AMS CHANGE REQUEST (CR) COVERSHEET

Change Request Number: 15-33
Date Received: March 25, 2015
Title: Real Estate Guidance updates and editorial changes

Initiator Name: Caitlin Phillips
Initiator Organization Name / Routing Code: ALO-200
Initiator Phone: 828-291-1470

ASAG Member Name: Irene Langwell
ASAG Member Phone: 202-267-3888

Guidance and Policy must be submitted with separate CR coversheets.

- ○ Policy

Or

- ○ Procurement Guidance
- ◉ Real Estate Guidance
- ○ Other Guidance

Summary of Change: Updates to the Real Estate Guidance is required as a result of updated information from customers, Real Estate Contracting Officers, and Legal Counsel.

Reason for Change: To update and make editorial changes. The change address concerns expressed by the Legal Counsel and Real Estate Contracting Officers.

Development, Review, and Concurrence: ALO-200, ALO-300, AGC-520, WLSA, ELSA & CLSA

Target Audience: Real Estate Contracting Officers

Briefing Planned: No

ASAG Responsibilities: None

Section / Text Location: 1.1.3.1 - Environmental / Sustainability / Energy (RealEstate1.1_TrackedChanges.docx)
2.2.6 - Request for Offers / Solicitation for Offers (RealEstate2.2_TrackedChanges.docx)
2.4.10 - Appendix J: Outgrant (RealEstate2.4_TrackedChanges.docx)
6.3.3 Training Prioritization and Delivery (RealEstate6.3_TrackedChanges.docx)

The redline version must be a comparison with the current published FAST version.

(•) I confirm I used the latest published version to create this change / redline

or

( ) This is new content

Links: http://fast.faa.gov/RealEstateGuidance.cfm

Attachments: Redline and Final Documents

Other Files: None.

Redline(s):

Section Revised: 1.1.3.1 Environmental / Sustainability / Energy 8 A

Real Estate Guidance - (~~10~~4/20145)

1.1.19.2 Condemnation Procedures Checklist Added 1/2008

1 LAND ACQUISITION

1.1 Land Guidance

1.1.1 Applicability

This document provides general guidance for the procurement of all real property land interests by lease, purchase, condemnation, or otherwise. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR Part 24) is **mandatory** and establishes the minimum Real Property Acquisition Policies for appraisal, negotiation and property possession standards and requirements.

1.1.2 Background

The Federal Aviation Administration has been relieved from the requirements of the Competition in Contracting Act, Federal Acquisition Regulations (FAR), Brooks Act, Prompt Payment Act, and other restrictive regulations and laws. This document provides general guidelines for the procurement of real property land interests taking into consideration the changes in laws, rules and regulations.

1.1.3 Guidelines **Revised 4/2012**

Normally land interests needed by the FAA are for on-airport sites or are site specific and will be acquired through a single source. Acquiring interests in land by the competitive method should be used when the possibility exists that more than one acceptable site exists within the delineated area that could satisfy the FAA.

1.1.3.1 Environmental / Sustainability / Energy **Revised ~~10/2014~~4/2015**

During the land acquisition process, Real Estate Contracting Officers (RECOs) are required to follow the requirements as set forth below in the following laws, executive orders, regulations, policies and orders:

1. Energy Policy Act (EPAct) of 2005, Publ.L.No.109-58
2. Energy Independence and Security Act (EISA) of 2007, Pub.L.No.110-140
3. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
4. National Environmental Policy Act (NEPA)
5. FAA EDDA Order 1050.19B: "Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions" and any revisions thereto or subsequently published Orders pertaining to environmental compliance
6. Resource Conservation and Recovery Act (RCRA)
7. Executive Order 11988, Floodplain Management
8. Executive Order 11990, Protection of Wetlands

A. Environmental Due Diligence Audits (EDDA) Requirements

FAA real property transactions are subject to the requirements of FAA Order 1050.19B, Environmental Due Diligence Audits (EDDA) in the Conduct of FAA Real Property Transactions, in order to identify and minimize potential environmental liabilities associated with the condition of the property and past activities at the site. After the EDDA process, the determination of whether to waive the performance of an EDDA must be completed prior to the execution of contracts for the acquisition or disposal of real property per 1050.19B.

Off-airport land acquisitions of new sites, or that result in the expansion of an existing site, require an EDDA per 1050.19B. All on-airport leases or no-cost on-airport acquisitions that utilize the Memorandum of Agreement (MOA) template will use the Hazardous Substance Contamination clause, preferably the version included in the template, unless an EDDA is required pursuant to FAA Order 1050.19B. In accordance with FAA Order 1050.19B, any revisions to the Hazardous Substance Contamination clause must be reviewed by and concurred by the appropriate Regional Counsel's office or the Office of the Assistant Chief Counsel for Acquisition and Commercial Law (AGC-500). Any revisions to the Hazardous Substance Contamination clause will not be approved if such revisions result in a provision that increases FAA's potential environmental liability beyond that which can be proven to have resulted directly from FAA's use of the site and/or operation of equipment on site.

Question and Answers concerning FAA Order 1050.19B

Q 1: Is the RECO required to obtain a memorandum as stated in 1050.19B 1-9b(3) or an EDDA if the RECO is executing a new or succeeding lease or exercising an option to renew the land lease?

A 1: At this time and until further notice of a change to the FAA Order 1050.19B, the requirements to obtain an EDDA, EDDA waiver, or memorandum remain in place and are the responsibility of the service/office requester to provide to the RECO. See additional information below:

- No additional EDDA documentation is required when exercising an existing renewal option where the terms of the option were negotiated during the original leasing action.
- For new acquisitions (new locations or increasing the size of the existing location) or for disposals/terminations (in whole or in part), the RECO is not to finalize the real estate transaction until the appropriate documentation (EDDA report, memorandum and/or waiver) is approved by the line of business (LOB).
-
- For succeeding leases in the same location where there are no changes in the area under lease (either increasing or decreasing in size), if EDDA ~~the appropriate~~ documentation (EDDA report, memorandum and/or waiver)~~, if the memorandum is~~s not provided ~~either~~ by the LOB ~~or u~~upon request by the RECO, the RECO can proceed with the succeeding lease award but must document the lease file showing evidence of the attempt to secure the documentation from the LOB.

Q 2: Are we required to use the "hazardous substance clause" in its entirety for an airport lease or MOA?

A 2: If the requirements imposed upon the Airport Sponsor by FAA conflict with that Sponsor's requirements under state law, and provided that any revisions to, or deletions from the clause which received the concurrence of the appropriate FAA Regional or Center Counsel or the Office of the Chief Counsel for Acquisition and Commercial Law (AGC-500), then the RECO has the authority to revise the Hazardous Substance Contamination clause found in the "Land On Airport Lease Template" (clause #21) and the "MOA". However, under no circumstances may the clause be revised to increase FAA's potential liability beyond that incurred as a direct result of FAA's actions installing, operating, and/or maintaining of the facility or equipment that FAA has placed on the demised premises. An example of an acceptable revision to the Hazardous Substance Contamination clause is set forth below:

> HAZARDOUS SUBSTANCE CONTAMINATION (MAY-00): The Government agrees to remediate, at its sole cost, all hazardous substance contamination on the leased premises that is found to have occurred as a direct result of the installation, operation, and/or maintenance of the (type of facility) facility. The Lessor agrees to remediate at its sole cost, any and all other hazardous substance contamination found on the leased premises.

B. National Environmental Policy Act (NEPA) Requirements

In accordance with the requirements of FAA Order 1050.1E, Change 1, Policies and Procedures for Considering Environmental Impacts, before acquiring (by lease, purchase, or otherwise) any additional land (new sites or expanding existing sites), the FAA must comply with the requirements of the National Environmental Policy Act (NEPA) to the extent applicable to such acquisitions. The appropriate level of environmental review must be determined by the program office Environmental Specialist or the project designated Environmental Specialist.

The three levels of environmental review include:

- Categorical Exclusion (CATEX),
- Environmental Assessment (EA), or
- Environmental Impacts Statement (EIS).

In the absence of Extraordinary Circumstances (e.g., the presence of wetlands), most real property acquisition transactions can be categorically excluded by the program office from further environmental review. Chapter 3 of FAA Order 1050.1E, Change 1 provides information on CATEXs and the application of extraordinary circumstances. Specifically, paragraph 310 provides the list of categorical exclusions for FAA actions involving facility siting, construction and maintenance.

If there are extraordinary circumstances directly applicable to the site acquisition, and consequently, the action cannot be categorically excluded from further environmental review then the EA must be initiated by the Environmental Specialist. If the impacts are not significant the environmental review will end with a Finding of No Significant Impact (FONSI).

If any impact to the site attributable to FAA's acquisition or the proposed use of the site, is found to be significant and cannot be mitigated then an EIS must be initiated by program office. The EIS process ends in a Record of Decision.

The environmental review process must be complete before negotiating the acquisition of any new and additional land interests. The RECO must obtain written notification from the program office that all applicable NEPA requirements have been met, which would include all required EDDA documentation, prior to proceeding with the land acquisition including all required EDDA documentation. The written notification and additional documentation must be placed in the real estate lease file. Once the RECO receives the written notification, the RECO can proceed with the real property transaction for any new or additional land acquisition. The office requesting the land acquisition is responsible for keeping the official documentation for the NEPA review. It is not necessary for the RECO to obtain copies of the CATEX, EA, FONSI, EIS or Record of Decision.

1.1.4 Request

The process for procurement of real property interests can be initiated informally such as a request for market information, potential costs, or availability. Prior to conducting formal negotiations, or awarding of a contract a formal written request certified by an authorized requesting official must be received. At present, formal certification is normally provided by means of a Procurement Request (PR); however, a memo or other form of document can be used as a formal request as long as the document contains an original signature of an authorized requesting official.

If costs are involved in the procurement, a certification of funding must be received prior to obligation of any funds for any purpose or award of a contract.

1.1.5 Requirements **Revised 4/2009**

Requirements received from the customer may be general in nature or can be very specific. The Real Estate Contracting Officer must ensure that whatever requirements are received, they contain sufficient detail to assure the customer's needs are met. The Real Estate Contracting Officer should work with the customer to clarify unclear or incomplete requirements and verify that the procurement requested is in conformance with applicable regulations. When appropriate, the Real Estate Contracting Officer should advise the customer of any alternatives available to satisfy the requirement.

Improvements to the land accomplished by the property owner (i.e. gates, grading, paving, clearing, fencing, etc.), as requested by the FAA, may be included in the procurement. Costs of improvements shall be evaluated to assure they are fair and reasonable. Payment for costs of these improvements can be by lump-sum payment or amortized over the term of a lease.

On requests for renewal of existing leases, the Real Estate Contracting Officer should determine if the property continues to meet the FAA's needs without any changes. Any changes required in the lease terms should be negotiated and included in the succeeding lease.

Legal description, title information, market survey/appraisal, Environmental Due Diligence Audit (EDDA), Environmental Impact Statement (EIS), Environmental Assessment (EA) or Finding Of No Significant Impact (FONSI) should be obtained as early as possible in the land procurement process. This information is required prior to making a final offer to the property owner(s) for a new land lease/purchase. The requiring office shall provide the EDDA, EIS, EA or FONSI.

"Master" leases should be utilized for land lease renewals and new land leases of on-airport properties whenever possible. Master leases consolidate separate land leases into one document, and can significantly reduce the administrative work of the Real Estate Contracting Officer and airport officials.

The Real Estate Contracting Officer makes the determination of the appropriate method of procurement to be used to satisfy the requirement, either competitive or single source. A preliminary assessment of potential available sources may be needed to assist in the determination of the procurement method.

1.1.5.1 No Cost Land on Airport Memorandum of Agreement (MOA) Revised 4/2012

The MOA template **must** be used for the acquisition of land on an airport only when the airport sponsor is issued an Airport Improvements Project (AIP) Grant (reference AMS Policy Section 4.2.3.2, Requirements). As defined in the AIP Grant Assurance 28, the airport sponsor is to provide land without cost to the Federal Government for the purpose of any air traffic control or air navigation activity. Although a large majority of airports have received AIP Grant funds, some airports have not. The Real Estate Contracting Officer (RECO) can obtain a list of airports that have received AIP grants through the FAA Regional Airport Division, AXX-600.

GENERAL INFORMATION:

It is recommended that the MOA term be for the greatest number of years (life expectancy) of a FAA facility (as this is a no-cost agreement). Although the grant obligates the airport sponsor to give FAA 20 years of land use at no cost, the airport sponsor, most of the time, continues to get AIP grants that extend the 20-year period for no cost from the date of the last signed AIP grant. Millions of dollars in grant funds will have to be paid back by the airport sponsor if they do not give FAA land use or try to remove FAA facilities from their airports, because the airport sponsor has agreed to Grant Assurance 28.

As mentioned earlier, the RECO **must** use the MOA for all new no-cost land agreements on Airports where AIP Grants are in place. If there is a lengthy list of leases being terminated and superseded by the MOA, the RECO needs to reference an attachment that lists all the leases being superseded. There is an exception to using the MOA on an airport that received an AIP Grant. If

there is a provisional agreement attached to an expiring lease, for example, an Air Traffic Control Tower (ATCT), the RECO **must** use the ATCT MOA with the Operating Agreement for Tower (under the land section of the real estate- template library).

If facilities need to be added to or deleted from the MOA, the RECO will modify the contract agreement by deleting the old List of Facilities and replacing it with a revised list ensuring the new date change is made on the List of Facilities. A written notice will be sent to the Airport Sponsor and the RECO will retain the latest copy in the acquisition file.

If the RECO needs to change or add clauses to this agreement, they can work with their Regional Counsel to effect any changes on a case-by-case basis. The changes worked with the Regional Counsel should not become a standard for the region but an exception for that case. Any permanent changes that are found necessary to the standard business practice for the regions need to be worked in conjunction with ALO-200 and AGC-500.

THE MOA PROCESS:

1. The RECO must acquire the new contract number from the PRISM system.

2. The RECO will send out the MOA Template to the Airport Manager. If unsure which clauses are mandatory and required, look up information on the Lease Land Matrix.

3. The RECO should explain as part of the initial discussion with the Airport Manager or the Airport Manager representative the purpose and benefits of the MOA. The MOA is less labor intensive, easier to administer, sign, and provides potential cost savings for both the FAA and the airport sponsor.

4. The list of facilities must be made a part of the MOA agreement. The attached List of Facilities is a sample table used to validate facilities, their GSA number and the associated runway. If the facility is not associated with a runway the term, support, is listed in the R/W column**.** It is recommended that if a clear zone radius and location(s) is not on the ALP, then the facilities clear zone criteria will be noted at the bottom of the attached list of facilities by reference to the appropriate FAA siting criteria order, i.e., ILS clear zone is in the current FAA Order 6750.16C, Siting Criteria for Instrument Landing Systems. The Operations and/or Field and Equipment (F&E) Engineers can help the RECO in determining the latest siting criteria order. Other options are the most recent ALP depiction referenced or if required, a drawing showing the location and size provided by the engineer.

5. If additional facilities are required on the airport, adding the new facilities to the attachment entitled List of Facilities can modify the MOA. A copy will be sent to the airport sponsor and a copy retained in the acquisition file.

6. The RECO should ask the local Service Support Center (SSC) or on-site technician to review the Airport Layout Plan (ALP) and the List of Facilities to verify both the accuracy

of the list and location of the facilities. Also the RECO should contact the Airport Manager or their representative and request that they verify the facilities as well. If there is a discrepancy between the lists given by the SSC or the Airport Manager, the RECO will notify the appropriate parties and work on a solution with the SSC.

7. Highlight the FAA facilities on the ALP before putting the drawing in the contract file on the documentation side for informational purposes. The most recent ALP is part of the MOA only by reference, because it allows the ALP to change as new ALP updates occur. This reduces the amount of mandatory modifications and takes care of the situations in which FAA Real Estate has not been notified when changes occurred on the ALP drawing. It is recommended that Logistics Service Area Real Estate office work with their Regional Airports Division to be notified of new ALP updates when FAA Airports Division receives them.

8. The policy of the FAA is not to restore. However, Restoration Clause - Alternative A may be used on a case by case basis when non-restoration is not feasible or appropriate. If the RECO is using this alternate restoration clause, they must get the line of business to provide written concurrence on use of this alternate clause. Another alternate is the MOA can remain silent and not have any reference to restoration or non- restoration if the airport sponsor will agree.

9. Once executed, the RECO must provide copies of the MOA to the airport sponsor; input the MOA in the Real Estate Management System (REMS); and appropriately document the real estate file.

1.1.5.2 Succeeding Leases/Lease Renewals **Revised 7/2012**

General Requirements: In general, when a lease for land for an off-airport NAS facility is expiring, the requirements are not re-competed, unless a compelling reason to relocate is established. This is due to the long service life of facilities installed on the leased land, as well as the cost of installation. Prior to determining whether to enter into a succeeding lease (this is a new lease because the lease expires at the end of the term and succeeds the prior lease), or renew an existing lease (this is the exercise of an option to stay in the existing location for the amount of time stated in the option(s) to renew), the RECO must consult with the tenant organization and obtain a statement of continuing need. If the tenant organization indicates a need to remain in the same location, the RECO may initiate filling in the single source justification form and send to the tenant organization for concurrence prior to initiating the procurement. Legal review is not required when exercising an option to renew or executing a succeeding lease at the same location where the RECO is either establishing a new lease term and/or a new rental price (as agreed in the previously negotiated option or negotiated new price in the succeeding lease) and no material provision is changed. In such instances, the RECO is not required to complete the Single Source Justification Form. The RECO must ensure that all new and revised clauses are incorporated in the succeeding lease agreement. In addition, if the term of a lease is less than 20 years, including options, and if the RECO determines that the best method to fulfill a short term continuing need is by extending the current lease, the Supplemental Lease Agreement must contain all new and revised clauses that may be added by reference.

When to sign a succeeding lease: In accordance with the provisions of 49 USC 40110(c)(1), the RECO may enter into a lease with a term of up to 20 years, regardless of whether appropriations sufficient to pay the rent for the entirety of the lease term have been obligated. This means that the RECO can sign a lease now, even when rent commences in the next fiscal year.

Example: The RECO diligently negotiates for a succeeding lease for an off airport navaid and obtains the lease signed by the lessor in the month of July 2010. The rent does not commence until October 1, 2010 (the start of FY-2011). In order to consummate the lease, the RECO must sign the lease AND award it in the PRISM system in July 2010. The RECO can obtain either a zero dollar PR or a subject to availability of funds PR for the award of the lease.

Timing of renewal efforts: In order to allow sufficient time for completion, and prevent FAA from becoming a holdover tenant, the RECO must commence the renewal process, or the process of entering into a succeeding lease, at least 18 months prior to the lease expiration date. This time period should be extended if the RECO is aware of issues that could jeopardize timely completion of the lease transaction.

NOTE: If a lease is to be terminated and not renewed, the RECO must ensure that the lease and any associated utility or other associated contracts are appropriately terminated and that accounting is notified to ensure that lease and associated utility payments are terminated at the appropriate time.

1.1.5.2.1 Holdover Tenancy **Revised 4/2008**

If a continuing need has been determined and it appears the lease will expire without a Supplemental Lease Agreement for a short term extension, or succeeding lease has not been awarded, then the RECO must follow the steps in the AMS policy as per 4.2.3.2.1.2 Emergency Reservation of Expiring Funds for Continued FAA Occupancy. In those instances where FAA continues to occupy leased facilities after the expiration of the lease term, the FAA is considered a "holdover tenant." If the expired lease does not have a "holdover" clause, the laws of the state in which the facility is located will determine FAA's rights of occupancy.

As mentioned under the policy, the RECO must notify his manager, regional counsel, and the LOB Budget office of issue.

If the RECO is unable to get the lessor to sign a temporary agreement, then the RECO must take steps to ensure that sufficient funds are either reserved, or set aside for settlement of the holdover period. A holdover period should not exceed 6 months. Prior to the end of the current fiscal year, the RECO will notify the affected LOB of the potential need to reserve the minimal funds necessary to pay for the FAA's occupancy during the continued occupancy period, and provide an estimate. If the LOB wishes to reserve funds from the soon to be expiring budget year, they shall provide a requisition to the RECO, and the RECO will reserve the estimated rent as an emergency contract. The RECO will send a formal memo to the Accounting office of the emergency

reservation of funds, and to await further instructions from the Accounting on when to make any payments. Note: The RECO must document in the file a justification for the emergency reservation of funds. Below is information for dealing with holdover tenant with accounting in the financial system.

1. FAA cannot use its holdover status to avoid its obligation to pay for leased facilities. This may necessitate a a memo for the emergency reservation of funds or temporary supplemental lease agreement so that PRISM can accept the obligation without a signed contract. The interim contract number will be the old lease number with an "OH" suffix to the old lease number, or will be a new lease number.

2. Delphi Miscellaneous Obligating Documents (Delphi MOD) will be used only for FY200X funds that are due to the lessor of a holdover lease where funds have not yet been obligated or paid in FY200X for the time already lapsed. Instructions for recording in Delphi in accordance with year-end closing instructions are on the Delphi website (FAA only). The Delphi M.O.D. is regularly used to accrue utilities, credit card purchases, etc. in Delphi for transactions that will not clear before year-end. A Delphi M.O.D. will not be used for leases where FAA is a holdover tenant except in the instance mentioned above.

3. Note if the LOB validates, it can pay the back rent from current year funds, it is not necessary to perform the emergency reservation of funds.

During this period the RECO must continue to negotiate an lease extension even if considering a condemnation posture. Once the RECO has negotiated a final lease agreement, the RECO must perform a modification to the emergency lease to document the conversion to a fully executed lease contract. Any difference in lease rental payment should be settled and paid at that time.

1.1.6 Procurement Method **Revised 4/2012**

The single source method of procurement is appropriate when technical requirements, business practices, or programmatic needs have determined that specific location, site, or unique need is required to meet the FAA. s mission, or when it has been determined that only one source is reasonably available that can meet the requirement.

Competition is appropriate when the requirement is not site or location specific and the reasonable possibility exists that there is more than one provider that can meet FAA needs. Competition should be utilized whenever practical and reasonable. Competition is obtained by providing two or more sources an opportunity to express an interest in satisfying the requirement. Advertising is not required. Interest may be expressed either orally or in writing.

1.1.7 Advertising

If the requirement is not for a site specific location and multiple sources may be available to meet the requirement, then advertising to allow for competition may be appropriate. When advertising the Real Estate Contracting Officer should utilize the publicizing method most likely to result in receipt of offers appropriate to satisfy the specific requirement. Advertisements in most cases will be by local or area wide newspapers; however, this is not limited and may include commercial trade journals, electronic bulletin boards, and the Commerce Business Daily. Multiple advertising may be utilized if considered necessary.

The Real Estate Contracting Officer determines need or requirement for advertising. Data from a market survey may be used to determine the need for advertising.

1.1.8 Right Of Entry **Revised 4/2012**

The Real Estate Contracting Officer should ensure that a "right of entry" permit to the property for any purpose has been obtained from the land owner prior to ingress by an FAA employee or any of its agents. Legal counsel should be consulted for the proper action to take if the landowner refuses to grant a "right of entry" permit. Entry onto private property without appropriate rights may constitute trespass.

1.1.9 Survey / Title / Appraisers

Competition for obtaining the services of surveyors, appraisers, or title companies, is not required, however, obtaining competition for providing these services is encouraged as a sound business practice and should result in award of a contract at the most reasonable cost. Ranking of surveyors as required by the Brooks Act, does not apply to the FAA.

1.1.10 Market Survey / Appraisal **Revised 4/2012**

A market survey or appraisal should be accomplished for each land procurement where costs are involved.

Market survey data can be used to: determine the availability of properties within the delineated area; eliminate unsatisfactory properties from consideration; determining the willingness of landowners to provide property for the FAA's use; determining fair market rents; determining suitability of responses to advertisements; and, determining estimated cost for the purchase of property.

An appraisal is a formal written statement that a qualified appraiser prepares independently and impartially, giving an opinion, as of a specified date, of the defined value of a described parcel of real property, supported by the presentation and analysis of relevant market information. An appraisal is used to determine the fair market rent, and value or just compensation for purchase of a specific property.

1.1.10a. Market Survey

A market survey is required for each new land lease or renewal where rent will be paid. The survey does not need to be formal; however the RECO **must** document the lease contract file with the market survey results starting September 30, 2006. In general, the more expensive the lease the more information is required to support the rental amount. If there is a lack of survey data then an appraisal may be appropriate.

Market survey data may be used to determine fair market rent and to determine the estimated cost for the purchase of property for a lease vs. purchase analysis. Market surveys can be conducted by telephone, mail, on-site visits, or a combination of methods. The survey can be informal - just data gathering, or formal - where a request for written data is made.

When determining estimated market values, data should be obtained from a minimum of three sources. Sources may include, but are not limited to: local real estate offices; other lessees, city/county/parish/township assessors; local appraisers; internet sites; and, governmental offices dealing with land such as the Soil Conservation Service, Bureau of Land Management, and Forest Service.

The RECO **must** develop his own format for writing market surveys; however, any format must contain the following four basic parts.

- Property Identification – The subject property should be identified as accurately as possible using legal descriptions, plats, FAA drawings, state, county, land lot numbers, tax map number, parcel number, and acreage.
- Data – Sources should be reliable and accurate. Some surveys may require more detailed information than others. Data incorporated into the survey should be verifiable and the name, company, and telephone number of the person supplying the data should be included; data should be the most current available and, in any event, should not be more than one year old. Examples of data sources are: City and County Tax offices, Farm Credit Services, Farmers Home Administration, appraisal companies and real estate sales people. The data is typically dates of sale/lease, size, and sales price or lease amount, price per acre, current use and probable highest and best use.
- Analysis – Once data is gathered, the information needs to be analyzed. Any sales or lease information that is used should be from arms-length transactions with willing buyers/sellers or lessees/lessors. Any unusual circumstances should also be recognized and considered. Sales or lease data for property that is most similar to the subject usually provides the best indicator of value what FAA should pay.
- Conclusions of Value – After analyzing the data, a value range can be established and conclusion of value can be reached. Analyze and compare each sale/lease, and then make adjustments to the subject. Correlation of the information results in a conclusion of value that amount to be paid is justified and reasonable.

1.1.10b. Appraisal

An Appraisal is a formal written statement that a qualified appraiser prepares independently and impartially, giving an opinion, as of a specified date, of the defined value of a described parcel of real property, supported by the presentation and analysis of relevant market information. The appraisal of the market value of any real estate interest is not a matter of exact determination, and appraisers do not "establish" or "determine" the value. An appraisal is an estimate of the current value based upon, and supported by, an analysis of all the factors, physical, economic, and social which influence the present and future benefits to be derived from the ownership of the property appraised.

A. The need for or use of appraisals:

Before the initiation of negotiations, the FAA shall establish an amount which it believes is the just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property.

The RECO sends out an appraisal request letter (create link) to request appraisal services. The RECO must use the Appraisal SOW (create link). This SOW provides the information that should be given to the appraiser for inclusion in the appraisal, such as:

- legal description of property
- ownership data/title information
- results of the EDDA
- on new property the results of the EIS, EA or FONSI
- any other data that could have an effect on the property. s value

Note: Attached to the SOW is a certification for the appraiser to sign regarding his/her service to the FAA.

- No appraisal is required for:
  - Purchase of properties where the just compensation is estimated by the Real Estate Contracting Officer to be less than $2,500.00. (An appraisal is required for any property to be purchased whose value is estimated to be $2,500.00 or greater);
  - the owner's is donating the property and releases the FAA from its obligation to appraise the property:
- A value finding appraisal (opinion of value) can be used for properties whose value is estimated to be $2,500.00 to $5,000.00.
- The Real Estate Contracting Officer shall determine the appropriate type of appraisal method to be used.
- The real estate appraisals should be performed in accordance with generally accepted appraisal standards as set by the Appraisal Standards Board of the Appraisal Foundation.
- For the purchase of real property the appraisal should include a before and after valuation of the property to determine the value of any severance damage.

B. Requesting Funding from ALO for Appraisals

When a RECO is requesting funding for an appraisal, the RECO must fill out the ALO Appraisal Questionnaire (create link). This questionnaire can be sent electronically to ALO. Upon receipt of the Questionnaire, the RECO will receive a response within fifteen (15) working days regarding the status of the request. If ALO requires further information, they will notify the RECO within the same time frame of 15 working days.

C. Information on determining a Qualified Appraiser

The appraiser and review appraiser must each be qualified and competent to perform the appraisal and appraisal review assignments, respectively. Among other qualifications, State licensing or certification and professional society designations can help provide an indication of an appraiser's abilities.

Most states have various levels of licensing which are based on the appraiser's experience. Only individuals may hold appraiser licenses. There are no appraisal licenses issued to business entities. An appraiser that is licensed or certified has received a State designation based on the quantity and type of appraisal assignments. They then take a state exam and become either licensed or certified by that State (depends on how the state issues it). Some states have Reciprocity in that they will recognize and allow appraisers from other states to appraise in their state for a small fee.

The RECO must use an appraiser which is qualified as a State Licensed or Certified appraiser with a national designation of MAI or SRPA

- MAI is a national designation which stands for "Member of Appraisal Institute". There is also another designation from the Society of Real Estate Appraisers. It is broken down into SRA for residential appraisals and SRPA for all types of appraisals. About 10 years ago, the two merged and at the present time, is still hanging on to their designations. For most types of appraisal assignments the RECO must use an appraiser who has either an MAI or SREA in addition to the State Certification. It would be acceptable to use appraisers who are certified as both MAI and SREA so that should be fine.

D. Review appraiser

The term “review appraiser” is used rather than “reviewing appraiser,” to emphasize that “review appraiser” is a separate specialty and not just an appraiser who happens to be reviewing an appraisal. The review appraiser should possess both appraisal technical abilities and the ability to be the two-way bridge between the FAA's real property valuation needs and the appraiser.

Appraisals and review reports must comply with the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisitions.

The review appraiser is responsible for ensuring that the appraisal report and its conclusions are reasonably supported by market information and complies with agency regulations, as well as, Federal and professional appraisal standards.

The RECO must note that the review appraiser qualifications are the same as above and should look for a State licensed or certified appraiser with national designation MAI or SRPA.

The RECO can acquire the services of a review appraiser in two ways:

1. Directly contract for a review appraiser; or

2. Contract with DOI center for excellence appraisal service.

Other resources

BLM Land Exchange Regulations:
http://www.access.gpo.gov/nara/cfr/waisidx_02/43cfr2200_02.html

U.S. Department of Justice Uniform Appraisal Standards for Federal Land Acquisitions:http://www.usdoj.gov/enrd/land-ack/

The Appraisal Foundation: http://www.appraisalfoundation.org/

The Appraisal Subcommittee National Registry of state certified and licensed appraisers:
http://www.asc.gov/

Professional Appraisal Organizations

American Society of Farm Managers and Rural Appraisers: http://www.asfmra.org/

American Society of Appraisers: http://www.appraisers.org/

Appraisal Institute: http://www.appraisalinstitute.org/

1.1.11 Lease versus Purchase Analysis **Revised 4/2012**

Except as noted below, a lease versus purchase analysis must be made for all new land interests to be acquired and existing land leases to be renewed, taking into consideration the expected term the property will be needed. The analysis is used to determine the most cost-effective method of procurement - purchase or lease. Data from a market survey or appraisal must be used for input into the analysis. If the analysis shows purchase to be the most effective method of procurement, the RECO must initiate land purchase action in accordance with established procedures.

If cost is not a determining factor, such as when a landowner is unwilling to allow FAA use of the property or demands unreasonable lease terms, and eminent domain proceedings are needed, a lease versus purchase analysis is not required.

The RECO should note that the FAA does not routinely accept ATCT towers from nonfederal entities due to the maintenance and repair and final disposition costs. It is not fiscally sound to undertake ownership even if it is offered at no-cost. All purchases of ATCT should be reviewed by legal counsel and ALO corporate real estate office.

1.1.12 Term Of Lease

As provided in 49 U.S.C., Section 40110 (b)(2)(A) the FAA has authority to lease an interest in real property for not more than 20 years, without regard to FAA annual appropriations. This means the FAA has authority to enter into "firm-term" leases without violating the Antideficiency Act. FAA authority to lease real property does not allow lease terms in excess of 20 years, including all renewal options.

For purposes of this guidance a firm-term lease is defined as the period or length of time the lease or portion thereof cannot be canceled without the approval of the lessor.

Each region/center will determine when and how this authority will be used within the limitations set forth below. In using this firm-term authority, FAA Order 2220.1, Legal Participation in Procurement and Contracting, or its replacement order, must be followed.

Caution must be exercised in implementing firm-term lease authority. A firm-term lease commits the FAA to future rental payments. The FAA must be willing to commit future annual appropriations for the term of occupancy. If funding is not committed the FAA would be in default of the lease and subject to claims by the lessor. Funding is the responsibility of the using organization and must be understood up front.

The cost or terms of the longer firm-term lease must be advantageous to the FAA as compared to a one-year lease with renewal options. Prior to executing a firm-term lease the real estate acquisition team should advise and provide the organization responsible for funding with an analysis of potential lease costs and/or savings. Also prior to executing the lease the real estate acquisition team should obtain a written statement that acknowledges the terms and funding requirements of the firm term lease, including future budget year requirements. This written funding statement will be maintained in the real estate lease file.

A firm-term lease shall not be entered into if, in the judgment of the real estate contracting officer (CO), there is any doubt about the long term need of the user. The objective in leasing a facility is to obtain what is best not only for the user but also for the FAA. In some cases obtaining the lowest cost is not always the best, even though it is an important consideration.

There is no requirement to use firm-term authority. Firm-term leases are a tool in obtaining what is best for the FAA. If firm-term authority is used, the manner in which contract documents are written must be consistent. In establishing that consistency Regions/Centers should consider establishing, at least for some interim period, an appropriate level of firm-term lease review above the real estate CO.

1.1.12a. Firm-term authority for land leases only:

Regions/Centers:

> 1-20 Years Firm-term Unlimited. Leases not exceeding 20 years including all renewal periods. Unless a firm-term lease is clearly advantageous to the FAA, suggest the "TERM" clause in the standard land lease that provides for 30 day termination by the Government be used.

However, all FAA leasing actions in Headquarters organizations in Washington D.C. must be coordinated through the Real Estate Policy Branch (ASU-140), in order insure all relevant planning and policy issues are taken into consideration prior to using this authority. All requests shall be sent through channels to the attention of the Real Estate Policy Branch (ASU-140).

1.1.12b. Other Lease Considerations:

To provide some protection to the FAA the lease should include a clause allowing the FAA to sublease the premises in whole or in part.

1.1.13 Evaluation / Negotiation **Revised 4/2012**

Based on the results of market surveys or appraisals the Real Estate Contracting Officer must negotiate with property owners to obtain the necessary land interests at a fair and reasonable cost.

Costs of any improvements to the real property to be included in the procurement must be evaluated to ensure they are reasonable.

When using the competitive method of procurement, all offers received must be evaluated to ensure they can satisfy FAA needs. The total cost to the FAA should be a consideration in making the final selection. In addition to land costs, items such as the following should be considered for each site: site preparation costs, costs for construction of access roads, special maintenance considerations, environmental considerations, and utility service availability and cost.

If multiple offers are received and a competitive range is established, any offer falling within this range may be selected for final negotiation without further consideration of selection factors.

Purchase or lease costs must be comparable to costs charged to the general market. The value of the Government's enhancements, or intended use should not be used in determining the procurement or lease cost of the real property.

When appropriate, environmental cleanup costs for existing conditions must be considered in the negotiations. If environmental contamination is found, the requesting office must state in writing that they request continuation of the procurement.

All reasonable efforts should be made to conclude negotiations to the satisfaction of the concerned parties. Determining when to cease negotiations with landowners who demand unreasonable fees or are unwilling to allow the FAA use of their property is at the discretion of the Real Estate Contracting Officer. Eminent domain proceedings, in accordance with established procedures, should be initiated when negotiations have reached an impasse and a satisfactory conclusion to the procurement cannot be reached. Protracted negotiations are generally not in the best interests of either party.

1.1.14 Contract Execution Revised 4/2012

The Real Estate Contracting Officer will make any necessary changes or additions to the contract based on negotiations with the landowner. RECO must have legal review where deviation from standard clauses is made in a contract. Legal review is required on purchase contracts and legal counsel shall provide an opinion of title. The Department of Justice rules on condemnation and title requirements must be followed

Lease documents must not state the specific type of facility to be placed on the premises. Stating the specific use (i.e. RCAG site and Access Road) could limit what type of facility the FAA is legally allowed to install on the premises throughout the term of the lease.

The Prompt Payment Act does not apply to the FAA; however, the FAA should make payments within 30 days after acceptance or as provided in the contract. As determined by the Real Estate Contracting Officer, the FAA may apply late payment interest to payments made within the scope of real property contracting actions.

The Government is to make all payments through the use of EFT (P.L. 104-134). See Section D., Real Estate Asset Management, for guidance.

The Real Estate Contracting Officer shall send an appropriate number of contracts to the property owner for signature and return for final execution. All off-airport leases and purchase documents (deeds) shall be recorded in the appropriate County/Parish/Township office.

1.1.15 Documentation for Land Contracts and Files Revised 7/2014

Sufficient documentation must be developed to explain and justify the real estate acquisition action taken. RECO's are to use the appropriate checklists (file and/or contract) to ensure the adequacy of

contract clauses and to ensure required documentation is in the file to support the acquisition. RECOs must use a 6 part folder for all acquisition files.

Contract Review Process (Land)

RECOs must fill out the appropriate Contract Clause Review Checklist and determine if the contract requires secondary review in accordance with ISO 9001 Real Estate Contract Review Work Instructions. If secondary review is required, the RECO must submit the contract to the designated reviewer prior to sending it out for signature. Any changes made to the contract after the initial review must also be reviewed. A copy of the secondary review, signed by the reviewer, must be placed in the file

File Review Process (Land)

The File Review is intended to provide a quality control check of the file for completeness. The review is not intended to replace the judgment exercised by the contracting officer.
RECOs must fill out and sign the appropriate File Review Checklist and determine if the file requires secondary review in accordance with ISO 9001 Real Estate File Review Work Instruction. If secondary review is required, the RECO must submit the file to the designated reviewer. A copy of the secondary review, signed by the reviewer, must be placed in the file.

1.1.16 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR Part 24). (www.fhwa.dot.gov/realestate/49cfr.htm) and (http://www.fhwa.dot.gov/realestate/UAfnl99.htm)

This Act was intended to establish a uniform policy for the fair and equitable treatment of persons who are displaced as a direct result of programs or projects that are undertaken by a Federal agency **or** with Federal financial assistance. The ACT ensures that displaced persons shall not suffer disproportionate injuries as the result of programs and projects designed for the benefit of the public as a whole and minimizes the hardship of displacement on such persons. **The ACT also establishes minimum Real Property Acquisition Policies for appraisal, negotiation and property possession standards and requirements.**

The Uniform Act applies to any Federal or federally assisted program or project if Federal funding is used in **any phase** of the program or project. **Provisions of the Uniform Act are mandatory and are applicable to each Federal agency that administers programs or provides financial assistance for projects, which involve land acquisition or relocation assistance**.

The Uniform Relocation Act of 1970 was enacted January 2, l971 and amended by: the 1987 Uniform Act Amendments, 1991 Public Law 102-240 and the Nov 1997 Public Law 105-17. The Final Rule on the 1997 amendments was published in the February 12, l999 Federal Register (Volume 64, Number 29, pages 7127-7133), http://www.fhwa.dot.gov/realestate/UAfnl99.htm. This final rule

provides that "an alien not lawfully present in the United States shall not be eligible to receive relocation payments or any other assistance provided under the Uniform Act unless such ineligibility would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child and such spouse, parent, or child is a citizen or an alien admitted for permanent residence". The final rule requires that persons seeking relocation payments or assistance under the Uniform Act certify, as a condition of eligibility, that they are citizens or are otherwise lawfully present in the United States. The format of the certification is left up to each Agency. The certifications may be for individuals or a family [in which case the head of household may certify as to the status of other family members (see section 24.208(a)(2))]. FHWA has determined that the final rule applies to businesses as well as individuals and believes the prohibition on benefits must be applied differently to differing "ownership" situations, such as: a sole proprietorship, a partnership or a corporation. Any payments that a business is eligible to receive should be reduced by a percentage based on the prorated shares of the ownership between eligible and ineligible owners.

The Uniform Act designates the Department of Transportation (The Department) as the lead agency for implementing the Uniform Act. The Department has delegated this responsibility to the Federal Highway Administration (FHWA) [49 CFR 1.48(cc)]. Pursuant to section 213 of the Uniform Act, the FHWA promulgated a single government–wide regulation for implementing the Uniform Act, at **49 CFR Part 24** (WWW.FHWA.DOT.GOV/REALESTATE/49cfr.htm). Note that as of 6/30/1999 the final rule

has not yet been incorporated into 49 CFR Part 24; therefore, to obtain text of the final rule go to: http://www.fhwa.dot.gov/realestate/UAfnl99.htm

Helpful Reference Material Available from Federal Highways (Available in hard copy or on the Internet at WWW.FHWA.DOT.GOV/realestate/):

- ***Your Rights and Benefits as a Displaced Person Under the Federal Relocation Assistance Program*** – Publication No. FHWA-PD-95-010
- ***Acquiring Real Property for Federal and Federal-Aid Programs and Projects*** – Publication No. FHWA-PD-92-006 HRW-11/5-92(20M)E
- ***The Appraisal Guide*** – Publication No. FHWA-PD-93-032 HRW-22/9-93(15M)P

Other Helpful Reference Material:

1. FAA Order 5100.37A, Land Acquisition and Relocation Assistance for Airport Projects, dated April 4, l994. This order is written for the Airports Grant Program, but contains a lot of information that may be useful to the Real Estate Contracting Officer.

1.1.17 Outgrant **Revised 10/2014**

Outgrants, formerly known as outleases, are used when there is a secondary need for unutilized or underutilized FAA leased/owned land or space by either another government entity or third party and such use does not interfere with current or known future FAA needs for the property.

Maximum Term: Starting October 1, 2014, outgrants, new or succeeding, are not to exceed a 5-year term. If the FAA does not own the underlying land or building/structure but is leasing it from someone else, the term of the outgrant cannot exceed the term of the underlying FAA contract or 5 years, whichever is less. Unexercised options are not to be included when calculating the remaining term of the underlying contract. For instance, if FAA is leasing land for a Very High Frequency Omni-directional Range (VOR) and the underlying lease has 3 years remaining on the original term and one unexercised 5 year option, the maximum term for any outgrant shall not exceed three years.

Cancellation Rights: Starting October 1, 2014, outgrants, new or succeeding, must contain the right by the FAA to cancel at will -- at any time and for any reason. Cancellation rights by the grantee are allowed but should require sufficient notice to the FAA to inspect the property and to determine if any restoration is required.

Outgrant (Application Form 1.3.18 for land or 2.6.31 for space): Requesting parties will be required by the RECO to fill out an Application for Outgrant Form found in the Real Estate Template Library for all outgrant requests, including new uses, modification to existing uses, or to request a succeeding outgrant. The RECO will review the request against current real estate records to determine the status of the property, including whether FAA holds sufficient legal interest in the property, and real estate restrictions, if any, on FAA's ability to grant the use. The RECO will forward the Application for Outgrant, along with pertinent information identified during the real estate review, to the head of the line of business (LOB) or LOB designee responsible for the property.

LOB Concurrence: The LOB shall conduct a thorough review and analysis to ensure the secondary use will not interfere with FAA's primary use of the property and that the benefits from the secondary use outweigh the cost and potential for increased liability. Prior to issuing a new outgrant, revising an existing outgrant, or issuing a succeeding outgrant, the RECO must obtain, in writing, concurrence from the LOB, along with any stipulations imposed by the LOB as a condition of issuing the outgrant.

LOB Non-Concurrence: If the LOB does not concur with the outgrant request, the LOB will provide the reason for non-concurrence to the RECO in writing. The RECO will send a letter to the requestor denying the request.

Retention Period and Document Location for Denied Applications: Letters of denial for new requests and the initial application form shall be kept in a central file location within the Real Estate office for a minimum of 1 year after denial. After 1 year, the documentation can be destroyed. All letters of denial to modify existing outgrants or to enter into succeeding outgrants shall be filed in the official outgrant project file.

Permit and License (Outgrant) Forms: The RECO must use the appropriate Outgrant Permit Form or the Outgrant License Form. The Permit form is used solely for Federal government entities. The License form is used for all other entities, including State or Local governments and third parties. The Office of the Chief Counsel or the appropriate Regional Counsel must approve any modifications to the standard template.

Questions and Answers:

Q1. Outgrant vs. Reimbursable: How is cost captured in an outgrant (either license or permit) and is it different from a reimbursable agreement?

A1. An outgrant license or permit is not considered a reimbursable agreement because it does not result in the direct provision of a supply or a service by the FAA. Rather, an outgrant gives the grantee permission to utilize an FAA real property asset. Utility, janitorial, or other services that may be provided because of the outgrant are incidental to the use of the subject real property. The RECO must use the award designation letter J under the PRISM system for an outgrant award number.

A signed original outgrant document is sent to the Accounts Receivable department in accounting. With respect to amounts paid as consideration for the outgrant, the FAA may retain all outgrant proceeds in the account established pursuant to 49 USC 45303(c). Please check with ALO-200 for the account number. The RECO must make every effort to negotiate a payment amount that is equal to the Fair Market Value (FMV) of the outgrant, which should represent a fair market value for use of the property and the cost of any additional services and overhead costs provided by the FAA.

Q2. Cost Structure: How can the cost be structured in an outgrant?

A2. The RECO will structure the cost of the outgrants in the following order of preference:

- Based upon fair market value along with any additional services and overhead provided to grantee;
- Based upon the FAA cost and overhead only; or
- A no cost outgrant that specifies the non-monetary consideration of both parties.

Q3. Waiving Rent: Under what circumstances should a RECO waive 1) collecting the fair market value for an outgrant and only charge for services provided or 2) collect no monetary consideration at all?

A3. If the grantee is providing non-monetary consideration to the FAA that is of a direct benefit to the National Airspace System and the cost of any services provided by the FAA to the grantee are minimal, then the RECO may waive collecting monetary consideration with LOB approval. The value of the non-monetary consideration should be of equivalent or greater value than the fair market value waived. The RECO should not waive the cost of the services and related overhead in the outgrant if the FAA is providing more than minimal services to the grantee.

Q4. Specify Use: Should the outgrant specify the use of the property?

A4. Yes. The outgrant must state the specific use of the property. Examples: agricultural use including type of crops and maximum height of crops allowed; grazing use including type and maximum number of animals; mining rights, including what is being mined and exactly how it will be

extracted; communication site, including type, maximum number of frequencies, etc.

Q5. Options: Can outgrants have options?

A5. No.

Q6. Termination: Must outgrants be revocable by the FAA?

A6. Yes. The FAA must be able to terminate an outgrant at any time and for any reason during the term of the outgrant. All outgrants will contain an FAA revocation clause. Outgrants are considered a form of temporary disposal until the property is needed by the FAA or the FAA elects to permanently dispose of the property. FAA must be able to regain control of the property at any time. A grantee looking for a more permanent use should seek other property. For outgrants on property that the FAA does not own (e.g. leased property), the revocation clause in the outgrant must be structured to ensure the FAA can comply with all contractual termination rights of the underlying contract (lease).

Q7. Transferability: Can the licensee or permittee transfer the rights of the outgrant?

A7. No. Outgrants are issued exclusively to the licensee/permitee for limited time and for a specific purpose, the licensee/permitee has no rights under license/permit, subject to FAA's right to revoke the outgrant at will.

Q8. Emergency Service Providers: Can we waive the fee for an emergency service agency that requests an outgrant from the FAA?

A8. The criteria to charge rent to an emergency provider is not whether they provide emergency services but whether the grantee is a state or local government or the grantee is a private entity. If the emergency service or 911 provider is another government entity, such as a state, county, or city government, the RECO can waive the rent for use of the property. However, the government entity should make their own improvements, be liable for what it does on the property, and pay for any FAA-provided services based on actual costs and overhead (i.e. utilities, pro rata share of road maintenance, and any other services that FAA renders for the grantee).

If the emergency service provider is a private entity, then the RECO will need to charge fair market value for use of the property along with any FAA provided services. The FAA must not give an unfair advantage to one private entity over another. Further, if other private property is available nearby, the emergency service provider should be encouraged to seek use of the private property and not the FAA property.

Q9. Liability Insurance: Is the grantee, as a condition of the outgrant, required to carry general liability insurance?

A9. It depends on whether the grantee is a Federal agency, a State or local government entity, or a private entity (all others). As a general policy, the FAA requires that any use of FAA property by a

grantee is adequately covered against potential liability and/or damage caused by the use. In addition to general liability insurance, this must include coverage of costs due to potential damage to the environment (e.g. wetlands, endangered plants, etc.) or through the release of hazardous substances or petroleum products on the property. RECO's must obtain a copy of the Certificate of Insurance prior to allowing any new or continuing use (in the case of a succeeding lease) of the property and place the copy in the real estate file. Since insurance policies are generally written for only one year, the RECO is to obtain a copy of any successive insurance coverage period from the grantee during the term of the outgrant.

- Other Federal Agency: Federal agencies are self-insured and are generally prohibited from paying for insurance. In lieu of insurance, the Federal agency agrees to pay for any damage caused to the property subject to the availability of appropriations.

- State/Local government: All State and local government entities are required to provide insurance; however, if the government entity is prohibited from providing insurance due to state or local law, the RECO will need to work with the government party, the LOB, and FAA legal counsel to develop an acceptable alternative liability clause.

- Private Entity: Effective October 1, 2014, all private entities must obtain and maintain a general liability insurance policy as a condition of use of FAA property. All outgrant licenses with private entities shall contain the standard general liability insurance clause found in the Outgrant License Form for non-Federal entity.

1.1.18 Contracting Officer Representative (COR) **Added 1/2007**

a. Designating a Contracting Officer's Representative. The RECO may designate an individual representative, such as a COR to facilitate administration of a lease or contract. The RECO will designate a representative by written memorandum describing the specific authorities and responsibilities delegated to the representative. The RECO should ensure that the assigned representative has adequate training at the time of the assignment or will receive training within three months of being assigned the responsibility. Based on the yearly anniversary date of the lease/contract, the RECO should also obtain from the appointed representative, an annual validation that the representative has participated in adequate refresher training during the year.

The RECO provides a delegation memorandum to the appointed COR at the time the assignment is made or changed in any way.

b. Authority of the Representative. A duly-assigned representative is authorized to perform the actions delegated by the RECO. The representative of the RECO may assume the designated authorities when appointed, provided the COR has demonstrated adequate training. If the COR does not have adequate training at the time of the assignment, the COR may assume designated authorities for a provisional period, not to exceed three months, until completion of adequate training. While performing as a representative, the COR maintains current knowledge of the COR duties and responsibilities through formal training or other means and advises the RECO

annually. The RECO should consider the specific requirements and needs of the lease/contract in determining the support required from the representative and clearly enumerate the authority granted to the COR in a written memorandum of delegation. A sample delegation memorandum is included herein. One memorandum of delegation for all situations may not be appropriate since contractual situations are distinct and have varying needs. Therefore, the sample memoranda may be modified to reflect the specific needs of the lease/contract and the RECO.

c. Changing the COR. To change the COR on a lease/contract, the RECO must revoke the previous delegation and issue a succeeding delegation to the new COR, Both of these memoranda must be in writing and issued concurrently.

d. Information to the Lessor/Contractor. The RECO furnishes copies of all memoranda of delegation, revocation, changes in authority, or re-delegation to the lessor/contractor to make them aware of the authorities and limitations of the COR. A sample lessor/contractor notification letter is included herein and may also be modified to reflect the specific needs of the contract and the RECO.

1.1.19 Condemnation **Added 4/2009**

When negotiations reach an impasse and FAA has a need for real property, the FAA may initiate eminent domain proceedings. Generally, protracted negotiations are not in the best interests of either party. Legal participation is required on all condemnations. The Department of Justice rules on condemnation and requirements for title must be followed when real property is acquired through purchase or condemnation proceedings.

The FAA almost exclusively uses Declarations of Taking (DT) when it acquires property by eminent domain since the majority of FAA acquisitions involve property that the FAA currently leases and which already support FAA facilities. Since it would clearly be impractical to vacate the property while the condemnation case is pending, the FAA utilizes a DT to acquire immediate title to the property, which permits the agency to continue operating the facility on the property. The Agency should avoid using condemnation for short-term acquisitions.

The RECO must follow the FAA procedural guide on "Acquisition of Real Property by Eminent Domain". When preparing the condemnation file, the RECO must use the condemnation checklist.

Exceptions to the procedural Guide for FAA on Acquisition of Real Property by Eminent Domain

- Condemnation Package may be decided by Service Area such as RECO prepares the condemnation assembly for legal counsel who then puts the declaration of taking together and sends the package to DOJ. (reference to FAA guide page 11, Special Consideration for Expiring Leaseholds, paragraph 3 and page 15, Preparing a Condemnation Assembly, paragraph 1)
- Each Service Area needs to work with the Assistant US Attorney; however some service area the legal counsel receives the name of the AUSA and works with them and other service areas

the RECO works with the AUSA. (Reference to FAA Guide on page 21, Post-Transmittal Activities, paragraph 1.)

A. WHEN CONDEMNATION IS NECESSARY

- Price disagreement
- Title defects
- Missing or unknown landowner
- Landowner violates terms of contract for sale
- Landowner's request or necessity
- Landowner unwilling to sell at any price

B. PRE-CONDEMNATION PROCESS

It is extremely important for the RECO to start lease renewal process at least 18 months prior to lease expiration allowing sufficient time for the agency to make an economic decision whether to institute a "straight" (complaint-only) condemnation (with full adjudication) or the DT. The agency will decide if it is in its best interest to condemn, continue leasehold, or possible relocate the facility. Should a "straight" condemnation not be fully adjudicated prior to expiration of the lease, a lease extension or leasehold condemnation should be completed.

A feasibility study or business case should be prepared by the using service/requesting office to determine the remaining operational facility life. This is especially important with changing technology and the agency's plan to decommission facilities. The feasibility study or business case will be approved by AJA-62. The using service/requesting office will provide the determination to the RECO on the continuing need requirement of the facility

A lease versus purchase analysis must be conducted in order to determine the most economical acquisition method.

If it is determined it is in the best interest of the Government to acquire the property by direct purchase the RECO will follow the standard procurement process as outlined in AMS. The RECO will determine the estates to be acquired, obtain an accurate survey, obtain title evidence, obtain an initial appraisal report and assess any environmental issues.

If leasing property it is particularly important for the RECO to conduct a market survey and document the lease file. This information will be extremely important if the RECO ends up with a condemnation situation.

C. ACQUISITION OF REAL PROPERTY BY CONDEMNATION

The FAA should not automatically file a DT in every condemnation but should consider using the "straight" condemnation, if determined to be in the agency's best interest. Finally, for each condemnation, a written determination and decision paper should be developed on whether the "straight" or DT condemnation should be used.

Note: The purpose of the "straight" condemnation would be to minimize large adverse awards by the Court under the DT method, and to give FAA flexibility to cease the condemnation action should it be determined not to be in the agency's best interest at a later time.

In addition to condemning the fee or fee and restrictive easement, leasehold condemnations should also be considered. Leasehold condemnations may be appropriate when there is a very high risk of a large adverse award for a fee condemnation or the remaining facility operational life is ten years or less.

- A survey will be conducted on the property. The survey should define all the property the FAA needs to operate the facility to include the site (plot), access right-of-way (ROW), building restrictions easement, tree cutting easement, metal fencing easement, etc.
- The title company should be provided with complete and accurate survey information so it can conduct a title search over the appropriate number of years. Copies of recorded documents should be obtained (which could be voluminous). The title search should also include any out grants or leases given by the former owners.
- In cases where facilities require clear zones, because of potential interference with the operations of the facility, then fee simple of the entire property should be valuated, and also the value of fee only for the site with a perpetual easement for the clear zone area. In all appraisal assignments, the value of leasehold for the facility life should be provided.
- The real estate contracting officer (RECO) actions must be consistent with the FAA Order 1015.19B, Environmental Due Diligence Audits, in the Conduct of FAA Real Property Transactions when a condemnation is in process.

The RECO is prohibited from providing the landowner with a copy of the appraisal report

Note: If the FAA is paying rent and the lessor accepts the rental payment. The FAA is still considered in a holdover tenancy.

1. Time line for submissions to DOJ

- When using the Declaration of Taking method the submission of the condemnation assembly to DOJ must be at least sixty days prior to the date of lease expiration.
    - Note: RECO please remember to clearly state all the estates that you are taking under the Declaration of Taking. For further information please see Acquisition of Real Property by Eminent Domain, Appendix Four paragraph 6 subparagraph c.
- If the FAA determines that a "straight" (complaint-only) condemnation is appropriate, then the condemnation assembly should be sent to the DOJ at least one year before lease expiration.
- The FAA does not have to get title insurance policy however the FAA is required to get a title opinion from either DOJ, or someone to whom that authority is delegated in FAA.

2. Key Points for a RECO to remember regarding condemnation

- Condemnation is the process by which property of a private owner is taken for public use, without his consent, but upon the award and payment of just compensation. Condemnation is the right of the state to reassert its domain over any part of the soil of the state on the account of public exigency and for the public good. For all practical purposes the terms "condemnation" and "eminent domain" are synonymous.

- An available option to the US Government under the Constitution.

- You have the authority and responsibility to recommend when condemnation is appropriate.

- Cost/benefit of condemnation should be considered; a value issue: "what is in the best interest of the U.S. Government?"

- Used after earnest negotiations with property owner reaches impasse.

- A "Declaration of Taking" is a document used in a condemnation to give the government immediate use of the property.

- Involve FAA attorneys as early in the process as possible and consult with regional/center and headquarters counsel regarding condemnation issues.

- Document, document, document!

- The negotiator's report is extremely important documentation in a condemnation case

- DOJ rules must be followed (4.2.3.7& "Preparing Condemnation Assemblies for Submission to the Department of Justice")

1.1.19.1 Acquisition of Real Property by Eminent Domain - Procedure Guide for the FAA

Revised 4/2012

Acquisition of Real Property by Eminent Domain

A Procedural Guide for the Federal Aviation Administration

Written by the Land Acquisition Section of the Department of Justice [1]

May, 2005

FOREWORD

It gives me great pleasure to introduce the Federal Aviation Administration's instructions contained in this pamphlet. These instructions, written to meet present-day concerns and conditions encountered by FAA realty specialists involved in acquiring real property by eminent domain, are designed to achieve two very important goals of the FAA. Those goals are (1) to establish uniformity concerning the necessary steps for preparing a condemnation action, and (2) to promote the timely filing of condemnation actions in conjunction with the expiration of current FAA leaseholds. I am confident that the FAA's goals will be substantially achieved if these instructions are followed carefully.

Although this pamphlet represents a major step in developing uniform procedures for acquiring real property by condemnation, it is expected that those procedures will continue to evolve. As experience is accumulated in the preparation of condemnation assemblies and new regulations affecting real estate acquisitions are implemented, it is our hope that the FAA will accordingly revise and update this pamphlet.

Virginia P. Butler

Chief, Land Acquisition Section

Environment and Natural Resources Division

United States Department of Justice

CONTENTS

D. Order Preliminary Title Evidence

E. Obtain an Initial Appraisal Report

F. Assess Any Environmental Issues

Special Considerations for Expiring Leaseholds

Negotiations to Purchase the Property

Statutory Authority for Condemnation and Financing the Acquisition

Preparing a Condemnation Assembly

A. The Transmittal Letter

B. Attachments to the Transmittal Letter

C. The Declaration of Taking

D. Attachments to the Declaration of Taking

Post-Transmittal Activities

Post-Trial Activities

APPENDICES

Appendix One: Definitions

Appendix Two: Title Information

Appendix Three: Sample Transmittal Letter

Appendix Four: Sample Declaration of Taking

Introduction

A. Overview of Eminent Domain

Eminent domain (also known as condemnation) is an essential attribute of government power. Without this power, a landowner could thwart agency objectives that depend on the acquisition of his property by refusing to sell the property at any price, or by demanding an exorbitantly high price based upon the agency's need for the property.[2] Eminent domain resolves such potential problems by enabling the agency to initiate a proceeding in federal court to acquire title to the property in exchange for "just compensation."

The Fifth Amendment of the Constitution states that "Nor shall private property be taken for public use without just compensation." This language has been interpreted by the Courts to mean that (1) condemnation must be for a public use, and (2) just compensation must be paid for the property taken. The term "public use" has been interpreted liberally by the Courts to mean a use that is rationally related to any valid public purpose or legitimate governmental activity.[3] The term "just compensation" usually means the "fair market value" of the property taken.[4]

There are two types of condemnation actions that may be filed: (1) declaration of taking cases, and (2) "straight," or complaint-only cases. In a declaration of taking case, the agency takes title to the estate as soon as the case is filed and an estimated amount of just compensation is deposited in the registry of the court. Once a declaration of taking case is filed, the agency is committed to the condemnation, and the land cannot be given back to the landowner without the landowner's consent. Moreover, the agency is committed to paying whatever amount of just compensation the court ultimately awards for the taking. By contrast, in a "straight" or complaint-only condemnation case, the agency does not take title until after the condemnation case is fully adjudicated and the court determines the amount of just compensation owed for the estate. At that point, the agency can decide based on the price whether it wants to acquire the estate, or whether it wants to abandon the condemnation because the price is too high.

The FAA almost exclusively uses declarations of taking when it acquires property by eminent domain. This is because the majority of FAA acquisitions involve property that the FAA currently leases and which already contain FAA facilities. Since it would clearly be impractical to vacate the property while the condemnation case is pending, the FAA utilizes a declaration of taking to acquire immediate title to the property, which permits the agency to continue operating the facility on the property.

B. When Is Condemnation Necessary?

Although the agency is required by statute and agency policy to acquire real property by negotiation and direct purchase whenever possible, there are certain circumstances that necessitate acquisition by condemnation. Examples of situations that typically require condemnation are:

1. The **landowner is unwilling to negotiate or sell at any price** the property or interest therein.

2. The agency and the property owner agree in principle to most of the terms and conditions for direct purchase of the property or interest therein, but are **unable to agree on the price**.

3. An examination of title evidence discloses **title defects** that are too numerous or complex for curative action, or that can only be cured through condemnation proceedings.

4. It is **impossible to locate the owners** of the property or interests therein to be acquired.

5. The property **owners refuse to comply with the terms and conditions** of an executed offer-to-sell agreement.

6. The **owners request that condemnation be used** to acquire title to their property or interests therein, or where owners, such as fiduciaries, states, cities, or other public bodies **are without legal authority to sell** or otherwise dispose of real property or interests therein.

The Pre-Condemnation Process

Outlined below are the initial considerations and steps that should be undertaken by realty specialists contemplating the use of condemnation to acquire property. Note that most of these same steps and considerations would apply to acquisition by purchase as well.

A. Verify the Long-Term Need for the Property/Facility

The FAA uses eminent domain whenever it cannot negotiate a long-term interest or a direct purchase of real property. Given the degree of difficulty, the length of time, and the considerable expense involved in litigating a condemnation action, the FAA seeks to avoid acquisition of non-permanent interests such as short-term leaseholds by condemnation. Rather, the agency encourages the use of condemnation primarily for the acquisition of the permanent fee simple or easement interests. Accordingly, when considering whether condemnation is the appropriate method of acquisition, the realty specialist should first ascertain whether there is a well-established, long-term need for the property that the agency seeks to acquire. Thus in the FAA's typical~~ly~~ effort to acquire property on which a particular facility already exists. The real estate contracting officer (RECO) should determine whether there is a long-term need for the particular facility. In order to make this determination, the realty specialist should contact appropriate personnel in the following lines of business and staff office: Air Traffic Organization (ATO), Terminal Services, En Route Services, Oceanic Services and Technical Operations, Aviation Safety (AVS) , and/or Security and Hazardous Material (ASH) to advise of the agency's intention to acquire the property underlying the facility, and to solicit their feedback about whether there is a long-term need for the facility. Similar

inquiries should be directed to the District Office Manager, who should also be asked to provide his input on local concerns pertinent to the planned acquisition.

At this stage of the process, it may be appropriate for the RECO to visit the facility or the FAA office serviced by the facility to interview agency personnel about the long-term need for the property and the facility. At this point, the RECO should also attempt to become more knowledgeable about the local area, obtain listings of local surveyors, appraisers, and title companies/attorneys, and possibly initiate preliminary negotiations with the property owner.

B. Determine the Estate(s) to be Acquired

The RECO must next determine what estate(s) should be acquired in order to meet the agency's needs, and then draft language describing such estate(s). The typical long-term interest FAA acquires is fee interest. Depending on the particular needs and circumstances of each acquisition, it may be necessary for the agency to acquire other estates as well. For example, if the acquired parcel is not accessible by public road, it will be necessary for the agency to acquire an access easement to ensure ongoing access to the facility. Similarly, if the agency plans to build a new facility on the acquired parcel, it may be necessary to acquire a temporary construction easement on adjacent property. In addition to access and construction easements, proper operation of the facility may require the acquisition of restrictive easements on adjacent property, such as limits on nearby tree height or restrictions on residential development.

When drafting the language to describe each estate, the RECO should attempt to meet the agency's goals while minimizing encroachment on neighboring property interests whenever possible. For example, the estates taken should exclude all existing easements of record for public roads and highways, public utilities, railroads and pipelines when doing so does not conflict with the agency's needs. As discussed further in Part D below, an examination of the title evidence should reveal whether any such easements exist, while the appropriate Air Traffic Organization personnel should be able to determine whether such easements would interfere with the agency's needs. In cases where the agency must acquire an access easement, the RECO should consider drafting the easement so that it is non-exclusive, or so that the easement could be shifted to another location at the landowner's request. All estates should be drafted in a manner that most closely resembles an estate recognized under state law.

C. Obtain an Accurate Survey

For any real property acquisition, it is necessary to obtain an up-to-date survey that accurately describes the area of each property interest that the agency seeks to acquire. An accurate survey should define all the property the FAA needs to operate the facility to include the site (plot), access right-of-way (ROW), building restrictions easement, tree cutting easement, metal fencing easement, etc. It will be essential for negotiations with the landowner (to depict the exact area of the interests the agency seeks to acquire), and is also a necessary part of the condemnation assembly that will be sent to the Department of Justice if the agency chooses to acquire by condemnation. The RECO should refer to The Department of Justice Title Standards 2001, Section 5(d), for additional information concerning surveys.

In cases involving multiple or overlapping property interests, it is advised that the realty specialist obtain separate legal descriptions for each interest, and that all the interests should then be depicted on one single plat. The appropriate Air Traffic Organization (ATO) office should review and approve the estates, property descriptions and plats for technical accuracy and to ensure that operational requirements are being met by the proposed acquisition.

D. Order Preliminary Title Evidence

At the outset of the acquisition process, it is imperative to obtain and review up-to-date title evidence of the property, which generally will be in the form of a title insurance commitment. The realty specialist should refer to the Department of Justice Title Standards 2001 for additional information concerning title matters.

The title evidence should identify all interests such as leases, easements, liens and other recorded documents that affect the property. These interests will be listed as exceptions on the title insurance policy, and they all must be further researched to determine what impact they may have on the conveyance of good title to the United States

. Some title exceptions, such as the rights of a mortgage holder, can usually be extinguished at or prior to closing and, when extinguished, will not affect the conveyance of good title.

In some instances, the existence of certain easements and other property interests may adversely impact the operation of some types of FAA facilities. For example, gas/oil exploration agreements and utility easements that grant rights over or across the property may interfere with the operation of certain FAA facilities. In these cases, it is imperative for the RECO to inform the appropriate Air Traffic Organization office of the existence of these property interests and determine whether they would adversely affect operation of the facility prior to making the acquisition. In cases where an existing easement conflicts with agency needs, appropriate FAA officials must determine whether the easement should be acquired and extinguished (often at significant cost), or alternatively, whether the agency should seek other property to meet its needs. For example, if an existing utility easement would interfere with the operation of an FAA facility, the FAA may choose to relocate the facility rather than pay the cost associated with acquiring the easement.

RECO should discuss any title problems that are discovered with the title company as well as with the Regional Counsel or Headquarters Counsel. The Assistant Chief Counsel has been delegated authority from the Department of Justice to pass on the sufficiency of title to lands being acquired by the agency (see Appendix 2), which he/she will do by issuing a preliminary opinion of title prior to the acquisition and a final opinion of title afterwards.
However, researching, clearing title defects and providing an opinion as to the sufficiency of title is generally the responsibility of the RECO. If title cannot be satisfactorily cleared, condemnation to clear title may prove to be the only recourse.

E. Obtain an Initial Appraisal Report

Prior to any real estate acquisition, it is necessary for the agency to obtain an up-to-date and approved appraisal report. The information and analysis contained in the appraisal report, such as the determination of the highest and best use for the property and market data utilized by the appraiser, will provide the realty specialist with vital information for use in negotiations with the landowner. In situations where the appraised amount for property containing an existing facility is exorbitantly high (as defined by the FAA), the realty specialist should contact Technical Operations to explore the option of relocating the facility rather than proceeding with the acquisition.

The agency is required by statute to offer to purchase the property from the landowner for an amount that is not less than the value stated in an approved appraisal report.[5] If the agency chooses to acquire the property by condemnation, then the appraisal report must be updated to the date of taking and will be used as the primary evidence for establishing the amount of just compensation owed for the property.

Given the various purposes that the appraisal report must serve, the quality and professional nature of the report, along with the qualifications of the appraiser who prepared it, must be able to withstand intense scrutiny. Accordingly, it is strongly encouraged that the realty specialist select the appraiser with care. If the acquisition presents complex issues, such as a disagreement with the landowner about the possible highest and best use of the property, it is strongly recommended that the agency seek an appraiser who is qualified as an MAI (Member of the Appraisal Institute).

It is imperative that the RECO provide the appraiser with all necessary information pertaining to the estates that are sought to be acquired. If the agency seeks to acquire an estate in fee simple and an estate for an access easement, the appraiser should be instructed to determine market value in accordance with ***Uniform Appraisal Standards for Federal Land Acquisitions, December 20, 2000***, hereafter referred to as the Yellow Book. If there are any questions concerning whether additional should be given instructions to give the appraiser, particularly in situations presenting complex valuation problems, the realty specialist should consult with FAA counsel or contact the Land Acquisition Section.

If condemnation is necessary and the case proceeds to trial, it will be up to the Department of Justice and the AUSA to determine whether the initial appraisal report is adequate for use at trial. If the initial report is not deemed adequate, it is the responsibility of the FAA to provide funding for an appraisal report that meets with DOJ approval. To avoid having to obtain a second appraisal for use at trial, the RECO should select the initial appraiser carefully, and provide the appraiser with all necessary information and instructions for the preparation of an adequate report. Although the agency may be required to select the "lowest bidder" when choosing an appraiser, the realty specialist can attempt to ensure a high quality appraisal report by adding qualification requirements to the scope of work, such as the requirement that the appraiser must be qualified as an MAI, or that the appraiser must have prior experience in federal condemnation actions.

F. Assess Any Environmental Issues

Agency policy requires that prior to acquisition of any real property, testing must be conducted to determine if the property contains any hazardous materials ("HAZMAT"). Under applicable environmental legislation, the current owner/operator of the property may be liable for cleanup and

remediation of certain hazardous materials that exist on the property. Thus, in cases where the FAA has occupied the site for a number of years under a leasehold agreement, the agency may be jointly or severally liable for any contamination that exists on the property. Even when the FAA is not responsible for the contamination on the property, the cost of remediation and potential future liability risk should be factored in as part of the cost of acquisition. Accordingly, it is imperative that the property be inspected for hazardous material contamination prior to making the final decision to acquire the property.

In instances where the agency seeks to acquire the property by condemnation, the agency must certify that all applicable environmental regulations and procedures, including testing for hazardous material contamination, have been complied with. If cleanup or remediation of hazardous materials is necessary, it is not required that the cleanups be completed or even underway at the time of filing a condemnation action. Rather, the agency must inform the Department of Justice that hazardous materials exist on the site and explain the efforts that will be or have been taken to redress the contamination. Be aware that environmental contamination is a factor to be considered in determining property value.

Special Considerations for Expiring Leaseholds

The FAA currently holds leasehold interests on many of the properties that it seeks to acquire. Because these leasehold arrangements often impose unfavorable economic terms for the agency, upon expiration of the lease the agency usually seeks to acquire the fee simple interest to the underlying property. In cases where the landowner is unwilling or unable to convey fee simple to the property, the agency must resort to condemnation in order to acquire the property.

In situations where an existing leasehold is about to expire, it is imperative that the RECO be prepared to acquire an interest in the property as soon as the leasehold expires. Otherwise, once the lease expires the agency will enter into a "holdover tenancy," meaning that the agency remains as the tenant on the property without paying rent, which gives rise to an inverse condemnation claim for the landowner. In addition to the inverse condemnation claim, a holdover tenancy will likely complicate any potential negotiations for acquisition by purchase or for settlement of a condemnation case, and may also add to the agency's overall cost of acquiring the property.

Accordingly, the RECO must be aware of the expiration dates of existing leases, and proceed with plans for acquiring the underlying property accordingly. If the RECO determines that a condemnation action may be necessary, then the Declaration of Taking condemnation assembly should be prepared and sent to the Department of Justice at least sixty days prior to the date of expiration of the leasehold. Negotiations to purchase the property from the landowner may continue after the condemnation package has been sent to the DOJ; however, any agreement to purchase the property must be made before the declaration of taking is filed.

If the agency is already in holdover status before the condemnation package has been sent to the Department of Justice, the Declaration of Taking should include a retroactive taking of a leasehold interest for the holdover period. The agency must separately appraise the value of the holdover leasehold interest, and include an estimated amount of just compensation for this holdover leasehold. Note that the property owner may challenge the holdover (retroactive) portion of the taking and there

is a possibility that he may succeed because, technically, a Declaration of Taking cannot have a retroactive effect. This is a matter to be decided by the Court, but if the property owner's challenge succeeds, the agency could be liable for attorney fees. Moreover, if the landowner subsequently brings an inverse condemnation claim for the holdover period and is successful, the agency will be liable for attorneys fees associated with that action as well. Thus, it is in the agency's best interests to avoid holdover situations altogether by preparing to file a condemnation action as soon as the existing leasehold expires.

Negotiations to Purchase the Property

Prior to initiating a condemnation action, an agency should first attempt to acquire the property by negotiation and direct purchase. The Uniform Relocation Assistance and Real Property Acquisition Policy Act, 42 U.S.C. § 4651, requires the agency to make "every reasonable effort to acquire expeditiously real property by negotiation." The Act states in pertinent part that:

Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

42 U.S.C. § 4651(2). The Act goes on to state that

Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property . . . The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

See 42 U.S.C. § 4651(3).

Although the Act requires the Agency to provide the landowner with a "written statement" and summary of the basis for the estimated just compensation, the realty specialist is **strongly discouraged from providing the landowner with a copy of the appraisal report**, in case the negotiations are not successful and the property must be acquired by condemnation.

Frequently, once the realty specialist has made an offer to purchase the property, the landowner will wish to suspend the negotiations while the landowner retains an attorney and/or his own appraiser. This may cause several months to one year of delay, depending on how expeditiously the landowner chooses to proceed. The RECO should therefore establish a time frame in which the landowner is to respond to the Government's initial offer. Moreover, it is crucial for the RECO to initiate negotiations well before the existing leasehold is to expire, in order to avoid adding the pressure of an impending deadline to the negotiations process.

Early in the negotiations for the purchase of the property, the RECO should urge a the landowner to make a counteroffer. If the property owner is unresponsive to repeated requests for a counteroffer, it is probably appropriate to advise the owner that you will continue the acquisition process through condemnation. The exercise of tact at this critical juncture may result in the realization by the property owner that delaying tactics and unreasonable counteroffers will serve no useful purpose and he or she will begin to negotiate in good faith. The RECO should be open to any reasonable counteroffer from the property owner that will immediately lead to the prompt purchase of the property. Be wary of minor concessions made by the property owner in an effort to reopen negotiations where substantial differences still exist.

In some cases, however, the RECO will conclude that further negotiations are fruitless, and that acquiring the property through condemnation is necessary. In such cases, the RECO should provide the property owner with a certified letter outlining the progress of negotiations to date, make a final and best offer, and establish a deadline for a response from the property owner. The letter should also inform the landowner that if no response is made by the deadline, the agency will initiate a condemnation action to acquire the property, and that thereafter all negotiations would involve the Department of Justice and the United States Attorney's office. This letter may be sent at any time but should be sent at no later than 90 days before expiration of current leasehold rights.

The preparation and submission of the condemnation assembly to the Department of Justice does not prevent continued negotiations and settlement up to the date of filing the Declaration of Taking. Generally, the Declaration of Taking will be drafted so that the taking will become effective on the day of the expiration of the leasehold. Coordination with the appropriate U.S. Attorney's office should resolve any issues regarding last minute negotiated agreements.

Please note that it is crucial to document all offers and counter-offers made during the negotiation process. This information will be useful to the U.S. Attorney's office and prevents duplication of negotiations by that office after the filing of the Declaration of Taking.

Statutory Authority for Condemnation and Financing the Acquisition

The basic authority for FAA to acquire property by condemnation is contained in Section 303(a)(i) and 307(b) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40110(a)(1) et seq and 49 U.S.C. 106 (L6-N1A). This basic authority has been delegated from the Administrator of the Federal Aviation Administration to the Regional Administrators. Authority to acquire property by declaration of taking is set forth in the Declaration of Taking Act, 40 U.S.C. § 3114.

Funding for acquisitions is generally made available by appropriations acts, which change from year to year. It is important to note that funding for acquisitions is valid for only three years after enactment of the appropriations statute. This means that all funds must be obligated (though they need not actually be spent) within three years of passage of the statute. Accordingly, RECO must be aware of the applicable deadlines on which particular funding will expire, and must be prepared to expedite the acquisition process if the three-year deadline is fast approaching. If there is some doubt as to which appropriations act applies to a given acquisition, you should contact the Service Center budget office -or, alternatively, ABU- for guidance.

In some condemnation cases, the ultimate award of just compensation, or the settlement amount agreed to by the parties, may exceed the amount of funding provided by the original appropriations legislation. In those cases, it is imperative that the RECO contact ATO or the appropriate LOB to attempt to secure additional funding to cover the shortfall. The RECO should identify potential funding shortfalls as soon as possible to maximize the agency's ability to acquire additional funding. For example, if the landowner's appraiser produces a credible report concluding that the value of the property is in excess of the total funds provided by the appropriations legislation, the RECO should alert the ATO or the appropriate LOB of the possibility that there could be a funding shortfall for the acquisition, so that Service Center Logistics Manager may begin to plan for this contingency.

Preparing a Condemnation Assembly

In order to acquire property by condemnation, the realty specialist must send a condemnation assembly to the Department of Justice. This section describes the necessary contents of the condemnation assembly.

Given the lengthy amount of time needed to prepare all the necessary elements of a condemnation assembly, RECO are strongly encouraged to begin assembling these materials well in advance of the expiration of any existing leasehold. Once the condemnation assembly has been completed it should be forwarded to the regional Assistant Chief Counsel and headquarters counsel for final review. Upon completion of this review, the condemnation package should be forwarded to the Regional Administrator for signature and mailing to the U.S. Attorney General. Regional procedures vary but in all instances the condemnation package should be tracked to insure that the package is mailed to Department of Justice at least 60 days prior to the expiration of the current lease agreement.

A. The Transmittal Letter

The first part of a condemnation assembly is the Transmittal Letter from the FAA to the Attorney General of the United States. Generally, the Transmittal Letter will be signed by Regional Administrators. The Transmittal Letter should contain the following information (see Appendix 3 for a sample Transmittal Letter):

1. GENERAL AUTHORITIES AND APPROPRIATIONS ACT The letter should contain a recitation of the FAA's general authority to acquire real property by condemnation, as well as a recitation of the delegation of that authority from the FAA Administrator to the Regional Administrators. It is also necessary to include the correct appropriations act that provides the funds to acquire the property.

2. NECESSITY STATEMENT

The letter should include a statement that the taking is necessary for a well-established long-term need for a particular property or facility. A simple statement usually will suffice. For example, "The Remote Communications Air/Ground facility is a vital part of future FAA navigational aids and is a critical element of the National Airspace System. It is in the best interest of the Government to utilize

the facility in its present location. There will be a continuing need for the facility throughout the foreseeable future."

3. IMMEDIATE POSSESSION STATEMENT

The letter should contain a statement as to whether immediate possession of the property being acquired is needed. If the property is currently under lease, the letter should note when the leasehold is set to expire. If the FAA is continuing its existing occupancy, no order of possession is required.

4. DECLARATION OF TAKING STATEMENT

If applicable, the letter should include a statement that the agency seeks to acquire the property by a Declaration of Taking (DT). A Declaration of Taking will vest the property with the United States immediately upon filing the action and depositing the estimated amount of just compensation in the appropriate District Court.

5. COMPLIANCE WITH UNIFORM RELOCATION ACT

The letter should include a general statement that the agency has complied with the provisions of Uniform Relocation Assistance and Real Property Acquisition Policy Act, 42 U.S.C. § 4601.

6. ENVIRONMENTAL COMPLIANCE STATEMENT

If the acquisition will result in the construction of new facilities, the Transmittal Letter should indicate compliance with the provisions of the National Environmental Policy Act, 42 U.S.C. § 4332 and, if applicable other statutes such as the National Historic Preservation Act of 1966, 16 U.S.C. § 470f. If the acquisition is for an existing facility that will not undergo any site changes or modifications, environmental proceedings are excepted by 42 Fed. Reg. 32467 Appendix 5, Paragraph 5f. In such cases, a statement referencing this exception will suffice.

7. LIMITATION STATEMENT

If there is any limitation that may be imposed on the acquisition by any statute, a statement as to the limitation must be included. The Federal Aviation Act does not impose any limitations on the acquisition of land for technical facilities except that of funding imposed by annual appropriations acts. It is unlikely that any individual acquisition will exceed the appropriation for all the land acquisitions funded in any particular year. Accordingly, a general statement that the acquisition will not exceed statutory limitations will serve to meet this requirement

8. POINT OF CONTACT

The letter should contain the name and contact information of the agency official who has been involved in the negotiations and preparation of the condemnation assembly.

B. Attachments to the Transmittal Letter

Several attachments must be included along with the transmittal letter, the most notable being the Declaration of Taking which will be discussed in detail in the next section. Other attachments are described below:

1. PAYMENT OF ESTIMATED JUST COMPENSATION

A Treasury check payable to the Clerk of the Court for the appropriate federal district should be enclosed. If doubt exists as to what district the case will be filed in, contact the Assistant Chief Counsel's office. The estimated amount of just compensation should be not less than the appraised value for the rights and/or interests being acquired. Be mindful that checks issued by the Treasury expire one year after the date of issue.

2. APPRAISAL REPORTS AND REVIEWS

Copies of all appraisal reports, including all unapproved and outdated appraisal reports and updates, along with the appraisal reviews should be included as an attachment to the transmittal letter.

3. TITLE EVIDENCE AND PRELIMINARY TITLE OPINION

A title package should be prepared that includes a copy of the title evidence (usually a title insurance commitment with copies of the documents mentioned therein), preliminary title opinion, a statement as to the location of title evidence (name and address of the local recorder of deeds, registrar, etc.), and all efforts made to cure title defects, if any. For those cases where a condemnation is being requested because of title defects, the following information is also required:

A. An analysis of the defects and the agency's opinion as to the correct resolution of those title defects.

B. A listing of the attempts to cure title defects made by the realty specialist. C.

A summary of all discussions with the title company to have title defects removed.

D. Any curative data obtained to remedy title defects.

E. A Contract-to-Sell signed by the property owners, if applicable.

Additional Guidance can be found in the Department of Justice Title Standards 2001, Section 7.

4. NEGOTIATOR'S REPORTS

A copy of the negotiator's report that lists the time and place of all negotiations, offers and counter-offers made, and any other relevant information concerning discussions with the property owner(s).

5. HAZARDOUS MATERIALS NARRATIVE

In accordance with FAA policy, DOJ should be provided with an explanation of all HAZMAT testing and remediation efforts that are planned for or underway on the property being acquired.

6. CERTIFICATE OF INSPECTION AND POSSESSION

This form should be completed, signed and dated by an individual employed by the acquiring agency who has recent knowledge of the property being acquired. (See the Department of Justice Title Standards 2001, Section 4(b) "Instructions" and 10(b) "Required Forms").

7. DECLARATION OF TAKING

The original and three copies of the Declaration of Taking (described in Part C below), signed by the Regional Administrator, along with the necessary attachments (described in Part D below), must be included with the Transmittal Letter to the Attorney General.

C. The Declaration of Taking

The format and content of a Declaration of Taking is standardized, and must include the following information (see example in Appendix Four).

1. CASE CAPTION

A case caption should be set at the top of the Declaration of Taking, setting forth the name of the United States District Court, with the names of the parties set forth below. In all cases, the Plaintiff in the condemnation action will be "THE UNITED STATES OF AMERICA." The Defendants are identified by stating the property interest by size and location (for example "32.945 Acres of Land, More or Less, Situated in Montgomery County, Maryland"), and listing at least one individual who possesses an interest in the property (usually the primary landowner). Leave the Civil Number as a blank; the number will be assigned by the clerk after the case has been filed.

2. AUTHORITY FOR THE TAKING AND CERTIFICATIONS

The body of the DT begins by identifying the individual possessing the authority to acquire the property. This will be the Regional Administrator in most cases. The DT continues with a number of certifications that identify FAA's authority to take the property including the funding appropriation, the public uses for which the land is being taken, the estimated compensation for the taking, a legal description of the property and the estate(s) being taken, and a plat showing the estate(s) being taken. The legal description, estates being taken, and the plat are usually schedules that are attached to the DT.

3. CLOSING

The DT closes with an authorizing statement, date, signature, and signature block.

D. Attachments to the Declaration of Taking

1. Attachment A

The first attachment should be labeled "Schedule A" and should consist of a legal description of the property being acquired. In instances where more that one parcel is being acquired, each parcel should be separately identified (Parcel 1, Parcel 2, etc.) and described. It is strongly recommended that, rather than re-type legal descriptions from a title report or land survey, that such legal descriptions instead be copied in order to avoid mistakes or omissions. Label and number successive pages as "Schedule A, page 1 of 3", to avoid confusion with other schedules.

2. Attachment B

The second attachment should be labeled "Schedule B" and should consist of the survey plat(s) of the property being acquired. The plats should be easy to read and understand, but contain sufficient information to be useful. As a practical matter, try to avoid plats drawn on excessively large size paper.

3. Attachment C

The third attachment should be labeled “Schedule C” and should describe the interest(s) or estate(s) to be acquired. The types of estates taken may include the fee simple title and perpetual easements of various kinds (i.e., restrictive use, utility, access, etc.). Exercise care in describing the estates you wish to acquire as errors are common. For example, if you need an easement that will provide access and serve as a utility corridor, you should call it an access and utility easement, and not simply an access easement.

Each interest or estate being acquired should be matched to the appropriate parcel identified in Schedule A. Schedule C should also include a listing of all entities by name and address that may have an interest in the property being acquired. This list should include not only all the owners but also all persons shown by the title evidence as potentially or actually having an interest in the property, if we are taking that interest. Depending on the estate taken this could include the local tax assessing office, mortgagees, lienholders, utility companies with rights-of-way interests, lessees, as well as holders of gas, oil, timber, and mineral rights, etc. If an interest, or class of interests, is excluded from the estate taken, the holder of such interest need not be named. For example, if the estate taken is “fee simple, subject to existing easements for public roads and highways, public utilities, railroads and pipeline.”, then holders of utility easements need not be owners and parties in interest is required because all holders of any interest in the property being taken must be given notice by the Assistant U.S. Attorney that the property is being acquired for public purposes. If all individuals with an interest in the property are not served, the possibility exists that the acquiring agency may have to pay twice for the property being taken.

Post-Transmittal Activities

Once the Condemnation Assembly is sent to the Department of Justice, it is reviewed by an attorney in the Land Acquisition Section of the Environment and Natural Resources Division. That

attorney may contact the realty specialist to discuss details of the taking and/or the assembly package. Typically, the condemnation assembly is then sent to the appropriate U.S. Attorney's office in the federal district where the subject property is located, where it will be assigned to an Assistant U.S. Attorney (AUSA). Once the realty specialist receives the name and contact information for the AUSA handling the condemnation, the RECO should initiate a call to the AUSA and offer any assistance possible in preparing the case for trial. This initial contact should begin a period of close cooperation between the AUSA and the realty specialist. A meeting between the RECO and the AUSA at this stage may provide the AUSA with insight about property valuation issues as well as negotiation prospects with the property owner.

In Declaration of Taking cases, the estimated amount of just compensation is deposited in the registry of the court at the time that the case is filed. Distribution of the estimated amount of just compensation to the appropriate parties is the responsibility of the court. However, the realty specialist and the AUSA should make every effort to assist the court in this endeavor.

As soon as the AUSA files the Declaration of Taking, or notice of lis pendens, the RECO should coordinate with the AUSA and file a copy of the Declaration of Taking (or, in complaint-only cases, a notice of lis pendens) in the local land records for the county in which the subject property is located. The RECO should also obtain updated title evidence, usually in the form of a title insurance policy (see the Department of Justice Title Standards 2001, Section 5(a)). to include a search of all records through the date of recording of the Declaration of Taking or the lis pendens. This updated title report should be promptly furnished to the AUSA. In addition, the initial appraisal report will need to be updated to the date of taking. In some cases, the AUSA may ask the acquiring agency to obtain a new appraisal or to assist in locating and retaining expert witnesses such as environmental or land use experts.

The RECO should offer to attend pre-trial meetings and negotiation sessions and should have full authority from the agency to recommend settlement prior to trial based on detailed knowledge of the circumstances surrounding the case and on advice of the AUSA. Prior to any negotiation session, the RECO should contact ABA

to determine exactly what funding limits may apply to settlements due to budgetary constraints. As the case proceeds to trial the RECO should offer to assist in the preparation of any exhibits that may be required. In many instances the official property file will contain photographs or plats that may be useful during the trial.

Finally, the RECO should plan to attend the entire trial proceeding. Negotiations and settlements have been known to occur up until the day of the trial itself, or during the trial. DOJ officials are the ones who negotiate and settle matters after a case has been filed. The realty specialist should consult the AUSA handling the case regarding how the realty specialist should participate in the settlement process.

Post-Trial Activities

When a court award (or a negotiated settlement) has been made that exceeds the estimated amount of just compensation deposited in the registry of the court, the AUSA will provide a certified

copy of the judgment to the realty specialist. The RECO should then take immediate steps to arrange for prompt payment of the deficiency (with interest) by Treasury check to the Clerk of the Court. The Land Acquisition section can assist in the calculation of the amount of interest due.

In those instances where compensation is awarded that is significantly higher than the Government's appraised amount, the title insurance policy may need to be increased to correspond to the higher property value (see the Department of Justice Title Standards 2001, Sections 5(c) and 7(d)(1)). However, that portion of the compensation awarded for damages to the remaining property should not be considered as part of the value of the property taken when determining how much title insurance to acquire. Unfortunately, the compensation awarded does not always provide a distinction between the value of property taken and any severance damages to the landowner's remainder parcel.

When the judgment involves an award which is considered to be excessive, the RECO should discuss the possibility of an appeal with the AUSA and ALO-200. Those discussions should focus on the potential success of an appeal and be weighed against the additional litigation costs associated with the appeal process. Specific procedures are required for filing an appeal; contact ALO-200for guidance concerning appeal procedures. See the Department of Justice Title Standards 2001, Section 7(e) for guidance on recording the judgment fixing compensation and proof of payment, if the condemnation action is a compliant only
action.

APPENDIX ONE

Definitions

Appraisal

An appraisal is an estimate of value of property. Usually an appraisal is a written statement setting forth an opinion of value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant data.

Assistant

United States Attorney (AUSA)

An attorney employed by the Department of Justice who works under the supervision of a United States Attorney in one of the 94 United States Attorneys offices located throughout the United States. There is a United States Attorney in each federal judicial district.

Condemnation

The process by which property of a private owner is taken for public use upon the award and payment of just compensation. Condemnation is the right of the state to reassert its dominion over any part of the soil of the state on account of pubic exigency and for the public good. For all practical purposes the terms "condemnation" and "eminent domain" are synonymous.

Complaint

A complaint is the first or initial pleading on the part of a plaintiff in a civil action. A complaint will generally contain a statement of facts constituting a cause of action and a demand of relief to which the plaintiff supposes himself entitled.

Declaration of Taking

A document in the form and content specified in the Declaration of Taking Act, 40 U.S.C. § 3114, prepared by an acquiring agency and signed by an authorized agency official. The filing of a declaration of taking in a condemnation action together with a deposit into the registry of the court of estimated compensation thereby immediately vests title to the property in the United States. The amount of compensation due for the taking is adjudicated in subsequent proceedings and any difference between the estimated and actual just compensation with interest thereon computed from the date of taking is due the property owner.

Department of Justice

Department of the Executive branch of the Federal government responsible for, inter alia, prosecuting condemnation actions on behalf of other agencies of the Federal government.

Easement

An interest which one person has in the land of another, normally for the benefit of adjoining land. There are two types of easements. One is an "appurtenant" easement, which is an easement across a servient estate for the benefit of another property. An access easement is one example of an appurtenant easement. (For an example of a "Floating" access easement, see Appendix Four, Paragraph 6, subparagraph b.) The other is an "easement in gross", or "restrictive" easement, which is an easement that restricts what an owner can do with his property.

Fee

An absolute estate, subject only to the limitations of eminent domain, escheat, police powers, and/or taxation, where the owner is entitled to the entire property, with unconditional power of disposition during his life, and descending to his heirs upon his death intestate.

HAZMAT

An acronym referring to any substance or class of substances that may be hazardous to the health and well being of the human population. Environmental regulations recommend that testing for hazardous substances be conducted prior to the acquisition of real estate in order to limit the liability of the property owner or user to correct any contamination discovered on the property regardless of who caused the contamination.

Interest

A very general term that denotes a right, claim, or share in real estate or chattels.

Inverse Condemnation

This is a claim brought by a property owner against a governmental agency to recover damages for the taking of property as a result of the government's activities when no compensation has been made to the property owner. A frequent basis for an inverse condemnation claim is damage to property due to airplane overflights which, by noise and vibration, cause a diminution of the property below the flight path.

Just Compensation

The full and fair monetary equivalent for the property taken for public use.

Lease

A written document by which the rights of use and occupancy of land and/or structures are transferred by the owner to another person for a specified period of time in return for a specified rent or other recompense.

Leasehold

An estate in realty held under a lease. The right of use by a lessee to use and enjoy real estate by virtue of a lease agreement.

Plat

A map or representation on paper of a piece of land, usually drawn to a scale. Plats will generally show property lines, and may also show other features such as roads, abutting ownerships, building locations, topographical features, vegetation, etc.

Property Description

This is an unequivocal identification of a specific piece of land. Several methods of have been devised for adequately describing tracts of land such as the metes and bounds system and the Government Survey system (also called the Township/Section system).

Public Use

This means a use concerning the whole community as distinguished from particular individuals. Each member of the community need not be equally interested in such use, or be personally or directly affected by it; if the object is to satisfy a public want or exigency, that is sufficient.

Title Insurance

This is insurance against loss or damage resulting from defects or failure of title to a particular parcel of real estate, or from the enforcement of liens existing against it at the time of the insurance. In some locations the Torrens system of land registration exists in which the sovereign governmental authority issues title certificates covering the ownership of land which tends to serve as title insurance.

Vest

This means to give a fixed and indefeasible right. To have vested rights to a property means that rights have been so completely and definitely accrued to or settled in a person that they are not subject to being defeated or cancelled by the act of any other private person.

APPENDIX TWO

Title Information

The Attorney General has redelegated his authority to pass on the sufficiency of title in land acquisitions to the Department of Transportation, Federal Aviation Administration. That redelegation is recited below.

FEDERAL REGISTER, VOL. 35 NO. 251 - 29 DECEMBER 1970

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION

REGIONAL COUNSELS AND CENTER COUNSELS AND/OR HEADQUARTERS COUNSEL

Notice of Redelegation of Authority to Approve

Sufficiency of Title to Land

Section 355 of the Revised Statues, as amended by Public Law 91-393, 84 Stat. 835 (40 U.S.C. 255) authorizes the Attorney General to delegate to other departments and agencies his authority to give written approval of the sufficiency of the title to lands being acquired by the United States. The Attorney General has delegated to the Assistant Attorney General in charge of the Land and Natural Resources Division the authority to make delegations under that law to other Federal departments and agencies (35 Fed. Reg. 16084; 28 C.F.R. 0.66). The Assistant Attorney General, Land and Natural Resources Division has further delegated certain responsibilities in connection with the approval of the sufficiency of title to land to the department of Transportation as follows:

DELEGATION TO THE DEPARTMENT OF TRANSPORTATION FOR THE APPROVAL OF

THE TITLE TO LANDS BEING ACQUIRED FOR FEDERAL PUBLIC PURPOSES

Pursuant to the provisions of Public Law 91-393, approved September I, 1970, 84 Stat. 835, amending R.S. 355 (40 U.S.C. 255), and acting under the provisions of Order No. 440-70 of the Attorney General, dated October 2, 1970, the responsibility for the approval of the sufficiency of the title to

land for the purpose for which the property is being acquired by purchase or condemnation by the United States for the use of your Department is, subject to the general supervision of the Attorney General and to the following conditions, hereby delegated to your Department.

This delegation of authority is further subject to:

i. Compliance with the regulations issued by the Assistant Attorney General on October 2, 1970, a copy of which is enclosed.

2. This delegation is limited to:

(a) The acquisition of land for which the title evidence, prepared in compliance with these regulations, consists of a certificate of title, title insurance policy, or an owner's duplicate Torrens certificate of title.

(b) The acquisition of lands valued at $100,000 or less, for which the title evidence consists of abstracts of title or other types of title evidence prepared in compliance with said regulations.

A stated in the above-mentioned act, any Federal department or agency which has been delegated the responsibility to approve land titles under the Act may request the Attorney General to render an opinion as to the validity of the title to any real property or interest therein, or may request the advice or assistance of the Attorney General in connection with determinations as to the sufficiency of title.

This the 2nd day of October, 1970

SHIRO KASHIWA, Assistant Attorney General, Land and Natural Resources Division.

The above authority was delegated to the General Counsel of the Department of Transportation by Amendment 1-41 to Part 1 of Title 49, Code of Federal Regulations, 35 F.R. 17658, November 17, 1970

Finally, the authority was redelegated to the Chief Counsels of the operating administrations of the Department of Transportation, including the Federal Aviation Administration (35 F.R. 18412, December 3, 1970).

In consideration of the foregoing and pursuant to the authority delegated to me as chief counsel of the Federal Aviation Administration by the General Counsel of the Department of Transportation, the Regional Counsels and Center Counsels of the Federal Aviation Administration are hereby authorized to approve the sufficiency of the title to land being acquired by purchase or condemnation by the United States for the use of the Federal Aviation Administration. This delegation is subject to the limitations imposed by the Assistant Attorney General, Land and Natural Resources Division, in his delegation to the Department of Transportation. Redelegations of this authority may only be made by the Regional Counsels and Center Counsels to one attorney within their respective staffs.

Issued in Washington, D. C. on December 22, 1970.

GEORGE U. CARNEAL, JR. General Counsel

APPENDIX THREE

Sample Transmittal Letter

The Honorable Name, Attorney General c/o

Land Acquisition Section

P.O. Box 561

Washington, DC 20044

Dear Mr. Attorney General:

It is respectfully requested that you acquire, by condemnation, fee simple title to certain land situated in Perry County, Illinois, for use as a land site for radio communication link (RCL) facility. The land is more fully described in the Declaration of Taking.

This request is made pursuant to 49 U.S.C. § 40110, 40 U.S.C. §§ 3113-14, and in accordance with the authority delegated by the Administrator of the Federal Aviation Administration to the Regional Administrators. Funding was apportioned to the Federal Aviation Administration for the purchase of this property by the Transportation and Related Agencies Act of 1993 (Public Law 107-388), dated April 3, 2001.

The radio communication facility link facility provides a voice and data link between air traffic control facilities and is critical to the operation of the National Airspace System. There will be a continuing need for the facility throughout the foreseeable future.

The government has operated and maintained this facility under a lease agreement since 1977. The owners have rejected all government offers to purchase the subject property. The current lease will expire on September 30, 2004, and continued possession is required on October 1, 2004. Thus, immediate possession is necessary and a Declaration of Taking is therefore requested.

Since this acquisition is for an existing operational facility that will not undergo any site change, environmental processing is exempted by our procedure 42 Fed. Reg. 32647 (Appendix 5, paragraph 5f).

I certify that the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policy Act (Pub. L. 91-646) have been complied with in our attempts to acquire this property. I also certify that there are no statutory limitations imposed on this acquisition and that the ultimate award for said land will probably be within any limits prescribed by law on the price to be paid therefore.

Enclosed herewith are the following:

1. An original and three copies of the Declaration of Taking with Schedules "A", "B", and "C" attached.

2. U.S. Treasury Check No. 786,465,982 in the amount of $86,500, said sum being the amount estimated as just compensation for said property with all buildings and improvements thereon.

3. Four copies of the complete condemnation assembly package.

If you or your staff need any assistance or additional information in connection with this request, please contact (insert and telephone number of point of contact) of FAA's Great Lakes Region Real Estate and Utilities office.

Sincerely,

Regional Administrator

Enclosures

APPENDIX FOUR

Sample Declaration of Taking

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

United States,)
)
Plaintiff,) CIVIL NO. _____
)
vs.)
)

32.945 ACRES OF LAND, MORE) OR

LESS, SITUATED IN MONTGOMERY)

COUNTY, MARYLAND, AND FRED)

JOHNSON, AND UNKNOWN OWNERS)

)

Defendants.)

DECLARATION OF TAKING

I, Name, Regional Administrator, Federal Aviation Administration, Eastern Region, do hereby declare that:

1. The land, hereinafter referred to as the "property," is hereby taken under and in accordance with 49 U.S.C. § 40110, 40 U.S.C. §§ 3113 and 3114, and Public Law 107-87, dated December 18, 2001, which appropriated funds for such purposes, and the authority delegated by the Administrator of the Federal Aviation Administration (FAA) to the Regional Administrators of the FAA (27 Fed. Reg. 3773).

2. A determination has been made by me that the subject property is necessary for public use to provide a site for the continued operation and maintenance of a Non-Directional Radio Beacon facility. This facility is used by aircraft for navigational purposes and is a critical element to the National Airspace System.

3. A general description of the property being taken is set forth in "Schedule A" attached hereto and made a part hereof.

4. A plan showing the property taken is attached hereto as "Schedule B" and made apart hereof.

5. The owner and any parties having or claiming an interest in the subject property are listed in "Schedule C," attached hereto and made a part hereof.

6. The estates being acquired here for public use are:

a. As to the Non-Directional Radar Beacon facility lot, containing 32.00 acres of land: fee simple, subject to existing easements for public roads and highways, public utilities, railroads, and pipelines.

b. "Floating" Easement - A perpetual and assignable easement and right-of- away to locate, construct, operate, maintain, and repair a roadway in, upon, over and across the land described in "Schedule A", together with the right to trim or remove any vegetative or structural

obstacles that interfere with the right-of-way; subject, to existing easements for public roads, highways, public utilities, railroads and pipelines; reserving, however, to the landowner, its heirs and assigns, to 1.) the right to use the surface of such land as access to their adjoining land or for any other use consistent with its use as a road; 2) the right to relocate said right-of- way at any time, provided a) the United States shall have continuous access during the relocation process; b) the relocated easement and right-of-way shall provide access as passable as that of the existing road, and it shall be located on a reasonably convenient route from described in Schedule "A" to the public road; c) the relocated easement and right-of-way shall be of equal width as the road described in Schedule "A", and shall be clearly described in the same manner as the original easement in a properly recorded instrument; and d) the relocated easement and right-of-way is clearly described in a recordable instrument, and the United States must sign said instrument to acknowledge that it has received notice of the relocation, which signature shall not be unreasonably withheld.

c. The estate(s) taken for said public uses is (list estate(s) or interest being taken – fee simple, perpetual easement such as utilities, cabling, leasehold, leasehold than fee simple or term of years then fee simple for holdover situations, etc.) and is further set forth in "Schedule A" which is attached thereto and made a part hereof.

7. A plan showing the property taken in the form of a survey is attached hereto as "Schedule B" and made a part hereof.

8. The owner and any parties having an interest in the subject property are listed in "Schedule C" attached hereto and made a part hereof.

9. The sum of money estimated by me as just compensation for the acquisition of said property interest is ninety-five thousand five hundred dollars ($95,500.00). It is my opinion that the ultimate award of just compensation for this acquisition will be within any limits prescribed by law on the price to be paid therefore.

10. I herewith deposit ($95,500.00) in the registry of the court for use and benefit of the persons entitled thereto.

In witness whereof, the United States of American has caused this Declaration of Taking to be signed in its name by me, as Regional Administrator, Federal Aviation Administration on this _____ day of _____, 2005 at Jamaica, New York.

_____

_____

Name

Regional Administrator

Federal Aviation Administration

[1]/This document is a revision to the 1993 pamphlet Preparing Condemnation Assemblies for Submission to Department of Justice

[2]/ The Supreme Court has stated that "[Condemnation] authority is essential to [the] independent existence and perpetuity [of the United States]. . . . If the right to acquire property . . may be made a barren right by the unwillingness of property holders to sell . . . the constitutional grants of power may be rendered nugatory, and the government is dependent for its practical existence upon the will of . . . a private citizen. This cannot be." Kohl v. United States, 91U.S.367, 371 (1875).

[3]/ See, e.g., Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984); Berman v. Parker, 348 U.S. 26 (1954).

[4]/ See, Kirby Forest Industries v. United States, 467U.S.1 (1984).

[5]/ See Uniform Relocation Assistance and Real Property Acquisition Policy Act, Pub. L. 91-646, 42 U.S.C. § 4651(3) (1987).

1.1.19.2 Condemnation Procedures Checklist Added 1/2008

CONDEMNATION PROCEDURES CHECKLIST	
DESCRIPTION	**DATE**
Receive & Prepare PR for Land Acquisition	
Prepare Right-of-Entry for Survey and Appraisal	
Solicit Survey	
Award Survey	
Review Survey	
Solicit Appraisal	
Award Appraisal	
Preparation of Appraisal Report by Contractor	
Receive Appraisal	
Review Appraisal and take any necessary corrective action	
Solicit, award and review title evidence	
Physical Inspection of Land	
Prepare Certificate of Inspection and Possession	
Lease vs. Purchase Analysis (This should be completed prior to the initiation of the condemnation action)	
Negotiate Purchase	
Letter of Condemnation Notification to Owner	
Prepare DT Package	
Letter to Attorney General	
Declaration of Taking (DT)	
Schedule A Property Description	
Schedule B Plat of Survey	
Schedule C Owners of Record & Interested Parties (Tax/Liens, etc)	
Schedule D Estate to be Acquired	
Appraisal Copies	
Check to Clerk of District Court - coordinate with the DOJ attorney handling the case	
Update Appraisal if requested by Office of Council	
Forward DT to DOJ	
DT File to AUSA	
Title Assumed by FAA Record DT in Land Records Update Title Insurance through date of recording (typically the updated title evidence is a title insurance policy)	
Order new Appraisal or update if necessary	
Pretrial Work including as appropriate discovery information and settlement	

negotiations	
Hearing	
Court Award	
Obtain & Deposit Deficiency Judgment (plus interest)	
Receipt of Final Judgment (If you have recorded the DT, it is not necessary to record the final judgment)	
Report Final Cost	

Section Revised: 2.2.6 Request for Offers/Solicitation for Offers

Real Estate Guidance - (~~10~~4/2014~~5~~)

2.2 Real Estate Acquisition Process

2.2.1 Request

The acquisition of real property interests is usually informally initiated by a request for market information and estimated costs. The Real Estate Contracting Officer (RECO) must receive a written request along with a funding certification in order to start the acquisition process. A certification of funding must be received prior to the obligation of any funds for any purpose (i.e., surveys, appraisals, space lease, etc.) or the award of a contract. This certification is normally provided by a Procurement Request (PR), which must commit valid funding to fully cover the first fiscal year costs.

2.2.2 Requirements and Planning **Revised 1/2011**

The RECO should assist the customer in the development of requirements to ensure that the space to be acquired will meet their needs and that it will conform to FAA regulations such as the Administrative Space Guidance, found in 2.4.1: Appendix A and the Administrative Space Regulations as found in the Space Order 4665.4 for administrative space found in 2.4.1.1. The customer should be advised of available alternatives that may fulfill their needs at a lower cost or in a more efficient manner. The RECO must consider the potential budgetary impacts of long- term (over 5 years including options) space leases when developing alternatives and generally should avoid any lease terms that could result in the lease being classified as a capital lease or lease purchase, unless the customer has prepared and obtained budgetary authority for such a lease. See OMB Circular A-11, Appendix B, and "Budgetary Treatment of Lease Purchases and Leases of Capital Assets" for further information.

When the FAA is currently leasing space, in or near the delineated area, consideration should be given to the advantages of collocation, both from economic and program point of view. If there is a demonstrated advantage to collocation, negotiations may be conducted with the lessor provided the proposed rental will be comparable with the market survey determination of the fair annual rental. The RECO should also consider other available federal space, if it meets the requirements of the customer.

The FAA's mission generally requires that offices be located within 5 miles of an airport and outside the central business area.

On requests for renewal of existing leases, the RECO should determine that if the property continues to meet the FAA’s needs, any changes required in the lease terms should be negotiated and included in the renewal.

2.2.3 Procurement Method

Competition is the preferred method of procurement and should be utilized whenever practical and reasonable. Competition is appropriate when the requirement is not site specific.

The single source method of procurement is appropriate when technical requirements, business practices, or programmatic needs have determined that a specific site is required to meet the FAA's mission. The lease file should document the reason(s) competition was not used in the acquisition.

2.2.4 Succeeding Leases/Lease Renewals Revised 7/2012

General Requirements: Prior to determining whether to enter into a succeeding lease (this is a new lease because the lease expires at the end of the term and succeeds the prior lease), or renew an existing lease (this is the exercise of an option to stay in the existing location for the amount of time stated in the option(s) to renew), the RECO must consult with the tenant organization and obtain a statement of continuing need. If the tenant organization indicates a need to remain in the same location, the RECO can initiate filling in the single source justification form and send to the tenant organization for concurrence prior to initiating the procurement. Competition is the preferred method of acquisition for administrative space; however, if a single source is in the best interest of the Government, the single source form must have signature concurrence from the line of business. In addition, if the term of a lease is less than 20 years, including options, and if the RECO determines that the best method to fulfill a short term continuing need is by extending the current lease, the Supplemental Lease Agreement must contain all new and revised clauses. However, if the lease has met its 20 year authority, the RECO must negotiate a new lease using the current lease template.

When to sign a succeeding lease: In accordance with the provisions of 49 USC 40110(c)(1), the RECO may enter into a lease with a term of up to 20 years, regardless of whether appropriations sufficient to pay the rent for the entirety of the lease term have been obligated. This means that the RECO can sign a lease now, even when rent commences in the next fiscal year.

Example: The RECO diligently negotiates for a succeeding lease for an off airport nevoid and obtains the lease signed by the lessor in the month of July 2010. The rent does not commence until October 1, 2010 (the start of FY-2011). In order to consummate the lease, the RECO must sign the lease AND award it in the PRISM system in July 2010. The RECO can obtain either a zero dollar PR or a subject to availability of funds PR for the award of the lease.

Timing of renewal efforts: In order to allow sufficient time for completion, and prevent FAA from becoming a holdover tenant, the RECO must commence the renewal process, or the process of entering into a succeeding lease, at least 18 months prior to the lease expiration date. For all GSA controlled space, the RECO must commence the renewal process at least 24 months prior to the lease expiration date. Further, this time period should be extended if the RECO is aware of issues that could jeopardize timely completion of the lease transaction.

NOTE: If a lease is to be terminated and not renewed, the RECO must ensure that the lease and any associated utility or other associated contracts are appropriately terminated and that accounting is notified to ensure that lease and associated utility payments are terminated at the appropriate time.

2.2.4.1 Holdover Tenancy Revised 7/2008

If a continuing need has been determined and it appears the lease will expire without a Supplemental Lease Agreement for a short term extension, or succeeding lease has not been awarded, then the RECO must follow the steps in the AMS policy as per 4.2.3.2.1.2 Emergency Reservation of Expiring Funds for Continued FAA Occupancy**.** In those instances where FAA continues to occupy leased facilities after the expiration of the lease term, the FAA is considered a **"holdover tenant."** If the expired lease does not have a "holdover" clause, the laws of the state in which the facility is located will determine FAA's rights of occupancy.

As mentioned under the policy, the RECO must notify his manager, regional counsel, and the LOB Budget office of issue.

If the RECO is unable to get the lessor to sign a temporary agreement, then the RECO must take steps to ensure that sufficient funds are either reserved, or set aside for settlement of the holdover period. A holdover period should not exceed 6 months. Prior to the end of the current fiscal year, the RECO will notify the affected LOB of the potential need to reserve the minimal funds necessary to pay for the FAA's occupancy during the continued occupancy period (so long as it occured in the same fiscal year), and provide an estimate. If the LOB wishes to reserve funds from the soon to be expiring budget year (for rent that is incurred during the same fiscal year), they shall provide a requisition to the RECO, and the RECO will reserve the estimated rent as an emergency contract. The RECO will send a formal memo to the Accounting office of the emergency reservation of funds, and to await further instructions from the Accounting on when to make any payments. **Note:** The RECO must document in the file a justification for the emergency reservation of funds. Below is information for dealing with holdover tenant with accounting in the financial system.

1. FAA cannot use its holdover status to avoid its obligation to pay for leased facilities. This may necessitate a a memo for the emergency reservation of funds or temporary supplemental lease agreement so that PRISM can accept the obligation without a signed contract. The interim contract number will be the old lease number with an "OH" suffix to the old lease number, or will be a new lease number.

2. Delphi Miscellaneous Obligating Documents (Delphi MOD) will be used only for FY200X funds that are due to the lessor of a holdover lease where funds have not yet been obligated or paid in FY200X for the time already lapsed. Instructions for recording in Delphi in accordance with year-end closing are on the Delphi website (FAA only)**.** The Delphi M.O.D. is regularly used to accrue utilities, credit card purchases, etc. in Delphi for transactions that will not clear before year-end. A Delphi M.O.D. will not be used for leases where FAA is a holdover tenant except in the instance mentioned above.

3. Note if the LOB validates, it can pay the back rent from current year funds, it is not necessary to perform the emergency reservation of funds.

During this period the RECO must continue to negotiate an lease extension even if considering a condemnation posture. Once the RECO has negotiated a final lease agreement, the RECO must perform a modification to the emergency lease to document the conversion to a fully executed lease contract. Any difference in lease rental payment should be settled and paid at that time.

2.2.5 Advertising/Market Survey and Appraisal **Revised 4/2012**

Advertising: If advertising is to be accomplished, the Real Estate Contracting Officer (RECO) shall utilize the publicizing method most likely to result in receipt of offers appropriate to satisfy the specific requirement. The content of the advertisement is at the discretion of the RECO. In most cases, advertisements will be in local newspapers. Also, advertisements may include commercial trade journals, electronic bulletin boards, and the Commerce Business Daily. Multiple advertising may be utilized, if necessary. If the RECO chooses to advertise, the RECO shall place the largest circulation in the geographic delineated area and include placement on the days when the "Real Estate" Section is published.

Advertising is not required when the RECO determines that it is not warranted, or reasonable competition can be achieved. Data from an advertisement or market survey may be used to determine the competitive range.

Market Survey: A market survey is a tool used to help the RECO determine the following when leasing a space:

- the FAA's needs and requirements,
- determines the fair market rental value and the rental price, and
- allows for the determination of the competitive range.

A market survey must be conducted in both competitive and single source space acquisitions for all new, succeeding, renewal or small space lease.

Market Information for a Business Case

Under the Space Council Administrative Space Standard Operating Procedures, all lines of business are required to submit a copy of an approved business case to the RECO for all new administrative space requirements. The AFI will submit a copy of an approved business case to the RECO for all technical space. The RECO will assist the LOB with the business case by providing limited market information.

A limited market survey is used for assisting the customer in the development of a business case. A limited market survey is basic fact finding, and includes gathering data that answers the following questions:

- Is space available in the delineated area?
- What is the cost per square foot?
- What are the general terms in the surveyed area?

In addition, the customer must provide initial information on their space requirements to the RECO to conduct a limited market survey.

The RECO has the authority to proceed with a full market survey only after receiving a copy of the approved business case for all new space acquisition, either technical or administrative. The RECO must place a copy of the approved business case in the lease documentation file.

There is one exception to this requirement for an approved business case. In the case of an emergency, which creates an immediate threat to the life or safety of FAA employees, such as a fire or an earthquake, the requesting servicing organization can contact the RECO to proceed immediately with a full market survey.

The business case must not identify a pre-selected location when the intent is to procure the requirements using competitive method. If a business case identifies a specific site location when competition is available within the geographically delineated area, the RECO must notify the customer that the AMS policy requires a RECO to use competition when available.

Full Market Survey

Once a copy of an approved business case is received by the RECO, a "full" market survey is conducted by the RECO with their customer. Prior to initiating a full market survey for a new space requirement, the RECO and the customer must determine space requirements such as square footage, security, parking, electrical, data/telephone and any special build-out requirements. Time frames must be established for the acquisition of the space and a delineated geographic area must be identified. The RECO will conduct a full market survey based upon the requirements received from the customer including receiving a zero dollar purchase request.

The RECO will request funding from the customer to ensure that the RECO and customer are able to participate fully in the market survey process. However, if funding is not available, the RECO must send a copy of the space market survey form to the potential lessor(s) to fill in the required information and either by fax or e-mail a completed copy to the RECO within 5 business days from the date the RECO sent the request to the potential lessor(s).

New Lease Market Survey

With respect to the acquisition of new space leases, a full market survey must be conducted. This ensures that the RECO leases space that meets the FAA's requirements and is in the FAA's best interest. As mentioned above, the RECO needs to receive a copy of an approved business case with a zero dollar purchase request in order to proceed with a full market survey.

The following are guidelines for performing a full market survey for new space:

- The RECO must check if other government space is available for occupancy prior to initiating a market survey. Your local General Services Administration (GSA) point of contact is one potential source for such information.
- The RECO must ask the customer/facility manager if he/she has developed information concerning space available in the geographic delineated area. If so, the RECO must request specific points of contact and follow up with the named

individuals/companies. If possible, the RECO must physically canvas the geographic delineated area for space offerings, and listings of competing space by looking for vacancy signs, or reviewing the available real estate listings as published in the local paper serving the geographic delineated area. An on-site market survey visit is important in both a competitive and single source acquisition. However, if the RECO is unable to attend the on-site market survey, the RECO must fax or e-mail the market survey form to the potential lessor(s) to fill in and contact the customer to visit the site with the form, if possible.

- Communicate with other RECOs and review existing files to determine if there have been other recent surveys (e.g. within the last 6 months) completed with respect to the delineated area that may provide points of contact (brokers, property managers and property owners), leads for buildings with available space, or associated information on rent, operating costs, tenant improvements, etc.
- Contact and communicate with other federal agency real estate representatives (GSA, Corps of Engineers, etc.) to see if they have completed recent surveys or lease negotiations in the geographic delineated area.
- The RECO is recommended to use Loop net or GSASales.gov or other market tools to gather data. These tools are extremely helpful when the RECO is gathering limited market information.

Succeeding, Renewal and Small Lease Market Survey

It should be noted that a copy of an approved business case is **not** required for succeeding lease (a new lease succeeds the lease expired) or lease renewals (exercising an option to stay in the same location) for standard or small space requirements; however, the RECO should receive a continuing need statement before proceeding with the process of a succeeding lease or a renewal lease including a zero dollar purchase request. This statement should include sufficient and verifiable justification that the requirement for the space is ongoing.

With the above information, (i.e., approved business case or continuing need statement), the RECO can proceed with a full or limited market survey. For most succeeding leases, when a lease has expired and a continuing need statement indicates requirements to remain at the existing location, the RECO **must** conduct a full market survey (see above information on full market survey). For a renewal lease or a small lease (3,000 square foot or less) a full market survey is not required. However, at a minimum, the RECO is required to gather limited market information. As mentioned above a limited market information gathering must be conducted by 3 or more telephone calls to owners of potential sites located within the delineated area to evaluate present market conditions. This would be sufficient information for the RECO's assessment. The RECO must document the lease file with the limited market information.

Market Survey Form

For all new or succeeding space leases the RECO **must** use the 2.6.10 Space Market Survey Form when conducting a full market survey. For all lease renewals or small lease acquisition, the RECO **must** have the lessor complete the market survey form to ensure that the Safety and Environmental information is captured in the file. The RECO may also provide a document to the lease file

indicating the market data gathered. A completed Space Market Survey form(s) must be placed in the lease contract file for each location.

The RECO must request a block plan from the potential lessor(s) (owner or owner representative) outlining the space being offered. This plan will assist the RECO and customer in determining if the potential lessor(s) can meet the requirements of the FAA.

- The space form will be completed by the RECO (part I-III) and the potential lessor(s) (part IV-V). When the RECO is conducting a market survey, part of the form can be given to the potential lessor(s) to fill in onsite, or it may be sent to a potential lessor(s) to fill in sections VI-VII. This information will assist the RECO and the customer to decide the acceptability of the space for further consideration.
- If the RECO is unable to attend the market survey, the potential lessor(s) must fill in the form. Then the potential lessor(s) must send back the completed form to the RECO either by fax or e-mail to the RECO within 5 business days from the date the RECO sent the form to the potential lessor(s).

Developing a List of Potential Lessors to whom FAA's Requirements will be provided

Once a full market survey is completed and the market information has been collected, the RECO must determine a reasonable range for rents, anticipated operating expenses and tenant improvement allowances for potential space that meets the customer's needs. This information forms the basis for discussions with potential lessors. The market survey is a vital tool for the RECO to use to determine the price reasonableness of offers that are otherwise likely to qualify for an award based upon the FAA's requirements. The market survey is essential for making a determination of the fair market value (FMV) of the rent and the FMV of asset under lease. Such a determination is necessary in both competitive and single source acquisitions.

The RECO must send the customer a written notification of the selected potential lessor(s) within the competitive range. This will give the customer notice of the potential lessor receiving a Solicitation For Offer (SFO).

2.2.6 Request for Offers/Solicitation for Offers Revised 4/2015~~7/2014~~

After the market survey is completed, the RECO will decide if they need to send out the Solicitation for Offerors (SFO) ~~or the proposed lease contract and other attachments~~ to those offerors whose space meets the FAA requirements and whose prices have been determined initially to be fair and reasonable. If the RECO is using the SFO, they **must** use 2.6.1~~0~~ the Solicitation for Offer form. The SFO will set forth a detailed statement of FAA's space requirements, including any tenant improvement requirements; will set forth pertinent evaluation criteria and the basis for award; will include a schedule for space delivery; will set forth all statutory and regulatory requirements, such as accessibility, life safety, how disputes will be addressed, and labor wage requirements; and will include such additional provisions as are necessary to ensure that the space is acquired in the best interest of FAA. The SFO should be clear and unambiguous. An SFO is not required for a small lease (under 3,000 square feet). However, a modified version of an SFO for small lease is acceptable for the RECO to use.

2.2.7 Negotiation

RECO will begin negotiating the FAA's requirements with the offerors, either from the competitive range or single source.

Below are the items typically negotiated with the owners or owner's authorized representative:

1. Clauses from either the Standard Lease or Small Lease

- Mandatory Clauses are **non-negotiable** items such as:
  - Rent and lease term
- Recommended clauses should be negotiated were applicable circumstances such as:
  - Base rates for utility and service operating costs
- Optional clauses should be negotiated if RECO chooses to use them for their contract such as:
  - Changes required during a new lease buildout phase.

2. Clauses from Attachment A to the lease

- Mandatory Clauses are **non-negotiable** items such as:
  - Fire and Safety Requirements
- Recommended clauses should be negotiated were applicable circumstances such as:
  - General health and safety standards
- Optional clauses should be negotiated if RECO chooses to use them such as:
  - Janitorial Services

3. Program office special requirements, as applicable

After the market survey or inspection, the specialist and the customer representative should confer and determine if the building meets or can be made to meet the requirements by the specified occupancy date. If a building cannot meet or be made to meet the FAA requirements, the offeror should be informed, verbally or in writing, that the building will not be considered and provided a brief explanation. No further negotiations or consideration is required once an offer has been excluded.

If during negotiations an agreement is reached regarding all of the FAA's requirements however, the rental/price is higher than the market survey indicates, the lessor can be asked to lower the rental (or any other particular item price) to a stated rate. This may be done formally or informally. The requested lower rental may be based upon the market or another offer.

Should negotiations not result in an agreement that represents the best value to the FAA, negotiations may be discontinued. Another selection can be made by the RECO from the offers in the competitive range. The final award is based on solicitation evaluation criteria.

2.2.8 Evaluation of Offers

If the competitive range method is used, once offers are determined to be within the competitive range, selection for final award may be made without further consideration of the selection criteria. Selection from the competitive range group may be made based upon that proposed offer that is best suited to the FAA's needs, in the RECO's opinion. This includes benefits offered that have not previously been addressed in the FAA's requirements provided. Any new benefits identified do not change the evaluation criteria used to develop the competitive range group. The evaluation criteria should be in writing and the lease file should indicate how the criteria would be used. Use of the evaluation criteria should be consistent through out the procurement. The use of "best and final" offers is generally not used in real property acquisitions. Negotiations may be terminated at anytime by the RECO.

When using the competitive range method in determining the offer most advantageous to the FAA the reason for selection should be some characteristic (or group of characteristics) that cannot be obtained from one or more of the other offerors. As an example, the selected offer may be located very near the main gate so as to provide ideal access to the FAA by its airport customers.

The RECO should review the offer(s) and make a selection that will represent the best value. Price must always be considered along with the other written evaluation criteria. RECO's required for both competitive and sole source procurement conduct a price evaluation of the offeror(s). The length of the lease determines whether actual or discounted dollars are used. Programs to evaluate offers dollars are available.

As part of the evaluation, a fair market value determination must be made. This can be done by appraisal or use of market data. This is true for competitive or non-competitive space.

The requiring office should be advised as soon as possible of the recommendation for award.

2.2.9 Documentation to the Lease File **Revised 7/2014**

Sufficient documentation must be developed to explain and justify the real estate acquisition action taken. RECO's are to use the appropriate checklists (file and/or contract) to ensure the adequacy of contract clauses and to ensure required documentation is in the file to support the acquisition. RECOs must use a 6 part folder for all acquisition files.

Contract Review Process (Space)

RECOs must fill out and sign the appropriate Contract Review Checklist and determine if the contract requires secondary review in accordance with ISO 9001 Real Estate Contract Review Work Instructions. If secondary review is required, the RECO must submit the contract to the designated reviewer prior to sending it out for signature. Any changes made to the contract after the initial review must also be reviewed. A copy of the secondary review, signed by the reviewer, must be placed in the file.

File Review Process (Space)

The File Review is intended to provide a quality control check of the file for completeness. The review is not intended to replace the judgment exercised by the contracting officer. RECOs must fill out and sign the appropriate File Review Checklist and determine if the file requires secondary review in accordance with ISO 9001 Real Estate File Review Work Instruction. If secondary review is required, the RECO must submit the file to the designated reviewer. A copy of the secondary review, signed by the reviewer, must be placed in the file.

2.2.10 Award

Legal review of leases is recommended where there is deviation from AMS clauses. Legal review is required on all purchases. The Department of Justice rules and requirements must be followed for condemnation and title review.

After negotiations and when all FAA criteria have been met, the RECO will prepare three original leases for signature by the offeror. Prior to the RECO signing the returned lease document it should be compared to the copy retained in the file to ensure that no changes have been made by the offeror. The RECO will execute all originals leases.

After execution, the RECO should ensure that all information is entered into the real property database, i.e. REMS.

2.2.11 Condemnation **Added 1/2008**

When negotiations reach an impasse and FAA has a need for real property, the FAA may initiate eminent domain proceedings. Generally, protracted negotiations are not in the best interests of either party. Legal participation is required on all condemnations. The Department of Justice rules on condemnation and requirements for title must be followed when real property is acquired through purchase or condemnation proceedings.

The FAA almost exclusively uses Declarations of Taking (DT) when it acquires property by eminent domain since the majority of FAA acquisitions involve property that the FAA currently leases and which already support FAA facilities. Since it would clearly be impractical to vacate the property while the condemnation case is pending, the FAA utilizes a DT to acquire immediate title to the property, which permits the agency to continue operating the facility on the property. The Agency should avoid using condemnation for short-term acquisitions.

The RECO must follow the FAA procedural guide on "Acquisition of Real Property by Eminent Domain" see 1.1.19.1. When preparing the condemnation file, the RECO must use the condemnation checklist see 1.1.19.2.

For further information on condemnation please see guidance under section 1.1.19

Section Revised: 2.4.10 Appendix J: Outgrant

Real Estate Guidance - (~~10~~4/2014~~5~~)

2.4 Appendices

2.4.1 Appendix A: Administrative Space Guidance Revised 10/2012

I. General:

The following guidance presents the space standard for all administrative space in FAA owned, leased and GSA controlled facilities. The following guidance is designed to promote the efficient utilization of FAA administrative office space. This guidance has been developed to help FAA LOB and Staff Offices (SO) effectively plan and manage FAA's real property use and cost. Since there are many variables associated with space, e.g. configuration of existing space, funding limitations, available furniture, etc., it makes it impossible to establish rigid space standards. Therefore the administrative space standard establishes a baseline for all FAA LOB and SO (referred to as the "originating office" in this document) to use in order to determine and evaluate individual administrative office needs. This space standard should be adhered to and deviated from only in those instances when documentation supports such deviation. This administrative space standard applies to all authorized personnel (i.e. permanent, temporary, part-time, seasonal employees and approved FAA contractors). It should be noted that Operating (Technical) Space for terminal should follow the Terminal Facilities Administrative and Operational Space Guidelines (October 30, 2007). Under this guidelines the administrative space follows the standard under this guidance.

II. APPLICABILITY:

This standard is applicable to all FAA owned, FAA leased and GSA controlled administrative space except for those facilities defined in Section VI, Exemptions to the Administrative Space Standard below. Existing space will be subject to the space standard when an originating office alters/reconfigures or acquires additional or new space or occupies GSA controlled space (see section IX, GSA Controlled Space).

III. DEFINITIONS:

Below are definitions for commonly used terms in this guidance.

1. **Administrative Primary Office Space -** Primary Office Space is the personnel-occupied area in which an activity's normal operational functions are performed. Space is allocated based on the total number of authorized personnel (permanent, temporary, part-time, seasonal employees and approved FAA contractors) occupying open or closed office work areas.

2. **Administrative Support Space -** All secondary/shared workstations, extraordinary circulation space, and space for those specific mission needs outside the agency's requirements for housing personnel. This includes space for mission needs such as reception/waiting areas, meeting areas, file areas, central storage areas, processing areas, and, conference rooms not having special buildout, library and reference areas.

3. **Acquiring Organization -** The regional real estate section in Logistics or the space management organization in the centers is the main point of contact for space requests.

4. **Common Use Space –** Space used by multiple FAA organizations and available for use by all FAA personnel. Space such as conference rooms (not associated with a single FAA organization), general reception areas, loading docks and shipping and receiving platforms, etc.

5. **Hotelling -** Employees reserve workspace in advance at the corporate office where there are fewer workspaces than staff (the ratio of staff to offices can be anywhere from 2:1 to 10:1 or higher).

6. **Joint Use Space -** Space that benefits all of the building tenants such as cafeterias, conference rooms (those not under FAA control), credit unions, snack bars, health/fitness facilities, and child care centers.

7. Occupiable Square feet - The method of measurement for the office area where FAA occupies a facility.

It is determined as follows:

- If the space is on a single tenancy floor, compute the inside gross area by measuring between the inside finish of permanent exterior building walls or from the face of convectors (pipes or other wall-hung fixtures) if the convector occupies at least 50 percent of the length of exterior walls.

- If the space is on a multiple tenancy floor, measure from the exterior building walls as above and to the room side finish of fixed corridor and shaft walls or the center of tenant-separating partitions.

In either case, make no deductions for columns and projections enclosing the structural elements of the building and deduct the following from the gross area including these enclosing walls:

a. Toilets and lounges b.

Stairwells

c. Elevators and escalator shafts

d. Building equipment and service areas e.

Entrance and elevator lobbies

f. Stacks and shafts and

g. Corridors in place or required by local codes and ordinances.

8. **Office Space -** Space which provides an environment suitable for an office operation. There are two categories of office space: primary office space and support space (see definitions for Administrative Primary Office Space and Administrative Support Space for further details). Typical

office standard space is constructed with the following finishes: carpet, lights, ceiling, HVAC and painted finished walls.

9. **Operating (Technical) Space -** Operating (technical) space is defined as space required to house the installation or operation of air traffic control and/or air navigation equipment, research and development laboratories and other project-related spaces. It should be noted that Operating (Technical) Space for terminal should follow the Terminal Facilities Administrative and Operational Space Guidelines (October 30, 2007) (For publication contact ATO Corporate Real Estate Office - AJA-15). Under these guidelines the administrative space follows the standard under this guidance.

10. **Originating Office -** This may be either the using office or an office in the organizational or supervisory line with responsibility for obtaining space for the using office. This office develops space requirements and prepares a request for the space with sufficient information for development and validation of the requirements.

11. **Non-Office Personnel -** Personnel assigned to operational or other space should not count towards the administrative space utilization standard.

12. **Personnel** - means the peak number of persons to be housed by a LOB/SO during a single 8-hour shift, regardless of how many workstations is provided for them. In addition to permanent employees of the agency, personnel include temporary, part-time, seasonal, and approved contractual employees and budgeted vacancies. Regional or Field offices should also include detailees from other Regions, Headquarters and/or non-DOT agencies. Headquarter offices should include detailees from the Regions and/or non-DOT agencies but not from other Headquarter offices. Employees of other LOB/SO who are housed in the space (i.e. Integrated Product Teams, etc.) are also included in the personnel total.

13. **Special Space -** Special space means unique architectural/construction features, requiring the installation of special equipment or requires additional monies above the standard office space to construct, maintain and/or operate as compared to office and storage space.

14. **Storage Space -** Space that is not constructed to office type standards and is only suitable for storage purposes. Space generally consisting of concrete, woodblock, or unfinished floors, bare block or brick interior walls; unfinished ceiling; and similar construction containing minimal lighting and heating. Supply rooms, storerooms, file rooms and warehouse areas that are not finished to office standards are classified as storage space.

15. **Telecommuting -** (Work-at-home) Home-based workers who bring work to their home, eliminating the need to commute to the work site.

16. **Telecommuting Centers** (Satellite Office) Alternative work site located closer to employees' homes that provide all office services. May be used on a full-time or part-time basis by those who want to shorten their commute but cannot work from home, or by telecommuters as a support site for copying, faxing, etc.

17. **Types of Space -** There are three (3) types of space occupied by FAA: 1) FAA owned, 2) FAA leased, and 3) GSA controlled space.

IV. UTILIZATION SPACE STANDARD:

The average utilization rate for all administrative space occupied by FAA LOB and SO will be 152.5 occupiable square feet per person (osf). A person is the following type of employees: permanent, temporary, part-time, seasonal employees and approved FAA contractors. Any exemptions to this administrative space standard are defined in Section VI, Exemptions to the Administrative Space Standard below. The 152.5 is an average per person, however the square footage for any specific individual may vary up or down from the average.

The administrative space standard is a calculation involving the number of personnel, the circulation factor, and the following types of space: all office areas (closed or open), shared workstations, originating office conference rooms, reception/waiting areas, meeting areas, file areas, central storage areas, processing areas, and library and reference areas. Below is the method to calculate the utilization rate for originating office requirements.

1. Administrative Office Space Utilization Rate: The average Administrative Office Space utilization should not exceed 125 square feet per person. The 125 square feet per person is the utilization rate for the primary office area. Administrative Office space is all office areas where normal operational functions are performed by personnel (see Section II, administrative primary office space definition). This square footage standard stands regardless of the types of furniture options (freestanding, modular or systems). Circulation allowances are included in this number.

2. Administrative Support Space Percentage: The support space should not exceed 22 percent of the primary office space. Allowances may be made for those unique functions that require additional support space above the primary support factor of 22 percent. Administrative Support Space should accommodate the following areas: reception/waiting areas, meeting areas, file areas, central storage areas, processing areas, mail areas, work areas, conference rooms not having special buildout, library and reference areas and aisles and corridors.

3. Total Utilization Rate Formula: The calculation formula for the average amount of administrative office and support space per person is as follows: 125 sq. ft. + (125 sq. ft. X 22%)
= an average of 152.5 osf per person

V. DEVIATIONS TO THE ADMINISTRATIVE SPACE STANDARD OF 152.5 SQUARE FEET

The originating office must submit a written justification with the requirements package for any increase in space above the 152.5 square foot average per person standard to the approving official at the LOB/SO headquarters office. This written justification must be based upon mission or unique requirements such as limited space due to building configuration. The approving headquarters official must also certify funding availability. See Section VIII for additional details on funding. The originating office must send the approved waiver with requirements package to the RECO or to the

Mike Monroney Aeronautical Center (MMAC) Space Manager, AMP-400. The RECO or the space manager should acknowledge the approved waiver and acquire the additional space, if available.

VI. EXEMPTIONS TO THE ADMINISTRATIVE SPACE STANDARD:

Below is a list of examples of exempted space types from the administrative space standard. If an originating office's requirements do not fit any of the exemptions below, the RECO will make a determination on a case-by-case basis.

A. Special Space - Space with unique architectural/construction features, requiring the installation of special equipment or requires additional sums to construct, maintain and/or operate as compared to standard office and storage space. Special space provides space for an originating office to perform special or unique functions such as an engineer requiring a drafting desk, which is larger than a typical workstation.

Examples of special space:

1. Food Service Areas: Cafeterias, Snack Bars, Mechanical Vending Areas, and Private Kitchens.

2. Laboratories

3. Libraries with special stacks (shelving) requiring load-bearing floors (normal floor loading is 80 live load and 20 dead load).

4. High-density filing areas

5. Auditoriums

6. Training classrooms

7. Automatic Data Processing Rooms - areas having special features such as humidity and/or temperature control, raised flooring, and ceiling heights exceeding office standards, and extensive power requirements.

8. Computer rooms, telecommunication rooms with special environmental requirements

9. Computer Tape Vaults

10. Conference Rooms with special equipment and/or HVAC

11. Sensitive Compartmentalized Information Facility (SCIF) area

12. Hot Copy Rooms

13. Operating (Technical) space - see section C.

14. Shop type space

15. Light-Industrial type space

B. **Storage Space** - Storage space is not constructed to office type standards and is only suitable for storage purposes. Space generally consisting of concrete, woodblock, or unfinished floors, bare block or brick interior walls; unfinished ceiling; and similar construction containing minimal lighting and heating including: supply rooms, storerooms, and file rooms that are not finished to office standards. Storage space is typically located in the basement or garage of a building.

C. **Operating (Technical) Space** - space required to house the installation or operation of air traffic control and/or air navigation equipment, research and development laboratories and other project-related spaces. Operating (Technical) space tends to be the dominant space in a facility whereas administrative is space supporting the operating function. Any administrative space requirements within operating space are subject to the 152.5 sq. ft. baseline.

D. Small, stand-alone operating field offices (i.e. Airport Field Office) that have eight or fewer total personnel should be housed as efficiently as possible.

E. The shape and design (configuration) of a building and its impact on space utilization may be considered an exemption. Although the originating office should submit to the RECO for review documentation to support this factor as an exemption.

VII. PLANNING AND DEVELOPING ADMINISTRATIVE SPACE REQUIREMENTS

Prior to acquiring or constructing space, the originating office should submit their requirements to the acquiring organization, the RECO, in order to determine their actual space needs. Requirements received from the originating office may be general or specific in nature. If the originating office chooses to submit specific requirements, they may choose the option to fill out the Space Requirements Questionnaire (see Space Forms, 14) or any other space-planning checklist. When planning and developing their administrative space requirements, the originating office should use the administrative space standard as a baseline. Originating office should also remember that when developing requirements, the space measurement used is occupiable square footage. For more information on "occupiable square feet" see definitions section III.

Determine if vacant space is available at other FAA-owned or leased facilities for these administrative space needs. If the administrative space requires the construction of a new facility, first determine if FAA-owned property is available to build this facility on. The order of priority is to occupy existing a.) FAA-owned space b.) FAA-leased space c.) GSA controlled space prior to acquiring commercial or privately owned space. Provide ample notification to the RECO or FAA Space Management organization during the planning process to assure availability of space when it is needed.

The RECO can provide assistance to the originating office with filling out the questionnaire. If FAA or GSA space is not available, or special program needs dictate otherwise, then commercial or privately owned space may be acquired. It should be further noted that space requirements development (through the appropriate local space management organization) is one of the initial steps to begin the acquisition space process. Once an originating office submits their requirements, the RECO can proceed with rest of the acquisition steps listed below. All the steps listed below are coordinated by the RECO with the originating office. For example the RECO sets up and attends all market surveys. Once the acquisition process is over the RECO is authorized to commit the government to using space.

Below are list of the steps for the acquisition space process.

1. Requirements and Planning
2. Advertising
3. Procurement Method
4. Market Survey
5. Request for Offers
6. Negotiations
7. Evaluation of Offers
8. Award

The above acquisition process varies slightly for space requirements under 10,000 square feet. For further information on the space acquisition process please see Space Guidance above.

Questions to ask prior to planning and developing requirements:

When an originating office is developing their requirements for administrative space, they should keep the following questions in mind. They may also work with the RECO in answering the questions together.

- Can a variation from the space standard be justified on the basis of mission or unique requirements?
- Is the planned assignment based on an open floor plan with systems furniture, with one workstation per person?
- Can adjustments be made for workstation sharing, telecommuting, hotelling, working in shifts, etc.?
- How much of existing space buildout can be used? How much space planning will be required?

- Will the building design and shape have an impact on the administrative support space percentage?

Space Requirement Questionnaire:

After the originating office has considered the above questions, they have the option of filling out "Space Requirement Questionnaire" or any other space-planning checklist. The RECO can assist the originating office with completing the Questionnaire. By completing the attached Questionnaire, the originating office can identify their specific requirements to support and justify their space needs. Once the originating office finishes the questionnaire, it should be forwarded to the acquiring organization for assistance in determining their final requirement.

VIII. BUDGET PLANNING FOR ADMINISTRATIVE SPACE REQUIREMENTS:

When planning for space requirements an originating office should always consider the full economic cost of real property. All FAA organizations need to remember the importance of budget planning for real estate costs when beginning their initial planning of a space requirement(s). For all FAA owned and leased space, the originating office should prepare a line item budget for all employee space needs. All FAA organizations must be familiar with the budgetary impacts of long leases and plan accordingly if they contemplate leases for space that may exceed 5 years in duration. See OMB Circular A-11, Appendix B, "Budgetary Treatment of Lease Purchases and Leases of Capital Assets" for further information. ALO-100 prepares all GSA occupied space budget line items.

Furthermore, the originating office should consider preparing a budget line item for furniture (workstation) replacement every fifteen (15) years. The budget planning for space requirements by the originating office should also consider the periodic program modifications that would result in workspace expansion or alterations.

Suggestions to LOB/SO are to consider saving money.

- If an organization's current or future year budget proposes new programs or initiatives, include the real property implication of the programs. The organization should include funding projections for associated real property costs as well as the cost of the programs.
- Organizations should budget for space requirements in two phases. First, the organization should request a line item in their budget for their initial space request. Second, as the organization has defined their requirements, selected a site and received an estimated cost for buildout above the base lease, the organization should budget for a total lump sum amount instead of amortizing the entire design and construction cost.
- Organizations should perform a cost analysis to determine if it is more economical to construct a new facility rather than leasing.

IX - GSA CONTROLLED SPACE CLARIFICATION

Headquarters (ALO-100) must approve all GSA controlled space requests prior to the acquiring organization (i.e. AXX-50) taking action on the request. LOBs/SOs must fund any new requests for

space not previously identified in the GSA rent budget submission. LOBs/SOs must submit written mission related justification for any additional space requirements in excess of the 152.5 square feet baseline. If the request for additional space is approved, the LOB/SO must pay for the additional rental cost over the 152.5 square feet baseline. Depending on the operations budget in any given fiscal year, LOBs/SOs may be charged for existing space that is occupied over the 152.5 square feet baseline. This means that if a LOB/SO currently has a utilization rate of 170 square feet per person, the LOB/SO will have to supplement the GSA rent for 17.5 square feet per person that they are over the 152.5 square feet baseline

Below are the rent supplementation procedures for GSA controlled space:

SUPPLEMENTATION PROCESS
COVERED UNDER THE GSA

RENT PROGRAM

The supplementation process outlined below is applicable to both regions and headquarters. The utilization rate of 152.5 square feet per person standard applies to both federal and approved FAA contract personnel housed in GSA controlled space. In addition, when a LOB or SO current utilization and future needs are being assessed, the Logistics Divisions in the regions and the Facilities Management Division at Headquarters will evaluate a their total square foot usage, including that occupied by its contractors. Base fund transfers will be the mechanism utilized to effect changes in rent fund allocations. This method allows all funding to remain under one accounting classification.

Prior to the supplementation process the region should complete the following:

- Upon receiving a request for additional space from a LOB/SO, the region will evaluate the existing space of the LOB/SO. If the LOB/SO utilization rate for that location exceeds the 152.5 sq. ft. criteria, the feasibility of satisfying the requirement in the existing space should be determined.
- If the requirement can not be satisfied within the existing LOB/SO space, the region will determine if the request can be satisfied in other existing space (FAA owned or FAA leased, or other GSA assigned space)
- If the requirement can only be satisfied with additional space, the LOB/SO may pursue supplementation.

Supplemental Procedures:

1) Prepare a memorandum to the Manager of the Facilities Management Division, ALO-100 outlining the transfer of operational funds from the requesting office to the GSA rent account to cover GSA rent charges. NOTE: The transfer of F&E funding is not a viable option because GSA Rent is funded through operational dollars.

2) The memo will include justification for the additional space, location, and terms of the agreement, requesting office, square footage, and the annualized rental amount. For your convenience, attached is a sample memorandum.

3) The transfer of operational funds memorandum will have to be processed starting each fiscal year for the duration of the requirement. If the commencement date starts during the fiscal year, the date should agree with the month and day. Supplementation will be effective based on the month and day the space is occupied.

4) In the last year of the lease, transfer of the operational funds memorandum will only cover the months that organization will occupy the space.

Short-Term GSA Space (requirements one year or less)

- Headquarters Requests. The memorandum transferring funds will then be forwarded to the Manager of the Accounting Operations Division, AFM-200, to obligate the operational funds.
- Regional Requests. The requesting organization will prepare the memorandum and forward to their Logistics Office. The Realty specialist will evaluate the request and provide ASU-400 with the appropriate accounting code and copy of the memorandum. After review, ASU-400 will forward to AFM-200 to obligate the funds. The memorandum should be prepared two weeks prior to obligation.

Long-Term GSA Space (requirements one year or more)

- **ASU-400 will forward the headquarters and/or regional memorandum/request to** ABU-200 with a courtesy copy sent to AFM-200.
- ABU-200 will request LOB's Headquarters to approve the request to transfer the funding.
- Upon authorization from the Headquarters level, ABU-200 will prepare an allowance document to transfer the funds from the requesting organization's budget baseline and increase ASU-400 GSA Rent baseline. The memorandum should be prepared four weeks prior to obligation.

X. Frequently Ask Questions (FAQ)

Q: How do I determine the administrative space standard for my organization?

A: The standard is the same for all FAA administrative space, 152.5 square feet per person. Q:

What if my organization does not fit one of the examples of exemptions? What do I do and whom do I speak with?

A: If you are unsure if the type of space your organization occupies is exempted from the administrative space standard, you need to contact your region/center RECO (AXX-50's, AMP-1).

Q: Who decides if my space meets the exemptions or not?

A: The RECO will determine if your space is exempted from the standard.

Q: What if my organization needs help to fill out the "Space Requirement Questionnaire"?

A: If you need help filling out the Space Requirement Questionnaire, you can contact your region/center RECO. The RECO will help you fill out the form.

2.4.1.1 Space Order 4665.4 - Standard Operating Process, Procedure and Guidelines for Administrative Space **Revised 1/2011**

The FAA currently occupies approximately 5 million square feet of administrative space including GSA-controlled, FAA-owned and leased space. Managing this amount of space caused the development of the FAA Administrative Spaceholders Management Council (ASCM) Standard Operating Process, Procedures and Guidelines (SOP), which was approved by the FAA Administrator with an effective date of March 13, 2010. Since then Space Order 4665.4 for administrative space was developed by the ASCM and approved by the FAA Administrator with an effective date of July 17, 2010. The Order provides the management of administrative space by determining if projects are major or minor, reviewing the feasibility and affordability of new space related projects, and ensuring that building infrastructure issues were analyzed. This Order supersedes the ASCM SOP referenced above and all previous Administrative Space Orders for
all lines of business.

The RECO and requesting office must use Space Order 4665.4 for administrative space. The Order applies to all new construction, newly leased space (GSA controlled or FAA direct), space renovations, and space reconfigurations.

2.4.1.2 Chief Financial Officer Review of GSA Space Request over $10 Million **Added 1/2010**

The Administrator, in a memorandum dated August 11, 2005, directed the Chief Financial Officer (CFO) to exercise greater control and fiscal oversight over FAA contracting, specifically by giving the CFO approval authority over all proposed procurement actions of $10 million or more. To accomplish this greater control and fiscal oversight, FAA program offices must submit their proposed procurement actions for CFO review to the Office of Financial Controls early enough in the acquisition process so that the CFO can effectively participate. Reviews of potential commitments are required before negotiation and finalization. The CFO requires an effective contribution; therefore, the Office of the Assistant Administrator for Regions and Centers (ARC) requests that all proposed procurement actions requiring the CFO review to be submitted to ARC prior to commitment with the General Services Administration.

The CFO's approval is required on all original actions of $10 million or more that would result in the following: other procurement actions or any other binding commitment, such as a lease.

The Assistant Administrator for Regions and Centers (ARC) internal approval process is outlined below to assist in planning a new GSA lease, renewal, continuing need, renovation or expansion.

• The business case package is presented to the Real Estate Contracting Officer (RECO) from the Line of Business (LOB).
• The RECO reviews the business case package and provides comments that include one-time cost, i.e. alterations, furniture, etc., related to the project that must be approved by the RECO and concurred by Logistics Service Area Managers. If another LOB is paying for part of the procurement, a memorandum of agreement will be part of the business case package to be forwarded to the Headquarters Facility Management Division (ALO-100).
• The RECO will forward the business case package to ALO-100 for final review and approval.
• The business case package must include at a minimum, with the Regional Administrator's concurrence on, the following information:

o Chief Financial Officer Acquisitions Form o
Business Case & Executive Summary
o GSA Market Survey Price Methodology document o
Occupancy Agreement from GSA
o Memorandum of Agreement from LOB, if required

• ALO-100 will forward the business case package to the ARC Resource Management Staff (ARC-10) for review and approval of other cost outside of the GSA Rental cost
• ARC-10 will provide comments and concurrence and forward to ALO-1
• ALO-1 approves and signs the Request for Approval form for submittal to the Chief Financial Officer (CFO)
• Once the CFO approval process occurs, the CFO's office forwards the approval to ARC-1
• ARC-1 notifies ALO-1 of the approval, who forwards the package to ALO-100
• ALO-100 provides the RECO the authorization to sign the Occupancy Agreement (OA). A copy of the OA is forwarded to ALO-100 to be made part of the real estate lease file.

2.4.1.3 Occupancy Agreement Checklist for GSA-Owned and GSA-Leased Space

Added 7/2010

A significant portion of the FAA's portfolio of space is GSA leased or owned space. The FAA's occupancy of GSA space is governed by the GSA Occupancy Agreement (OA). RECOs and Executive Operations Staff should use the FAA Occupancy Agreement Checklist for GSA- Owned and GSA-Leased Space in their assessment and review of GSA OAs.

2.4.2 Appendix B: Vehicle Parking Guidance **Revised 4/2012**

A. Requirements:

Managers responsible for implementing the provisions of this policy on vehicle parking should assess the parking requirements of their workforce, the available parking at the facility and in the vicinity, the requirements established in FAA Order 1600.69 (FAA Facility Security Management Program), the requirements of both the Uniform Federal Accessibility Standards (UFAS) and the Americans with Disabilities Act (ADA), and the cost of implementing this policy to the maximum extent possible. The FAA has determined that both UFAS and ADA apply to all FAA facilities; where there is an overlap in parking requirements, the FAA shall implement the more stringent requirement. Be sure to include requirements for accessible parking spaces in the assessment and the requirement sent forward to the RECO.

B. Parking at GSA-Controlled Buildings:

In new or existing space provided for FAA use, GSA parking policies will be followed. Requests for new leased space or requests for renewal of existing leased space should include FAA's parking requirements for official and employee vehicles. Special requests for accessible parking must be clearly delineated. GSA is currently billing parking at a per-space rate and will break out the cost of parking as a separate line item in the GSA rent. Although accessible parking spaces are larger in area, GSA attempts to negotiate the same rate for accessible and regular parking spaces.

C. Parking at FAA Owned or FAA Leased Buildings

Adequate parking for official and employee vehicles should be provided at the time a facility is initially constructed or leased. If parking requirements subsequently change, the requiring activity shall identify the new requirements and funds for the additional parking. At some FAA facilities and duty stations, especially at airports, adequate on site employee parking is not available and commercial parking is exceedingly expensive. In these instances, every reasonable effort shall be made to obtain free employee parking that is at least equivalent to the parking accommodations provided to employees at the airport or commercial entities in the nearby area. The cost the FAA negotiates for these parking spaces should be at or below market value (e.g. if the airport has negotiated a lower than market rate for its employees, the FAA should attempt to negotiate an equivalent below market rate). In some instances this may result in employees parking at satellite parking facilities located some distance from their facility or duty station and utilizing a shuttle bus service to reach their workplace. In order to determine the adequacy of parking facilities of this type, facility managers should carefully evaluate the frequency of the shuttle service, the safety of employees at satellite parking facilities, and the costs of acquiring alternative parking accommodations located closer to the FAA facility or duty station. If accessible parking cannot be provided at the facility, the shuttle transportation to and from the remote lots must be equipped with accessible boarding equipment so that FAA employees with disabilities can reach their duty station during working hours.

D. Allocation of Parking Spaces Available at Facilities:

1. Accessible parking spaces [as defined in UFAS and/or ADA] shall be provided for FAA employees with disabilities. All visitors parking shall also meet the requirements of ADA and/or UFAS. Since the FAA may not be able to provide one hundred percent of the desired non-accessible parking spaces, the available FAA parking spaces (exclusive of accessible

spaces) at both FAA owned and leased facilities shall be allocated in accordance with the following priorities:

2. Government-owned and Government-leased vehicles used for criminal apprehension, firefighting, and other emergency functions (Official Vehicles)

3. Government-owned and Government-leased vehicles for general use (Official Vehicles)

4. Visitor parking (required number of spaces must take into account the accessible spaces required by UFAS and/or the ADA Accessibility Guidelines).

5. Vanpool/carpool vehicles (State statutes may affect this priority.)

6. Executive personnel and employees working unusual hours. Employees who are periodically called back to work outside their normal duty hours are considered to be working unusual hours. Employees who periodically or regularly work second and/or third shifts <u>are not</u> considered to be working unusual hours.

7. Employee-owned vehicles that are routinely used for Government purposes at least 12 days per month and that qualify for mileage reimbursement and travel expenses under Government travel regulations

Other employee-owned vehicles

NOTE: ONLY 1. AND 2. ABOVE WILL BE DESIGNATED AS RESERVED PARKING. E.

<u>Electrical Outlets for Engine Block Heaters:</u>

Parking facilities owned or leased by the FAA and located in geographic areas with sustained low temperatures, zero degrees Fahrenheit or below, should be equipped with an adequate number of electrical outlets for official and employee-supplied vehicle engine block heaters. When electrical outlets for engine block heaters are required by climatic conditions, all accessible parking spaces will be equipped with accessible outlets. Electrical outlet installations shall be in accordance with all applicable codes and ordinances. As a guide for determining whether electrical outlets for engine block heaters are required, a survey of local area businesses, private employers, and other facilities in the area may be undertaken and a decision reached based on whether the survey shows that electrical outlets are being provided at the facilities surveyed. This requirement for electric outlets for engine block heaters does not apply to unattended technical facilities or those facilities visited only on a periodic basis for maintenance and/or service.

F. <u>Funding</u>

Initial FAA leases should be negotiated so that the rental payment includes parking costs. When negotiating for FAA leased space, the RECO should negotiate the best price for both the required square feet of building space and the required number of parking spaces (for official Government

vehicles and employee vehicles) as determined and justified by the requiring activity. The lease should clearly document the number of reserved and unreserved parking spaces that are included in the rent. If it becomes necessary to install electrical outlets for engine block heaters at existing leased parking facilities, the RECO should have the lessor install the electrical outlets and either amortize the installation costs over the term of the lease or pay for the installation costs in a lump sum. Payment of the additional utility costs generated by the use of the electrical outlets will be negotiated by the RECO as either an increase in rent or as a separate utility contract. If installation of electrical outlets is necessary at FAA-owned facilities, funding for the installation should be obtained through the normal budget process by the parent division of the field office that will benefit from the installation. At collocated offices and facilities, a proportional share of the cost to install electrical outlets should be agreed to by the parent divisions of the collocated offices and facilities. Where the FAA is getting "Rent Free" Space (under grant provisions), from an airport sponsor, the parking for "official Government vehicles" shall also be provided at no cost to the Government.

G. Responsibilities

1. The Manager, Facilities Management Division, at Headquarters is responsible for determining the adequacy of parking within the FAA Headquarters buildings and for implementation of all regulations and requirements. Suitable parking accommodations may be acquired as a result of new leases or modifications to existing lease agreements, through new construction contracts, or through contracts with commercial parking facilities. Funding for parking requirements will be acquired through the normal budget process.

2. Regional administrators and center directors are responsible for overall implementation of this order at the regional, center, and field facilities under their respective jurisdictions.

3. Regional division managers are responsible for determining the adequacy of parking at field facilities that fall within their operational jurisdictions. When parking accommodations are found to be inadequate, regional division managers will initiate requests for any funding needed to correct the parking inadequacies through the normal budget process. Upon receipt of funds, regional division managers will initiate requests to the Regional Logistics division managers. Logistics managers are responsible for acquiring adequate parking accommodations through new leases or modifications to existing lease agreements, through new construction contracts, or through contracts with commercial parking facilities.

4. The Program Director, Office of Facility Management, at the MMAC, is responsible for determining the adequacy of parking at the MMAC. When parking accommodations are found to be inadequate, the Program Director will initiate requests for any funding needed to correct the parking inadequacies though the normal budget process. Upon receipt of funds, the Program Director, Office of Facility Management, will initiate requests to the Program Director, Office of Acquisition. The Program Director, Office of Acquisition, at the Mike Monroney Aeronautical Center (MMAC), is responsible for acquiring adequate parking accommodations through new leases or modifications to existing lease agreements, through new construction contracts, or through contracts with commercial parking facilities.

5. The Manager, Logistics Division at the FAA Technical Center, (FAATC) is responsible for providing adequate parking at the FAATC. Suitable parking accommodations may be acquired through new leases or modifications to existing lease agreements, through new construction contracts, or through contracts with commercial parking facilities.

6. Managers at field facilities are responsible for assigning parking spaces at their individual facilities in accordance with paragraph D above of this Parking Guidance. Facility managers at collocated facilities shall confer and agree on the allocation of parking spaces. Facility managers are also responsible for reporting on the adequacy of parking accommodations to their respective division managers and ensuring that electrical outlets for engine block heaters are installed only after coordination with appropriate offices in accordance with existing regional procedures.

7. RECOs are responsible for acquiring the required parking spaces at the lowest cost.

2.4.3 Appendix C: Rural Development Act Guidance **Revised 4/2012**

This section provides general guidance for the application of the Rural Development Act (RDA). In accordance with the Rural Development Act (RDA) of 1972 (P.L. 92-419, 86 Stat. 670, 7 U.S.C. Section 2661) and DOT Order 4320.1A (Location of New Federal Offices and Other Facilities in Rural Areas), the FAA must give first consideration to rural areas when locating new space, land, and other facilities (i.e. research and development facilities, warehouses, labs, clinics, etc.) unless mission or program requirements call for urban areas.

This guidance applies to all new and lease renewals for space and land acquisition as of January 2003. However, this guidance does not apply to unmanned and on-airport facilities such as VORTACS, RCAGS, GS, LOC, MALSR, etc.

Frequently Ask Questions:

1.) After giving first consideration to rural area, what should the RECO do?

- If rural area location is not selected, the RECO must document why not. For example the mission or programmatic requirements may require an urban location. Document the acquisition file to show the consideration given to rural options.
    - For example, the FAA can consolidate TRACON sites in either an urban or rural area. The mission of the program office is dependent on having fully operational functions for the TRACON site. Therefore, if a rural area does not meet functional needs, the RECO has adequate justification to locate in an urban location.
        - The decision to not consider rural area cannot be made arbitrarily. The acquisition file must document the consideration given to rural areas and provide the data that supports the decision to locate in an urban area. The RECO can fill out the Checklist for RDA and add this to the acquisition file, to meet the documentation requirement.

2.) How do you define rural area?

- As per Federal Register/Vol. 67, No. 240(Friday, December 13, 2002, pg 76820, final rules for the Real Property Policies Update - 41 CFR Parts 102-71, et al.) rural area means a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants, as specified in the Rural Development Act, as amended.

3.) Which should the RECO consider first the central business district (urban areas – Executive Order (EO) 12072 and EO 13006) requirement or the rural areas (RDA)?

- If an acquisition can be either urban or rural, then the rural location must be given first consideration. If the mission or programmatic requirements and the justification state that the space, land and/or other facility be located in an urban area, then rural areas would not be selected.
    - The acquisition file must document the consideration given to rural areas and provide the data that supports the decision to locate in an urban area.

4.) If the FAA is using General Services Administration (GSA) to acquire new space or other facilities, is the GSA required to follow the RDA?

- When using GSA to acquire new office space and other facilities, our requirement to GSA must be clear that first consideration should be given to the availability of GSA space, and second consideration to rural areas. However if a rural area is not selected, GSA is required to document the acquisition file stating the reason for not selecting a rural location.

2.4.4 Appendix D: Lease Terms **Revised 4/2012**

A. Firm-Term Lease Consideration

As provided in 49 U.S.C., Section 40110 (c)(1) [copy attached] the FAA has authority to lease an interest in real property for not more than 20 years, without regard to FAA annual appropriations. This means the FAA has authority to enter into "firm-term" leases without violating the Antideficiency Act. ***Note: In accordance with the provisions of 49 USC 40110(c)(1), the RECO may enter into a lease with a term of up to 20 years, regardless of whether appropriations sufficient to pay the rent for the entirety of the lease term have been obligated.***

However, this does not relieve FAA from obtaining necessary budget authority before proceeding with a “firm-term” lease. Generally budget authority must be obtained for the rent for the entire period covered by the firm term, even though the funds are only obligated one year at a time. See OMB Circular A-11, Appendix B, "Budgetary Treatment of Lease Purchases and Leases of Capital Assets" for further information on lease scoring requirements. FAA authority to lease real property does not allow lease terms in excess of 20 years, including all renewal options. For purposes of this guidance a

firm-term lease is defined as the period or length of time the lease or portion thereof cannot be canceled without the approval of the lessor.

Each region/center will determine when and how this authority will be used within the limitations set forth below. In using this firm-term authority, FAA Order 2220.1, Legal Participation in Procurement and Contracting, or its replacement order, must be followed.

Caution must be exercised in implementing firm-term lease authority. A firm-term lease commits the FAA to future rental payments. The FAA must be willing to commit future annual appropriations for the term of occupancy. If funding is not committed, the FAA would be in default of the lease and subject to claims by the lessor. Funding is the responsibility of the using organization and must be understood up front. The using organization must consider the budgetary impact of firm term lease funding and score the lease for proper budget authority before issuing a requisition and certifying the funds for the first year's rent. See OMB Circular A-11, Appendix B, "Budgetary Treatment of Lease Purchases and Leases of Capital Assets" for further information on lease scoring requirements.

The cost or terms of the longer firm-term lease must be advantageous to the FAA as compared to a one-year lease with renewal options. Prior to executing a firm-term lease the real estate acquisition team should advise and provide the organization responsible for funding with an analysis of potential lease costs and/or savings. Also prior to executing the lease the real estate acquisition team should obtain a written statement that acknowledges the terms and funding requirements of the firm term lease, including future budget year requirements. This written funding statement will be maintained in the real estate lease file.

A firm-term lease shall not be entered into if, in the judgment of the RECO, there is any doubt about the long-term need of the user. The objective in leasing a facility is to obtain what is best not only for the user but also for the FAA. In some cases obtaining the lowest cost is not always the best, even though it is an important consideration**.**

Flexibility, especially in space leasing, needs to be part of the consideration for entering into a firm-term lease. As an example, if some cost savings would be realized with a 10-year firm-term space lease versus a 5-year firm-term lease, then some thought must be given to the potential for change (i.e., mission or operational need) at this facility in years 6-10. In this situation, it may be more advantageous to the FAA to lease for 5 years firm with an option to renew for an additional 3-5 years firm. It should be remembered that in the past, if space was requested for 5 years (based upon projected need) the FAA could lease for 10 years, without adverse ramifications, because the lease had an option to renew each year.

There is no requirement to use firm-term authority. Firm-term leases are a tool in obtaining what is best for the FAA. If firm-term authority is used, the manner in which contract documents are written must be consistent. In establishing consistency Regions/Centers should consider establishing, at least for some interim period, an appropriate level of firm-term lease review above the RECO.

1.) Real Estate Firm-Term Considerations:

1) How long is the end user prepared to commit, in writing, to stay in this location? How comfortable does the real estate acquisition team feel about this time frame?

2) Does any savings or benefit obtained in a longer firm-term justify the potential risk to the FAA?

3) Can two shorter firm-term periods serve almost the same purpose as one longer?

Firm-term period?

4) Does the firm-term period selected provide the FAA with the appropriate flexibility?

5) Is the FAA offering a firm-term lease because of a true market need or because one offeror has requested a longer firm-term?

6) Will the firm-term period allow amortization of the cost of alterations or construction in the rental payments instead of making a lump-sum payment? (The majority of commercial rental rates include a square footage allowance for amortizing the cost of initial space alterations over a specified period.)

2.) Firm-term authority for space leases only:

Regions/Centers:

1-5 Years Firm-term

> Usual firm-term period. Most real estate markets can provide a competitive rental rate with 3 to 5 years firm. Consider using two or more 1-5 year firm periods instead of a longer initial firm-term period. *For example, 9 year lease, 3 years firm, with 2 renewal options of 3 years firm for each or 10-year lease, 5 years firm with renewal option for 5 years firm.*

6-10 Years Firm-term

> May be needed for new lease construction. Typically 10 years firm is utilized when only lease construction will satisfy the FAA needs. Again, consider offering two shorter firm-term periods. as shown in the example above.

Regions/Centers with Headquarters Approval:

11-15 Years Firm-term Usual situation. The real estate market should clearly indicate that little or no competition would be obtained unless a firm-term of 11-15 years is offered. Should only use in unusual situations.

16-20 Years Firm-term Rarely used. Firm-terms of 16-20 years should only be used for very large (regional office building size, large towers, etc.) or costly blocks of space. Use of 20 years firm should be rare in the FAA and used only after careful consideration. Typically, used for a prospectus level project.

To insure that required prospectus packages and other legal requirements are appropriately considered, regional requests for firm-term leases that exceed 10 years require the review and concurrence of the Real Property Planning, Policy and Budget Division ALO-200. However, all FAA leasing actions in Headquarters organizations in Washington D.C. must be coordinated through the Real Property Planning, Policy and Budget Division ALO-200, in order to insure that all relevant planning and policy issues are taken into consideration prior to using this authority. All requests shall be sent through channels to the attention of the Real Property Planning, Policy and Budget Division ALO-200. The requests should be no more than 2 pages (exclusive of any transmittal memo or other attachments) and include the following:

- Current location, square feet, annual lease costs, including any services or unusual features.
- Proposed location or area, square feet, estimated annual lease costs, including any services or unusual features and explanation of how competition will be obtained.
- Justification of the need to exceed 10 years firm and how will it benefit the FAA.
- Any additional relevant facts.
- Attach a memo signed by the customer indicating their intent to remain for the firm-term period requested.
- A signature and date line at the bottom of the transmittal memo for concurrence by the Real Property Planning, Policy and Budget Division ALO-200

B. Other Lease Considerations:

To provide some protection to the FAA, the lease should include a clause allowing the FAA to sublease the premises in whole or in part. Additionally, the lease should allow the FAA rights to alter the premises to suit a new tenant.

C. Examples Of Clauses For Space Lease Documents:

15 year lease, 5 years firm, with termination after 5th year.

> *"To have and hold the said premises with their appurtenances for the term beginning on* January 1, 1990, *through* December 31, 2005, *inclusive; subject to termination and renewal rights as may be hereinafter set forth. The Government has the right to terminate this lease on 120 days notice on or after* December 31, 1995"

15 year lease, 5 years firm, with termination after 5th year <u>OR</u> renewal for 3 years firm with termination after 5th year.

> "*To have and hold the said premises with their appurtenances for the term beginning on* January 1, 1990, *through* December 31, 2005, *inclusive; subject to termination and renewal*

rights as may be hereinafter set forth. The Government has the right to terminate this lease on December 31, 1995, *with 90 days notice. In the event the Government elects not to terminate this lease on* December 31, 1995, *the Government may terminate this lease on 90 days notice on or after* December 31, 1998"

2.4.5 Appendix E: Rent-Free Guidance Revised 4/2014

Since Fiscal Year 2001, Congress has inserted a provision in FAA's Annual Appropriations Acts that limits dramatically FAA's ability to obtain no-cost space on Sponsor-Owned Airports. That provision states as follows:

FAA Appropriation: None of the funds in this Act shall be used to pursue or adopt guidelines or regulations requiring airport sponsors to provide to the Federal Aviation Administration without cost building construction, maintenance, utilities and expenses, or space in airport sponsor-owned buildings for services relating to air traffic control, air navigation or weather reporting. The prohibition of funds in this section does not apply to negotiations between the Agency and airport sponsors to achieve agreement on ``below-market'' rates for these items or to grant assurances that require airport sponsors to provide land without cost to the FAA for ATC facilities.

1. What does this mean for the FAA?

The appropriations provision states that the FAA is not allowed to expend appropriated funds, e.g. salaries, travel expenses; etc., to implement the requirement that Airport Sponsors provide no-cost space in sponsored-owned buildings on airport. However, FAA may expend appropriated funds to negotiate and to secure space at below-market rents from Airport Sponsors. In addition, nothing in the Act prohibits an airport sponsor from providing rent-free space for any new leases or renewal leases if done so voluntarily and as a condition for receiving an Airport Improvement Program (AIP) Grant B. None of the above is needed, and it doesn't read very well.

2. Does the language apply to both old lease renewals and new lease negotiations?

This language applies to all existing lease renewals and new leases after October 1, 2000.

2.4.6 Appendix F: Short-term Conference and Meeting Space Revised 4/2012

Conference or meeting space requirements may range from the rental of a room for a one-day meeting or training session to a large conference of several days. As in all procurements of commercial space the requiring organization must first seek the availability of Government- owned or controlled space. The FAA is required to make inquiries regarding the availability of Government-controlled space to GSA regional offices and to document such inquiries.

The selection of commercial meeting space may be based on a location, which provides the most advantageous solution to the FAA's needs. Procedurally, the organization requiring meeting or

conference space must first check on the availability of Government or FAA controlled space with the Office of Regions and Center Building Services office, or the Technical Center Facilities Management Office, or the Aeronautical Facilities Management office, or the Washington Area Facilities Management office to determine local procedures and restrictions. If GSA controlled space or other Government or FAA controlled space is not available, the requiring organization may initiate a request in accordance with local procedures. A vendor/hotel may be contacted to acquire an estimated cost; however, no commitments are authorized until approved by one of the above offices. Upon receipt of authorization to procure the commercial meeting space, you may proceed in accordance with federal and local procedures as provided by one of the above offices. Any contractual agreements between FAA and vendor/hotel should be reviewed and approved by warranted contracting officer and legal office.

If the cost of the conference space is within the limits of cardholders purchasing authority, see AMS Section 3.2.2.5. If the cost of the space exceeds the limits of a cardholder you should check with the appropriate Acquisition Office/Group located in one of the above offices to determine local procedures. The space should not be utilized or occupied until an authorized person with procurement authority has approved the transaction and finalized the agreement.

2.4.7 Appendix G: Security Revised 4/2012

The FAA will comply with FAA Orders: 1) 1600.69, Facility Security Management Program, and 2) 1600.72A, Contractor and Industrial Security Program, and 3) 1600.73, Contractor and Industrial Security Program Operating Procedures. These FAA Orders establishes standards, procedures and techniques for the protection of FAA employees, agency personal property, and security of the FAA facilities (leased or owned), contractors, and the public. Under these FAA Orders mentioned above, the FAA reserves the right to restrict access to FAA facilities.

1. The RECOs should seek consultation support from the local Servicing Security Element (SSE) for security issues for all new, succeeding or renewal lease location. The SSE contacts in the Region are as follows: AXX-710's, AMS-700, and AWA AIN-100.

2. During the Pre-Award process, the RECO needs to work with the SSE in meeting the end users requirements. Below are the processes to be followed and the services to be provided by the SSE to the RECOs for all new or existing locations.

- Schedule a meeting between the end user, i.e. the Line of Business (LOB), the RECO and the SSE. If the end user is moving to a new location the RECO should work with the SSE as soon as they learn the end user is moving.
    - During the meeting the RECO, the end user and the SSE should discuss the following:
        - Review the end user security planning and budgeting.
        - Review the solicitation for offers (SFO) security requirements (Facility and Personnel) and provide additional requirements as needed.
        - The SSE should provide the baseline Facility Security protective measures, which match the security level with the facility. This is an opportunity for the

SSE to ask questions to the RECO or the end user to assist in the determination of the security requirements for the SFO by determining the security level. Below are the types of questions that may be asked by the SSE.

- What is the physical address location(s) [if known such as a renewal lease] of the prospective lease sites?
- What types of FAA work functions will the leased space accommodate/perform?
- How many FAA personnel will there be at the facility? What will be the maximum/peak number of FAA personnel at the facility at shift change?
- Will this be a 24/7 facility?
- How many parking spaces required?
- Are there any other government tenants at the facility being considered? If so, would any of them be considered "high risk"? The RECO can check with the SSE to determine the "high risk" status of the other federal tenants.
- Is this is an ATC facility? What is the ATC facility level rating?
- If this is an ATC facility will there be a requirement for a childcare, credit union, or other services offered by the FAA at the facility?
- Provide security consultation during the market survey when required.
- Provide, review, and comment of lessors proposal of security requirements to include examination of lessors recommended alternatives and/or plans.
- Provide support to facility manager in formulating requests for exception to security policy prior to lease award. (Formal FAA memorandum to AIN-100)
- Provide security technical support to the RECO if required during negotiations and evaluations if security is considered evaluation criteria.
- Provide support to RECO during the space acceptance from the lessor by reviewing lessors drawings to ensure that the security requirements in the SIR/SFO were met.

3. The SSE can provide the following services after the lease award:

- Provide recommendations to facility manager when the Security Order is not met and examination of lessor's recommended alternatives to meet the FAA Order.
- Conducts facility security assessment after occupancy, which will confirm the lessor is meeting security requirements per the lease. The RECO will provide the SSE with Lessor plans and drawings to assist with the assessment.

4. Contractor and Industrial Security Facility Program for Leased Facilities (Revised 10/2003) FAA reserves the right to restrict access to FAA facilities. Depending on the terms of the lease agreement, any person or individual employed or hired by the lessor, or requiring access to perform work or provide services in or upon the leased premises may receive the same level of security investigation requirements as do FAA employees as determined by the FAA personnel security specialists.

There is a sequential process by which suitability and security determinations must be completed before any person(s) or individual(s) employed or to be hired by the lessor can perform work or provide services under the terms of the lease agreement. Each step is essential to the process and must be conducted in a specific sequence in order for the process as a whole to succeed. The RECO must be familiar with the process prior to initiating negotiations with the prospective lessor. It is also essential

that the RECO work closely with the FAA SSE and the operating office or the LOB tenant organization so that the best interests of the Government and the FAA are protected. The primary role of the RECO is to ensure that the security investigative program in leased facilities is established between the lessor and the FAA. Establishing a Contracting Officer Representative (COR) to assist with monitoring and maintaining the security requirements for leased space should be considered. Establishing a Trusted Agent in locations where the SSE is not available to assist with monitoring and maintaining the security requirements for leased space will be required.

Individuals employed or to be hired by the lessor to perform work or provide services in leased space typically fall in low-risk positions. These positions may include janitorial, construction, maintenance, property management, and repair workers. It may also include delivery personnel and repair technicians. The first step in the investigative process is for the operating office or LOB tenant organization to assess the level of access that may be required by the various positions to provide the services specified by the lease. This requires the completion of FAA Form 1600-77, Contractor Position Risk/Sensitivity Level Designation Record [see Order 1600.73 for each type position]. The RECO should assist as needed in completion of the 1600-77 by the LOB tenant organization for submission to the FAA SSE. The SSE will determine the risk level and possible exemptions for each type of position and advise the RECO and the LOB.

During negotiations and prior to lease award the RECO needs to ensure that the lessor understands the requirement for the security investigations and takes time to review the prescribed lease clauses and lease performance expectations. The types of positions required to meet the terms of the lease should be confirmed with the lessor during negotiations.

The prescribed standard clause, V. Section E –Security Requirements (December 2006), Security Screening of Persons or Individuals Employed or Hired by Lessor/Contractor (April 2003), Attachment A, used in all new leases where the lessor, or person(s) and individual(s) employed or hired by the lessor will perform work or provide services in or upon the premises leased by the Government.

The RECO will coordinate with the FAA SSE to obtain the following personnel security information forms for non-exempt positions:

a. FD-258, FBI Fingerprint Card. Fingerprints will be taken by those individuals who have been identified, as either a Trusted Agent or a Personal Identity Verification (PIV) Registrar (SSE).

b. SF 85P, Questionnaire for Public Trust Position, as designated by the FAA Form 1600-77.

c. DOT Form 1681, Card/Credential Application, needed to obtain PIV card.

d. Form I-9, Employment Eligibility Verification. In locations where the contractor employee cannot go to the FAA SSE office, a Trusted Agent will have to be appointed to perform the duties of the SSE's Registrar. The Trusted Agent needs to be someone on location and can be an FAA or contractor employee. The Trusted Agent will also go through the background suitability investigation process. The purpose of the Trusted Agent position is to verify the

applicant's identity with two forms of identification that are listed on the I-9 Form and to take fingerprints when needed.

The RECO will send the forms to the lessor with instructions that they are to be completed by each employee within five (5) business days, not to exceed a maximum of 30 days after acceptance and execution of the lease or modification. The completed forms are to be returned to the FAA SSE or the Trusted Agent, and then sent in a sealed envelope containing a memorandum identifying the name of the lessor, address and FAA lease contract number of the premises leased, and list the full names (alphabetically), social security numbers, date and place of birth (city, state or country), and position title of all person(s) or individual(s) employed or to be hired by the lessor to perform work or provide services in or upon the leased premises for both exempted and non-exempted positions. The contractor employees will be required to take pictures (passport photo-type) or send them in jpeg format to the SSE. The employee(s) will also have the registrar or Trusted Agent verify their identity and complete their portion of the I-9 Form, and take their fingerprints. Non-exempt positions will require some or all of the forms above for investigative screening by the FAA SSE. The operating office or LOB tenant organization occupying the FAA leased premises will be responsible for funding the costs for security screenings for all persons or individuals employed or hired by the lessor, with the exception of fingerprinting. The lessor will be responsible for all expenses associated with fingerprinting any person(s) or individual(s) employed or to be hired by the lessor.

The FAA SSE must conduct the security screening investigation for those persons and individuals identified and employed by the lessor. The FAA SSE will notify the lessor (through the designated Government representative) of any individuals determined to be unsuitable for access to the leased premises. The lessor will be required to immediately remove any unsuitable persons or individuals from the leased premises and not permit the individual to perform any work or provide any services under the terms of the lease.

The FAA shall request, upon lease award or contract modification, the lessor to provide the required information prior to FAA occupying the leased premises. The lessor will be directed to notify within five (5) business days, the designated FAA representative of any persons or individuals newly hired or currently employed during the term of the lease. Newly hired persons or individuals currently employed by the Lessor must be escorted at all times until background investigations are completed.

The FAA SSE has determine if any person or individual employed or hired by the lessor is exempted from the investigative screening that person shall be escorted at all times in or upon the leased premises by FAA personnel located on-site or by an individual or person employed or hired by the lessor, who has been properly investigated, favorably adjudicated, and authorized to escort exempted individuals. The escort must keep the escort-required contractor employees or other persons in plain view at all times. The lessor shall provide to the designated Government representative the full names (alphabetically), social security numbers, and date and place of birth (city, state or country) of all exempted personnel to be escorted while performing work or services in or upon the leased premises.

Foreign Nationals: All persons or individuals employed or to be hired by the lessor to perform work or provide services in or upon the leased premises shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by Alien

Registration Receipt Card Form I-151, or who presents other evidence from the United States Immigration and Naturalization Service that employment will not affect his/her immigration status. Aliens and foreign nationals who perform work or provide services under the terms of the lease must meet the following conditions in accordance with FAA Order 1600.72A, chapter 5, paragraph 7 & 8.

a. Must have resided within the United States for three (3) years of the last five (5) years unless a waiver of this requirement is requested and approved in accordance with the requirements stated in FAA Order 1600.72A, chapter 5, paragraph 9;

b. A risk or sensitivity level designation has been completed for the position; and

c. The appropriate security screening has been conducted.

Interim suitability requirements may not be applied unless the position is low/moderate in risk, and/or temporary, and/or is not in a critical area position.

The standard clause and alternate clause prescriptions include language for aliens and foreign nationals employed or hired by the lessor.

The lessor will have an ongoing requirement to advise the RECO, or the designated Government representative, of changes to the lessor/contractor list. The contractor must notify CO within one (1) business day after an employee has been terminated from the contract. The contractors are also responsible for immediately notifying the SSE if a Contractor employee is arrested for any reason other than minor traffic offenses. Quarterly/bi-annual reports to the CO and SSE are required on or before the 5th business day following each reporting period. These listings must include a complete alphabetical listing of current employees working on the contract, and a separate list of terminated employees. The RECO must coordinate with the SSE, the LOB tenant and the lessor on an ongoing basis. The RECO should, whenever possible, delegate day to day management of the contractor security program at a leased facility to a responsible on-site representative.

When others contract for services (e.g., janitorial, construction, maintenance, etc) separately for FAA leased premises, personnel security investigations shall also be conducted. It is the responsibility of the CO for that service contract to coordinate with the SSE and LOB tenant organization regarding contractor screenings. In accordance with FAA Order 1600.72, paragraph 204, the operating office or LOB tenant organization occupying the FAA-leased space will be responsible for funding the costs for security screenings for all person or individuals employed or hired by the lessor.

If FAA occupies GSA controlled leased space, the designated FAA representative will request GSA to include the prescribed FAA security clause in the GSA lease requirements. GSA will be responsible for conducting the security investigations on any person or individual employed or hired by the GSA lessor to perform work or provide services in or upon premises occupied by FAA personnel. Funding for security screenings in GSA controlled space are covered under the GSA rental costs, unless FAA requires a higher level of security than the standard established by the GSA Building Security Committee, or if current FAA occupancy agreements with GSA require something different than the standard established.

Sensitive Unclassified Information (SUI) must be restricted to specific contractors who: have a "need to know" to perform contract tasks, meet personnel suitability requirements to access sensitive information, and successfully complete a non-disclosure agreement (NDA). The contractor must develop and implement procedures to ensure that sensitive information is handled within accordance with FAA requirements and at a minimum, must address

a. Steps to minimize risk of access by unauthorized persons during business and non-business hours to include storage capability.

b. Procedures for safeguarding during electronic transmission (voice, data, fax) mailing or hand carrying.

c. Procedures for protecting against co-mingling of information with general contractor data system/files.

d. Procedures for marking documents with both the protective marking and the distribution limitation statement as needed.

e. Procedures for the reproduction of subject material. f.

Procedures for reporting unauthorized access.

g. Procedures for the destruction and/or sanitation of such material.

Government Issued Keys, Personal Identity Verification (PIV) cards, and Vehicle Decals may be issue to contractor employees. Prior to or upon completion/termination of work the contractor must return all Government issued items to the issuing office. When employees are terminated or are no longer required the work, the Government issued items must be returned to the Government within three (3) business days or upon termination of the contract or employee. Improper use, possession, or altercation of FAA issued keys, PIV cards and/or vehicle decals is subject to penalties under Title 18, USC 499, 506, and 701.

In the event that the Government-Issued items are not returned the contractors understands and agrees that the Government may, in addition to any other withholding provision of the contract with hold [CO to enter appropriate amount] for each key, PIV card, and vehicle decal not returned. If such items are not returned within 30 calendar days from the date the withholding action was initiated, any amount withheld must be forfeited by the contractor.

2.4.8 Appendix H: Seismic **Revised 10/2014**

Buildings, or space, acquired for the FAA or constructed on FAA property must meet current seismic safety requirements as provided in E.O. 12699, E.O. 12941 & P.L. 101-614.

The standard for seismic safety in Federally Owned or Leased Buildings is found in National Institute of Standards and Technology (NIST) RP-8, Standards for Seismic Safety for Existing Federally Owned or Leased Buildings, December 2011. RP-8 requires a "Seismic Safety Certification" to be executed by a qualified structural engineer prior to signing any new lease or renewing existing leases. The requirements for the Seismic Safety Certification are found in RP8. In addition, Section 1.3 of RP-8 lists a number of *exemptions* and one *exception* that may relieve the Agency of the Seismic Safety Certification. Any exemption or exception **must** be applied on a case-by-case basis.

Guidance on compliance requirements for leased space or buildings is set forth below.

The FAA is required to implement a program to mitigate seismic hazards in buildings occupied by FAA. It is FAA's policy to ensure the safety of its employees. Accordingly, every effort should be made in the space acquisition process to ensure that FAA employees are housed in seismically safe buildings. In this regard, and to the extent practicable, any new leases or succeeding leases in existing locations are to be for space in buildings that comply with seismic standards.

There are several levels of seismic performance. For leasing purposes, RP-8 requires that, at a minimum, all buildings and space occupied by FAA personnel must meet the "Life-Safety" performance objective. A RECO may request a higher seismic performance objective if LOB requirements dictate a need for a performance objective higher than "Life Safety." The other performance objectives are "Immediate Occupancy," which requires that a building be constructed so that it could sustain a level of damage during a seismic event that is sufficiently minimal that employees could re-enter the building immediately after a post-event inspection, and "Continuous Performance", which requires that a building be constructed so that no damage would occur during a seismic event , and that, consequently, employees would not be required to leave their duty stations during or after a seismic event.

Leased Facilities

A licensed structural engineer hired by the Lessor **must** certify on the Life Safety Compliance/Seismic Certification (Form 2.6.4) the level of seismic compliance. The structural engineer's certification is to be kept in the lease contract file. An alternate document such as a letter from the Lessor stating the building meets the seismic compliance does not take the place of the required certification form.

Life Safety Compliance/Seismic Certifications do not expire. If the building owner provided a signed certification for the building under a previous lease, it is still valid. The RECO is to ensure the original signed certification is placed in any succeeding lease file and a copy kept in the previous lease file.

The RP-8 Standards shall apply to all or portions of a building leased by the FAA, unless an exemption or exception applies under the provisions of RP-8.

Section 1.3 of RP-8 provides several exemptions and one exception to the standard. Below are examples of the exemptions and exception, which cite the applicable RP-8 section.

Exemptions (RP-8 Section 1.3)

The following are common exemptions from the RP-8 standard:

- The building is in a low seismic risk zone (SDS<0.33g and SD1<0.133g) as shown in the green areas on the map from the U.S. Geological Survey dated May 2012. (Attachment to Form 2.6.4.1)
- The total area in the building leased by the Federal Government is less than 10,000 sq. ft. and is located in the yellow area as shown on the map from the U.S. Geological Survey dated May 2012. (Attachment for Form 2.6.4.)
- The remaining useful life of the building or the agency's requirement for the building is less than five years (short term lease).
- The building is one story, constructed of a light steel frame or wood, and is less than 3,000 sq. ft.
- FAA's use of the building is intended only for incidental human occupancy of less than 2 hours per day.

If a building selected for lease award meets one of the exemptions above, the RECO is to fill out and sign Exemption/Exception from Seismic Compliance (Form 2.6.4.1) and place it in the lease file.

Benchmark Buildings (RP-8 Section 1.3.1): Some buildings may qualify as benchmark buildings, designed or retrofitted with seismic provisions deemed suitable at the time of construction or renovation, and thus could be deemed to meet minimum seismic requirements. The application of the RP-8 standard for benchmark buildings is very complex and requires technical expertise to interpret. The Lessor must provide a Life Safety Compliance/Seismic Certification (Form 2.6.4), signed by a Structural Engineer, if claiming benchmark building status.

Best Available Leased Building Exception (RP-8 Section 1.3.2): If no seismically conforming space is available, otherwise acceptable space with the best seismic resistance shall be pursued.

The distinction between an exemption and an exception is that an exemption allows a presumption to be made that the building is life safe based on research by the Government and industry. Use of the best available space exception does not allow a presumption of life safety. It indicates acceptance of the reality that the Agency cannot perform its mission without occupying that particular space.

The LOB manager may choose to modify the space requirements or expand the delineated area to allow for more space options that could meet the minimum seismic requirements, or the LOB may choose to expend Agency funds to have the space evaluated by a Licensed Structural Engineer for life safety according to the requirements of RP-8.

The term of any lease under this exception should be limited to that time necessary for the tenant LOB to budget for and fund relocation to compliant space.

The decision to use the best available space exception must be made in writing and concurrence obtained by the Line of Business (LOB) that occupies or will occupy the space. RECO is to use Exemption/Exception to Seismic Compliance (Form 2.6.4.1) to document the lease file.

Privately Owned Buildings on Federal Land (RP-8 Section 1.3.3): The Standards shall be applied to all privately owned buildings located on Federal land. Application of the Standards to evaluate and rehabilitate buildings for seismic risks shall be the responsibility of the building owner. The RECO must include the seismic lease clauses in any outgrant agreement or other agreement that allows the privately owned building to be located on FAA property to ensure the structure complies with the Standard.

Lease Clauses

Unless one of the exemptions or the best available exception applies to the space, the RECO is to insert the seismic safety clauses, 7AA "SEISMIC SAFETY FOR EXISTING BUILDINGS, and 7AB, SEISMIC SAFETY FOR NEW CONSTRUCTION into all new and succeeding space leases, as well as to the construction of new buildings to be leased by the FAA, and to any outgrant license, permit, or other such agreement that may allow for the placement of a privately owned building on FAA or other federal property.

The seismic safety clause(s) are not be inserted in the lease if one of the exemptions or the best available exception applies to the space.

2.4.9 Appendix I: Accessibility Revised 4/2012

Architectural Barriers Act Accessibility Standard (ABAAS) Guidance

I. Architectural Barriers Act Accessibility Standard (ABAAS)- Background On November 8, 2005 the Federal Register included a section from the General Services Administration amending 41 CFR Parts 102–71, 102–72, et al; Federal Management Regulation; Real Property Policies Update; Final Rule. Subpart C of this amendment pertains to the Architectural Barriers Act, and states that GSA has adopted the ADA / ABA Guidelines (Part II ABA Application and Scoping and Part III Technical Chapters) issued by the Access Board on July 23, 2004 as the Architectural Barriers Act

Accessibility Standard (ABAAS) as the accessibility standard for all Federal facilities (See Q&A section for additional information on using the Guidelines as the Standard). Copies can be ordered from the Access Board or electronic copies are available on the Access Board website (www.access-board.gov). ABAAS replaces the Uniform Federal Accessibility Standards (UFAS) as the accessibility standard for federal facilities.

II. Applicability
This guidance applies to all FAA leased, owned, and GSA controlled facilities.

A. To all FAA Owned, Leased, or GSA controlled leased facilities

All FAA leases awarded prior to February 6, 2007 will continue to use the UFAS. ABAAS requirements will be included in all leases solicited, renewed, or otherwise entered into after February 6, 2007. In addition, any 41 CFR Parts 102-71, 102-72 alterations or improvements to FAA leased space made, or contracted for, after February 6, 2007 must be ABAAS compliant.

Facilities for which leases are entered into must comply with F202.6 of the Architectural Barriers Act Accessibility Standard, without regard to whether the costs of alterations to comply with F202.6 are disproportionate to the costs of the overall alterations. The FAA is required to provide an "accessible route of travel" for leased space. This includes at a minimum: (a) An accessible route and an accessible entrance; (b) At least one accessible restroom for each sex or a single unisex restroom; (c) Accessible telephones; (d) Accessible drinking fountains; and (e)

Accessible parking spaces. In complying with ABAAS, the entire leased area should be considered as being required to be fully accessible unless limited by the ABAAS Scoping (Chapter F2) requirements, which are included below.

Areas of Primary Function

For FAA leases, an "area of primary function" would be the entire facility, except for the following. Note: For purposes of ABAAS compliance, an Area of Primary Function is defined as follows: A primary function area is an area that contains a major activity for which the facility is intended. Primary function areas include areas where services are provided to customers or the public, and offices and other work areas in which the activities of the Federal agency using the facility are carried out.) The "Area of Primary Function" concept is more fully explained in the Question and Answer Section.

Exceptions for Leased Space

1. Elements in compliance with an earlier standard issued pursuant to the Architectural Barriers Act or Section 504 of the Rehabilitation Act of 1973;
2. In air traffic control towers, an accessible route shall not be required to serve the cab and the floor immediately below the cab;
3. Limited Access Spaces. Spaces accessed only by ladders, catwalks, crawl spaces, or very narrow passageways;
4. Spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment (Machinery Spaces);
5. Where a two story building or facility that has one story with an occupant load of five or fewer persons that does not contain public use space, that story shall not be required to be connected to the story above or below;
6. Structures and equipment directly associated with the actual processes of construction;
7. Alterations to Qualified Historic Buildings and Facilities (limited exceptions);
8. Buildings or facilities leased for 12 months or less provided that the lease may not be extended or renewed;
9. Buildings or facilities leased for use by officials servicing disasters on a temporary, emergency basis; and

10. Alterations and additions in multi-tenanted building (non-FAA exclusive use) to joint use areas serving the leased space shall not be required to comply with F202.2, F202.3, and F202.5 provided that the alterations are not undertaken by or on behalf of the Federal government.

B. ABAAS Standard Reporting

All new and renewal leases entered into after February 6, 2007 are required to meet ABAAS; however, If the Lessor certifies that it is not compliant, lessor is required to bring the facilities into compliance within a reasonable date (i.e., not to exceed a year from the date of award of the lease). With some exceptions, design and new construction begun after May 8, 2006 are required to meet ABAAS. (Note: Per F203.2 Existing Elements, Elements (An Element is defined in ABAAS as "An architectural or mechanical component of a building, facility, space, or site") in compliance with an earlier standard issued pursuant to the Architectural Barriers Act or Section 504 of the Rehabilitation Act of 1973, as amended, shall not be required to comply with these requirements unless altered.);

C. Required Documentation

The RECO must approve the completed the "ABAAS Compliance Report" and place in lease contract file for all space leases entered into after February 6, 2007. Documentation is also required on each contract, grant or loan for the design, construction or alteration of a facility to ensure that the facility complies with ABAAS.

This documentation must include the following:

Lessor must certify the property is or will be made compliant with ABAAS by a specified date.

The "ABAAS Compliance Report" is attached to the lease and placed in the file for record purposes.

If the lessor has certified that the space will be compliant by a certain date, the Real Estate Contracting Officer must ensure the space has been made compliant through inspection and certification by the FAA facility manager, or designee, or a site visit. If the lessor fails to meet the standard, a cure notice is sent, and if the Lessor fails to cure the facility to meet ABAAS requirements, then the FAA will fix (under the "Changes" Clause or "Alterations" Clause) the subject facility to meet the ABAAS standard and reduce the rent in an amount equal to the cost of the alterations paid by the FAA.

III. ABAAS Waiver

No FAA employee is authorized to waive or modify ABAAS. If the FAA requires a waiver or modification to the ABAAS, the process should be coordinated through the Access Board.

Waiver determinations will be made on a case-by-case basis; the GSA "Administrator determines if the waiver or modification is clearly necessary." Additional information is available in the Question and Answer section. Cost is generally not a valid reason for a waiver.

IV. Questions and Answers

a.) When does the Architectural Barriers Act Accessibility Standard (ABAAS) become effective? As of May 8, 2006 ABAAS became the standard for construction, alterations, and modernizations, unless design was complete or substantially complete on that date. If design was complete or substantially complete, then UFAS is allowed if the construction starts by May 8, 2008. The ABAAS is effective for leases entered into on or after February 6, 2007.

b.) How do the ADA and ABA standards relate to each other within the Guidelines / Standard?

The diagram shows the ADA Scoping and ABA Scoping both connecting with the Technical Chapters but not intersecting. This is to illustrate that the ABA Scoping (applies to FAA as a federal entity, adopted by GSA), chapters F1 and F2, are joined to the Technical chapters (applies to FAA as a federal entity, adopted by GSA) but separate from ADA.

The Scoping section explains the definitions and requirements. The Technical Chapters explain how the requirement from the Scoping Section is implemented. By way of example: To determine if parking is required to be accessible, you would determine from sections F201 - Application and F202 - Existing Buildings and Facilities- if the parking is new or existing and which compliance or exceptions apply. Then refer to section F208 to find how many parking spaces and which types are required to comply. Once the number of compliant spaces required is determined, refer to Technical Chapter 502 - Parking Spaces- to determine the technical requirements. In summary, review the Scoping Section to determine how many, and the Technical to review how to, fulfill ABAAS requirements.

The ADA Scoping section applies to State and Local governments and private industry. It does not apply to the federal government.

c.) If the space is UFAS compliant, do I have to change it to meet ABAAS?

The answer is “No” and “Yes”.

In complying with ABAAS, review the Scoping Section. With respect to Existing Elements, Section F203.2 - General Exceptions, states that “Elements in compliance with an earlier standard issued pursuant to the Architectural Barriers Act or Section 504 of the Rehabilitation Act of 1973, as amended shall not be required to comply with these requirements unless altered. "

In other words, if the facility meets UFAS, then it complies with ABAAS.

The second part of that provision means that elements altered to provide "Program Access" per section 504 of the Rehabilitation Act, or to provide an individual "Reasonable Accommodation" per sections 501 and 504 of the Rehabilitation Act do not have to meet ABAAS, as long as the modification is needed to meet an individual accommodation. When the individual accommodation is no longer required, the element is required to be modified to meet ABAAS.

The last part of the statement means that if a UFAS compliant element or area is altered, then the altered or modified element or area must meet ABAAS.

d.) What does "enter into" mean?

When both parties sign a new lease or renew an existing lease. When "exercising an option" to extend a lease you are not creating a new lease as long as you are only extending the term of the lease , and are not changing or revising any other terms of the lease. In those instances, UFAS compliance is sufficient.

e.) If a facility (leased or new construction/alteration) will be altered to meet the standards, will a schedule and budget be required as part of the file documentation?

Yes. The lessor will develop the schedule and budget for lessor-completed alterations. FAA will develop the schedule and budget for FAA alterations.

f.) What are disproportionate costs (20% Rule)?

If an alteration to an FAA owned facility requires the FAA to provide an accessible path of travel, the cost would be disproportionate if it exceeds the cost of the alteration or addition by 20%. If a series of small construction projects were completed, then the calculation consists of the total costs of all of such projects over a three-year period.

For leases entered into after February 6, 2007 there is no disproportionate cost clause. The leased facility must be ABAAS compliant (see Required Documentation question), without regard to whether the costs of alterations completed to bring the facility in compliance with F202.6 are disproportionate to the costs of the overall alterations.

g.) What are the new documentation (certification) requirements for compliance with ABAAS?

The head of each Federal agency must ensure that documentation is maintained on each contract, grant or loan for the design, construction or alteration of a facility and on each lease for a facility subject to ABAAS. The documentation will contain one of the following statements:

(1) The standards have been or will be incorporated in the design, the construction or the alteration.

(2) The grant or loan has been or will be made subject to a requirement that the standards will be incorporated in the design, the construction or the alteration.

(3) The leased facility meets the standards, or has been or will be altered to meet the standards. (4)

The standards have been waived or modified by the Administrator of General Services and a copy of the waiver or modification is included with the statement.

h.) What is an area of "primary function"?

Per F202.4, an area of “primary function" is (a) n area of a building or facility containing a major activity for which the building or facility is intended”. There can be multiple areas containing a primary function in a single building. Primary function areas are not limited to public use areas. For example, both a bank lobby and the bank's employee areas such as the teller areas and walk- in safe are primary function areas. Also, mixed-use facilities may include numerous primary function areas for each use. Areas containing a primary function do not include: mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, or restrooms.”

i.) How can we get a waiver from ABAAS and who can authorize it?

No one in the FAA can waive ABAAS requirements. The Administrator must request a waiver from the GSA Administrator. Only the GSA Administrator can waive ABAAS requirements. The waiver should be processed through the Access Board.

Waiver determinations will be made on a case-by-case basis; the GSA “Administrator determines if the waiver or modification is clearly necessary.”

The FAA would be required to show that there is a compelling justification for a waiver to be approved. A waiver will not be granted if complying with ABAAS is inconvenient or if ABAAS compliance was not incorporated in the design or construction process. Generally project cost or budget shortfalls are generally not considered a basis for a waiver.

j.) What happens if we are in the negotiation process and February 6, 2007 passes? If you are in the negotiation process you will need to go back and amend the SIR to include ABAAS and reopen the process. For new leases you should include provisions in the SIR and provide notification to prospective offerors/respondents about ABAAS when the SIR is issued.

k.) Since there is no dollar limit on required ABAAS renovations for leases entered into after February 6, 2007, what options do we have if the lessor cannot make the retrofits due to cost?

This is resolved on a case-by-case basis. The FAA can:

1. Negotiate to spread the costs out or pay a lump sum;
2. Make the changes and withhold rental payments for that amount;
3. Make the changes (zero or one dollar leases);
4. Commence Condemnation proceedings;
5. Relocate;
6. Consider using the waiver process (waivers are generally not given on a cost basis only).

In addition, the FAA does have statutory authority to improve leased space in certain situations. If the lessor is unwilling or unable to complete the improvements, then the FAA can utilize its authority under 49 USC Section 44502(a)(5) to renovate the leased space.

The FAA cannot spend money that it doesn't have, so we need to subject any action to the availability of appropriations. The RECO should also check with regional or headquarters counsel on any

question of authority to make alterations or improvements to a leased facility. In addition, the FAA does have statutory authority to improve leased space in certain situations. If the lessor is unwilling or unable to complete the improvements, then the FAA can utilize its authority under 49 USC Section 44502(a)(5) to renovate the leased space.

l.) How does a RECO determine what needs to be done to bring a facility into compliance with ABAAS?

The lessor is required to state whether the leased facility is compliant with ABAAS or will be made compliant. If the facility will be made compliant, then a schedule of the work required should be provided and the FAA facility manager or designee can verify if the work is complete and report the status to the RECO. If there are additional questions, contact the Regional Accessibility Focal Points from Technical Operations or Logistics, who are the regional SME's or the national Facility Accessibility Program Office is available for additional information.

m.) How is the information forwarded to the Administrator for reporting to GSA?

When GSA requests the information from the FAA, the appropriate office will provide the reporting format. Since lessors entering into leases with FAA after February 6, 2007 are required to complete the "ABAAS Compliance Report" as to the compliance status, this requirement can be met by reviewing the lease files.

n.) Who will maintain the documentation?

The RECO must include the "ABAAS Compliance Report" in all space lease files after 9/1/06.

o.) Who pays to bring a leased facility into ABAAS compliance?

If the facility is ADA compliant, the FAA will have to fund the upgrades from ADA to ABAAS. If the facility is not ADA compliant, the lessor is required to pay the costs of making the space ADA compliant, and the FAA would pay for ABAAS compliance. Remember, if an element or area is UFAS compliant it complies with ABAAS.

2.4.10 Appendix J: Outgrant Revised ~~1/2013~~4/2015

Outgrants, formerly known as outleases, are used when there is a secondary need for unused unutilized or underutilized FAA leased/owned land or space by either another g~~G~~overnment entity or third party and such use does not interfere with curren~~n~~et or known future FAA needs for the property. ~~Outgrants were formerly known as outleases.~~

Maximum Term: Starting October 1, 2014, outgrants, new or succeeding, are not to exceed a 5-year term. If the FAA does not own the underlying land or building/structure, but is leasing it from someone else, the term of the outgrant cannot exceed the term of the underlying FAA contract or 5 years, whichever is less. Unexercised options are not to be included when calculating the remaining term of the underlying contract. For instance, if FAA is leasing land for a Very High Frequency Omni-

directional Range (VOR) and the underlying lease has 3 years remaining on the original term and one unexercised 5 year option, the maximum term for any outgrant shall not exceed ~~three~~ 3 years.

Cancellation Rights: Starting October 1, 2014, outgrants, new or succeeding, must contain the right by the FAA to cancel at will -- at any time and for any reason. Cancellation rights by the grantee are allowed, but should require sufficient notice to the FAA to inspect the property and to determine if any restoration is required.

Outgrant Application Form (1.3.18 for land or 2.6.31 for space):~~-~~ ~~-~~Requesting parties will be required by the RECO to fill out an Application for Outgrant Form found in the Real Estate Template Library for all outgrant requests, including new uses, modification to existing uses, or to request a succeeding outgrant. The RECO will review the request against current real estate records to determine the status of the property, including whether FAA holds sufficient legal interest in the property, and real estate restrictions, if any, on FAA's ability to grant the use. The RECO will forward the Application for Outgrant, along with pertinent information identified during the real estate review, to the head of the line of business (LOB) or LOB designee responsible for the property for review.

LOB Concurrence: The LOB shall conduct a thorough review and analysis to ensure the secondary use will not interfere with FAA's primary use of the property and that the benefits from the secondary use outweigh the cost and potential for increased liability. Prior to issuing a new outgrant, revising an existing outgrant, or issuing a succeeding outgrant, the RECO must obtain, in writing, concurrence from the LOB, along with any stipulations imposed by the LOB as a condition of issuing the outgrant.

~~-~~LOB Non-Concurrence: If the LOB does not concur with the outgrant request, the LOB will provide the reason for non-concurrence to the RECO in writing. The RECO will send a letter to the requestor denying the request.

Retention Period and Document Location for Denied Applications: Letters of denial for new requests and the initial application form shall be kept in a central file location within the Real Estate office for a minimum of 1 year after denial. After 1 year, the documentation can be destroyed. All letters of denial to modify existing outgrants or to enter into succeeding outgrants shall be filed in the official outgrant project file.

Permit and License (Outgrant) Forms: The RECO must use the Outgrant Permit Form or the Outgrant License Form. The Permit form is used solely for Federal government entities. The License form is used for all other entities, including State or Local governments and third parties. Any modifications to the standard template must be approved by the Office of the Chief Counsel or the appropriate Regional Counsel.

Provisions for Use of FAA Space or Other Stuctures: Granting others use of space in FAA buildings or on FAA structures is unusual. The RECO will need to use the Outgrant Permit or License Form and tailor them on a case-by-case basis. This includes adding any additional provisions from the standard space or antenna templates that are applicable and deleting any that apply to~~are for~~ land use only~~. Early coordination with the LOB and Legal on drafting the outgrant~~

~~with Legal counsel on outgrants for space or structures isare encouraged.~~ . The same care taken to craft the contract when FAA leases space and other structures should be used when FAA leases its space and other structures to other parties. Early coordination with the LOB and Legal when drafting the outgrant for space or structures is highly encouraged. All modifications to the standard outgrant templates must be approved by the Office of the Chief Counsel or the appropriate Regional Counsel.

Questions and Answers:

Q1. Outgrant vs. Reimbursable: How is cost captured in an outgrant (either license or permit) and is it different from a reimbursable?

A1. An outgrant license or permit is not considered a reimbursable agreement because it does not result in the direct provision of a supply or a service by the FAA. Rather, an outgrant gives the grantee permission to utilize an FAA real property asset. Utility, janitorial, or other services that may be provided ~~as a result~~ because of the outgrant, are incidental to~~, and required for,~~ the use of the subject real property ~~asset by the grantee~~. The RECO must use the award letter designation of J under the PRISM system for an outgrant award number. ~~The cost under the outgrant are expenses engendered as a result of the occupancy or use of the real property such as rent or utilities.~~

A signed original outgrant document is sent to the Accounts Receivable department in accounting. With respect to amounts paid as consideration for the outgrant, FAA may retain all outgrant proceeds in the account established pursuant to 49 USC 45303(c). Please check with ALO-200 for the account number. ~~Consequently, the RECO must make every effort to negotiate a payment amount that is equal to the Fair Market Value (FMV) of the outgrant.~~ The RECO must make every effort to negotiate a payment amount that is equal to the Fair Market Value (FMV) of the outgrant, which should represent a fair market value for use of the property and the cost of any additional services and overhead costs provided by the FAA.

Q2. Cost Structure: How can the cost be structured in an outgrant?

A2. The RECO will structure the cost of the outgrants ~~with one of~~in the following order of preference:

- ~~1)~~ B~~b~~ased upon fair market value along with any additional services and overhead provided to grantee;
- ~~; 2)~~B ~~b~~ased upon the FAA cost and overhead only; or
- ~~3)~~ A~~a~~ no ~~-~~cost outgrant that specifies the non-monetary consideration of both parties.

Q3. Waiving Rent: Under what circumstances should a RECO waive rent 1) collecting the fair market value for an outgrant and only charge for services provided or 2) collect no monetary consideration at all?

A3. If the grantee is providing non-monetary consideration to the FAA that is of a direct benefit to the National Airspace System and the cost of any services provided by the FAA to the grantee are minimal, then the RECO may waive collecting monetary consideration with LOB approval. The value of the non-monetary consideration should be of equivalent or greater value than the fair market value waived. The RECO should not waive the cost of the services and related overhead in the outgrant if the FAA is providing more than minimal services to the grantee.

~~Q3~~Q4. Specify Use: Should outgrants specify the use of the property?

~~A3~~A4. Yes, the outgrant~~s need to~~ must state the specific use of the property~~., e.g., agricultural use or as a mining rights.~~ Examples: agricultural use including type of crops and maximum height of crops allowed; grazing use including type and maximum number of animals; mining rights, including what is being mined and exactly how it will be extracted; communication site, including type, maximum number of frequencies, etc.

~~Q4~~Q5. Options: Can outgrants have options?

A~~5~~4. No.~~, outgrants can be specified for a firm term not to exceed twenty years (see Q5). However, they may not have options placed inside. The rationale for the duration of an outlease must be documented in the real estate file. An outgrant of an FAA leased property will never extend beyond the period of the FAA lease. Please note the period of the FAA lease does not include unexercised options.~~

~~Q5~~Q6. Termination: ~~Are~~Must outgrants be revocable by the FAA?

~~A5~~A6. Yes. ~~, an outgrant may be revoked by the Government at anytime during the term of the outgrant. All outgrants will contain an FAA revocation clause. In outgrants of FAA leased property, this revocation clause must be structured so that it allows the FAA to comply with all contractual termination rights of the lessor (which are other than default) contained in the FAA primary lease.~~The FAA must be able to terminate an outgrant at any time and for any reason during the term of the outgrant~~.~~. All outgrants will contain an FAA revocation clause. Outgrants are considered a form of temporary disposal until the property is needed by the FAA or the FAA elects to permanently dispose of the property. FAA must be able to regain control of the property at any time. A grantee looking for a more permanent use should seek other property. For outgrants on property that the FAA does not own (e.g. leased property), the revocation clause in the outgrant must be structured to ensure the FAA can comply with all contractual termination rights of the underlying contract (lease).

~~Q6~~Q7. Transferability: Can the licensee or permitee transfer the rights of the outgrant?

~~A6~~A7. No. Outgrants are issued exclusively to the licensee/permitee for limited time and for a specific purpose, the licensee/permitee has no rights under license/permit, subject to FAA's right to revoke the outgrant at will.

~~Q7~~Q8. Emergency Service Providers: Can we waive the fee for an emergency service agency that requests an outgrant from the FAA?

~~A7~~A8. The criteria to charge rent to an emergency provider is not ~~is~~ whether they provide ~~the other entity is the state or local government or private entity, not whether they are~~ emergency services but whether the grantee is a state or local government or the grantee is a private entity.~~.~~ If the emergency services or 911 party is another government entity, such as a ~~(i.e.~~ state~~, county,~~ county, or city government~~)~~, the RECO can waive the rent for use of our property. However, the government entity should make their own improvements, be liable for what it does on the property, and pay for any ~~asks the~~ FAA-provided services based on ~~for reimbursement for~~ actual costs and overhead ~~to FAA services~~ (i.e. utilities, pro rata share of road maintenance, and any other services that FAA renders for the ~~other party.~~grantee).

If the emergency services party is a private entity, then the RECO ~~may~~will need to charge ~~compete the available space and request a~~ fair market value ~~fee in lieu of rent to be charged that goes to the "Miscellaneous Receipts of the General Treasury", not the FAA.~~ for use of the property along with any FAA-provided services. The FAA must not give an unfair advantage to one private entity over another. Further, if other private property is available nearby, the emergency service provider should go to the private property and not the FAA.

Q9. Liability Insurance: Is the grantee, as a condition of the outgrant, required to carry general liability insurance?

A9. It depends on whether the grantee is a Federal agency, a State or ~~l~~local government entity, or a private entity (all others). As a general policy, the FAA requires that any use of FAA property by a grantee is adequately covered against potential liability and/or damage caused by the use. In addition to general liability insurance, this must include coverage of costs due to potential damage to the environment (e.g. wetlands, endangered plants, etc.) or through the release of hazardous substances or petroleum products on the property. RECO's must obtain a copy of the Certificate of Insurance prior to allowing any new or continuing use (in the case of a succeeding lease) of the property and place the copy in the real estate file. Since insurance policies are generally written for only ~~one~~1- year, the RECO is to obtain a copy of any successive insurance coverage period from the grantee during the term of the outgrant.

- Other Federal Agency: Federal agencies are self-insured and are generally prohibited from paying for insurance. In lieu of insurance, the Federal agency agrees to pay for any damage caused to the property subject to the availability of appropriations.

- State/Local government: All State and local government entities are required to provide insurance; however, if the government entity is prohibited from providing insurance due to state or local law, the RECO will need to work with the government party, the LOB, and FAA legal counsel to develop an acceptable alternative liability clause.

- Private Entity: Effective October 1, 2014, all private entities must obtain and maintain a general liability insurance policy as a condition of use of FAA property. All outgrant licenses

with private entities shall contain the standard general liability insurance clause found in the Outgrant License Form for non-Federal entity.

2.4.11 Appendix K: Supplemental Lease Agreement (SLA) Revised 7/2014

Supplemental Lease Agreements (SLA)

The RECO **must** use an SLA for modifications to existing lease requirements to (1) document changes in lease ownership, (2) exercise a lease renewal option, (3) extend a lease prior to expiration, and (4) change or modify a performance requirement. The RECO must use Form 2.6.13 to execute an SLA.

An SLA must include all updated clauses to the base lease, except when exercising a lease renewal option, where the price and all other terms of the option have been previously negotiated and agreed upon in the lease.

All modifications to the existing requirements must be within the scope of the lease (e.g., the requirements the lessor has to perform on the lease).

No SLA may extend the term of an existing cost lease beyond twenty (20) years unless approved by Legal.[1] This restriction does not apply to no-cost leases.

Unilateral SLAs

A unilateral SLA is one that is executed only by the RECO, and no consent of the Lessor is required. A unilateral SLA is appropriate under the following circumstances:

- Exercising a lease renewal option where the price and all other terms of the option have been previously negotiated and agreed upon in the lease.
- Exercising a termination right in accordance with the cancellation clause in the lease.

Bilateral SLAs

A bilateral SLA is one that must be signed by the RECO and the Lessor. A bilateral SLA is appropriate under the following circumstances:

- Rental commencement and/or escalation payments (e.g., tax, operating costs)
- Any changes that require the consent of the Lessor

[1] [1] See Legal Coordination 7.0 for additional information.

2.4.12 Appendix L: Contracting Officer Representative (COR) Added 1/2007

a. Designating a Contracting Officer's Representative. The RECO may designate an individual representative, such as a COR to facilitate administration of a lease or contract. The RECO will designate a representative by written memorandum describing the specific authorities and responsibilities delegated to the representative. The RECO should ensure that the assigned representative has adequate training at the time of the assignment or will receive training within three months of being assigned the responsibility. Based on the yearly anniversary date of the lease/contract, the RECO should also obtain from the appointed representative, an annual validation that the representative has participated in adequate refresher training during the year. The RECO provides a delegation memorandum to the appointed COR at the time the assignment is made or changed in any way.

b. Authority of the Representative. A duly-assigned representative is authorized to perform the actions delegated by the RECO. The representative of the RECO may assume the designated authorities when appointed, provided the COR has demonstrated adequate training. If the COR does not have adequate training at the time of the assignment, the COR may assume designated authorities for a provisional period, not to exceed three months, until completion of adequate training. While performing as a representative, the COR maintains current knowledge of the COR duties and responsibilities through formal training or other means and advises the RECO annually. The RECO should consider the specific requirements and needs of the lease/contract in determining the support required from the representative and clearly enumerate the authority granted to the COR in a written memorandum of delegation. A sample delegation memorandum is included herein. One memorandum of delegation for all situations may not be appropriate since contractual situations are distinct and have varying needs. Therefore, the sample memoranda may be modified to reflect the specific needs of the lease/contract and the RECO.

c. Changing the COR. To change the COR on a lease/contract, the RECO must revoke the previous delegation and issue a succeeding delegation to the new COR, Both of these memoranda must be in writing and issued concurrently.

d. Information to the Lessor/Contractor. The RECO furnishes copies of all memoranda of delegation, revocation, changes in authority, or re-delegation to the lessor/contractor to make them aware of the authorities and limitations of the COR. A sample lessor/contractor notification letter is included herein and may also be modified to reflect the specific needs of the contract and the RECO.

2.4.13 Appendix M: Labor Standards/Davis Bacon Revised 7/2009

Labor Standards/Davis-Bacon Act

a. Davis-Bacon Act. The Davis Bacon Act (40 U.S.C. 276a-278a-7) provides that contracts of $2,000 or more to which the U.S. or the District of Columbia are a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the U.S., will require that no laborer or mechanic employed directly upon the site of the work will receive less than the prevailing wage rates as determined by DOL.

b. Related Laws.

(1) The Copeland ("Anti-Kickback") Act (18 U.S.C. 874 and 40 U.S.C. 276c) makes it unlawful to induce, by force, intimidation, threat of dismissal, or otherwise, any person employed in the construction or repair of public buildings or public works, to give up any part of the compensation to which the person is entitled under a contract of employment. Contracts subject to the Copeland Act will include a clause requiring contractors and subcontractors to comply with regulations issued by DOL. Additionally; the Copeland Act requires each contractor or subcontractor to furnish weekly statements of compliance regarding wages paid to each employee.

(2) The Contract Work Hours and Safety Standards Act applies to construction contracts involving laborers or mechanics.

c. Applicability.

(1) The Davis-Bacon Act and related laws apply to:
(a) Construction work to be performed by laborers and mechanics on a public building or public work site;
(b) Dismantling, demolition, or removal of improvements if construction at that site is anticipated under the same or a separate contract;
(c) Manufacture or fabrication of construction materials and components to be incorporated into the work when manufacture or fabrication is performed at the construction site;
(d) Painting of public buildings or public works, whether performed in connection with the original construction or as alteration or repair of an existing structure; and
(e) Hazardous waste cleanup contracts that require elaborate landscaping activities or substantial excavation and reclamation work (see DOL Memorandum No. 155, March 25, 1991).

(2) Davis-Bacon Act and related laws do not apply to:
(a) The manufacturing or fabrication of components or materials offs the construction site, or their subsequent delivery to the site by the manufacturer or fabricator, unless the manufacturing or fabrication facility is operated solely in support of the construction project;
(b) Contracts requiring construction work that is so closely related to research, experiment, and development that it cannot be performed separately, or that is itself the subject of research, experiment, or development;
(c) Employees of railroads operating under collective bargaining agreements that are subject to the Railway Labor Act; or
(d) Employees who work at the contractors' or subcontractors' permanent home offices, fabrication shops, or tool yards not located at the site of the work. However, when employees go to the work site and perform construction activities there, the requirements of the Davis-Bacon Act and related laws are applicable for the actual time so spent, not including travel unless the employees transport materials or supplies to and from the site of the work.

Procedures for Construction in Leases

a. Davis-Bacon Act Wage Determinations.
(1) DOL is responsible for issuing wage rate determinations for construction reflecting prevailing wage and fringe benefits. The wage determinations apply to those laborers and mechanics employed by a contractor at the site of the work, including drivers who transport materials and equipment to and from the site. Wage determinations are issued for different types of construction, such as building, heavy, highway, and residential (referred to as rate schedules), and apply only to the types of construction designated in the determination.

b. General Requirements.
(1) The RECO should ensure that clause is contained in the lease when applicable see Labor Standards above. If a RECO receives a call about these clauses, he or she should contact DOL for guidance (www.wdol.gov and further examples are contained in DOL Memoranda Numbers 130 and 131).

2.4.14 Appendix O: Disaster or Emergency Janitorial Services **Revised 4/2012**

When a health related emergency (such as pandemic flu) is declared by the United States Department of Health and Human Services Centers for Disease Control and Prevention (CDC), or other authorized federal, state or local governmental official, and the FAA Real Estate Contracting Officer (RECO) is provided written notification of the declaration by the LOB or duly authorized government official, the RECO is authorized to modify the cleaning requirements of all leased facilitates in the affected geographic area, upon receipt from the Line of Business (LOB) of a purchase request to do so. The modifications to the janitorial services requirements shall be memorialized in a Supplemental Lease Agreement (SLA), and will be consistent with current guidelines for prevention of the spread of communicable diseases.

These requirements are not applicable to space that is assigned to FAA by the General Services Administration (GSA). Any modifications to the janitorial requirements at GSA assigned facilities shall be undertaken by the GSA Contracting Officer working with FAA RECO.

The costs of the revised janitorial requirements will be negotiated with the Lessor at the time the purchase request is received by the RECO, and shall be included as an adjustment to the monthly rental amounts. The SLA will be effective on a month to month basis until the RECO has notified the lessor in writing that the health related emergency has ended.

2.4.15 Appendix P: Prohibited Real Estate Broker Services **Added 7/2010**

A. Background:
Real Estate often has a need for the use of brokers in the acquisition of real property. Broker(s) represent the potential lessor during land and space acquisition. The agency is often approached by

Broker(s) representing potential lessor(s) who have property to meet a current requirement or unsolicited offer for the FAA. However, the RECO is not authorized to accept broker services to represent the FAA, i.e. tenant representative without a formal agreement in place authorized by legal counsel, in accordance with legal coordination set forth in AMS Real Estate Guidance Section 7.4, and concurred by ALO-200 and AGC-500.

B. Prohibition of Using a Letter to Acquire Broker Services:
It often seems appealing to use a letter to acquire services from a broker service. Letter contracts for real estate broker services that fail to meet the requirements of AMS T3.2.4 and the requirements for legal coordination set forth in AMS Real Estate Guidance Section 7.4 are prohibited.

1. Excerpt of the definition of letter contracts as defined in AMS T3.2.4, subsection 7: Letters and Ceiling Price Contracts as follows:

a. General. A letter contract is a preliminary contractual instrument that authorizes a contractor to immediately begin work, subject to negotiating a definitive contract. A letter contract should not be used for contract modifications.

b. Letter Contract.

(1) Description:

(a) Provides a preliminary authorization for the contractor to immediately begin work.

(b) Includes a brief description of the work, performance period, and a limitation on the total funding amount that a contractor may expend and FAA will pay.

(c) Contractor agrees to be bound by the AMS termination, changes and disputes provisions.

(2) Use When:

(a) The FAA's interests demand that the contractor be given a binding commitment so that work can start immediately and negotiating a definitive contract is not possible in sufficient time to meet the requirement.

(b) Emergency or other special situations for limited amounts.

(3) Considerations:

(a) Should not be used to commit the FAA to a definitive contract in excess of the funds available at the time the letter contract is executed.

(b) Should not be amended to satisfy a new requirement unless that requirement is inseparable from the existing letter contract. Any such amendment is subject to the same requirements and limitations as a new letter contract.

As noted above, a letter contract is used for an immediate purpose pending a negotiated contact and emergency services. The use of broker services does not fall under these definitions. Thus, the RECO is prohibited from entering into a broker service using a letter.

Additionally, the AMS establishes clearly those who may act to bind the United States under the AMS T3.1.4 (Delegations) item 6 (Limited Procurement Authority to Other qualified individuals). Thus, using the services of a broker without an approved (see above for approvals by legal counsel and concurrence by ALO-200 and AGC-500) contract is unauthorized delegation. To summarize, only Federal/FAA employees have the authority to enter into a binding commitment on behalf of

the United States. Since broker contractors are not Federal/FAA Employees, they have no authority to do so, and any implication to the contrary is prohibited. Furthermore, the spending of appropriated monies is an "inherently governmental function" as established in OMB Circular A-76. As such, the RECO cannot contract this function to a real estate broker because the broker is not a Federal/FAA employee.

2. Excerpt of a definition of who has delegated authority under AMS T3.1.4 Delegations, subsection 6: Limited Procurement Authority to Other Qualified Individuals:

a. General. The COCO may delegate a limited form of procurement authority to qualified individuals who are not warranted COs. This limited authority may be granted to individuals within or outside of the contracting office when supported by a demonstrated need. Managers of non-contracting offices that require limited purchasing authority may request a Delegation of Procurement Authority (DPA) from the COCO. The COCO evaluates the request and delegates authority to the individual needing the authority. The delegation must be in writing and state specific limitations governing the limited procurement authority, such as dollar thresholds or types of procurement (i.e. supply, services, construction, etc). Guidance in this section does not apply to the purchase card program, as it is addressed in AMS Procurement Guidance T3.2.6, Purchase Card Program.

Furthermore, a letter to a broker acquiring services is not only misleading it implies an employer - employee relationship which does not exist. Personal Services are characterized by an implied employer - employee relationship between the agency and the contractor. Thus, a letter acquiring broker service would fall under personal service which is prohibited. Personal Services are characterized by an implied employer - employee relationship between the agency and the contractor.

3. Excerpts of Personal Services in AMS Section 3.8.2.3.2S on 3.8.2.3: Personal Services Contracts and 3.8.2.3.2: Determination:

The FAA may award personal services contracts when the head of a line of business determines that a personal service contract is in the best interest of the agency after thorough evaluation, which includes, but is not limited to the following factors:

1. Worker's compensation payments and other tax implications;
2. Government's potential liability for services performed;
3. Availability of temporary hires to perform the desired services;
4. Demonstration of tangible benefits to the agency;
5. Detailed cost comparison demonstrating a financial advantage to the Government from such contract;
6. Potential post-employment restrictions applicable to former employees;
7. Legal determination that the work to be performed is not inherently governmental; and
8. Potential post-employment restrictions pursuant to Federal Workforce Restructuring Act of 1994 Public Law 103-226.

Although personal service contracts are permitted, they should be used only when there is a clear demonstrated financial and program benefit to the FAA. The determination required herein is non-delegable and shall be reviewed for legal sufficiency by the Office of the Chief Counsel.

C. Exhibits of Prohibited Letters with Broker(s)

Attached are four sample letters sent to potential broker(s) which are prohibited. These letters are misleading the broker and potential lessor. These sample letters also are prohibited due the conflict with the sections of the AMS cited above.

Additional reasons for these letters being prohibited are detailed below.
a. Attachment Letter A- is misleading in that the Real Estate Broker Company has been designated as the agent for the FAA. Only the Real Estate Contracting Officer can be the agent for the FAA.
b. Attachment Letter B - Real Estate Broker Company states they have the authority to be the exclusive agent for the FAA. As stated above, the only agent in the FAA is the RECO.
c. Attachment Letter C - States that we terminated an agreement with the broker who was our exclusive agent. First we did not have an official agreement. And second the last sentence of the letter thanks the broker for negotiating; the broker does not have authority to negotiate on behalf of the FAA.
d. Attachment Letter D - Letter of intent - The Broker has no authority to bind the government prior to the award of a lease by a RECO. As mentioned above, they are not the agent for the FAA.

D. Acceptable Acquisition of Broker Services

There are several options to find an acceptable format to acquire broker services:

1.) Conduct a full and open competition either on a National or Service Area level.
a. Develop a team to include at a minimum real estate subject matter experts including RECOs, National SME and headquarters and/or regional council.
i. The team can look into developing SIR to acquire broker services.
ii. Investigate how GSA and other agencies developed broker contracts.
2.) Data gathering, i.e. market survey information can be contracted using a purchase card. Please follow the purchase card requirements. AMS Procurement Guidance T3.2.6, Purchase Card Program.

Any attempts to acquire such services must be submitted for approval to ALO-200/AGC-500 for review and concurrence.

2.4.15.1 Sample Prohibited Letters Attachment A: Hiring a Broker **Added 7/2010**

Attachment Letter A- is misleading in that the Real Estate Broker Company has been designated as the agent for the FAA. Only the Real Estate Contracting Officer can be the agent for the FAA.

RE Company
Address

Dear Sir:

Subject: Flight Standards District Office (FSDO)
Location:

Company as our Exclusive Agent to assist us in locating new office facilities in the location XXX.

It is understood that RE company has the authority to act as our agent to identify and evaluate various office opportunities, which may satisfy the needs for our FSDO. Information derived from your efforts will be provided to the RECO in our office for consideration and approval.

It is also understood that RE Company will receive compensation through earned commissions paid by the building owner as part of the transaction. The FAA will not incur any financial obligation to you under this agreement. Likewise, the FAA is not assuming any responsibility or liability for any of your actions. The FAA does not extend to you any legal authority that will encumber the Federal Government. All options, determinations, or final decisions will be subject to approval by the FAA Contracting Officer.

We will operate under this arrangement until such time as your services are no longer required or deemed to be unsatisfactory by the FAA. You will be notified at that time.

We look forward to working with your firm in our search for office space and trust that you will be able to located space for our FSDO requirements.

Sincerely,

RECO

2.4.15.2 Sample Prohibited Letters Attachment B: Broker Letter to potential lessor

Added 7/2010

Attachment Letter B - Real Estate Broker Company states they have the authority to be the exclusive agent for the FAA. As stated above, the only agent in the FAA is the RECO.

RE Estate Lessor

RE: Request for Proposal

Dear Sir:

I have been retained by the FAA ("Tenant"), as their exclusive agent in identifying and evaluating various opportunities for a new office location in the location. In that regard, I would appreciate receiving a response to this Request for Proposal.

In order to determine if it will satisfy our needs, I am furnishing specific information describing their requirements, objectives, and time schedule to enable you to provide a detailed and informed response. Your response will serve as the basis for comparative analysis and subsequent negotiations with the successful landlord by Tenant and representatives of RE Company.

Proposed RFP

Please respond to the RFP in writing no later than date. The above terms and conditions of any lease and/or related documents are subject to approval by FAA.

On behalf of the FAA, I look forward to your favorable response and to further discussions concerning all of these points. Please call me at your convenience if you and/or other representatives of your building have any questions regarding this inquiry.

Sincerely,

RE Company

2.4.15.3 Sample Prohibited Letters Attachment C: Letter of Termination with Broker

Added 7/2010

Attachment Letter C - States that we terminated an agreement with the broker who was our exclusive agent. First we did not have an official agreement. And second the last sentence of the letter thanks the broker for negotiating; the broker does not have authority to negotiate on behalf of the FAA.

RE: Company

Dear Sir:

Subject: Lease of FSDO

This letter will officially terminate the exclusive agency agreement that was previously entered into between the FAA and RE Company to assist with locating office facilities in the location or renewing our existing lease at location.

The FAA has determined that a lease renewal at location is not in the best of interest of the Government and the existing lease should not be renewed. The Government is no longer in need of services from RE Company.

You can inform the property owner that the FAA will not be renewing our lease at the current location and that they should direct all future correspondence on this matter to the RECO.

We thank you for your efforts in lease negotiations with Lessor.
Sincerely,

RECO

2.4.15.4 Sample Prohibited Letters Attachment D: Letter of Intent Added 7/2010

Attachment Letter D - Letter of intent - The Broker has no authority to bind the government prior to the award of a lease by a RECO. As mentioned above, they are not the agent for the FAA.

Real Estate Lessor

Re: Letter of Intent for Flight Standards District Officer (FSDO) Dear

Sir:

As exclusive broker, RE Company is pleased to submit the following Letter of Intent for which the Federal Aviation Administration (FSDO) is willing to prepare a Lease for your review.

Lease clauses included.

Upon agreement of the Terms within this Letter of Intent, the Government is prepared to provide a Lease of the Premises will occur.

If the foregoing Terms are acceptable, please have the Landlord sign below and we will proceed with preparation of a Lease Agreement for Landlord's review. Please feel free to call me with any questions or comments regarding this proposal number. Thank you for your efforts.

Best regards, RE

Company

AGREED AND ACCEPTED this __day of _____, 20__.

Agreed to by Landlord:

By: _____

Name: _____

Title: _____

2.4.16 Environmental / Sustainability / Energy Revised 10/2014

A. Guidance

FAA is required to significantly reduce the negative environmental effects of constructing, leasing, operating and maintaining and demolishing buildings. Some of the potential results from successful reduction of negative environmental effects may include: 1) a reduction in total life- cycle costs of facilities through the improvement of energy efficiency and the implementation of alternative energy technologies; 2) a reduction in total adverse environmental impacts by the reduction of carbon emissions; and 3) an enhancement of the safety, health and productivity of FAA employees through the reduction in the use of toxic chemicals in buildings.

1. High Performance Sustainable Buildings

Executive Order (EO) 13423, Strengthening Federal Environmental, Energy, and Transportation Management, dated January 24, 2007, and EO 13514, Federal Leadership in Environmental, Energy, and Economic Performance, dated October 5, 2009, require federal agencies to comply with the Guiding Principles for High Performance and Sustainable Buildings (Guiding Principles). The Guiding Principles establish building standards for:

- Integrated design,
- Energy performance,
- Water conservation,
- Indoor environmental quality, and
- Building materials.

The Interagency Sustainability Working Group (ISWG), established by EO 13423, issued the current version of the Guiding Principles on December 1, 2008, which includes standards for building construction and major renovation, as well as standards for building operation and maintenance (HPSB Appendix).

The EOs direct the FAA to incorporate the HPSB Guiding Principles into 15% of its existing owned and directly leased building inventory greater than 5,000 square feet (it should be noted that Energy Independence and Security Act (EISA) requires Energy Star labeled buildings for 10,000 gross square feet or above) by 2015 and demonstrate annual progress thereafter toward 100% conformance. FAA's strategy to meet this mandate includes acquiring green leases.

New or succeeding lease space and space which FAA shall continue to occupy through a succeeding lease must meet the Guiding Principles (HPSB Appendix). A RECO can identify buildings that will meet the Guiding Principles by looking for Energy Star labeled buildings or buildings that have received Leadership in Energy and Environmental Design (LEED) certification. A RECO may pay more for sustainable lease spaces to the extent that funds are available. The space acquisition shall be considered financially feasible if the rental offer for space in a conforming building is no more than 10% greater than the market rate for a comparable conventional building in the same rental market. If the market does not support buildings that meet the Guiding Principles (e.g., the RECO is unable to obtain sufficient competition for HPSBs, the offered rental rates are excessive, etc.), then the RECO

must provide written justification for the inability to meet the Guiding Principles in the Negotiator Report. Notwithstanding the foregoing, the RECO shall include within the solicitation all AMS provisions applicable to the acquisition of sustainable or "green" space.

2. Energy Star Buildings

As of December 19, 2010, Section 435 of the EISA mandates that, if financially feasible, all new space must be acquired in buildings having either an Energy Star label for the most recent year, or a commitment from the Lessor to earn the Energy Star label within one year of signing the lease. The acquisition shall be considered financially feasible if the proposed rental is no more than 10% over the market rate for a comparable building in the same rental market. Regardless of whether or not acquiring space in an Energy Star designated building is financially feasible, the RECO shall incorporate all AMS provisions applicable to the acquisition of sustainable or "green space", which include the provisions for Energy Star designation, into the Solicitation for Offer (SFO).

In addition to financial infeasibility, there are four other exemptions to the requirement for the Energy Star label that is allowable. They are the following:

1. No space is offered in a building with an Energy Star label in the delineated area that meets the functional requirements of an agency, including location needs;
2. The agency will remain in a building they currently occupy;
3. The lease will be in a building of historical, architectural, or cultural significance verified by listing or eligibility for listing on the National Register of Historic Places; or
4. The lease is for no more than 10,000 gross square feet of space.

The determination of whether or not a particular building meets the requirements for an exception to the requirement for an Energy Star label, shall be based upon a review of supporting documentation submitted to the RECO by the Lessor/Offeror. If the documentation submitted is determined sufficient to establish such an exception, the Lessor/Offeror shall be required to renovate the subject building with all energy efficiency and conservation improvements that would be cost effective over the life of the lease. As mentioned in the HPSB Guidance, a RECO may pay more for sustainable lease spaces to the extent that funds are available. The acquisition of space that complies shall be considered financially feasible if the rental offered for a conforming building is no more than 10% over the market rate for a comparable conventional building in the same rental market. As stated previously, if unable to obtain space designated as Energy Star compliant, the RECO must provide written justification for such inability in the Negotiator Report.

B. Applicability of Sustainability Requirements to FAA Space Acquisition

The requirements of this section apply to all FAA owned and leased buildings reported in the Real Estate Management System (REMS). The FAA has updated its inventory of buildings and is working towards meeting the EO 13423 and 13514 and EISA requirements regarding High Performance Sustainable Buildings (HPSB). HPSB requirements apply to space and buildings having the following characteristics: 1) owned or leased and 2) over 5,000 square feet (Guiding Principles).

C. Laws, Executive Orders, Regulations and Other Policies Applicable to Sustainability

Legal and other programmatic requirements for the acquisition of space in sustainable buildings include:

1. Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, 74 FR 52117, October 5, 2009
2. Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, 72 FR 2763, January 23, 2007
3. Office of Management and Budget (OMB) Circular No. A-11, June 27, 2002
4. Federal Leadership in High Performance and Sustainable Buildings Memorandum of Understanding
5. Energy Policy Act (EPAct) of 2005, Publ.L.No.109-58
6. Energy Independence and Security Act of 2007, Pub.L.No.110-140
7. Implementing Instructions - Sustainable Locations for Federal Facilities
8. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
9. National Environmental Policy Act (NEPA)
10. Resource Conservation and Recovery Act (RCRA)
11. FAA Order 1050.19B, Environmental Due Diligence Audits (EDDA) in the Conduct of FAA Real Property Transactions
12. Knowledge Services Network (KSN)
13. FedCenter and The Whole Building Design Guide (WBDG) Websites

<u>Question and Answers concerning FAA Order 1050.19B</u>

Q 1: Is the RECO required to obtain a memorandum as stated in 1050.19B 1-9b(3) or an EDDA if the RECO is executing a new or succeeding lease or exercising an option to renew the space lease?

A 1: At this time and until further notice of a change to the FAA Order 1050.19B , the requirements to obtain an EDDA, EDDA waiver, or memorandum remain in place and are the responsibility of the service/office requester to provide to the RECO. See additional information below:

- No additional EDDA documentation is required when exercising an existing renewal option where the terms of the option were negotiated during the original leasing action.

- For new acquisitions (new locations or increasing the size of the existing location) or for disposals/terminations (in whole or in part), the RECO is not to finalize the real estate transaction until the appropriate documentation (EDDA report, memorandum and/or waiver) is approved by the LOB.

- For succeeding leases in the same location where there are no changes in the area under lease (either increasing or decreasing in size), if the appropriate documentation (EDDA report, memorandum and/or waiver) is not provided either by the LOB or upon request by the RECO, the RECO can proceed with the succeeding lease award but must document the lease file showing evidence of the attempt to secure the documentation from the LOB.

D. Definitions

See Appendix E to this Guidance for a full listing of terms and definitions applicable to HPSB. Set forth below are some of the most commonly used terms and definitions applicable to sustainability.

- **Energy Intensity** - energy consumption per square foot of building space, including industrial or laboratory facilities (EO 13514, Section 19(f)).
- **Environmental** - environmental aspects of internal agency operations and activities, including those aspects related to energy and transportation functions (EO 13514, Section 19(g)).
- **Sustainability** - to create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirement of present and future generations of Americans (EO 13423, Section 9 and EO 13514, Section 19(l)).

E. Operation and Maintenance

The Guiding Principles (HPSB APPENDIX) include standards for both building construction and major renovation as well as for the operation and maintenance (O&M) of buildings and space. The O&M program for leased buildings should be monitored by the Lessor throughout the lease term and O&M information provided to the RECO to ensure it conforms to the O&M requirements of the Guiding Principles.

F. Tracking and Reporting Sustainability Compliance

Tracking and reporting on agency progress towards reaching the sustainable buildings goals is a requirement of EOs 13423 and 13514 and EISA 432. To leverage existing resources related to real property management, sustainable building inventory data is reported in the Federal Real Property Profile (FRPP) database via FRPP data element #25 "Sustainability". In order to select "Yes (1)" for data element #25, the new, existing or non-GSA leased building must meet the Guiding Principles (HPSB APPENDIX). The rate of building conformance to the Guiding Principles is reported by the Department of Transportation (DOT) to Office of Management and Budget (OMB) annually with mid-year progress updates via the Sustainability Scorecard.

1. Tools to use for Reporting:

The following are the systems and tools that must be used to report data on HPSB in order to meet the requirements of EOs 13514 and 13423 and EISA:

1. Real Estate Management System (REMS) - Submit the Federal Real Property Portfolio (FRPP) annually as well as additional information on buildings that meet the criteria for HPSB. Users are assigned and managed by ALO-300.

2. Energy Star Portfolio Manager - Generates a Guiding Principle checklist for reporting HPSBs for FAA. For all leased buildings, the Lessor is required to use this tool to track progress towards meeting the Guiding Principles. The Energy Star Portfolio Manager GP checklist should be provided to the RECO.

Also, the Energy Star Portfolio Manager can help FAA track and report on its progress in acquiring leased Energy Star buildings. Federal agencies assessing their existing building inventory against the Guiding Principles for HPSBs can use the Guiding Principles Checklist. Access the Guiding Principles Checklist from the Energy Star website.

2.4.16.1 HPSB Appendix A: Federal Leadership in HPSB MOU **Added 1/2012**

Purpose: With this Memorandum of Understanding (MOU), signatory agencies commit to federal leadership in the design, construction, and operation of High-Performance and Sustainable Buildings (HPSB). A major element of this strategy is the implementation of common strategies for planning, acquiring, siting, designing, building, operating, and maintaining HPSBs. The signatory agencies will also coordinate with complementary efforts in the private and public sectors.

Background and Federal Policy: The Federal government owns approximately 445,000 buildings with total floor space of over 3.0 billion square feet, in addition to leasing an additional 57,000 buildings comprising 374 million square feet of floor space. These structures and their sites affect our natural environment, our economy, and the productivity and health of the workers and visitors that use these buildings.

Therefore, the Federal government is committed to designing, locating, constructing, maintaining, and operating its facilities in an energy efficient and sustainable manner that strives to achieve a balance that will realize high standards of living, wider sharing of life's amenities, maximum attainable reuse and recycling of depletable resources, in an economically viable manner, consistent with Department and Agency missions. In doing so and where appropriate, we encourage the use of life cycle concepts, consensus-based standards, and performance measurement and verification methods that utilize good science, and lead to sustainable buildings.

Goals and Objectives of this MOU: Consistent with and in addition to Federal policy, statutes, executive orders and supplemental agency policies and guidance, the Parties to this MOU collaboratively seek to establish and follow a common set of sustainable Guiding Principles for integrated design, energy performance, water conservation, indoor environmental quality, and materials aimed at helping Federal agencies and organizations:

- Reduce the total ownership cost of facilities;
- Improve energy efficiency and water conservation;
- Provide safe, healthy, and productive built environments; and,
- Promote sustainable environmental stewardship.

Other Laws and Matters: This MOU is for internal management purposes of the Parties involved. It is not legally enforceable and shall not be construed to create any legal obligation on the part of any of

the signatories. This MOU shall not be construed to provide a private right or cause of action for or by any person or entity. This MOU in no way restricts the Parties from participating in any activity with other public or private agencies, organizations or individuals.

The Parties mutually recognize and acknowledge that MOU implementation will be subject to financial, technical, and other mission-related considerations. It is not intended to create any rights, benefits, or trust responsibilities, either substantive or procedural, nor is it enforceable in law by a party against the US, its agencies, its officers, or any other person.

Collaboration under this MOU will be in accordance with applicable statutes and regulations governing the respective Parties. Nothing in this MOU is intended to affect existing obligations or other agreements of the Parties.

Effective Period: This MOU will become effective upon signature. It shall remain in effect unless otherwise modified or terminated. Any Party may withdraw upon 30 days written notification to the others.

Modifications: This MOU can be modified through mutual written agreement among the Parties.

Administration: Agencies will strive to incorporate and adopt, as appropriate and practical, the Guiding Principles into existing agency policy and guidance within 180 days of signature. To assist with this effort, the Interagency Sustainability Working Group (ISWG) will provide technical guidance and updates for the Guiding Principles.

The Office of the Federal Environmental Executive will work with the ISWG and Federal Green Building Council to develop methods of reporting on progress towards this MOU in a manner that is least burdensome to the agencies. This may include incorporating reporting into existing mechanisms, such as executive order reports; but in any case with a goal of avoiding a separate reporting process.

2.4.16.2 HPSB Appendix D: HPSB Definitions **Added 1/2012**

Agency - an executive agency as defined in section 105 of title 5, United States Code, excluding the Government Accountability Office (EO 13514, Section 19(a)).

Energy Intensity - energy consumption per square foot of building space, including industrial or laboratory facilities (EO 13514, Section 19(f)).

Environmental - environmental aspects of internal agency operations and activities, including those aspects related to energy and transportation functions (EO 13514, Section 19(g)).

Sustainability and Sustainable - to create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirement of present and future generations of Americans (EO 13423, Section 9 and EO 13514, Section 19(l)).

Zero-Net-Energy Building - a building that is designed, constructed, and operated to require a greatly reduced quantity of energy to operate, meet the balance of energy needs from sources of energy that do not produce greenhouse gases, and therefore result in no net emissions of greenhouse gases and be economically viable (EO 13514, Section 19(o)).

Commissioning - A quality focused process for enhancing the delivery of a project. The process focuses upon verifying and documenting that the facility and all of its systems and assemblies are planned, designed, installed, tested, operated, and maintained to meet the Owner's Project Requirements.

ReCommisioning - An application of the Commissioning Process requirements to a project that has been delivered using the Commissioning Process. This may be a scheduled recommissioning developed as part of an Ongoing Commissioning Process, or it may be triggered by use change, operations problems, or other needs.

RetroCommissioning - The Commissioning Process applied to an existing facility that was not previously commissioned. This guideline does not specifically address retrocommissioning. However, the same basic process needs to be followed from Pre-Design through Occupancy and Operations to optimize the benefits of implementing the Commissioning Process philosophy and practice.

2.4.16.3 HPSB Appendix B: Guiding Principles for Federal Leadership in HPSB

Added 1/2012

I. Employ Integrated Design Principles

Integrated Design. Use a collaborative, integrated planning and design process that

- Initiates and maintains an integrated project team in all stages of a projects planning and delivery;
- Establishes performance goals for siting, energy, water, materials, and indoor environmental quality along with other comprehensive design goals; and, ensures incorporation of these goals throughout the design and lifecycle of the building; and,
- Considers all stages of the buildings lifecycle, including deconstruction.

Commissioning. Employ total building commissioning practices tailored to the size and complexity of the building and its system components in order to verify performance of building components and systems and help ensure that design requirements are met. This should include a designated commissioning authority, inclusion of commissioning requirements in construction documents, a commissioning plan, verification of the installation and performance of systems to be commissioned, and a commissioning report.

II. Optimize Energy Performance

Energy Efficiency. Establish a whole building performance target that takes into account the intended use, occupancy, operations, plug loads, other energy demands, and design to earn the Energy Star targets for new construction and major renovation where applicable. For new construction, reduce the energy cost budget by 30% compared to the baseline building performance rating per the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., (ASHRAE) and the Illuminating Engineering Society of North America (IESNA) Standard 90.1-2004, Energy Standard for Buildings Except Low-Rise Residential. For major renovations, reduce the energy cost budget by 20% below pre-renovations 2003 baseline.

Measurement and Verification. In accordance with DOE guidelines issued under section 103 of the Energy Policy Act of 2005 (EPAct), install building level utility meters in new major construction and renovation projects to track and continuously optimize performance. Compare actual performance data from the first year of operation with the energy design target. After one year of occupancy, measure all new major installations using the Energy Star Benchmarking Tool for building and space types covered by Energy Star. Enter data and lessons learned from sustainable buildings into the High Performance Buildings Database.

III. Protect and Conserve Water

Indoor Water. Employ strategies that in aggregate use a minimum of 20% less potable water than the indoor water use baseline calculated for the building, after meeting the Energy Policy Act of 1992 fixture performance requirements.

Outdoor Water. Use water efficient landscape and irrigation strategies, including water reuse and recycling, to reduce outdoor potable water consumption by a minimum of 50% over that consumed by conventional means (plant species and plant densities). Employ design and construction strategies that reduce storm water runoff and polluted site water runoff.

IV. Enhance Indoor Environmental Quality

Ventilation and Thermal Comfort. Meet the current ASHRAE Standard 55-2004, Thermal Environmental Conditions for Human Occupancy, including continuous humidity control within established ranges per climate zone, and ASHRAE Standard 62.1-2004, Ventilation for Acceptable Indoor Air Quality.

Moisture Control. Establish and implement a moisture control strategy for controlling moisture flows and condensation to prevent building damage and mold contamination.

Daylighting. Achieve a minimum of daylight factor of 2% (excluding all direct sunlight penetration) in 75% of all space occupied for critical visual tasks. Provide automatic dimming controls or accessible manual lighting controls, and appropriate glare control.

Low-Emitting Materials. Specify materials and products with low pollutant emissions, including adhesives, sealants, paints, carpet systems, and furnishings.

Protect Indoor Air Quality during Construction. Follow the recommended approach of the Sheet Metal and Air Conditioning Contractors National Association Indoor Air Quality Guidelines for Occupied Buildings under Construction, 1995. After construction and prior to occupancy, conduct a minimum 72-hour flush-out with maximum outdoor air consistent with achieving relative humidity no greater than 60%. After occupancy, continue flush-out as necessary to minimize exposure to contaminants from new building materials.

V. Reduce Environmental Impact of Materials

Recycled Content. For EPA-designated products, use products meeting or exceeding EPAs recycled content recommendations. For other products, use materials with recycled content such that the sum of post-consumer recycled content plus one-half of the pre-consumer content constitutes at least 10% (based on cost) of the total value of the materials in the project.

Biobased Content. For USDA-designated products, use products meeting or exceeding USDAs biobased content recommendations. For other products, use biobased products made from rapidly renewable resources and certified sustainable wood products.

Construction Waste. During a projects planning stage, identify local recycling and salvage operations that could process site related waste. Program the design to recycle or salvage at least 50% construction, demolition and land clearing waste, excluding soil, where markets or on-site recycling opportunities exist.

Ozone Depleting Compounds. Eliminate the use of ozone depleting compounds during and after construction where alternative environmentally preferable products are available, consistent with either the Montreal Protocol and Title VI of the Clean Air Act Amendments of 1990, or equivalent overall air quality benefits that take into account life cycle impacts.

2.4.16.4 HPSB Appendix C: Frequently Asked Questions on Guiding Principles Added 1/2012

Question	Resolution
Can the Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings (Guiding Principles) be revised?	Executive Order (EO) 13423 Implementing Instructions provide the Interagency Sustainability Working Group (ISWG) the authority to modify the Guiding Principles. The Implementing Instructions reads: "The ISWG shall review the Guiding Principles and Technical Guidance periodically for updates and to consider adopting additional principles or goals addressing issues such as conservation plantings, integrated pest management, deconstruction, and siting."
Can certification of the building by a third party organization be required?	It is beyond the scope of the Guiding Principles to designate or require certification by a rating system. The EO specifically refers to meeting the Guiding Principles. A preference for third party certification developed by an American National Standards Institute (ANSI) accredited

	organization is included in the guidance, but is not a requirement. However, utilizing LEED and other green building rating systems as a tool to help meet and verify compliance with the Guiding Principles is highly encouraged.
Can any level of LEED certification, at any time in the past or future, equate to meeting the Guiding Principles?	Historical US Green Building Council Leadership in Energy and Environmental Design (LEED) certification and future LEED certification where registration occurred prior to October 1, 2008 will be accepted as meeting the Guiding Principles. The EO requires sustainable buildings to meet the Guiding Principles. The original intent of the Guiding Principles was to set minimal design expectations for high performing buildings. Although LEED certification offers documentation of green design, it doesn't necessarily meet the minimal expectations of the Guiding Principles.
Why do the green building rating systems need to be developed by "ANSI-accredited organizations"?	The National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies. The wording that refers to "ANSI-accredited organizations" is intended to meet the NTTAA requirement and allow for the use of only legitimate third-party green building rating systems. Additional guidance is pending, as the Energy Independence and Security Act (EISA) requires the Department of Energy (DOE), in consultation with the General Services Administration (GSA) and the Department of Defense (DOD), to issue further guidance on viable rating systems and levels of certification.
Do agencies have to obtain third party independent verification and validation (IV&V) of their building data if expertise exists within the agency?	In instances where an agency is reporting compliance under Options NC-1, EB-1, or L-1, internal agency verification will suffice where the agency has established an IV&V process. In instances where an agency is reporting compliance under Options NC-2, EB-2, or L-2, third party certification is required.
How will agencies or OMB verify that a building has met the Guiding Principles if it doesn't require third party certification?	To ensure the accuracy and completeness of an agency's annual Federal Real Property Profile (FRPP) submission, each agency is required to establish an independent validation and verification (IV&V) process for all data reported to the FRPP. Incorporating building sustainability into environmental management systems could fulfill this obligation and meets the intent of EO 13423. The agency IV&V process should be documented in its Sustainable Building Implementation Plan (SBIP).
Can we consider buildings that are not	As it currently stands, only those buildings that meet the

100% compliant with the Guiding Principles as compliant?	intent of each Guiding Principle can be credited toward the 15% goal unless the building was registered prior to October 1, 2008 and is third party certified.
Will reporting on and tracking the status of an agency's buildings and	Sustainability compliance will be tracked and measured through the previously established FRPP database.
progress toward the 15% sustainability goal require additional data management systems?	Many agencies have existing internal systems which track additional information on the individual asset level and provide the agency's FRPP submission, however, no new databases are required.
Why are both number of buildings and square footage being tracked?	Both number and square footage of sustainable buildings are being tracked to provide a more complete picture of sustainability progress with respect to the EO goal.
How does this guidance relate to residential housing?	This guidance does not include a separate set of guiding principles for government housing; however, sustainably designed housing can be counted as part of the 15% sustainability goal if it meets the appropriate set of Guiding Principles for new construction, existing buildings, or leases. The Department of Energy is developing a rulemaking that addresses High Performance and Sustainable Buildings specific to residential housing under EPAct 2005, Section 109.
How should leased buildings be addressed?	All leases are to be reported per EO 13423, including capital and operating leases. In reporting the sustainable inventory to the FRPP, the signatory agency (agency which is a party to the lease with the lessor) is responsible for reporting the building. For the occupant agency, the sustainability of the asset may be identified and reported in its SBIP.
Why do the Guiding Principles reference specific versions of standards, such as American Society of Heating, Refrigerating and Air- Conditioning Engineers (ASHRAE) 90.1 2007?	Specific years are referenced because the goals included in the Guiding Principles are intended for these versions of the standards. Whether the goals will apply to future versions of the standards cannot be known, therefore the words "current standard" were not used.
Why do the Guiding Principles not reference "if life cycle cost effective" for 30% more energy efficient requirement?	The Guiding Principles are to be applied to the 15% of an agency's portfolio that are considered high performance sustainable buildings, and thus the life cycle cost effective wording is not used in the Guiding Principles, including the energy efficiency requirement.
How is commissioning addressed for existing buildings?	For existing buildings, there is an increased focus on retro- and re-commissioning. The requirement of "total" commissioning was taken out of both sets of Guiding Principles to allow for a more tailored approach to commissioning, depending on the size and complexity of the building.

How does the Guiding Principle on Energy relate to 10 CFR 433?	The energy performance guidance defined in 10 CFR 433 allows for exceptions for high energy use activities when calculating estimated energy use. The Guiding
	Principles use the ASHRAE 90.1-2007 standard as the baseline and method for calculating energy performance.
Why are WaterSense products referenced, given their currently limited availability?	The phrase "where available" was added to the expectation to specify WaterSense products.
How was the daylighting Guiding Principle amended for EB?	The daylighting Guiding Principle was adapted to increase the focus on lighting controls for EB. As with many of the existing building Guiding Principles, there are multiple options for compliance. Existing buildings have little control over building envelope renovations, so alternative compliance was necessary.
How does the Guiding Principle on Energy relate to 10 CFR 433?	The energy performance guidance defined in 10 CFR 433 allows for exceptions for high energy use activities when calculating estimated energy use. The Guiding Principles use the ASHRAE 90.1-2007 standard as the baseline and method for calculating energy performance.
Why are WaterSense products referenced, given their currently limited availability?	The phrase "where available" was added to the expectation to specify WaterSense products.
How was the daylighting Guiding Principle amended for EB?	The daylighting Guiding Principle was adapted to increase the focus on lighting controls for EB. As with many of the existing building Guiding Principles, there are multiple options for compliance. Existing buildings have little control over building envelope renovations, so alternative compliance was necessary.

Section Revised: 6.3.3 Training Prioritization and Delivery

Real Estate Guidance - (~~1~~4/2015)

6.3 Real Estate Contracting Officer/Realty Specialist Training and Development Added 1/2015
- 6.3.1 Training for Initial Certification Added 1/2015
- 6.3.2 Training for Recertification or Job Specific Development Added 1/2015
- 6.3.3 Training Prioritization and Delivery Revised 4/2015~~Added 1/2015~~

6.3 Real Estate Contracting Officer/Realty Specialist (RECO/Realty Specialist) Training and Development Added 1/2015

The ALO organization views training and development as a strategic investment in the workforce and seeks to:

- Use competency based, instructionally sound, and cost-effective methods that promote organizational learning.
- Promote employee career development efforts and build the knowledge and skills of the workforce necessary to increase organizational productivity and efficiency.

6.3.1 Training for Initial Certification Added 1/2015

The Acquisition Career Management (ACM) and Aviation Logistics Office (ALO) organizations have established required training for each level of Realty Specialist certification that can be found on the RECO Acquisitions Professions Portal (FAA only). All levels of RECO/Realty Specialist must submit planned training and development activities as part of the certification application process.

6.3.2 Training for Recertification or Job Specific Development Added 1/2015

After the initial certification is issued, the RECO/Specialist is given a recertification date. All RECO/Specialists are required to recertify every 2 years including receiving a total of 80 CLPs as outlined in 6.2.2. Requests for specialized training to support continuing competency development or job specific duties can be made using the ALO Real Estate Training Course Request form.
The Real Estate Group Managers will forward signed request forms to the Aviation Logistics Organization, Planning, Policy and Performance Division (ALO-200).

6.3.3 Training Prioritization and Delivery Revised 4/2015~~Added 1/2015~~

Upon receipt of ALO Real Estate Training Course Request, ALO-200 will input the data into a spreadsheet with all of the fiscal year training requests. ALO-200 analyzes and prioritizes the aggregate Training and Development requests based on funding availability and organizational needs. On a monthly basis, aggregate analysis of the training requests will be reviewed with Group Managers to confirm the priority decisions for each RECO/Specialist individual training request in accordance with budget constraints and organizational priorities. Any changes made to priorities will be noted in the database.

The table displayed below summarizes how training requests for RECO/Specialists will be made based upon the receipt of the Training Request Form.

	Overview	Process	Benefits
Training for Initial Certification	RECO/S is assigned training in eLMS based on Certification Level When submitting Certification Application, any missing training is documented on the RECO/S Temporary Waiver for Training and Development	1. Each RECO/S is tagged in eLMS with the appropriate certification level (L I – L III). 2. A curriculum is assigned to each employee based on the Certification Level and RECO/S Temporary Waiver Request for Training and Development, if required. 3. As employees take the required training, courses move to completed status. 4. For external courses, employees provide certificate of completion to Learning Coordinator for recording in eLMS. 5. ALO-200 periodically runs reports to know number and location of employees requiring each course.	• Employees have a list of required training in eLMS • Allows ALO to better track required courses and more effectively plan for future courses

Recertification	RECO/S completes the RECO/S Recertification Training Request Form ~~ALO Real Estate Training Course Request~~ for training related to CLPs and Job Specific Competencies	1. RECO/s completes RECO/S Recertification Training Request Form ~~ALO Real Estate Training Course Request~~ and submits to Supervisor. 2. Supervisor reviews for alignment with employee's developmental plans and sends to GM for approval. 3. GM approves and submits to ALO-200. 4. ALO-200 consolidates and prioritizes results based on funding availability and organizational needs. 5. ALO-200 reviews summary priorities during monthly Real Estate Group Manager meetings. 6. Training will be approved based on funding availability and monthly meeting input.	• Allows ALO to better track training and travel budgets while minimizing Group Manager responsibility • Provides GM and RECO transparency with monthly updates