



ACQUISITION OF REAL PROPERTY

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OPR: HQ USAFE/CEPR (Mr. Thomas Schmeer)
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AFI 32-9001, 27 July 1994, is supplemented as follows: Refer recommended changes and conflicts between this and other publications to the Real Estate Branch (HQ USAFE/CEPR), Room 306, Ramstein AB, Germany, on Air Force (AF) Form 847, **Recommendation for Change of Publication**. Any organization may establish local guidance according to AFI 33-360 Volume 1. Ensure all established guidance is coordinated through HQ USAFE/CEPR. This supplement applies to all US Air Forces in Europe (USAFE) units. It does not apply to US Air Force Reserve or Air National Guard units. Maintain and dispose of records created as a result of prescribed processes in accordance with Air Force Records Schedule in Web-RIMS.

SUMMARY OF REVISIONS

This document is substantially revised and must be completely reviewed.

3.1. Leases. Forward an economic analysis (EA) to the Financial Analysis Division (HQ USAFE/FMA) if the annual rental of the proposed lease exceeds \$200,000. In cases where a firm-term lease exceeds 1 year and the annual rental exceeds \$150,000. The analysis is prepared according to AFI 65-501 and certified by the local comptroller (preparation requires at least 30 days). Lease proposals of this magnitude must be submitted in sufficient time to allow for MAJCOM coordination and 6 months processing at SAF/IEIR and SAF/IEI.

3.2.3. In some instances, a service contract may be a viable alternative to a leasing action. However, the facility requirement must be capable of being reshaped into a proper service contract requirement. Service contracts must be awarded by the appropriate contracting organization pursuant to the Federal Acquisition Regulation. Consult your Jude Advocate (JA) as soon as possible in all instances where a contract or lease is being considered as the appropriate contracting vehicle. If service contract action is selected, the user submits the completed AF Form 9, **Request for Purchase**, with supporting documentation to the base contracting office.

7.5.4. (Added) During the preliminary acquisition process, the real property officer requests the environmental planning function to analyze the action for its environmental impact as prescribed in AFI 32-7061, *The Environmental Impact Analysis Process (EIAP)*. The real property officer initiates this process by completing Section 1 of AF Form 813, **Request for Environmental Impact Analysis**, and forwarding it to the Unit Environmental section for action. Forward a copy of the completed form with the final lease package to Real Estate Management (HQ USAFE/CEPR).

7.6. Approval "In Principle" for Leases in Foreign Countries. SAF/IEIR approvals in principle are no longer required for leases in foreign countries. Submit AIP requests to HQ USAFE/CEPR for action.

7.7.1. (Added) Submit all leasing actions and terminations with appropriate local JA review to include all supporting documents, to reach HQ USAFE/CEPR for action 90 days before the notification period required by the lease.

7.9. Advance Rental Payments. The USAFE Civil Engineer is delegated authority to make advance payments of up to one year when consistent with local custom and appropriately documented.

7.9.1. (Added) Authority to Approve Leases in Foreign Countries under paragraph 9b of SAFO 700.4–(10 USC 2675). This authority may be further re-delegated by the Director to the MAJCOM/CE, but any such re-delegation shall not authorize a build-lease project and is subject to the following limitations: (a) The lease shall be made in conformance with agreements in effect between the United States and the government of the host nation; and, (b) The proposed lease shall be for a term of one year, renewable from year to year, whether automatic or by notice, and the annual rent not to exceed \$500,000.

7.11. Construction on leased Property in Foreign Countries. There is a 35 percent cost limitation (non-family housing leases) waiver packages, which will be henceforth approved at USAFE/CE level. Continue to document all expenditures on facilities on AF Form 1430, **Real Property Accountable Record-Building**, as provided under AFI 32-9005 and AFH 32-9007. Alterations, improvements, and repairs to leased premises (except military family housing) to be accomplished from appropriated funds which exceed the greater of \$50,000 or 35 percent of the rent for the first year of the rental term, or for the rental term, if less than a year, require prior written approval from USAFE/CE. If expenditures will not exceed \$50,000 but exceeds 35 percent of the first year's rental amount, or the rental term, if less than 1 year, then whoever is vested with project approval authority must make a formal written determination documenting the basis for the proposed expenditures as being in the best interest of the government. Such a determination must accompany project approval documentation. Please note that the SAFO 700.4 does not apply to the 25 percent cost limitation for alterations, improvements and repairs made to family housing. Approval from SAF/IEI continues to be required for such work. The limitations apply to the total cost of all alterations, improvements, and repairs over the life of the lease. Submit requests to exceed the 25 percent cost limitations for family housing leases to HQ USAFE/CEPR.

7.11.1. (Added) Establish and maintain a memorandum for record of the work and costs on AF Form 1430, for each leased building, or portion of a building. Maintain this memorandum for record for the entire term of the lease including all renewals. The memorandum for record is a separate record and serves a different purpose than the regular accountable record card for a leased building.

7.11.1.1. (Added) The real property management activity establishes and maintains the AF Form 1430, monitors expenditures, and submits required requests for waiver to exceed the alteration limitation. Requests for waivers will be submitted to HQ USAFE/CEPR as soon as requirements are known, emergency repair work excluded. No work order or job order on a leased building will be issued without the coordination of the real property officer.

7.11.1.2. (Added) The AF Form 1430 shows, in addition to the general descriptive information, the amount representing the alteration limitation. Further, it includes the work order or job order number, description of work, date completed, cost of work, total cost to date, and remaining balance.

7.11.1.3. (Added) Normal day-to-day maintenance work (as defined in AFI 32-1032), the replacement of worn-out carpeting (if not covered under the terms of lease as a lessor responsibility), as well as those items included in paragraph 3.8 of the basic instruction are not included in the alteration limitation. All other work such as repair and minor construction as defined in AFI 32-1032, to include the costs associated with the initial laying of carpet, is included in the alteration limitation. All such work approved and accomplished will be charged against that limitation and recorded on the AF Form 1430.

7.11.1.4. (Added) Discontinue the AF Form 1430 when the lease expires, either automatically or upon notification, or after 5 years from lease start date, whichever is sooner. The AF Form 1430 becomes a supporting document to the real property voucher that terminates real property accountability for the leased building. This also applies when a lease expires and a new lease is executed to permit continued occupancy of the same facility. The existing form is discontinued and a new form will be established for the new lease term.

7.11.1.5. (Added) Continuously monitor the AF Form 1430 to ensure that once the total expenditures have reached the alteration limitation, no additional work is performed or contracted without the required advance approval of SAF/IEIR.

7.11.2. (Added) Send requests to exceed the alteration limitation to HQ USAFE/CEPR for submittal to appropriate approval authority (SAF/IEIR for family housing and HQ USAFE/CE for non-family housing). Include complete details and full justification for the proposed project. All requests for such waivers must contain the following information and supporting documents:

7.11.2.1. (Added) First year's rent of current lease.

7.11.2.2. (Added) Lease expiration date.

7.11.2.3. (Added) List of previous alterations, improvements or repair projects, and their costs chargeable against this alteration limitation (memorandum record--AF Form 1430).

7.11.2.4. (Added) DD Form 1391, **FY_Military Construction Project Data**, or AF Form 327, **Base Civil Engineer Work Order**

7.11.2.5. (Added) Certificate of funds availability

7.11.3. (Added) Where proposed alterations, improvements, or repairs to the leased premises are to be accomplished from non appropriated funds and costs exceeds the alteration limitation, obtain prior approval from HQ USAFE/CEPR by providing the information required by para **7.11.2. (Added)** of this supplement.

7.16. (Added) Real Estate Lease Requirement. All bases submit all known or anticipated real estate requirements for each fiscal year to reach HQ USAFE/CEPR by 15 January. Break down the list of requirements into existing leases that are continued, leases that are canceled and proposed leases and include the anticipated costs for the coming fiscal year. Keep your local budget office informed of changes in projected costs of leases so adjustments can be made in appropriate financial plans.

7.17. (Added) Joint Inventory and Condition Report. As of the effective date of a lease, but not later than 10 days thereafter, make a joint inventory and condition report of all personal and real property of the lessor included in the lease. Seek assistance from housing, services, fire department, etc., to assess the true

condition of personnel/real property. Reflect the condition of military family housing on AF Form 227, **Quarters Condition Inspection Report**. Add a copy of AF Form 227 and the inventory and condition report to the initial real property lease file. This inventory and condition report is used for the determination and negotiation of damages when the lease is terminated. Photo or video documentation of major discrepancies should be made during this inventory and condition report inspection and kept with the lease file.

7.18. (Added) Lease Documentation. The following support documentation is maintained by the real property management activity. A comparison of candidate facilities listing the following data:

7.18.1. (Added) Type of facility

7.18.2. (Added) Condition

7.18.3. (Added) Age

7.18.4. (Added) Location

7.18.5. (Added) Distance from base

7.18.6. (Added) Annual estimated rent broken out by total cost and by square meter/square foot cost (\$/m²/yr and \$/ft²/yr)

7.18.7. (Added) Estimated annual utility costs broken out by total cost and by square meter/square foot cost.

7.18.8. (Added) Estimated annual maintenance costs broken out by total cost and by square meter/square foot cost.

7.18.9. (Added) Estimated upgrade costs to meet minimum Air Force standards and operational requirements.

7.18.10. (Added) Amenities, e.g., security service, janitorial service, gardening service.

7.19. (Added) Lease Preparation. The Gratuities Clause (FAR 52.203-2), which is required by statute to be inserted in all contracts, must be included in all leases. While this is the only clause required by statute, numerous additional clauses are required by legal and management prudence.

7.19.1. (Added) Each lease should contain clauses or provisions addressing the following:

7.19.1.1. (Added) Disputes (FAR 52.233-1). (verbatim not required but clause must be consistent with Contract Disputes Act, 47 U.S.C. 601 et seq).

7.19.1.2. (Added) Assignment of claims (FAR 52.232-23; 31 U.S.C. 203; 41 U.S.C. 15).

7.19.1.3. (Added) Tax treatment of US government.

7.19.1.4. (Added) Immunity of US from legal process.

7.19.1.5. (Added) US law will govern disputes (unless certain provisions of local laws are references).

7.19.1.6. (Added) Termination rights.

7.19.1.7. (Added) US language version of the lease controls.

7.19.1.8. (Added) Maintenance responsibilities of the lessor and lessee.

7.19.1.9. (Added) Rules on computation of time periods specified.

- 7.19.1.10. (Added) Designation of officials authorized to execute lease and designated to administer it.
- 7.19.1.11. (Added) Rights in the event of untenability, partial, or complete destruction.
- 7.19.1.12. (Added) Lease registration requirements.
- 7.19.1.13. (Added) Notices are to be in writing.
- 7.19.1.14. (Added) Any modifications will be in writing.
- 7.19.1.15. (Added) Applicable interest rate due on payments deemed to have been made late, when interest is specified as being owed as a result of a late payment by other terms of the contract. Rate will be the Renegotiation Board Interest Rate established by the Secretary of the Treasury and published in the Federal Register semiannually on or about January 1 and July 1.
- 7.19.1.16. (Added) Automatic protection of US in situations of lease holdovers, or provisions securing the lessor's specific agreement to our US protective clauses which have the effect of ensuring the enforceability of those clauses in the event of litigation in the courts of the host nation, or any other provisions of host nation origin as may be appropriate and desirable under the circumstances.
- 7.19.2. (Added) The lease should contain signature and witness statements in conformance with and enforceable under host nation law.
- 7.19.3. (Added) The standardized USAFE lease format, as modified to satisfy local conditions and requirements, should be used wherever available.
- 7.20. (Added) Lease Submittal:**
- 7.20.1. (Added) The real property management activity prepares and maintain in their files the following documentation, except for the negotiator's report, for all lease submittals/RPODs unless waived by HQ USAFE/CEPR (forward original documents to the lease negotiator):
- 7.20.1.1. (Added) Certificate of fair value if the lease is under \$250,000 per year, signed by the base civil engineer or the resources management officer. Background information used to determine fair market rent will be kept on file.
- 7.20.1.2. (Added) Written appraisal by a disinterested third party if lease exceeds \$250,000 per year. In Turkey, the base civil engineer is authorized to accomplish subject appraisals. It does not have to be in a specific format. It must, however, contain sufficient price and economic data to ensure the US is paying no more than the fair market rental value.
- 7.20.1.3. (Added) Certificate of advance payment signed by the base civil engineer or resources management officer.
- 7.20.1.4. (Added) Certificate that funds are available signed by the base civil engineer or resources manager.
- 7.20.1.5. (Added) Legal review by both US and host nation legal advisor.
- 7.20.1.6. (Added) For military family housing, a certificate from the housing officer stating the net square footage. If the statutory limit is exceeded, a waiver request from the housing officer must be included.
- 7.20.1.7. (Added) Lessor's evidence of ownership and, if appropriate, authority to sign for owners.
- 7.20.1.8. (Added) Anti Terrorism and Force Protection Certification IAW EUCOM Operations Order (OPORD) 01-01.

- 7.20.1.9. (Added) Certificate that the premises meet minimum Air Force fire, safety, and construction standards or conform to local building and fire protection codes and will not endanger US personnel.
- 7.20.1.10. (Added) Negotiator report.
- 7.20.1.11. (Added) Environmental impact statement (AF Form 813) according to AFI 32-7061.
- 7.20.1.12. (Added) Floor plan with dimensions, clearly marked
- 7.20.1.13. (Added) Certificate of compliance with or exemption from Architectural Barriers Act.
- 7.20.1.14. (Added) Request for High Cost Lease (if appropriate).
- 7.20.1.15. (Added) Request for waiver of space criteria (if appropriate).
- 7.20.2. (Added) Prepare leases/RPODs on 8 1/2 x 11 inch paper.
- 7.20.3. (Added) Submit six copies of final lease/RPOD contract to HQ USAFE/CEPR.
- 7.20.4. (Added) Renewals and terminations of leases or notices to renew and terminate must be signed at the same level that the lease was executed.
- 7.20.5. (Added) HQ USAFE/CEPR must be informed of the associated installation code for all leases. If a lease requires a new installation code, submit an AF Form 1192, **USAF Installations Characteristics Report**. If a new lease is going to be incorporated under an existing installation code, inform HQ USAFE/CEPR accordingly.

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

Terms (Added)

Real Property Obligation Document (RPOD)—A form prepared by the responsible Federal Republic of Germany (FRG) authority that assigns a lease interest in real property to the US Forces. Such arrangements are made by the FRG on behalf of the US Forces. The RPOD is issued for private, municipal, and certain FRG properties made available to the US Forces on a rent-payable basis. The USAFE Civil Engineer or Assistant USAFE Civil Engineer executes the RPOD.

Accommodation Consignment Agreement—A document prepared by the competent GE authority and executed with the US real estate contracting officer. The agreement assigns to the US Forces rights of use of GE- or Land-owned or DM-constructed property made available to the US Forces on a rent-free basis (rent-payable only by exception).

Approval In Principal—A request by the local BCE asking for authority to start exploratory and noncommittal lease negotiations.

Build/Lease—Build/Lease is a “lease”, not a construction project. The build/lease program is a method of acquiring needed facilities when other programs such as military construction or straight leasing are not feasible. It consists of an arrangement between the Air Force and a developer for the construction of a facility according to negotiated specifications for subsequent lease to the Air Force. After a competitive selection process, the successful offeror is chosen and the Air Force executes a final lease contract to be effective upon acceptance of the completed construction. The maximum firm term period for a build lease is 5 years for all facilities, except housing, which will not exceed 10 years. “Up front” payments of any kind to support or subsidize the lessors construction are not authorized. Rental payment starts when the facility is completed and accepted for use by the US Government. Rental payment will generally be based on actual market value of a finished facility to be leased, not on the cost amortizing of the completed build/lease facility over the 5- or 10- year lease period, as appropriate.

Service Contract—A contract for non-personal services, executed under the Armed Services Procurement Act of 1947, where the contracting party agrees to perform some service for the Air Force and the Air Force agree to pay for such service. In performing the service, the contractor may use real property in which he or she has an interest, even to the extent of permitting the Air Force to go on the property in a nonexclusive manner.

Relocatable Structure—A building or other structure designed for economical erection or relocation from one site to another, such as temporary classrooms and office or storage buildings. Do not confuse with portable structure.

Portable Structure—A building or structure (except vehicular equipment) designed to be moved intact from one location to another with or without utility connections. Portable structures are not accounted for as real property.

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