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efficiency, or national security, and that the total cost of the proposed work to the Government for the expected life of the lease shall be less than the cost of alternative space which needs no such improvements.

(e) *Certificates of Necessity*. Department of the Army requests for Certificates of Necessity pursuant to 40 U.S.C. 278b will be forwarded to the Assistant Secretary of the Army through DAEN-REA-L. In any case requiring the issuance of a Certificate of Necessity, the amount requested will be sufficient to provide for all improvements which can be foreseen and that will be required during the term of the lease. Should unforeseen, essential requirements arise at a later date, an additional Certificate of Necessity to cover such work will be necessary. It is required that the using service furnish Division or District Engineers with a request for a Certificate of Necessity, explaining the circumstances, followed by a statement that the continued use of the leased premises, or the work to be performed, as the case may be, is vital in the national emergency. All requests by Division and District Engineers will include a completed ENG Form 869–R, 15 percent Valuation Certificate.

(f) *Approval—Chief of Engineers*. (1) The Chief of Engineers is authorized to approve leases where proposed temporary construction to be placed on land by the Government has an estimated cost equal to or in excess of the current market value of the property, or where the estimated rentals to be paid in the future, plus the cost of restoration, would exceed 50 percent of the current market value of the property.

(2) Leases, renewals, or lease extensions, which are controversial, unusual, or inconsistent with existing policies, require the approval of the Chief of Engineers.

(3) Any lease involving clearances by higher authority will be submitted to HQDA (DAEN-REA-L) WASH DC 20314.

(4) Leases, renewals, or lease extensions of industrial properties, other than for bakeries, laundries, and drycleaning facilities, are to be submitted to DEAN-REA-L for prior approval.

(5) Division and District Engineers, and Chiefs of the Real Estate Divisions, are authorized to perform emergency maintenance and repairs to leased premises not in excess of $500 where lessors refuse to perform, or under such circumstances that the lessor cannot perform. Where the cost exceeds $500, approval by DAEN-REA-L is required. The Comptroller General has ruled that where the lessor is obligated to perform maintenance and repairs under the terms of the lease and after demand of and refusal by the lessor, the Government makes such repairs in order to utilize the property to the fullest extent, the cost should be withheld from rental payments under the lease as soon as possible after work is completed (15 Comp. Gen. 1064). However, no rental payments will be withheld and no repairs made after demand and a refusal by the lessor, without prior approval of DAEN-REA-L.

(g) *Division and District Engineer Authorization*. (1) Division Engineers and their Chiefs of the Real Estate Division have been delegated, without authority to redelegate, leasing authority to approve leases where the annual rent, excluding services and utilities, unless said services and utilities are included in the recited rental consideration, is in excess of $25,000, but not in excess of $50,000. The $50,000 limitation will be strictly observed because of the reporting requirements under the provisions of 10 U.S.C. 2662.

(2) District Engineers and their Chiefs of the Real Estate Divisions are authorized to approve leases wherein the rental excluding utilities and services, unless included in the recited rental consideration, does not exceed $25,000 per annum.

(3) Except for space in the National Capital Region, Division and District Engineers are authorized to process all requests for the assignment of space in Government-owned buildings or leased space in the GSA urban centers to the regional GSA office having jurisdiction.

§ 644.136 Leasing guidelines.

Division and District Engineers, and the Chiefs of the Real Estate Divisions,

are authorized to execute leases, or renewals of leases, negotiated in accordance with the procedures expressed herein, upon receipt of a proper request from an authorized command, service, or agency, subject to any required approvals or clearances. When there is no Real Estate Division, as such, but the Division or District Engineer has responsibility for leasing activities, he may delegate this authority to the officer or civilian in charge or real estate activities.

(a) *Leasing requests.* Requests for space or land will be received by the Chief of Engineers, or the appropriate Division or District Engineer. Requests will include the data outlined in AR 405–10 (para 2–2c). Division and District Engineers will coordinate space or land requirements with appropriate commanders to assure responsive lease processing. If required, a Lease Planning Report, or narrative report covering essential information, will be furnished the using service for review and recommendations. Funding requirements, usually in the form of fund citations, will have been met by the using service prior to lease execution. If approvals by higher authority are required, the Division or District Engineer will initiate appropriate action to obtain the necessary clearances.

(1) *Army Commands.* Upon receipt of a request from an Army Command, negotiations for obtaining acceptable leases will be carried to completion in accordance with present procedures for military leases.

(2) *Air Force.* Upon receipt of a lease request approved by Headquarters, U.S. Air Force, or an Air Force major command, the appropriate Division or District Engineer will negotiate and lease the required property. The provisions of AFR 87–1 prescribe the Department of the Air Force policies and procedures that are to be followed.

(3) *National Guard.* All requests for the leasing of facilities for National Guard purposes will emanate from the Chief, National Guard Bureau. Army National Guard leasing requirements will be transmitted through DAEN-REZ-R to DAEN-REA-L. Air National Guard requirements will be transmitted to DAEN-REA-L through Headquarters, U.S. Air Force.

(i) Upon receipt of authority from the Chief of Engineers, negotiations will be conducted for obtaining an acceptable lease, in accordance with the approved lease request. The appropriate United States Property and Fiscal Officer generally makes separate service contracts for utilities, except sewage disposal, and services, and is responsible for the maintenance of all buildings used exclusively by the Air National Guard. Representatives of the Corps of Engineers do not participate in obtaining contracts for utilities and services. In cases where such a contract is impracticable, the lease may include any and all utilities and services as part of the rental consideration, with the cost of the various services and utilities to be itemized. The ''use clause'' in the lease will provide for occupancy of the premises for ''Government purposes''. The wording, ''For use by the Air National Guard and/or United States Air Force, and, in time of war or national emergency, by other units of the Armed Forces of the United States or for any other use by the Federal Government,'' will be acceptable if it is not possible to insert the for ''Government purposes'' provision.

(ii) Leases made by representatives of a State with private parties for use of premises by the National Guard of the State involved, under which State funds are used for rental payments, are not the responsibility of the Division or District Engineer.

(4) *Department of Energy/Nuclear Regulatory Commission.* Space is acquired by these agencies direct from GSA in the designated urban centers pursuant to Reorganization Plan No. 18. In instances where general purpose space is not obtained through GSA and instances involving the leasing of special-purpose space, managers of field offices of subject agencies are authorized to initiate requests to Division or District Engineers for the leasing of properties where the net per annum rental does not exceed $50,000. Leasing of properties where the net rental per annum exceeds $50,000 requires the prior approval of the appropriate agency head, *i.e.*, the Secretary of Energy, the Chairman of the Nuclear Regulatory Commission, or their designees.

(5) *Metropolitan Washington, DC.* All requests for leased space in the National Capital Region will be processed in accordance with DOD Instruction 5305.5.

(b) *Requirements survey.* The availability, use, and adaptability of property owned by the Government, whether under control of the GSA or other agencies, shall be thoroughly explored before additional space is leased, or existing leases are renewed, or construction commenced. Particular attention is to be given to the availability of space, or land, at military reservations, camps, posts, or stations.

(1) A statement covering the nonavailability of Government-owned space, or if such is available and not suitable, reasons why it is not suitable, for occupancy by the requesting using service, should be made for each lease executed by the Corps of Engineers, excluding family housing leases.

(2) Suitable privately-owned space shall be acquired only when satisfactory Government-owned space is not available. Rental charges will be consistent with prevailing rates in the community for comparable facilities.

(3) The quality of office space for Government occupancy shall be appropriate for the efficient and economical performance of required operations, affording employees safe, healthful and convenient facilities.

(4) Full consideration shall be given to the efficient performance of the mission and programs of the using service.

(c) *Government-owned and General Services Administration furnished space.* If Government-owned space is available, the Division or District Engineer will inform the using agency, and details of occupancy will be developed. If it is necessary for GSA to lease space, the Division or District Engineer will make a careful review to determine if there are any statutory or regulatory limitations involved. If so, appropriate action will be taken to satisfy the limitations. During the processing of all GSA space assignments and leases, the Division or District Engineer is the only official contact representative with GSA. This procedure is to be emphasized at all time with the using service.

(1) The Division of District Engineer will submit a Standard Form 81, Request for Space, to the appropriate GSA Regional Office for space assignment in urban centers under the jurisdiction of GSA. The requirement to this form applies to lease renewals or lease supplements, and for space assignments in Federal office buildings. Excluded from this procedure is a proposed space assignment in the National Capitol Region.

(2) Except for the acquisition of general-purpose space of 2,500 square feet or less, outside the designated urban centers, and special-purpose space of 2,500 square feet or less, irrespective of the location, the need for any type of building space will be made kown to the appropriate GSA Regional Office by filing Standard Form 81, Request for Space.

(3) The designated urban centers are listed in Figure 5–11 in ER 405–1–12.

(d) *Advertising.* As a general rule, procurement of space will be by formal advertising. However, in leasing certain types of premises where only one location will serve the Government's purpose, such as municipal airports, recruiting stations, and similar facilities, negotiations without advertising are permissible. In instances where building space is needed and the requirement cannot be met through the use of existing buildings, there must be advertising to solicit bids for the furnishing of the space. In every instance, it is essential that efforts be made to seek competition. For each lease, a statement will be prepared concerning competition in the solicitation for space or land and Standard Form 1036, Statement and Certificate of Award, will be used. Where specific space or land is needed, and competition is therefore not involved, the facts and circumstances will be fully explained and such explanation will be made a part of the lease file for future reference.

(e) *Appraisals.* Appraisals are required as a basis for making rental determinations in all leases except those for a nominal consideration. At the discretion of the Division and District Engineers, and the Chiefs of the Real Estate Divisions, formal or detailed appraisals

can be dispensed with for leases wherein the annual rent does not exceed $5,000. Where the rental of a building or part of a building, or family housing unit, exceeds $3,600 per annum, excluding services and utilities, it may be necessary to estimate the fee value of the property contemplated for leasing to determine whether or not the rental rate is in excess of 15 percent of the fee value of the property. For family housing leases, the opinion of fee value will be in short summary form and will be supported by general evidence of comparable values of the unit to be leased. If the proposed annual rental, excluding services and utilities, of a family housing unit exceeds 15 percent of the estimated fee value, the unit will not be leased.

(f) *Determination of valid interest.* Persons executing leases for and on behalf of the United States of America will satisfy themselves, before executing leases, that the prospective lessors have an interest in the real estate which will assure the validity of the lease. Where leased lands are used as a site for contruction, the land records of the county will be examined by a staff attorney familiar with land title records, who will execute a certificate that he has examined the said records and that title is vested in the lessor, subject to the infirmities, liens and encumbrances noted in the certificate. In lieu of such examination, a certificate from the Register of Deeds, County Recorder or other qualified officer is acceptable. If considered advisable in unusual cases, title evidence may be obtained from commercial sources.

(g) *Outstanding rights and damages.* (1) Where the land is subject to outstanding oil, gas, mineral, or similar interests, the Division or District Engineer will determine, from the appropriate command, in advance of the consummation of the lease, whether the continued exercise of the mineral or outstanding rights will interfere with the contemplated use of the premises.

(2) Where buildings, structures, or growing crops are located on land to be leased, a determination will be made by the Division or District Engineer, in coordination with the appropriate command, as to whether they will interfere with the use of the premises.

(3) Where the lessor will not be permitted to harvest crops or remove improvements and timber which will be destroyed by the Government, the appraised value thereof will be determined, and such amount will be included in the rental for the initial term of the lease, together with an express provision relieving the Government of restoration.

(4) Leases of land for bombing, artillery, rifle ranges, and other extraordinary usage will specify that the leased premises are to be used for such purpose, and an effort will be made to include in the lease a provision waiving restoration and claims for damages, particularly where the premises are wastelands or unproductive.

(5) Where the lessor will not consent to a waiver of restoration, the estimated value of such damage, if it can be determined in advance, will be included in the rental for the initial term of the lease, and the lease will contain an express provision relieving the Government from responsibility for restoration.

(6) If restoration is not waived, and the damages cannot be determined in advance, a provision may be included in the lease to the effect that the rental payments do not include compensation for damages arising from the use of the premises for the purpose leased and that, upon termination of the lease, the damages, mutually determined, will be paid by supplemental agreement to the lease. In event the amount of the loss or damage cannot be mutually determined, the lessor may file a claim for the alleged loss or damage in accordance with subpart H.

(h) *Services and utilities.* Services, such as janitorial, heat, air conditioning, light and water, should be included in leases for building space wherever possible. Whether services are paid for as part of the rent or by a service contract, the time period for furnishing heat, air conditioning and light, *i.e.*, usual business hours, 24-hour basis, Saturdays and Sundays, should be clearly stated.

(i) *Other contracts.* The negotiation and execution of contracts not involving an interest in real estate are the responsibility of the services concerned.

(j) *Condition surveys.* (1) Whenever possession of any premises is acquired by lease or other agreement, or by condemnation for a term of years, the Division or District Engineer will cause a survey and inspection of the condition of the real and personal property to be made as of the time the Government takes possession.

(2) The survey and inspection required above will be made jointly with the lessor or his duly authorized representative. The report will be signed by both parties.

(3) The initial survey report must be made with great care since it is the basis for future restoration claims by a lessor. The use of photographs is encouraged. Full explanatory data covering condition of the premises will be added to the report if, in the opinion of the Chief, Real Estate Division, a useful purpose will be served thereby. The survey report of real property, and the inventory and condition report of personal property, will be made with care, as the condition reflected as of the date of initial occupancy will be compared with the condition shown by the terminal reports made upon vacation of premises.

(4) A survey is not required of unimproved land where an appraisal has been made and the condition of the land is set forth by the appraiser and made a part of the record.

(5) A survey will be made wherever property of another Federal agency is used, with the exception of post offices and Federal buildings. In the event privately-owned buildings, crops, or other property, are on the Federal property, a report will be made outlining the terms and conditions under which they were placed thereon, and the value thereof will be appraised as of the date of possession.

(6) Normally, ENG Forms 3143 and 3143A, Joint Survey and Inspection of Condition of Government Leased Property, are adequate for the joint survey and inspection. In certain cases, narrative reports may, at the discretion of the Division or District Engineer, be considered preferable; however, local forms will not be developed for this purpose.

(k) *Possession.* Possession of real property will not be taken until required approvals and clearances are obtained and a lease is executed. When requested by an appropriate command, rights-of-entry for exploration and survey, or construction, will be obtained in accordance with instructions in §§ 644.155 through 644.157.

(l) *Condemnation of leaseholds.* Where the required leasehold interest cannot be acquired by a negotiated lease, the recommendation of the Division or District Engineer for the institution of condemnation proceedings will be submitted to HQDA (DAEN-REA-C) WASH DC 20314, in accordance with § 644.121, setting forth the negotiations that have been conducted with the property owner(s) and all other factors supporting the recommendation.

(m) *Decease of lessor.* (1) Any claim on account of death of a lessor (except uncurrent depository check claims) may be settled without submission to the Chief of Engineers where no doubt exists as to the amount and validity of the claim or as to whom payment may be made under the laws of the domicile of the decedent.

(2) Any claim for rent or services due a deceased lessor which is considered doubtful will be forwarded to HQDA (DAEN-REM) WASH DC 20314 in accordance with subpart H.

(n) *Recording leases.* If the property is located in a State requiring the recording of leases, all statutory requirements will be met. Leases, and supplemental agreements prior to termination, involving property upon which substantial Government improvements are to be constructed, will be recorded in all cases.

(o) *Change in ownership.* (1) When the title to premises leased to the Government is transferred, the contracting officer shall satisfy himself that the new owner has a valid interest in the premises covered by the lease, and thereafter enter into a supplemental agreement between the old and new owners and the Government, for distribution in the same manner as the original lease.

(2) Upon being notified or otherwise determining that a foreclosure proceeding has been filed against the leased premises, or that the enforcement of a deed of trust or mortgage is

imminent, the Division or District Engineer will take such action as is appropriate under State laws for protection of the United States. This would consist of filing by the United States Attorney with the court, or with the trustee, receiver, or commissioner, as the case might be under local law, of a notice of the Government's lease on the property, with request that the foreclosure proceedings be made subject thereto. If the proceeding is made subject to the lease, an abstract of such proceeding will be made, certified by a staff attorney, and distributed in the same manner as the original lease. If considered advisable, a supplemental agreement to the old lease will be made with the new owner; or a superseding lease may be executed and distributed. If the proceeding results in vesting title in a new owner, free and clear of the Government's lease, attempt will be made to negotiate a new lease; if this fails, condemnation action will be taken sufficiently early to protect the interests of the United States. Negotiation and condemnation in this latter type of situation must be based on a current appraisal.

(p) *Supplemental agreements.* Modification of existing leases will be in the form of supplemental agreements and will be prepared, executed, and distributed in the manner prescribed for the original lease. Where a supplemental agreement provides for an increase in space at an increased rental, the supplemental agreement should contain appropriate recitals of this fact, and provide that the Government, thereafter, may, upon 30 days notice, partially reduce, or discontinue, the use of the space covered by either the supplemental agreement, the basic lease, or both. Supplemental agreements enlarging or reducing space will show the total area and rental comprising the basic lease and preceding supplemental agreements.

(q) *Annual review of leases.* Annual review of leasing requirements and space assignments from GSA are to be initiated by the Division or District Engineer not later than one year before the end of the lease term for each lease.

(1) Special attention will be given by Division and District Engineers to leases which expire by their own terms and continued occupancy is required at annual rentals of $50,000 or more. These leases require approval by the Department of Defense and reporting to the Armed Services Committees of the Congress by the Chief of Engineers. An Acquisition Report together with full justification, as set forth in § 644.135(a), in support of each lease (or project covered by more than one lease) must be furnished. For leases in which it is not clear whether Title 10 reporting is required, DAEN-REA-L will be informed of the facts for decision. Attention will be given also to existing leases having annual rentals between $30,000 and $50,000. It is probable that current appraisals will indicate annual rental rates in excess of $50,000 and, therefore, require a title 10 report.

(2) If the using command anticipates that there will be further need for the leased property, and the total estimated rentals to be paid by the Government, excluding utilities and services, for the additional period, plus the cost of restoration, will exceed, 50 percent of the estimated current market value of the property, DAEN-REA-L will be informed of all details in order that the review required by paragraph 1–8, AR 405–10, may be made. Only estimated future rent payment is to be considered and not the rental paid in the past for the property. In applying this formula, if the period of future use cannot be ascertained but it is likely that a property will be used for a long period of time, use a period of five years for calculations.

(r) *Lease renewals and extensions.* (1) Lease entered into under authority of the annual appropriation acts may include a provision for automatic renewal after expiration of the initial term subject to the availability of appropriated funds. However, if the property is still needed after lease expiration, a new lease is required and the old lease will not be extended by supplemental agreement for the new term. Where the lease requires notice in writing to be given to the lessor to exercise the option of renewal, notice will be served by the use of ENG Form 221, Notice of Renewal of Contract or Lease, in accordance with the terms of the lease. The notice, properly addressed,

will be sent by certified mail, with return receipt requested. Adequate time, in addition to the number of days specified in the lease, will be allowed for delivery to, and receipt by, the lessor. The Division or District Engineer will maintain adequate records to assure prompt service of notice to avoid the lapse of leases.

(2) No lease will be renewed or kept in existence unless it has been administratively determined, through advertising or otherwise, that other suitable property at a lower rental is not obtainable. At all times, and in particular during the lease renewal review period, the Division or District Engineer will take cognizance of the availability of property in the area of the using service that is Government-owned, or property under GSA control.

(s) *Payment of rents.* (1) One of the most important factors involving good relationships between the Government and the lessor is the prompt payment of the rent. Under existing regulations, the rent is paid by the using commands. The Division or District Engineer makes rental payments for leases when the Corps is the using service and for recruiting facilities, since the Chief of Engineers is the Department of Defense Executive Agent for recruiting facilities acquisition. It is therefore appropriate for the Division or District Engineer to inquire periodically of the using commands whether delays in processing payments are encountered. If payments are not being made within seven working days after payment is due, appropriate action will be taken to correct the delay; if no action is taken after a reasonable time allowed for correction of procedures, DAEN-REA-L will be informed fully of the facts and an investigation will be conducted.

(2) Prior to payment, the Division or District Engineer, or his designee, will certify for submission to the Disbursing Officer that the leased property was occupied or available for use. The following certification, contained on Standard Form 1166, Voucher and Schedule for Payments, is used:

I hereby certify that the leases identified hereon were in effect for the month (or other period) indicated, and that the space was occupied, or available for use, by the Department of the Army.

§ 644.137 Maneuver agreements.

Joint training exercises or maneuvers are conducted by elements of the Department of Defense. Land use requirements vary with the exercise objectives and the force elements which participate. The Corps participates in the planning and acquires rights to use land and other facilities for Department of the Army exercises. The current Memorandum of Understanding by Department of the Army, United States Readiness Command (USCINCRED), and United States Army Forces, Readiness Command (USCINCARRED) on acquisition of maneuver rights for United States Readiness Command (USREDCOM) Joint Training exercises is included as Figure 5–13 in ER 405–1–12. This Memorandum covers timing of requests for preliminary surveys, real estate studies, funding and acquisition of maneuver rights. The Corps also responds to requests from other Department of Defense commands for maneuver rights, and the same procedure is envisioned although no Memoranda of Understanding have been entered into. Upon receipt of a request for real estate services, an estimate of the funds required for the report should be forwarded to the using command.

(a) *Procedures.* The appropriate Division or District Engineer will be responsible for negotiating maneuver agreements and short-term leases and, after the maneuver is completed, will be responsible for negotiating restoration settlements and/or releases, as appropriate. Real estate acquisition will be in the form of agreements with landowners, granting the right to conduct maneuvers at a given time, or periodically. Short-term leases for exclusive use may also be acquired for special areas (such as headquarters areas, radio relay sites, base camp sites, field hospital sites and supply dumps), and buildings needed for warehouses, ordnance shops and similar purposes directly related to the maneuver. Permits will be obtained to cover the use of lands under the jurisdiction of another Government department or agency.