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with normal standards of good housekeeping, and that the lessor will furnish leased housing in pest-free condition and maintain the premises free of pest infestation.

(e) *Leasing actions.* (1) Division and District Engineers will proceed with acquiring the family housing units within the framework of the leasing requests. Care is to be taken to assure that there are no violations of the Economy Act, *i.e.*, the net rental will not exceed 15 percent of the estimated fee value of the space or building contemplated for leasing.

(2) At the discretion of the Division or District Engineer and the Chief of the Real Estate Division, Standard Form 2B may be used for family housing leases, regardless of the rental rate.

(3) Emergency repairs may be accomplished in accordance with § 644.135(f)(5).

(f) *Supplemental payments.* All leases for family housing units which are executed on behalf of the United States shall contain the following clause prohibiting supplemental payments: ''The Lessor hereby agrees that the rental consideration specified herein is the only consideration to be received for the demised premises and includes payment for all utilities, maintenance and services specified herein. No other remuneration will be paid by the Government's occupant, members of his family, or any other person on their behalf.''

§ 644.139 Leases for civil works purposes.

Division and District Engineers and the Chiefs of the Real Estate Division are authorized to execute leases, and renewals of leases, for river and harbor or flood control purposes, subject to necessary approvals and clearances. The provisions of 10 U.S.C. 2662, which require reporting of certain leases proposals to the Armed Services Committees of the Congress, do not apply to leases for civil works.

(a) *Approvals required.* The following lease actions for civil works projects will be referred to DAEN-REA-L for consideration:

(1) Where the annual rental is in excess of $50,000.

(2) Where the leasing involved is for space for both military and civil functions, and the rental for the portion used for military purposes is in excess of $50,000. The report required is covered in § 644.135(a).

(b) *Records.* The originals of leases for civil works purposes, together with supporting data, will be retained at the Division or District Engineer offices for site audit in accordance with Section 7530, ''General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies.''

§ 644.140 Physical protection.

It is essential that the Division or District Engineer make provision for the physical protection for all facilities under Corps control. Coordination with state, county, and city law enforcement officials as well as the U.S. Attorney's Office is required. These officials should be alerted at the first indication of possible disturbances. The U.S. Attorney's Office should be provided with an up-to-date list of the locations of such facilities.

(a) *Self-protection plan.* Space or property controlled by GSA is the responsibility of GSA for physical protection. In accordance with 41 CFR 101–20.504, a Facility Self-Protection Plan is to be established by agencies in GSA-controlled space. This requirement should be coordinated with appropriate GSA Regional personnel. A similar plan should be made operational, where feasible, in other space over which the Corps has responsibility.

(b) *Funding.* Space under GSA control may require protection and the GSA Regional Offices may not have funds. In these situations, the facts will be made known to DAEN-REA-L, accompanied by a request for funds. Likewise, for Corps leases, funds for physical protection shall be requested from DAEN-REP if they are not already available to the Division or District Engineer.

§ 644.141 Alterations and construction on leased real property.

(a) *General.* Division and District Engineers will be available to the military elements for consultation and review of requirements involving construction on leased land or in leased

space. Detailed instructions are furnished in DOD Directives 4165.12, 4165.16, 4165.20, 4270.24, 5160.58, 7040.2; DOD Instruction 5305.5; Army Regulations 140–485, 405–10, 415–25, 415–35, 420–10. Section 644.135(b) covers the requirements of the Economy Act which are applicable to alterations and construction on leased real property. The work to be performed must be essential. Guidelines are furnished as follows:

(1) The proposed alterations and improvements must be advantageous to the Government in terms of economy, efficiency, and, where applicable, to national security.

(2) For office space, the cost should be less than the cost of other space that is available and which does not require alterations or improvements to any appreciable extent.

(3) Due regard is to be given to the convenience of the public that is served and the maintenance and improvement of safe and healthful working conditions of employees.

(4) Where the proposed temporary construction at a leased facility has an estimated cost equal to or in excess of the current market value of the property, the facts will be reported promptly to DAEN-REA-L.

(b) *Initial and subsequent alterations.* (1) Initial alterations to facilities leased by the Corps are the responsibility of the appropriate Division or District Engineer.

(2) Effort will be made to include all required alterations in the rental package with the lessor performing all of the work. Careful attention will be given to possible violations of the Economy Act. Payment for initial alterations may be in a lump sum or by the month with the rent, provided the provisions of the Economy Act are complied with and the alterations costs are stated separately in the file or in the voucher.

(3) Alterations or improvements of any nature in GSA furnished space are the responsibility of GSA. Under certain circumstances, GSA may require a Certificate of Necessity in order to perform the required construction.

(4) Although alterations and improvements subsequent to occupancy are not the responsibility of the Corps, the Division or District Engineer should always review subsequent alteration projects to determine whether or not the limitations of the Economy Act are applicable. See AR 415–34, AR 415–35, and AR 420–10 for procedures and instructions.

(c) *Army National Guard.* No initial alterations regardless of cost will be made to properties leased for the Army National Guard without prior approval of the Chief, National Guard Bureau. (Funds will be made available by the National Guard Bureau.)

(d) *Air Force.* All alterations to premises leased for the Department of the Air Force, including Air Force Reserve and Air National Guard Units, are the responsibility of that Department including the issuance of any Certificate of Necessity for Department of Air Force elements. The only exception is the leasing and modification of leased premises for recruiting facilities.

(e) *Recruiting facilities.* The Chief of Engineers, as the Department of Defense Executive Agent for recruiting facilities, is responsible for initial alterations for all recruiting facilities located on military reservations or leased by the Corps. This responsibility includes recruiting offices and recruiting main stations and detachments, whether single-service or collocated. However, as to recruiting facilities acquired by GSA, all alterations are the responsibility of GSA and processing is accomplished through the Division or District Engineer.

(f) *Permanent construction requirements.* If permanent construction is to be placed on land, the Government must have fee title or acquire title to the land or a permanent easement must be secured, with the following exceptions:

(1) Real property, including land or buildings, which the Government currently holds the right to reuse by exercise of the National Security Clause.

(2) Real property, including land or buildings, which the Government holds the right to reuse by exercise of a National Emergency Use Provision.

Since such rights apply only during the period or periods of national emergency and are extinguished by the termination thereof, every effort will be made to negotiate a lease covering

such property under terms that would provide the Government the right of continuous possession for a minimum of 25 years.

(3) Real property required for installation of utility lines and necessary appurtenances thereto, provided a long-term easement or lease can be secured at a consideration of $1.00 per term or per annum.

(4) Real property required for air bases, provided such property can be acquired by lease containing provisions for:

(i) Right of continuous use by the Government under firm term or right of renewal for a minimum of 50 years.

(ii) A rental consideration of $1.00 per term or per annum.

(iii) Reserving to the Government, title to all improvements to be placed on the land and the right to dispose of such improvements by sale or abandonment.

(iv) Waiver by the lessor of any and all claims for restoration of the leased premises.

(v) Use of the property for ''Government purposes'' rather than for a specific military purpose.

(5) Property required for facilities for the Reserve Components of the Armed Forces, provided such property can be acquired by lease containing provisions detailed in paragraph (f)(4) of this section. Whenever possible, the insertion in a lease of a provision restricting the use of land to a specific purpose will be avoided; use a term such as ''Government purposes''.

(6) Property required for air defense sites, provided such property can be acquired by lease containing provisions in paragraphs (f)(4)(ii), (iii), and (iv) of this section and the right of continuous use by the Government under a firm term or right of renewal for as long as required for defense purposes.

(7) Assistant Secretary of Defense (MRA&L) approval is required when leases for air bases, Reserve Components facilities, or air defense sites can be obtained containing some but not all of the above listed provisions. Such approval is also required for leases for all other types of installations upon which permanent construction is to be placed by the Government when leases can be obtained containing similar provisions. In all cases, it must be in the best interest of the Government to acquire a lesser interest than fee title.

(8) Construction projects estimated to cost less than $25,000 will not be considered a permanent construction for purposes of the above policy.

(g) *GSA reimbursement.* Reimbursement to GSA for Standard Level User Charges (SLUC) and other costs incident to leasing will be in accordance with the applicable provisions of the Federal Property Management Regulation.

(h) *Nominal rent leases.* (1) Where premises are occupied by the Government at a nominal rent or rent-free basis, any alterations, improvements, and repairs necessary for occupancy may be considered as a cost of occupancy, *i.e.*, in lieu of rent, for each year of the rental term. However, the total cost of such alterations, improvements, and repairs, plus the nominal rental, during any year of the rental term may not exceed 15 percent of the fair market value at the date of the lease, unless the total cost plus nominal rental does not exceed $2,000 per annum.

(2) When rental plus amounts to be spent by the Government for alterations, improvements, and repairs total more than $2,000 and more than 15 percent of the fair market value of the premises at the date of the lease, a Certificate of Necessity is required.

(3) A Certificate of Necessity is not required for the cost of installing equipment, apparatus, appliances, machinery, fixtures, movable partitions, etc., which are not intended to become an integral part of the building and which may be removed without injuring or defacing the item or the building. Such property is considered to be the property of the Government. The lease or a supplement thereto should provide for the installation and removal of such equipment, etc.

(4) Under the limitations in 40 U.S.C. 278a, not more than 25 percent of the net rental for the original lease period, if less than one year, may be expended before a lease is actually renewed. If the whole period, including renewals, is less than a year, not more than 25 percent of the rent for such whole period may be expended for alterations, repairs, and improvements (20 Comp.

Gen. 30; 29 Comp. Gen. 299). Where a lease, entered into by the Government for an original term of less than a year, is renewed for the following fiscal year, the net rental for the first year of the rental term, as distinguished from the original term, is for consideration in the computation of the amount that may be paid under the 25 percent limitation, after the lease is actually renewed.

(i) *Items not within the purview of the Economy Act.* (1) The limitations in 40 U.S.C. 278a are not applicable to leases of unimproved land (38 Comp. Gen. 143).

(2) Where fixtures, alterations, and improvements are of such characters to be of a temporary nature, and are not permanently attached to the realty so as to prevent removal thereof without destroying their usefulness or damaging them or the realty, they do not constitute alterations or improvements of the leased premises within the meaning of 40 U.S.C. 278a and therefore do not fall within the 25 percent limitation of that Act. Title to such temporary fixtures, alterations, and improvements remains in the Government (18 Comp. Gen. 144; 20 Comp. Gen. 105).

(3) Upon termination of leases, restoration of leased premises to the original condition is not considered an alteration within the purview of 40 U.S.C. 278a.

(4) When the Government is required by the terms of the lease to maintain the leased premises, such maintenance, together with the cost of such improvements and alterations as may be made by the Government, may not exceed the 25 percent restriction of the Act.

(5) Leaseholds acquired through condemnation proceedings are excluded from the purview of the Act of 30 June 1932, as amended (40 U.S.C. 278a).

(j) *Architectural Barriers Act.* The Architectural Barriers Act of 1968 (Pub. L. 90–480), 82 Stat. 718, 142 U.S.C. 4151, *et seq.*, as amended, requires that when Federal funding is used in the design, construction, or alteration of certain buildings or facilities, the buildings or facilities must be designed, constructed or altered to insure that physically handicapped persons will have ready access to, and use of, such buildings. In the Corps' leasing program, when Federal funds are used to make improvements to leased premises, it is necessary that the plans and specifications for the construction or alteration work be approved in accordance with guidelines published by the American National Standards Institute (ANSI), as implemented by DOD Construction Criteria Manual 4270.1–M, Section 5–1.6.

§ 644.142 Lease forms and instructions.

ENG Form 856 will be used for Corps of Engineers leases in the United States and possessions, and overseas, for the leasing of unimproved land. ENG Form 527 is recommended for leases of improved property in overseas areas. Standard Forms 2, 2A, or 2B (short form) will be used for all Corps of Engineers leases of improved property in the United States and possessions. Standard Form 2B is limited to rentals not exceeding $3,600 per annum. The General Provisions are on the reverse side of the short form lease.

(a) *Mandatory clauses.* The following clauses must be included in all Corps of Engineers leases:

(1) Officials Not to Benefit clause (para 15 of ENG Form 527) is required by 18 U.S.C. 431.

(2) Gratuities clause (para 16a of ENG Form 527) is required by 5 U.S.C. 174d.

(3) Covenant against Contingent Fees (para 14, ENG Form 527) is required by 10 U.S.C. 2306(b).

(4) An Examination of Records clause (para 17, ENG Form 527) is required by 10 U.S.C. 2313(b). Exceptions to the use of this clause in 10 U.S.C. 2313(c) are permitted when the contractor is a foreign Government or agency thereof, or when the laws of the country involved preclude it. Also, if the Head of the Agency determines, with the concurrence of the Comptroller General, that the use of the clause would not be in the public interest, it may be omitted in leases covering land in foreign countries.

(5) The Nondiscrimination clause (Executive Order 11063, dated 20 November 1962) is required in all leases in the United States. It is desirable, but is not considered mandatory in overseas leases.

(b) *Hold harmless clauses.* ''Hold harmless'' clause will not normally be added to the lease forms. Where lessors insist