC authorized to sign leases and should contain the following:

(1) Notice of Termination. The above indicated letter to effect termination of a lease must contain specific language to comply with the provisions of Clause 4 of General Clauses. The following language will accomplish this purpose: "Lease (Number) is hereby terminated effective (date) in accordance with the terms and conditions thereof."

(2) Special Release. It is highly desirable to obtain a release of any and all liability of the Government for the leased property subsequent to the effective date of termination.

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Accordingly, the letter of termination should forward a form of Special Release for execution and return to the FEC. Although highly desirable, it is not mandatory that such a release be obtained. If obtained, a copy of the Special Release should be distributed as indicated for the original lease in subparagraph (5) below.

(3) Final Inspection. The letter of termination should make arrangements for final inspection of the leased premises on or just prior to the Government's relinquishment of possession of the premises. In the case of family housing leases, the occupant of the unit should not be released until this inspection is made since the occupant is responsible for such restoration other than normal wear and tear.

(4) Appropriation Accounting Data. Since a copy of the letter terminating a lease is to be provided to the paying office identified in the lease, for the purpose of stopping payment of rental subsequent to the effective date of termination, the letter must serve as a fiscal accounting document. Accordingly, appropriation accounting data as prescribed by [paragraph 25 a.\(14\)](#) above shall be placed at the lower edge of the letter on all copies, except the original. It is suggested that the amount of decrease in obligation be shown in brackets at the end of the linear accounting data to permit rapid fiscal accounting by those responsible for this task. As an example, if the annual rental is \$12,000 per annum and the lease is being terminated two months short of the 12 month term, this would be shown (\$2,000.00 decrease).

(5) Distribution of Notice of Termination. Letters of termination for leases shall be distributed as follows:

- | | |
|--------------------|--|
| (a) Original | Lessor |
| (b) Signed Copy | FEC |
| (c) Conformed Copy | Mission Component
Command/Region
(if required) |
| (d) Conformed Copy | Commanding Officer of Using
Activity |

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(e) Conformed Copied To Finance Office
responsible for making
payment

33. LEASING OF UNIMPROVED LAND

a. The competitive procedures described in [10 U.S.C. §2303](#) and [48 C.F.R. Sec. 570](#) do not apply to the acquisition of leasehold interests in bare or unimproved land. However, in certain circumstances, such as where the exact location of the property is not the most important issue, it may be more advantageous to use competitive procedures. In these cases, the competitive procedures described in this section should be utilized.

34. CONDEMNATION OF LEASEHOLD INTERESTS

a. Policy. Where it has been determined to acquire the use of real property by lease, it is the policy of the Department of the Navy to do so by conducting negotiations with the owner of such property and to enter into a lease as provided for in this chapter. However, circumstances sometimes require the acquisition of an interest in land by institution of condemnation proceedings. Occasions where this action is necessary are stated in P-73 Chapter 11. These occasions are equally applicable to the acquisition of leasehold estates through condemnation, except that Agreements of Purchase are not applicable to leases. There may arise a circumstance in which negotiations took place through a "nonvoluntary" noncompetitive process (see [paragraph 20.e.](#)) above, and subsequently a determination is made to acquire the lease through condemnation. In such instances, the FEC shall provide to NAVFACENGCOM a description of the circumstances and justification to proceed. Upon NAVFACENGCOM approval, the lessor should be advised of the changed circumstances and made an offer to lease, including rental based upon the appraised fair rental value in accordance with applicable procedures set forth in P-73 Chapter 8. If a negotiated agreement is not reached, condemnation proceedings may then be sought.

b. Authority. The Department of the Navy's basic authority to acquire real property by condemnation is the Act of 1 August 1888 [40 U.S.C. §257 {40 U.S.C. 3113}](#) ([reference \(dd\)](#)). This Act does not contain a provision authorizing the taking of possession of real property upon the filing of the complaint in condemnation.

(1) Authority to Condemn in Time or Imminence of War. [Title 10 U.S.C. §2663](#) ([reference \(ee\)](#)) authorizes the Secretary of

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the Navy to cause proceedings to be instituted for the acquisition by condemnation of any interest in land, including temporary use for purposes expressly enumerated in the Act. It also authorizes the acceptance of gifts of any interests in land, including temporary use, for such purposes. It contains a provision that in time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under the provisions of the Act, take and use the land to the extent of the interest sought to be acquired. In condemnation proceedings instituted pursuant to this provision, the courts usually will enter orders granting immediate possession of the property or interests therein to be used for military purposes.

(2) Limitations on Authority. The Acts cited in subparagraphs b. and b.(1) above are not authority to acquire lands but are procedural. No one single Act of Congress can be cited as the overall authority for the leasing of real property for naval uses. The leasing or renting of land for naval purposes is customarily provided for in annual Department of Defense Appropriation Acts. Military Construction Acts include special provisions which, although varying as to the language used, provide in express terms for the acquisition of lesser interests than the fee, including leaseholds.

c. Procedure. The legal authority for condemnation and the judicial rules of procedure relating thereto cover all interests in real property. Therefore, the procedure to be followed in the condemnation of a leasehold estate is essentially the same as the procedure for the condemnation of a fee estate. The procedure set forth in P-73 Chapter 11, with the exception of the references to Purchase Agreements, is applicable and shall be followed.

d. Renewal of Condemnation Leaseholds. The procedure to determine the continuing requirement for condemnation leaseholds will conform to the procedure for other leases. After it is determined that a continuing requirement exists and that funds are available for payment of rental, the FEC will negotiate with owners to determine if a negotiated lease can be consummated. If not, NAVFACENCOM will be advised of the continuing requirement, the availability of funds for payment of rental, and results of negotiations with a recommendation that appropriate action be taken to provide for extension of the condemnation leasehold for another 12-month term. NAVFACENCOM will then request that the Department of Justice file a Notice of Election with the court to extend the leasehold for the additional 12-month term.

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SECTION IV - FOREIGN LEASING

35. PURPOSE AND SCOPE

a. Leasing procedures in foreign countries are, to a great extent, similar to those employed within the United States. There are, however, certain significant policy and procedural differences. This Section prescribes the authority, limitations thereon, the regulations involved, and the procedures applicable to the leasing of real property in foreign countries by the Department of the Navy under the following laws:

- Direct leasing of family housing as authorized by [10 U.S.C. §2828, reference \(b\)](#).
- Direct leasing of facilities other than family housing as authorized by [10 U.S.C. §2675, reference \(d\)](#);

36. DELEGATION OF AUTHORITY

The delegation of authority in [Paragraph 4.d.](#) hereof is applicable to foreign leasing.

37. LEGISLATIVE AUTHORITY FOR FOREIGN LEASING

a The annual Department of Defense Appropriations Acts which support domestic leasing are also applicable to the leasing of real property in foreign countries. The funds appropriated thereby are available only for the fiscal year covered by the Act.

b. The following laws also provide authority for the leasing of real property in foreign countries.:

(1) [Military Family Housing. 10 U.S.C. §2828, reference \(b\)](#), provides authority for the leasing of military family housing in foreign countries. [Reference \(d\)](#) provides, in part, that:

"Leases of housing units in foreign countries. . for assignment as family housing may be for any period not in excess of ten years, and the costs of such leases for any year may be paid out of annual appropriations for that year."

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Pursuant to this authority, the initial term of a lease for family housing may be for any period not in excess of ten years, and the term of any one renewal period may be for any period not in excess of ten years.

(2) Structures and Related Real Property Other Than Family Housing. [10 U.S.C. §2675, reference \(d\)](#), provides authority for the leasing of facilities other than military family housing in foreign countries. [Reference \(d\)](#) provides, in part, that:

"The Secretary of a military department may acquire by lease in foreign countries structures and real property relating to structures that are needed for military purposes other than for military family housing. A lease under this section may be for a period of up to five years, and the rental for each yearly period may be paid from funds appropriated to that military department for that year."

Pursuant to this authority, the initial term of a lease for facilities other than family housing may be for any period not in excess of five years, and the term of any one renewal period may be for any period not in excess of five years.

38. NAVY POLICY FOR FOREIGN LEASES

The Navy's policy for the acquisition of real property by lease in foreign countries is as set forth in [Paragraph 6](#) hereof., except that acquiring general purpose space by assignment from GSA is not applicable.

39. UNAUTHORIZED CONTACTS

The cautions and consequences set forth in [Paragraph 22.b.](#) hereof regarding unauthorized contacts by employees of activities requiring leased property with prospective lessors fully apply to foreign leasing. Whenever the responsible FEC leasing official judges an unauthorized contact to be detrimental to the Government's interest, further leasing action shall be suspended for such time as may be required to eliminate or minimize the detrimental impact.

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40. COMPETITION REQUIREMENTS FOR FOREIGN LEASES

a. The competition requirements and documentation procedures specified in [Paragraph 20](#) hereof are fully applicable to foreign leasing; provided, however, that the acquisition of "non-voluntary" leases is not applicable to foreign leasing.

b. The Simplified Lease Acquisition Threshold (SLAT) applies to the leasing of real property in foreign countries. The simplified leasing procedures outlined in [Paragraph 23.a.\(7\)](#) hereof may be adapted, as appropriate, for foreign leasing; provided, however, that when using simplified leasing procedures, the Real Estate Contracting Officer (RECO) shall promote competition to the maximum extent practicable.

41. MARKET SURVEYS AND ADVERTISING FOR FOREIGN LEASES

The provisions regarding market surveys and advertising as set forth in [Paragraph 21](#) hereof are applicable to foreign leasing; provided, however, that advertising in local newspapers and/or in the Federal Business Opportunities Website (Fed Biz Opps) is not mandatory for foreign leasing or foreign lease-construction.

42. ALTERATIONS AND IMPROVEMENTS

a. No Inherent Right to Alter. The Government has no inherent right to alter or improve leased property. The specific terms of a lease determine the Government's right, if any, to make alterations and improvements to the leased property. Many leases authorize the Government to make alterations and improvements to leased property but, require the prior consent of the lessor for such alterations. Because lease provisions can vary, it is important that a lease be reviewed to determine the Government's right to make alterations and improvements to the leased property, and the lessor's role, if any, in such work.

b. Responsibility for Costs. The purpose of alterations and improvements is to adapt a facility for Government use or to meet changes in the Government's facility needs. Although a lessor may agree to share in the costs of the work, the cost of alterations or improvements required by the Government is ordinarily the Government's responsibility.

c. Alterations Versus Repairs. Not all changes to leased property constitute alterations. Repairs to replace or renew

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deteriorated components of a leased facility or necessary for continued utilization for its designed purpose are not alterations or improvements. The cost of repairs required to correct such deficiencies is the responsibility of the lessor; provided, however, that the costs to repair or restore property damaged or destroyed due to the fault or negligence of the Government, or its occupants, is the Government's responsibility.

d. How to Accomplish Alterations. Alterations to leased property may be accomplished in one of three ways: (1) by Government forces, (2) by a Government contract with a third party, or (3) by the lessor under a lease modification. The most practical method for accomplishing alterations is often via a lease modification. To the extent the lessor believes that the alterations will increase the value of its property, the lessor may be willing to share the cost of the alterations and/or waive the Government's restoration obligations for the alterations. Performance by or through the lessor should also facilitate the issuance of building permits and minimize conflicts/ambiguities regarding Government and lessor maintenance responsibilities.

e. Financial Aspects. The financial aspects regarding alterations and improvements as set forth in [Paragraph 7](#) hereof are applicable to foreign leasing. Additionally, pursuant to [NAVFAC P-930, Housing Manual, reference \(ff\)](#), the cumulative cost over the lease term (including all renewals) of any alterations, repairs or additions to foreign leased family housing units may not exceed 25 percent of the first year's annual rent, without the prior approval of the CNIC Housing Division and the Deputy Assistant Secretary of the Navy (Installations & Facilities).

43. ECONOMIC ANALYSIS FOR FOREIGN LEASES

a. The provisions regarding economic analysis as set forth in [Paragraph 9](#) hereof are applicable to foreign leasing. In this regard, a mission that requires long-term Government use of facilities should consider the feasibility of programming for the acquisition or construction of Government-owned facilities on Government-controlled land. In the case of activities/commands currently occupying Government-leased space, an evaluation should be made prior to lease renewal, or no less often than every five years, to determine if it is more advantageous to the Government to continue to occupy leased facilities or to relocate to Government-owned facilities or Government-controlled land.

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b. The House Appropriations Committee has directed that a cost benefit analysis of all new leases and lease-construction agreements covering more twenty-five (25) family housing units be performed and be made available to the Committee.

44. REQUIRED APPROVALS

a. Family Housing Leases with an Average Annual Rental exceeding \$500,000. A lease pursuant to [10 USC §2828](#) requires submission of a report to the appropriate committees of Congress on the facts concerning the lease where the average annual rental during the term of the lease exceeds \$500,000. The lease may not be entered into until expiration of 21 days from the date the committees receive the notification.

b. High-Cost Family Housing Leases. The House Appropriations Committee has directed that (1) it be notified 21 days prior (by the CNIC or CMC) to entering into any new overseas lease covering an individual military family housing unit for a "special position occupant" if the per-unit cost (inclusive of shelter rent, maintenance, services, and utilities) would exceed the maximum annual expenditure set by [reference \(b\)](#).

c. Land Leases of more than 1,000 acres or with an Annual Rental exceeding \$1,000,000. The approval of the Office of the Secretary of Defense must be obtained prior to issuing formal public notice of any major land acquisition exceeding 1,000 acres, or having an annual lease cost exceeding \$1 million, as stated in paragraph 5 above.

45. SUBMISSION OF REQUEST FOR LEASING ACTION

a. Activity/Claimant Responsibility. As with domestic leasing, the requirement for temporary use of real property in foreign countries is determined by activities and commands based on an approved military mission. The determination to pursue leasing action should include consideration of DOD criteria, Navy policy, and the limitations and prohibitions as set forth in this Chapter. Besides funding annual rental, the activity or its mission component command must also fund the cost of obtaining an appraisal, title evidence, economic analysis, market survey, and any other supporting data required for the execution of a foreign leasing project.

b. FEC Responsibility. The FEC having cognizance of the foreign country in which the proposed lease property is
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located has the responsibility of obtaining all required approvals for the leasing action. Requests for leasing action shall be initiated by the using activity or command and will be submitted as provided below. All requests for Marine Corps leases shall be sent via the Commandant of the Marine Corps.

(1) Requests for Leases with an Annual Rental not exceeding \$500,000 will be submitted by the using activity directly to the FEC, via the CNIC or other approval authority required by this chapter. The request shall contain complete justification for the leasing action and statements to indicate compliance with DOD criteria and Navy policy as stated in [Paragraphs 5 and 6](#) hereof. The request shall indicate that the Commanding Officer approves the proposed leasing action, provide a statement that funds are or will be available for all costs under the proposed lease, and cite the appropriation accounting data to be used. The request shall contain the same information, statements and data as set forth in [paragraph 22.c.](#) hereof. An economic analysis, or a request for technical assistance in the preparation of an economic analysis, shall also be provided if appropriate. Technical assistance furnished by the FEC will be on a reimbursable basis.

(2) Requests for Family Housing Leases with an Estimated Average Annual Rental Exceeding \$500,000 will be submitted by the using activity and processed as indicated in [Paragraph 44 b.](#) hereof. The request will also contain a statement of the mission of the using activity and complete and thorough justification for the leasing action including an economic analysis if appropriate (see [Paragraph 43](#) above) and statements to satisfy the Navy policy regarding seismic safety and physical security. The mission component command's endorsement on requests for leasing actions of this scope will certify the availability of funds and that the lease is required to meet an approved mission of the activity. Upon receipt of the request by the FEC, the request shall be thoroughly reviewed, a draft of the proposed lease instrument prepared along with a draft Acquisition Report to meet any congressional notification requirements. The request will then be forwarded to NAVFACENGCOM with drafts of the proposed lease, an Acquisition Report, and an economic analysis to obtain additional required approvals. Upon receipt of these approvals, NAVFACENGCOM will so advise the FEC.

46. ACTION BY FEC

a. Upon receipt of a request for leasing action, the FEC shall take those actions as set forth in [Paragraphs 22.d](#)

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and [23](#) above; provided, however, that the preparation of a prospectus for the lease and Congressional reporting pursuant to [40 U.S.C. §606](#) are not required.

b. In some instances, the FEC may determine that the preparation and submittal to NAVFACENGCOM of a draft Acquisition Report, with supporting information, should be deferred until actual rental and other lease terms have been negotiated by the FEC and the prospective lessor. In such instances, the FEC shall advise NAVFACENGCOM of the reasons for deferring such submittal and provide a plan of action and milestones for such submittal. In such circumstances, FEC shall ensure that no action shall be taken which shall constitute, or which may be reasonably interpreted by a prospective lessor as constituting, Navy acceptance or award of a leasing proposal.

47. ACTION BY COMNAVFACENGCOM

Upon receipt of a request for leasing action, NAVFACENGCOM shall take those actions as set forth in [Paragraph 22.e.](#) above; provided, however, that in the case of lease construction, or as otherwise determined to be in the Government's best interests, preparation and submittal of an Acquisition Report to the appropriate committees of the Congress shall be deferred until actual rental and other lease terms have been negotiated by the FEC and the prospective lessor. In such circumstances, FEC shall ensure that no action shall be taken which shall constitute, or which may be reasonably interpreted by a prospective lessor as constituting, Navy acceptance or award of a leasing proposal.

48. COMPETITIVE PROCEDURES FOR FOREIGN LEASES

a. Unless one of the exceptions set forth in [Paragraph 20](#) above applies and is documented as set forth therein, all foreign leases, other than the leasing of unimproved land, shall be awarded based on full and open competition.

b. Competitive procurement of leases involves the solicitation of proposals from or negotiation with the maximum number of sources that the RECO considers to have the resources and capability to provide facilities meeting the minimum military requirements.

c. Competitive procurement procedures for real property

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typically are handled by competitive leasing negotiation. Sealed bidding is rarely, if ever, used for real property acquisitions. The negotiated method of contracting is the best suited for the leasing of real property, since factors other than price must be considered in making a lease award, and it is necessary to conduct discussions with offerors about their leasing proposals.

d. In using the competitive negotiation process, the procedures to be followed by the FEC upon receipt of all required approvals are as generally set forth in [Paragraph 22](#) hereof; provided, however, that it is desirable, but not mandatory for foreign leases, to include the GSA Solicitation procedures etc.

e. Procedures other than full and open competition are only allowable under the simplified acquisition threshold, or under one of the exceptions contained in [reference \(f\)](#). Experience indicates, however, that circumstances will arise in which non-competitive or sole source leasing is required. Noncompetitive negotiations may be authorized on the basis that there is only one responsible offeror or facility capable of providing the required property, or otherwise as supported. If non-competitive leasing is necessary, such procedures shall be justified and documented as set forth in [Paragraph 20.d.](#), above.

49. FINANCIAL POLICIES APPLICABLE TO FOREIGN LEASING

a. Currency of Rent Payments. Leases for real property located in a foreign country shall be negotiated and paid in either U.S. Dollars or the currency of the Host Nation. Leases shall not be negotiated or paid in a "third country" currency.

b. Rent Adjustments. Leases may, but do not have to, provide for periodic rental adjustments. Adjustments, if necessary, can be based on a flat percentage or on changes in a Consumer Price Index (CPI), or another inflation index. When a lease provides for rent to be paid in US Dollars, the basis for a CPI adjustment shall be the U.S. Consumer Price Index. Leases paid in U.S. Dollars cannot be adjusted by changes in the Host Nation's CPI. Likewise, payments made in the Host Nation's currency can only be adjusted by changes in the Host Nation's CPI. Rent adjustments, where acceptable, shall be no more frequent than annually and shall identify a maximum adjustment amount for each adjustment period.

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c. Payment Vouchers. Payment of rental for real property leased in foreign countries will be made on the basis of a Voucher for Disbursement and/or Collection (Standard Form 2277). Payment will be made by the Disbursing Office serving the area in which the leased property is situated and in accordance with the Navy Financial Management and Comptroller Manual. The Disbursing Office which is to make payment of rentals or other charges under the lease will be indicated on the signature page of the lease contract. Appropriation accounting data will be indicated on the lease contract.

50. DOMESTIC REQUIREMENTS NOT APPLICABLE TO FOREIGN LEASING

a. The following general requirements are applicable to domestic leasing procedures but are generally not applicable to leasing in foreign countries unless otherwise stated.

(1) Advance Payment of Rent. The prohibition against advance payment of rental applies to foreign as well as to domestic leasing. There is, however, a broad exception to the prohibition which relates to foreign leasing. Pursuant to [reference \(gg\)](#) an advance payment of rent under a DoD appropriation may be made for "rent in a foreign country for periods of time determined by local custom." Prior to negotiation and execution of the lease, the RECO shall determine and document the existence of an applicable exception to the advance rent prohibition. Such determination will be retained as part of the permanent contract file.

(2) Advance rent payments are not Navy policy but may, at times, be necessary. For the leasing of existing facilities in foreign countries, rent payments made no more than quarterly in advance often may be considered as reflecting local custom. Law and/or custom in a specific country may, or may not, support advance payment of rent and must be considered on a case-by-case basis. Under no circumstances, however, can rent, or other payments due under a lease, be paid in advance of accepting a facility for Government occupancy.

(3) Experience with foreign lease-construction projects indicates that advance rent payments are often requested by developers. The specific proportion of the advance and arrears payments which may be considered by the Government must be identified in the Request for Proposals and shall be documented by the RECO, prior to release of the RFP, as being necessary, reasonable, and in accord with local custom. No progress payments are permitted for lease-construction contracts.

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(4) Congressional Reporting. The requirement for the submission of a report to the Armed Services Committees for non-family housing leases in excess of \$750,000 pursuant to [reference \(n\)](#) does not apply to foreign leases. There is however a requirement for submission of reports for family housing leases having an average estimated annual rental in excess of \$500,000 pursuant to [reference \(b\)](#).

(5) Access for the Handicapped. Facilities leased by the United States in foreign countries need not, but should, if possible, be accessible to the handicapped.

51. PREPARATION OF FOREIGN LEASES

a. Leases covering property in foreign countries will normally be prepared on [Standard Form 2](#), "U.S. Government Lease for Real Property" or such other form as may be approved by Legal Counsel at the FEC having responsibility for the proposed leasing action. All of the legal requirements of the country in which the premises are situated relating to the preparation, execution, or recordation of leases will be met. The guidelines provided in [Paragraph 25](#) above for the preparation and execution of leases apply to foreign leases.

b. In the event a satisfactory agreement cannot be reached by using the form approved by the FEC, such modifications as may be required by local practice may be made provided the United States is fully protected and all mandatory provisions are included.

c. Mandatory Statutory Clauses. Certain clauses are required in all leases. Therefore, even though the standard forms may be modified, as indicated above, the following clauses must be included in all foreign leases, except as noted:

(1) "Gratuities". Include in all leases.

(2) "Disputes". Include in all leases.

(3) "Covenant Against Contingent Fees". This clause is not required, however, if the lease covers only unimproved real property; and

(4) "Examination of Records", This clause is not required if the lease covers only unimproved real property.

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(5) "Assignment of Claims. No claims for money due or to become due shall be assigned by the Lessor unless (i) approved in writing by the Commander/Commanding Officer, FEC; (ii) made in accordance with the laws and regulations of the United States of America; and (iii) permitted by the laws and regulation of the Lessor's country. Any assignment under this Lease shall cover all amounts payable under this Lease and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. On each invoice or voucher submitted for payment under this Lease to which any assignment applies and for which direct payment thereof is to be made to any assignee, the Lessor shall identify the assignee by name and complete address and shall acknowledge the validity of the assignment and the right of the named assignee to receive payment in the amount of the invoice or voucher. In no event shall copies of this Lease or of any plans, specifications, or other similar documents relating to work under this Lease, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this Lease or to any other person not entitled to receive the same. However, a copy of any part or all of this Lease so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Commander/Commanding Officer, FEC."

d. Additional Clauses for Foreign Leases. The following clauses shall be included in all foreign leases, except as noted:

(1) "Lease Translation. It is intended that the English language version of this Lease and any other language into which it is translated shall have an identical meaning. In the event of any conflict between the two versions, the English version shall govern."

(2) "Taxes. The Lessor warrants that no part of the rental consideration includes an allowance for any tax or duty which the Government of the United States and the Government of _____ have agreed shall not be applicable to expenditures in _____ by the United States or any tax or duty from which the Lessor, its agents, contractors or sub-contractors hereunder are exempt under the laws of _____. If any such tax or duty has been included through error or otherwise, the rental shall be correspondingly reduced."

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(3) "Registration and Transcription. As required by the laws of _____, the registration and the transcription of this Lease, or any renewal thereof, shall be accomplished by the Lessor, at its cost. As requested by the Tenant, the Lessor shall provide the Tenant with the proof of such registration and/or transcription."

(4) "Annual Appropriations. All payments by the Tenant due under this Lease cannot exceed the amount of appropriations available at the time such payments are due hereunder. Additionally, nothing contained in this Lease shall be considered as implying that the Congress of the United States of America will, at any later date, appropriate sufficient funds to meet any deficiencies hereunder. In the event the amount of appropriations is not sufficient to cover all payments due under this Lease, the Tenant will notify the Lessor of the amount of appropriations available for this Lease and, at the option of the Lessor, either pay the amount of appropriations available as payment in full or vacate the premises within 90 days. If the Tenant is obligated to vacate the premises, all payments will be prorated based on the daily rate of the current annual payment amounts."

(5) "Service of Judicial Documents. Judicial Documents served on the Tenant by the Lessor shall be served as contemplated by the 15 November 1965 Hague Convention to the U.S. Department of Justice, Washington, D.C., U.S.A."

52. DISTRIBUTION OF FOREIGN LEASES

After a lease has been fully executed, the FEC will make distribution as follows:

- | | | |
|-----|------------------|---|
| (1) | Original | FEC Files |
| (2) | Executed Copy | Lessor |
| (3) | Executed Copy | Appropriate Disbursing Office |
| (4) | Conformed Copy | Mission component command |
| (5) | Conformed Copy | Using activity |
| (6) | Conformed Copies | As required for local fiscal accounting |

53. CONDITION REPORTS FOR FOREIGN LEASES

a. Initial Condition Report. The preparation of a Condition Report showing the condition of the leased premises at the time the Government assumes possession is required for all
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leases. This is necessary to: (i) enable the Government to properly perform any assumed restoration obligations, (ii) settle any valid claims arising out of such obligations, and (iii) defend against improper claims. The procedures relating to condition reports are set forth in [Paragraph 26](#) above will be followed. To the fullest extent possible, the Government representative who negotiated the lease shall be responsible for the preparation of the report and shall execute the report.

b. Note All Deficiencies. Upon expiration or termination of a lease agreement, the Government is required to return the leased premises to the property owner in as good a condition as when received, with the exception of reasonable wear and tear and damage by the elements over which the Government has no control. Under the laws of many Host Nations, the lack of written evidence of deficiencies at the time the tenant takes possession of the leased premises presupposes the premises to be in good condition. At the end of the tenancy, the tenant will be held liable for pre-existing deficiencies if the deficiencies are not made a matter of record in the condition report. Accordingly, care should be taken to assure that the condition report reflects all defects which could possibly be later asserted by the property owner as an item of damage which occurred during Navy occupancy.

c. Distribution. Three (3) copies of the report should be dated and signed by the Real Estate Contracting Officer (RECO), and the lessor, and by their designated representatives if the inspection was performed by such persons. Any differences of opinion as to condition of the premises must be clearly set forth in the report. If the lessor refuses to participate in the inspection or execute the condition report, the report should so indicate. One fully executed original shall be provided to the lessor. Another fully executed original shall be retained by the RECO as part of the permanent lease file. A conformed copy of the report shall be provided to the activity.

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d. Updated Condition Report. It is essential that the inspection of the leased property and condition report be made at the time of the Government's initial occupancy and are amended as necessary to reflect subsequent alterations/modifications. The updated report should be made jointly by the Activity's ACO/Lease Administrator and the lessor and signed by both parties. The updated report should focus on those changes as compared to the initial report. In the event the lessor refuses to sign, the report should so indicate with the reasons therefor. Distribution of the updated condition report should include all parties furnished copies of the initial condition report.

e. Final Condition Report. Upon expiration, or earlier termination, of the lease, a condition report is necessary to reflect the condition of the premises as of the date possession of the premises is returned to the lessor. The inspection should be made jointly by the Activity's designated ACO/Lease Administrator and the lessor and signed by both parties. In the event that the lessor refuses to sign, the report should so indicate with the reasons therefor. Distribution of the final condition report should include all parties furnished copies of the initial condition report.

54. RECORDATION OF FOREIGN LEASES

a. The Department of the Navy, as a rule, does not record its foreign leases. However, leases and/or lease-construction agreements may contain an option whereby the Government can purchase the leased property or otherwise acquire a long-term interest in the leased property. Any contract in which the Government is granted an option to purchase the leased premises will be recorded. It may be desirable in other instances, such as lease-construction agreements, to record leases where failure to do so might prejudice the Government's rights under the lease. The FEC, in its discretion, will in such cases cause the lease to be recorded in the public records. In each case in which the lease is to be recorded, it must be executed, witnessed and/or acknowledged in accordance with Host Nation laws to make it eligible for recordation. In most cases, it will be found that the original of the lease instrument must be submitted for recordation.

55. RENEWAL OF FOREIGN LEASES

a. A lease renewal is a contracting action and may only be performed by a warranted RECO acting within the limits of his/her
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contracting warrant. A lease may be renewed only if its provisions so allow. Renewal will be effected by use of a "Notice of Renewal of Government Lease" which must be received by the lessor on or before the date specified in the lease.

b. Leases in foreign countries will be renewed in accordance with their provisions only after receipt of a written recommendation from the head of the using activity of the need for the property for the renewal term and upon ascertaining that funds for payment of the rental are or will be available.

c. Prior to renewal the FEC will obtain the written recommendation of the Commanding Officer of the using activity for the continuing need for the leased property for the renewal term and the approval of the activity's mission component command. CNIC is the mission component command for family housing. For Marine Corps family housing leases, the approval of the Marine Corps District Director or other authorized Marine Corps Commander will also be obtained. For Marine Corps leases for unaccompanied personnel quarters approval will be obtained from the Commandant of the Marine Corps.

d. The activity's renewal request shall be accompanied by a NAVCOMPT Form 2276 evidencing that funds are or will be available for payment of rental and citing the appropriation accounting data. If the effective date of the renewal term will be in the next fiscal year, the NAVCOMPT Form 2276 will contain a "contingent on the availability of funds" statement. To avoid the risk of voiding the lease renewal, the renewal notice provided to the lessor shall not contain a "contingent on the availability of funds" statement if such statement is already contained in the lease itself. The remaining copies of the Notice of Renewal will be held until the appropriation data is received and inserted and then distribution will be made.

e. Timely Delivery is Essential. Renewals ordinarily require advance written notice to the lessor. The advance notice required can be 90 days or more. Failure to provide written notice of a lease renewal within the time period established in the lease, deprives the Government of the right to continue occupancy of the leased premises. To ensure the lessor's timely receipt, the renewal notice signed by the RECO may be provided to the activity's designated Lease Administrator not less than thirty (30) days prior to the date the lessor must receive the notice. The ACO/Lease Administrator shall ensure that renewal notices are (1) delivered to lessors by registered mail, with
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return receipt requested, not later than 15 days before the deadline date or (2) hand delivered, receipted by the lessor, not later than seven days before the deadline date. Approximately ten (10) days prior to the receipt date specified in the lease, a follow-up will be sent by the RECO to the ACO/Lease Administrator requesting confirmation of delivery and receipt of the signed renewal notice if such confirmation has not been provided.

f. The executed Notice of Renewal will be distributed as indicated for the original lease instrument, except that the original will be sent to the lessor and a signed copy retained for the FEC files. The appropriate Disbursing Office to make payments of rental and appropriation accounting data will be shown on all copies of the Notice of Renewal except the original.

56. SUCCEEDING LEASE

When the right to renew a lease does not exist, the Activity occupying the leased property may desire to continue occupancy of the existing leased property and may request that the contracting officer enter into a succeeding lease for continued occupancy of the leased property. A succeeding lease is a new contractual procurement, however, and the contracting officer must comply with all approval, policy, and procedural requirements discussed in this Chapter.

57. MODIFICATION OR AMENDMENT OF FOREIGN LEASES

a. Leases for properties located in foreign countries may be modified or amended by the RECO without further approval provided such modification or amendment does not change the substance of the lease, detract from the rights of the Government thereunder, or increase its obligations. If, however, the modifications or amendment changes the substance of the lease, detracts from the rights of the Government, or increases its obligations thereunder, the contracting officer must obtain the same approvals that would be required as set forth in [Paragraph 31](#) above.

b. Modifications or amendments to foreign leases will be distributed, after execution and insertion of appropriation accounting data, as indicated for the original lease.

58. LEASE CONSTRUCTION IN FOREIGN COUNTRIES

a. In certain instances, it will be found that the
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procurement of real property/facilities to meet military requirements will require the construction of additions to existing improvements or the construction of new buildings. In some instances, it has been necessary to enter into lease-construction agreements in order to procure such facilities. A lease-construction agreement typically involves the procurement of a leasehold interest in a facility built by the lessor to the Navy's specifications. In order to assure the owner the early amortization of a substantial portion of the construction cost, lease-construction agreements generally provide for longer firm lease terms, without a termination for convenience right, and for larger advance payments annually during the initial lease term.

b. Lease-construction is a particular type of leasing action and requires compliance with the same policies and the same approvals as do other leases.

c. Full justification for the space contemplated must be submitted to the FEC, including an economic analysis of the project that clearly indicates that the proposed lease-construction is the most advantageous acquisition alternative over the life of the requirement. This justification will be based on the standards of the Basic Facility Requirements List and will show the military population to be supported and the military allowance of each activity to be supported. If the need for the property is based on additional duties and/or a change in military mission, the project will require clearance through the Shore Facilities Planning System. A new Basic Facilities Requirements List should be submitted to the cognizant FEC in support of the project if such a change of mission is involved.

d. More Advantageous. Acquisition of required facilities by lease-construction may be more advantageous to the Government under the following circumstances:

- lease-construction is determined to be more cost effective than construction or acquisition through the Military Construction (MILCON) Program, or
- MILCON is impractical due to lack of suitable Government-controlled land, or
- MILCON is not a practical means of acquiring needed facilities within the time period necessary due to funding or programming constraints.

d. Cost Estimates for Lease-Construction. Cost estimating
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procedures for lease construction differ somewhat from those used in conventional leasing. Since the property required is to be constructed or altered to Navy specifications, the scope of the appraisal will be expanded to provide the market prices and rentals for similar existing facilities (if any), to estimate the cost to construct the proposed facility based on the Navy-furnished or Navy-approved specifications/design plans, and to estimate the rental value of the completed property. The appraisal will consider the construction and financing costs incurred by the developer/lessor, the nature of the facility, the estimated term of the lease, and other pertinent considerations.

f. Request For Proposals (RFP). Lease-construction requires the issuance of a formal RFP. The RFP will be prepared by the RECO based on the facility requirements identified by the requesting Activity (NAVFACENGCOM for family housing) and technical provisions validated by cognizant FEC line departments. The RFP is the basis for the subsequent procurement and negotiation process and must contain information sufficient and necessary to enable a proposer to prepare a proposal. In addition to the requirements discussed in [Paragraphs 22.c.](#) and [47](#) above, an RFP for lease-construction must:

- contain a detailed description of the facility required including sufficient plans/specifications to ensure an understanding of the Navy's requirements,
- identify the geographic area of consideration, and required availability date,
- furnish the form of lease-construction contract to be used,
- specify that, as a precondition of award, the successful proposer will be solely responsible for obtaining such land, construction and permanent financing, building permits and zoning approvals as required, and
- specify that proposals will be effective for a period of time sufficient to evaluate proposals and obtain higher-level approvals.

g. Basis For Award. The "best value to the Government, price and other factors considered" will ordinarily be the basis for award. The RFP shall contain a statement to this effect and provide that the Government, at its option, may (1) choose to
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reject any and all proposals without a requirement for justification, (2) accept an initial proposal without discussion, or (3) accept other than the lowest rental proposal if determined to be in the Government's best interest taking into consideration factors other than price. Proposers should be advised to submit at the outset their "best proposal."

h. Release of RFP. The RFP shall be released by the RECO simultaneously to all prospective proposer. A pre-proposal conference may be convened and prospective proposers afforded an opportunity to present questions concerning the RFP. After release of the RFP, any extension of time for the submission of proposals granted to one proposer must be granted uniformly to all prospective proposers. When changes occur in the Activity's requirements, either before or after the receipt of proposals, the RFP shall be amended by the RECO in writing.

i. Source Selection Plan. Lease construction projects typically require the preparation by the RECO of a formal Source Selection Plan (SSP). The SSP may provide for the formation of a Technical Evaluation Board, Price Evaluation Board and/or a Source Selection Board to evaluate and select proposals for negotiation (establish the competitive range) and award. The SSP shall identify specific responsibilities of each Board and identify Board members. The RECO shall ensure that the SSP and the RFP reflect a consistent acquisition strategy and evaluation methodology. High value and/or complex projects may require the designation of a Source Selection Authority (SSA) to exercise review and approval authority over the procurement. The SSA need not be a warranted RECO but shall be in the NAVFACENGCOCOM chain-of-command at an organizational level above the RECO. If an SSA is designated, the SSP will be reviewed and approved by the SSA prior to release of the RFP.

j. Technical Evaluation of Proposals. Proposals shall be evaluated from technical aspects in accordance with criteria contained in the RFP. The evaluation "team" shall be cross-disciplinary in composition with qualified personnel from architecture, engineering, construction, real estate, housing and other fields as determined by the RECO to best represent the Government's interests. Board members may be from the Activity, mission component command, FEC, and prospective occupant activity, as appropriate. The evaluation process often entails the careful review and analysis of detailed engineering plans and specifications and shall be conducted independently and without Board member knowledge of the analysis of the cost/price aspects

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of proposals. The results of the technical evaluation shall be documented in the form of a written Report which shall be retained as part of the permanent contract file.

k. Cost/Price Evaluation. The RECO is responsible for ensuring that the reasonableness of the proposed price(s) is evaluated. Such evaluation may be conducted by the RECO or by a Price Evaluation Board acting under the direction of the RECO. All data furnished will be analyzed, with such technical assistance, including audit personnel, as determined necessary by the RECO. The results of the price evaluation shall be documented in the form of a written Report which shall be retained as part of the permanent contract file.

l. Competitive Range. The RECO shall establish a competitive range comprised of the most highly rated proposals, i.e., proposals that are acceptable or can be made acceptable in terms of price and technical requirements. Selection of the competitive range may entail the RECO's preparation and submission for higher-level approval of a Pre-Negotiation Business Clearance Memorandum, or similar documentation, furnishing an analysis of all individual proposals determined to be within a competitive range. The Pre-BCM recommends proposals to be negotiated, identifies pertinent issues to be negotiated, including but not limited to price, recommends specific negotiation objectives and strategy, and identifies a maximum price determined to be fair and reasonable. The RECO may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals, provided, the RFP specifically advises of such possibility.

m. Conduct of Negotiations. Negotiations will be conducted with all proposers that are within the competitive range. Negotiations will be conducted by the RECO or an individual designated by the RECO. While other personnel may assist in the conduct of negotiations, the RECO or his/her designee is responsible for the negotiations. When discussions are held with proposers to allow for modification of proposals to reflect changed Government criteria, all proposers in the competitive range will be given an opportunity to modify their proposals. Proposers not within the competitive range after the initial negotiations will be notified and dropped from further consideration unless the negotiations require any one of the other proposers to correct otherwise unacceptable contents of their proposal.

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n. "Best and Final" Proposals. For all lease construction projects entailing discussions with a proposer(s), "Best and Final" Proposals will be requested from all proposers determined to be in the competitive range. "Best and Final" Proposals will be evaluated in accordance with the approved Source Selection Plan. Thereafter, while technical clarification of individual proposals may be necessary and is acceptable, further negotiations will not take place after the cut-off date unless negotiations are conducted with all proposers and revised "Best and Final" proposals are solicited.

o. Selection. For all negotiated procurements, a written Negotiation Report detailing the negotiations shall be prepared by the Government's negotiator and signed by the negotiator and the RECO. The Negotiation Report will comprise a component of the Post-Negotiation BCM and shall be compared with the negotiation objectives contained in the approved Pre-Negotiation BCM. Review and approval of the BCM at a level above the RECO constitutes final selection of a proposer and shall be followed by a request to NAVFACENGCOM for such Congressional and other Washington-level approvals as required for lease execution.

p. Award. Award shall not be made until NAVFACENGCOM advises that all Washington-level approvals have been obtained. The RECO shall take special care to ensure that no statements are made or written notice provided to the prospective successful proposer which could be interpreted thereby as constituting notification of award. The RECO is specifically prohibited from statements of the nature that the proposer has been selected for award "subject to Congressional or Washington-level approvals".

q. Inspection During Construction. Once a lease construction contract is awarded the requesting Activity, as beneficiary of the facility, (NAVFACENGCOM for family housing) is responsible for providing the ceiling points and funding for administering and inspecting the work to assure compliance with the contract. All lease-construction agreements will provide, without deviation, for the Navy's right to make such inspections as it may desire during the construction of the improvements. The lease-construction agreement shall identify the Government representative responsible for inspection of improvements and acceptance of completed facilities for occupancy. Inspections carried out by the Government shall not relieve the lessor of the responsibility for managing the construction and completing the improvements in accordance with the plans and specifications previously approved by the Government. The Government's

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inspector will promptly bring to the lessor's attention any defects noted or deviations from approved plans and specifications, and shall ensure that the RECO is similarly promptly notified of such defects and deviations. The direct assistance and/or intervention of the RECO shall be requested in the resolution of all matters pertaining to defaults by the lessor, liquidated damages, contract disputes and otherwise as required to fully protect the U.S. Government in its leasing actions. Prior to any requested changes to the previously approved plans and specifications, the Government's inspector shall consult with the RECO and furnish recommendations regarding the acceptability of the change. All approvals for changes to the plans and specifications shall be in writing and made as a modification to the lease-construction agreement by the RECO. Changes which may exceed the scope of the project as provided to and approved by Congress shall be reported to NAVFACENCOM for a determination of whether additional reporting or coordination is required.

r. Acceptance. To qualify for acceptance (1) all improvements must be complete and all facilities (units) ready for occupancy, (2) the premises must be determined by the Government's inspector to meet all requirements of the lease-construction contract, (3) utility systems must be fully operational, and (4) the premises must fully meet requirements for the issuance of such habitation certificates as may be required by the local authorities. Navy acceptance of the leased premises shall be evidenced by execution by the ACO/RECO of a Certificate of Acceptance addressed to the lessor. Copies of the executed Acceptance and Habitation Certificate(s), if required by local law, should thereafter be a part of the permanent lease file. Upon final acceptance on behalf of the Government, post-occupancy lease administration is an Activity/ACO responsibility as in conventional leasing.

s. Annual Expenditure Forecast for Family Housing. The annual expenditure limitation imposed by [reference \(b\)](#) fully applies to family housing procured through lease construction. Because lease construction agreements for family housing customarily provide for an initial multi-year lease term, it is important that the impact of the expenditure limit be considered during the entire firm lease term. Prior to the Congressional reporting or award of a lease construction contract for family housing, the RECO shall forecast the annual expenditures for such housing for each year of the initial lease term. This forecast is required to demonstrate that the estimated annual costs of the
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proposed housing units will not exceed the [reference \(b\)](#) limits at any time during the firm lease term. The maximum annual expenditure limit in effect at the time the lease-construction agreement is executed shall serve as the annual expenditure limit to be used when computing the maximum annual cost throughout the initial lease term. When forecasting expenditures, the RECO shall use reasonable estimates of annual inflation and/or cost-of-living adjustments as affecting rent, utility and maintenance costs during the initial lease term. The RECO's forecast shall be retained as part of the permanent lease file.

t. Tracking Actual Expenditures. Subsequent tracking of actual annual expenditures will take into account any and all annual cost-of-living adjustments as issued by NAVFACENGCOM. Just as with the leasing of existing family housing units, the failure of the ACO/Lease Administrator to review all payment vouchers related to lease-constructed family housing, (including vouchers for all utilities, services, etc., obtained independently of the lease contract), and to monitor costs during the lease term, risks inadvertent violation of United States civil and criminal statutes.

59. LEASING NAVY FAMILY HOUSING IN FOREIGN COUNTRIES

a. CNIC is the mission component command for all Department of the Navy family housing. Policies, criteria and requirements for this type of lease will be found in [NAVFAC P-930, reference \(ff\)](#). The policies and procedures for leasing property for military family housing in foreign countries will be essentially the same as those set forth in [Paragraph 24](#) of this Chapter.

b. Additional Clauses The following clauses will be added to the General Provisions in all foreign housing leases:

(1) "Maximum Annual Expenditure. The total maximum annual expenditure by the Tenant hereunder, including Shelter Rent, Supplemental Rent (if any), and Maintenance Rent (if any), and the cost of utilities, maintenance and services obtained by the Tenant through this Lease or independently of this Lease, may not exceed the statutory ceiling established for each year of the lease term, or any renewal thereof, by the Congress of the United States of America. Notwithstanding any other provisions of this Lease, in the event the total annual expenditure by the Tenant will or does exceed said statutory ceiling, the
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Lessor and the Tenant will agree to reduce the Shelter Rent and all other rents payable hereunder (in order) to reduce said total annual expenditure by the Tenant to the current statutory ceiling. Should the Lessor and the Tenant be unable to agree on a rent reduction, the Tenant shall have the right to terminate this Lease, or any renewal thereof, by giving ninety (90) days written notice to the Lessor. If the Tenant must vacate the premises, all payments will be prorated based on the daily rate of the current annual payment amounts."

(2) "Facilities Non-Discrimination. It is understood and agreed that the Government will assign the demised premises to military personnel, in accordance with Executive Order No. 11063, dated 20 November 1962, which provides that housing and related facilities shall be available without discrimination among tenants because of race, color, creed, or national origin."

(3) "Lessor's Rental Covenant. Lessor expressly covenants that the rental stipulated in article three of this lease constitutes the entire consideration for the lease and that the lessor has not and will not enter into any separate agreement with the occupant of the leased premises for any financial obligation of one to the other arising out of occupancy of the premises hereunder."

c. Unaccompanied Personnel Housing. The lease format to be used is the same as for other leased properties with the addition of the clauses (2) and (3) set forth above. Funds are to be furnished by the activity or its mission component command from the annual operating budget. Requests for leasing for Marine Corps quarters must be approved by the Commanding Officer of the Marine Corps activity, the Commander of the appropriate Marine Corps District, or other authorized Marine Corps Commander, and the Commandant of the Marine Corps.

60. LEASING FOR NAVAL ATTACHE PERSONNEL

Attache responsibilities of the military departments have been transferred to the Defense Intelligence Agency, with the Department of the Army acting as its agent in administering this leasing program. Such leasing is therefore no longer under the cognizance and control of NAVFACENCOM.

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61. LEASING FOR MILITARY MISSION PERSONNEL

The Department of the Army is the administrative agent for the military departments for all military mission matters in South America. Leasing for this purpose, therefore, does not come under the cognizance of NAVFACENGCOM.

62. USE OF HOST GOVERNMENT PROPERTY

The procedures set forth in this Chapter are not applicable to those situations where a host government makes land or buildings available under the Military Assistance Program or other treaty arrangements. This type action is ordinarily taken through diplomatic channels. Where such property is occupied by a Navy activity, the appropriate FEC will maintain a record of such use and, for record purposes, will inform NAVFACENGCOM thereof.

63. ACTING AS REAL ESTATE AGENT FOR ANOTHER MILITARY DEPARTMENT

Neither the Navy, the Army nor the Air Force maintains real estate capability in all parts of the world. In areas where the Navy has a real estate capability, such office is authorized to act as the agent in such matters for the Army or Air Force upon request. In this situation the Navy real estate office is acting as agent locally and the requesting department is responsible for obtaining all necessary approvals. In areas where the Navy lacks such capability but one of the other military departments maintains such capability, a Navy command may request such assistance after first obtaining NAVFACENGCOM approval. Such a request must include all information necessary to obtain all required approvals, and shall be forwarded via the appropriate FEC.

64. TERMINATION OF FOREIGN LEASES

a. Screening For Other U.S. Government Use. When the requirement for Navy use of a leased property no longer exists, the lease should be terminated in accordance with its provisions. If the Government's leasehold interest in such property is valuable or may be of use to other Government agencies, the leasehold interest in the property should be first screened for other U.S. Government use and disposal handled in the same manner as the disposal of other real property interests as set forth in P-73 Chapter 24.

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b. Termination Process. Screening of leased property located in foreign countries for other U.S. Government use will often be impractical or unsuccessful. For leasehold interests which have no residual value, the lease will be terminated in accordance with the terms thereof, necessary restoration will be accomplished or a settlement in lieu of restoration will be made, and a Final Release obtained from the lessor. The general termination process described in [Paragraph 32](#) hereof should be followed.

c. Early Termination. Not all leases can be terminated at the Government's convenience. Lease-construction agreements and leases entailing significant alterations or improvements often have no, or very limited, Government termination rights during the initial lease term. If a leased property is no longer required but the lease does not provide a unilateral Government termination right, the RECO will initiate negotiations with the lessor for an early lease termination. Absent a signed early termination agreement, the lease remains in effect and the Government is obligated to comply with lease terms, including but not limited to rent payments.

65. RESTORATION OF FOREIGN LEASED PROPERTY

a. Restoration Obligation. At the end of its occupancy, the Government is required to repair damages to the leased property caused by the fault or negligence of the Government or its occupants. No restoration shall be required for the effects of ordinary wear and tear or for alterations and improvements, including structural alterations, made with the lessor's consent and the lessor's waiver of restoration. Unless expressly waived by the lessor, the Government's restoration obligation extends to the beginning of its occupancy of the leased property.

b. Cash Settlement. The Government's restoration obligation for foreign leases is typically met by payment of a cash settlement versus the physical restoration of the property. Negotiation of a restoration settlement agreement is the responsibility of the RECO. The RECO shall base settlement negotiations upon the initial condition report for the property, a detailed physical inspection of the property at the time of termination, and an approved Government cost estimate. The activity occupying the leased property shall participate in settlement negotiations and is responsible for funding restoration and/or settlement costs. Funding for restoration of leased family housing is the responsibility of NAVFACENGCOM.

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Upon arriving at a mutually acceptable agreement, the parties shall enter into a Lease Modification effecting a settlement. Where negotiation of a damage claim is authorized and a specific sum agreed upon, a supplemental agreement will be prepared by the RECO and executed to evidence settlement and provide a basis for payment.

c. Final Release. A joint inspection of the property shall be conducted by the lessor and the ACO/Lease Administrator on or just prior to the Government's relinquishment of the premises. The termination letter should be accompanied by a Final Release to be signed by the lessor to release the Government of any and all liability under the lease. It is the ACO's responsibility to ensure the Final Release is executed. A copy of the termination letter and the signed Final Release should be provided to the RECO and the Disbursing Office identified in the lease for the purpose of stopping rental payments.

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