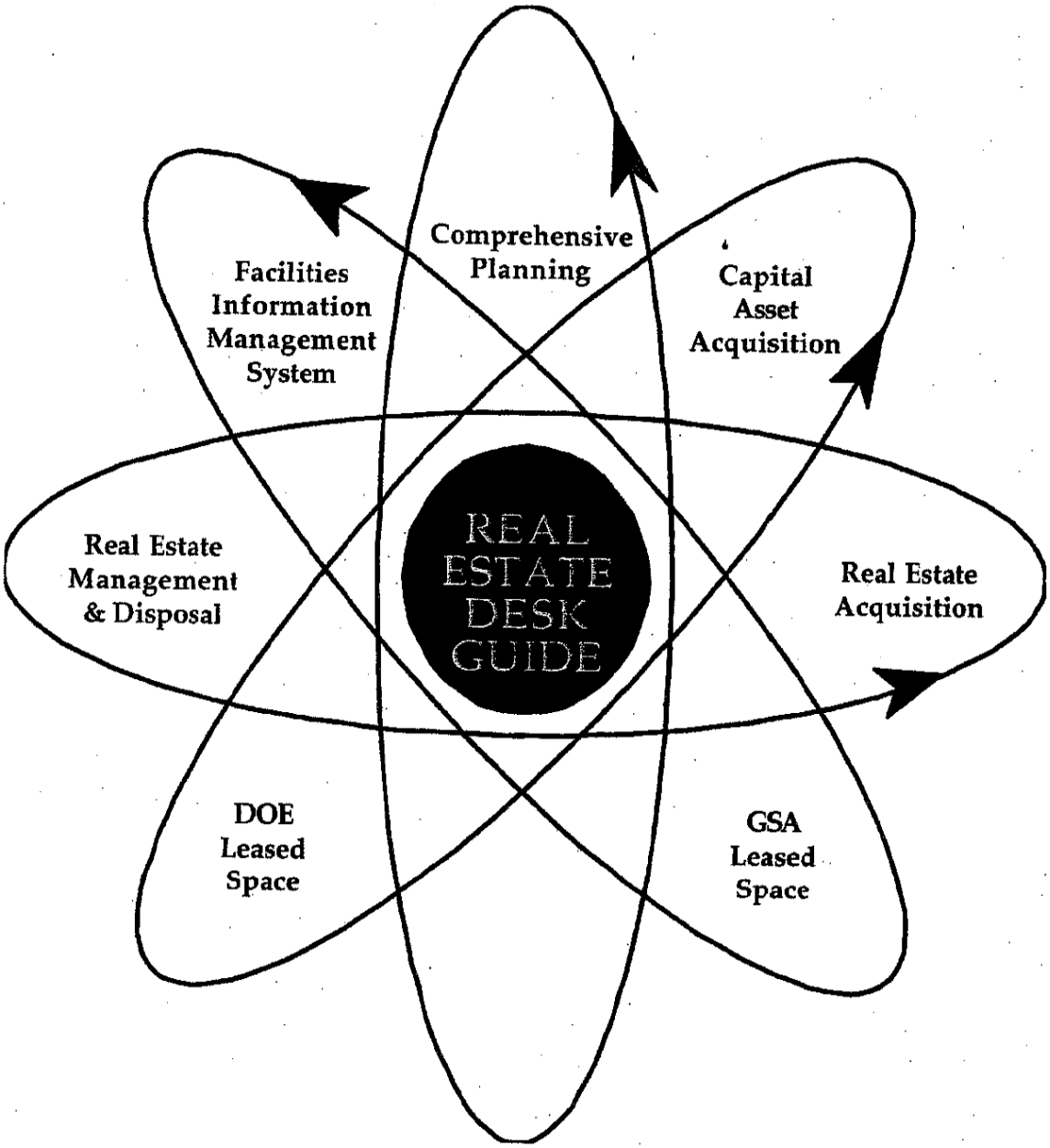
U.S. Department of Energy
Real Estate Desk Guide



Revised September, 2014

Real Estate Desk Guide

Table of Contents

Chapter 1-- Purpose of Desk Guide 1

Chapter 2-- Introduction 3

Chapter 3-- Planning Policy 9

Chapter 4-- Real Estate Function 12

Chapter 5-- Acquisition of Interests in Real Property 16

Chapter 6-- Acquisition by Lease 36

Chapter 7-- Land and Property Rights Management 47

Chapter 8-- Disposal of Real Estate 55

Chapter 9-- Facilities Information Management System (FIMS)/Records 64

Chapter 10-- Real Estate Certification Program 68

Appendix 1--Links to Referenced Documents 69

Appendix 2--Telecommunications Siting Procedures 73

Appendix 3--Funding Off-Site Public Road Work 87

Appendix 4--Table of Authorities 90

Appendix 5--Leasing-Related Statutes & Executive Orders 91

Chapter 1: *Purpose of the Desk Guide*

PURPOSE

Federal agencies realize the importance of managing real property assets to attain optimum usage and maximal returns and benefits to the holding agency, the Government at large, and the public. Long-range planning is the key to determining which actions need to be taken with respect to acquiring, managing and/or disposing of real property. The aim of this Desk Guide is to provide perspective on the day-to-day activities of Department of Energy (DOE) Realty Specialists as they relate to overall real estate asset management. From this perspective, the Realty Specialist can determine where a particular action lies within the overall real estate process, and perceive the relationship between the various real estate tasks, and their impact on future planning and management.

The Desk Guide provides an overview of the essential functions in the real estate process, emphasizes proper real property asset management as an integral part of real estate decision-making, and provides reference to authorities governing specific real estate actions. Its structure reflects the normal sequence of events in the real estate process: from planning, to acquisition, through management, and ultimately to disposal. Emphasis is placed on comprehensive land-use planning as a principal tool in effective real property asset management, and on the necessity of maintaining accurate real estate data in the Facilities Information Management System (FIMS).

APPLICABILITY

This Desk Guide is intended to be a resource for all DOE elements with responsibility for real property, including the National Nuclear Security Administration (NNSA). Nothing in this Desk Guide is intended to conflict with the provisions of the National Nuclear Security Act.

RECOMMENDED USE

This Desk Guide is not intended as a prescriptive document outlining mandatory steps in the real estate process. Rather, it should be viewed and used as a means of identifying authorities and good practices relating to matters or problems encountered in real estate projects. Mandatory authorities are identified and summarized for convenience, but the Guide itself is not mandatory and the relevant authorities govern the actions discussed. Essentially, the Guide provides the "guiding path" by identifying the central actions and procedures of the DOE real estate process.

The Guide also serves as an educational tool by covering the entire real estate process. It provides Realty Specialists and others with a general familiarization of the process, and new personnel with a concise description of the responsibilities and considerations they will face in managing real property assets. While the guide cannot address the numerous courses of action that might be pursued by Realty Specialists in carrying out their duties, it should enable them to view possible actions in light of the standard procedures and steps which are outlined.

STRUCTURE

The chapters in the Desk Guide are arranged to follow the normal sequence of events in the "cradle (planning/acquisition) to grave (management/disposal)" real estate process. Each chapter opens

with an explanation of the processes and procedures encompassed by the chapter title. Each chapter explains the processes for the various types of actions within a given category. In addition, each chapter identifies responsibilities and legal obligations, and indicates what forms and documents are generally employed in completing an activity.

Referenced Documents

With the institution of DOE Order 430.1B, **Real Property Asset Management** (RPAM) initiatives (see DOE Order 430.1B: https://www.directives.doe.gov/directives/current-directives/430.1-BOrder-bc2/view) the previous existing orders and directives addressing the various real estate operations were phased out. Much of the information, processes, and procedures contained in these orders and directives remain usable as a basis for developing courses of action. This is particularly true of former DOE Order 4300.1C, **Real Property Management,** and the **United States Department of Energy Leasing Handbook (1990)**. They describe in useful detail the elements that should be considered in the execution of real estate project tasks.

Again, these are not policy directives, but tools to assist field office personnel and contractors in performing their duties.

Thus, while no longer mandatory for real estate operations, these documents, as well as others, provide useful information, guidance and insight, and are referred to frequently in this Desk Guide.

Chapter 2: *Introduction*

BASIS FOR THE DOE REAL ESTATE PROCESS

The generic legislation under which DOE has real property holding authority is the DOE Organization Act (Public Law (PL) 95-91). Generally, departments and agencies with such authority may exercise the full range of real estate activities. Section 647 of the Act (42 United States Code (USC) 7257) specifically addresses the property holding responsibilities of DOE. Under this section, the Secretary of Energy is "authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain laboratories, research and testing sites and facilities, quarters, and related accommodations..." The Department, as successor to the Atomic Energy Commission, has similar authority for real property that falls under the jurisdiction of the Atomic Energy Act of 1954, as amended (PL 83-703, section 161g)(42 USC 2201(g)).

In addition to these responsibilities, which are directly related to the accomplishment of DOE's technical missions, DOE may, subject to GSA approval on a case-by-case basis, acquire general-purpose office and related space, less than 20,000 square feet in area, and certain special purpose space by virtue of delegated lease acquisition authority from the General Services Administration. DOE also may authorize its contractors, through provisions in their contracts, to procure space needed in connection with DOE programs and projects. These latter authorities stem from the Federal Property and Administrative Services Act of 1949 (40 USC 512) which permits GSA to delegate to other Federal agencies its authority to procure leased space. In exercising its delegated authority, DOE is subject to the rules and requirements of the Federal Management Regulations (FMR part 102-72 and the General Services Acquisition Regulation (GSAR) as incorporated into the General Services Acquisition Manual (GSAM).

Within the parameters of the enabling legislation and the delegated authority, DOE has established policies and procedures for the operation of its real estate function. The overall direction for the Department of Energy's real estate program is contained in DOE Order 430.1B, *Real Property Asset Management* (RPAM), issued September 24, 2003. The order establishes a corporate, holistic, and performance-based approach to real property life-cycle asset management that links real property asset planning, programming, budgeting, and evaluation to program mission projections and performance outcomes. To accomplish the objective, this Order identifies requirements and establishes reporting mechanisms and responsibilities for real property asset management.

DOE O 430.1B cancelled DOE O 4300.1C, *Real Property Management*, which contained requirements and procedures for real estate actions. The 2004 version of this Desk Guide encouraged the continued use of DOE O 4300.1C as a reference and included it in the Appendix. In the 2011 Desk Guide revision, much of the information found in DOE O 4300.1C was incorporated into chapters 5, 6, 7 and 8, with updated references to statutes, regulations, orders and DOE organizational elements. One goal of the 2011 revisions was to provide DOE Realty Specialists with more detailed guidance, as found in DOE O 4300.1C, while reflecting the various changes that have taken place since DOE O 4300.1C was published in 1992. The full text of DOE O 4300.1C can be found in the *Department of Energy Real Estate Process* at:
http://fimsinfo.doe.gov/RE/Desk%20Guide/dg_appendices.pdf. Note that the *Department of Energy*

Real Estate Process was the Appendix to the 2004 Desk Guide. In addition to DOE O 4300.1C, the *Real Estate Process* contains other reference material such as the *Department of Energy Leasing Handbook* and transactional forms. Much like DOE O 4300.1C, the other material in the *Real Estate Process* is not necessarily current and is being maintained primarily as a historical reference. Some material, such as transactional forms, may be useful but should be reviewed for currency and accuracy prior to use.

Other documents that are helpful in outlining the fundamental real estate processes are the *Department of Energy Leasing Handbook*, the Good Practice Guides on Site Selection (No. 024) and Comprehensive Land-use Planning (No. 033). These documents provide an overall view of the essential matters that a Realty Specialist must address in performing his/her role. This Desk Guide brings together documents addressing capital asset management, leasing procedures, out-grants, etc., in a single, quickly accessible form. It broadens coverage of the real estate process by presenting the common steps Real Estate personnel will generally follow to complete either routine or complex real estate actions. A major goal of the Desk Guide is to identify the role of Real Estate in the planning and asset management areas of the process, and to focus on the necessity for close interaction between Real Estate and the other field elements with responsibility for meeting the RPAM requirements (see specifically, Chapters 3, 4, and 9)

To understand the roles of the offices involved in the real estate process, this Introduction includes brief explanations of the functions of these offices as they relate to the management of real property assets. These explanations are meant to be short general overviews of each office's role in the real estate process; they are not intended to describe all of the functions these offices perform.

ROLE OF REALTY SPECIALIST

The Realty Specialists are responsible for managing the real estate program for their respective entities or organizations. They play the central role in the housing of DOE employees, whether through developing requirements for a GSA space acquisition, satisfying a property need themselves, or overseeing and approving a contractor leased space acquisition. Realty Specialists are charged with implementing the RPAM directive and other real estate/asset management policies, procedures, and initiatives developed by Headquarters. They participate directly in land-use planning and are key players in plan implementation. The major tasks they perform include: acquiring interests in real property; managing real estate inventory, including the out-granting of owned or leased property; identifying excess property and arranging for its disposition; and assuring that data covering real property assets is maintained in the Facilities Information Management System.

Certified Realty Specialists (CRS)

Pursuant to RPAM and formal delegations of authority from NA-1 and MA-1, designated Certified Realty Specialists (CRS) are authorized to review and approve realty actions commensurate with the level of the designation, (except for acceptance of donations or the institution of condemnation actions).

Real Estate Contracting Officers (RECO)

In 2013, the Director, Office of Property Management (MA-65) was designated the Head of Contracting Activity (HCA) for real property management which includes the authority to issue RECO warrants. Subsequently, all then-current CRS's were appointed as RECOs. A RECO has the authority to execute real estate agreements and instruments within limits prescribed in his or her certificate of

appointment. To be appointed as a RECO, a Realty Specialist must already possess a CRS designation, so the requirement in 430.1B for CRS review and approval is satisfied when a RECO executes an action.

Delegations of Authority

There are various delegations of authority to officials in Program and Site Offices that include real estate actions. An official holding such a designation may execute real estate agreements and instruments within the scope of the delegation, but review and approval by a CRS is required. Alternatively, the RECO may execute the action instead of the official holding the delegation.

The decision to pursue any particular real estate action is a management decision of the Program Office. The role of the CRS is to ensure that applicable real estate laws, regulations and policies are observed in the decision-making process and resulting agreement and/or instruments.

Interaction of Real Estate and Field Planning Activities

The development of a comprehensive land-use plan and a Ten Year Site Plan requires close, integrated action between Real Estate and other key planning processes in the field, including NEPA, utility planning, asset management, and project planning. This interaction and joint plan formulation can facilitate implementation of land-use decisions, and make Real Estate better able to determine the necessary real property rights to be acquired to perform the mission, establish the appropriate space parameter requirements, assure the optimum usage of real property and space, and dispose of rights no longer needed to support the mission. (See Chapter 3 on Comprehensive Planning and the Land-use Planning and Management Processes.)

ROLE OF NNSA REALTY SPECIALISTS

NNSA Realty Specialists manage real estate activities for all NNSA sites and facilities. Realty Specialists within NNSA function as a Headquarters unit at the Albuquerque Complex in Albuquerque, New Mexico, and provide realty support to both the field elements and NNSA HQ. Wherever applicable, when “SRO” or “CRS” is referenced throughout this Desk Guide; the NNSA Realty Specialist is the point-of-contact for all NNSA sites and facilities. Where a site or facility is under the authority of both NNSA and non-NNSA DOE programs, the NNSA Realty Specialist should manage real estate activities for NNSA-controlled property, but not for any non-NNSA property, which should be managed by an on-site CRS from the appropriate DOE Program Office or the SRO.

ROLE OF THE FIELD ELEMENTS

The DOE Field Elements are responsible for preparation of budget requests and planning for physical assets, including real property. They have responsibility for identifying excess real property that has significant remaining useful life. The field elements are charged with assuring that inactive and surplus facilities are managed adequately until a reuse is found or the property is disposed of. They also must assure the establishment of an efficient, economic approach to asset management in conjunction with program offices and the Office of Acquisition and Project Management (MA-60). These elements are accountable to the program offices and the Landlord program office for contractor performance, and coordinate all review and external oversight activities of the contractors.

ROLE OF HEADQUARTERS

Secretary of Energy or Designee

The Secretary of Energy, or NA-1 for NNSA sites, authorizes the acquisition of interests inreal estate by condemnation; accepts real property donations; and approves critical strategic planning decisions. See Section 5 in RPAM for other rules and responsibilities.

Office of Acquisition and Project Management

OAPM serves as the point-of-contact for external activities and issues relating to real property life-cycle asset management. It provides technical assistance to program offices, landlord programs, and field elements. See Section 5a in RPAM for other rules and responsibilities.

Program Office

The program office is responsible for defining, planning, and budgeting for program needs, including operations, facilities, and projects. It oversees field element program and project implementation, and field elements to assure an efficient, economic approach to asset management. See Section 5a in RPAM for other rules and responsibilities.

Program Office Designated as Landlord

The Landlord program offices are responsible for establishing policies and procedures and funding for the site's implementation of programs and projects relative to the management of site infrastructure. For multi-program sites, the Landlord coordinates funding requirements with other program offices. The Landlord also reviews field element infrastructure activities in conjunction with the program offices.

Real Estate

Realty Specialists in the Office of Acquisition and Project Management (OAPM) are the DOE's official point of contact in headquarters for real estate matters outside the Washington D.C. National Capitol Region (where GSA's National Capital Region Office handles most federal office space matters). OAPM's Realty Specialists provide guidance and assistance to the field in the entire range of real property activities including comprehensive land-use planning, acquisition (including condemnation and leasing), management (including outleasing), disposal, and data collection and reporting as part of the Facilities Information Management System (FIMS). In the event a site does not have a CRS, all actions are to be sent to the Senior Realty Officer (SRO) in OAPM for review and approval, per DOE O 430.1B.

ROLE OF CONTRACTORS

Contractors or subcontractors, including Maintenance and Operations contractors, may be authorized to perform real estate work for DOE, which may involve the acquisition, lease or disposal of real estate or interests therein, and reimbursement of the contractor for the cost. DOE Realty Specialists review, and approve, contractor practices and transactions relating to the lease, acquisition and management of real property to make sure that their actions are in accordance with the same laws, regulations, policies and standards as applicable to DOE for leasing, such as competition in contracting, fair market appraisals and other pertinent requirements, and that proper consideration is given to economy, efficiency, and programmatic need.

- FIMS corporate real estate database
- Acquisition of real estate
- Withdrawal from public domain
- Donation of real estate to DOE by others
- Condemnation of real estate
- Exchange of real estate
- CERCLA/RCRA real estate requirements
- Transfer of DOE real estate to Community Re-Use Organizations
- Sale of DOE real estate
- Transfers of real estate to other government agencies
- Disposal of DOE real estate through GSA
- Leasing of real estate owned by others
- Leasing DOE real estate to others
- GSA assigned space
- DOE's Management and Operations Contractor's Leasing Program
- Utilization of real estate
- Demolition of buildings
- Land Use Plan (see Chapter 3)
- Relinquishment of DOE withdrawn land

Chapter 3: *Planning Policy*

As covered in the DOE Order 430.1B (Real Property Asset Management), planning is the overarching function within real property asset management that integrates the other functions of acquisition, real property utilization, maintenance, recapitalization, disposition, and Long Term Stewardship (LTS) into a coordinated effort to ensure that current and future mission needs are met. Planning is dependent on clear objectives, sound data, and effective communication between all parties at a site.

(1) Site planning for real property assets must be consistent with EO 13327 (Federal Real Property Asset Management) and should be based on guiding principles:

GOVERNMENT ASSET MANAGEMENT PRINCIPLES

1. USE WHAT YOU HAVE FIRST
Real property assets under the custody and control of the Federal Government should be considered first when accommodating Federal agency mission requirements.

2. BUY ONLY WHAT YOU NEED
The amount of interest in Federal real property assets should be the minimum necessary to effectively support a Federal agency's mission.

3. USE INDUSTRY-LIKE INSTRUMENTS OF AGREEMENT
Real property assets of the Federal Government should be utilized among agencies with the use of instruments of agreement that follow the best practices of the industry.

4. REINVESTMENT IS ESSENTIAL
Reinvestment in a real property asset is essential to maintain its fair market value, its ability to benefit from advancements in business practices and technologies, and to support the Federal mission and enhance employee productivity.

5. INCOME/EXPENSES COMPARABLE TO THE MARKET
Any income realized by a real property asset during its useful life should approximate that generated by a comparable commercial property; while any expense by such an asset during its life cycle should approximate that incurred by a comparable commercial property.

6. MAXIMIZE USE AMONG AGENCIES
The maximum utility of a real property asset can be realized if it is continuously transferred among agencies having mission needs while it is under the control of the Federal Government.

7. TIMELY DISPOSAL
A Federal real property asset that has no further mission supporting use by the Federal Government should be disposed of timely and in a manner that best serves the public interest.

8. RETAIN PROCEEDS FROM DISPOSAL AND OUTLEASING
The proceeds gained from the disposal of a Federal real property asset, or from outleasing, are not currently available for use by most Federal agencies having custody, control and use of the asset. Under the "Hall Amendment" (42 U.S.C. § 7256(c)), services in kind or

retention of cash are the only forms of receipts currently available to DOE.

9. PROFESSIONAL TRAINING
Federal employees should be given the training needed to perform their jobs at the highest level of professionalism, and in order to utilize models and other analytical tools for optimizing their real property asset management decisions consistent with the provisions of Executive Order 12931(Federal Procurement Reform).

(2) For each non-closure site, results of real property asset site planning and performance must be documented in a Ten-Year Site Plan (TYSP) that is kept current and covers a 10-year planning horizon. For closure sites, disposition plans must be developed.

(a) The TYSP will be consistent with and support development of the Integrated Facilities and Infrastructure (IFI) Crosscut Budget, identifying the resource requirements associated with TYSP implementation. (Figure 1 represents the relationship between the TYSP and IFI Crosscut Budget.)

(b) The TYSP will be integral to and support the DOE Planning, Programming, Budgeting, and Evaluation System (PPBES).

(c) The TYSP will result in a consolidated and integrated plan replacing multiple reports. It will use the Facilities Information Management System (FIMS), DOE's corporate real property asset database, for real property asset information.

(3) The content of the TYSP addresses how the site's real property assets support the Department's strategic plan, the Secretary's 5-year planning guidance, and appropriate program guidance. As a comprehensive site-wide plan encompassing the needs of tenant activities, the format of the TYSP should be consistent within a program in accordance with program direction and guidance. Sections of the TYSP can be rearranged to meet the unique requirements of a site. As a minimum, TYSPs address the following.

(a) The site's plan to meet program missions, budgets, planning estimates, and performance outcomes within the program's budgetary and out-year fiscal projections.

(b) An assessment of the current status of the site real property assets against delineated program missions including discussions of condition assessments, maintenance and recapitalization plans, space utilization, real estate, excess facilities disposition, LTS, and unique site issues.

(c) The prioritized real property asset projects and activities required to meet program missions, budgets, and planning estimates. These include acquisition projects, elimination of excess property projects and activities, maintenance and recapitalization plans, disposition projects, and LTS requirements.

(d) The prior year (PY) plus ten (10) additional fiscal years of activities, planned in accordance with Lead Program Secretarial Office (LPSO), Cognizant Secretarial Office (CSO), and Program Secretarial Office (PSO) annual program direction and guidance for mission projections and fiscal projections. It will be consistent with the Department's PPBES and the field budget call.

(e) A report on past performance and projected future outcomes, including the results from real property asset corporate and program performance measures (see paragraph 4g of DOE O 430.1B (RPAM) for corporate performance goals and measures). The report must compare the budget authority against the actual expenditures and the performance outcomes achieved at the site for the fiscal year that precedes the PY.

(f) Space utilization activities and land-use that stabilize then reduce the costs by consolidating operations where practicable and eliminating excess facilities.

(4) The TYSP is submitted either concurrently with responses to the field budget call, or as directed by the LPSOs/CSOs/PSOs to be consistent with the PPBES cycle.

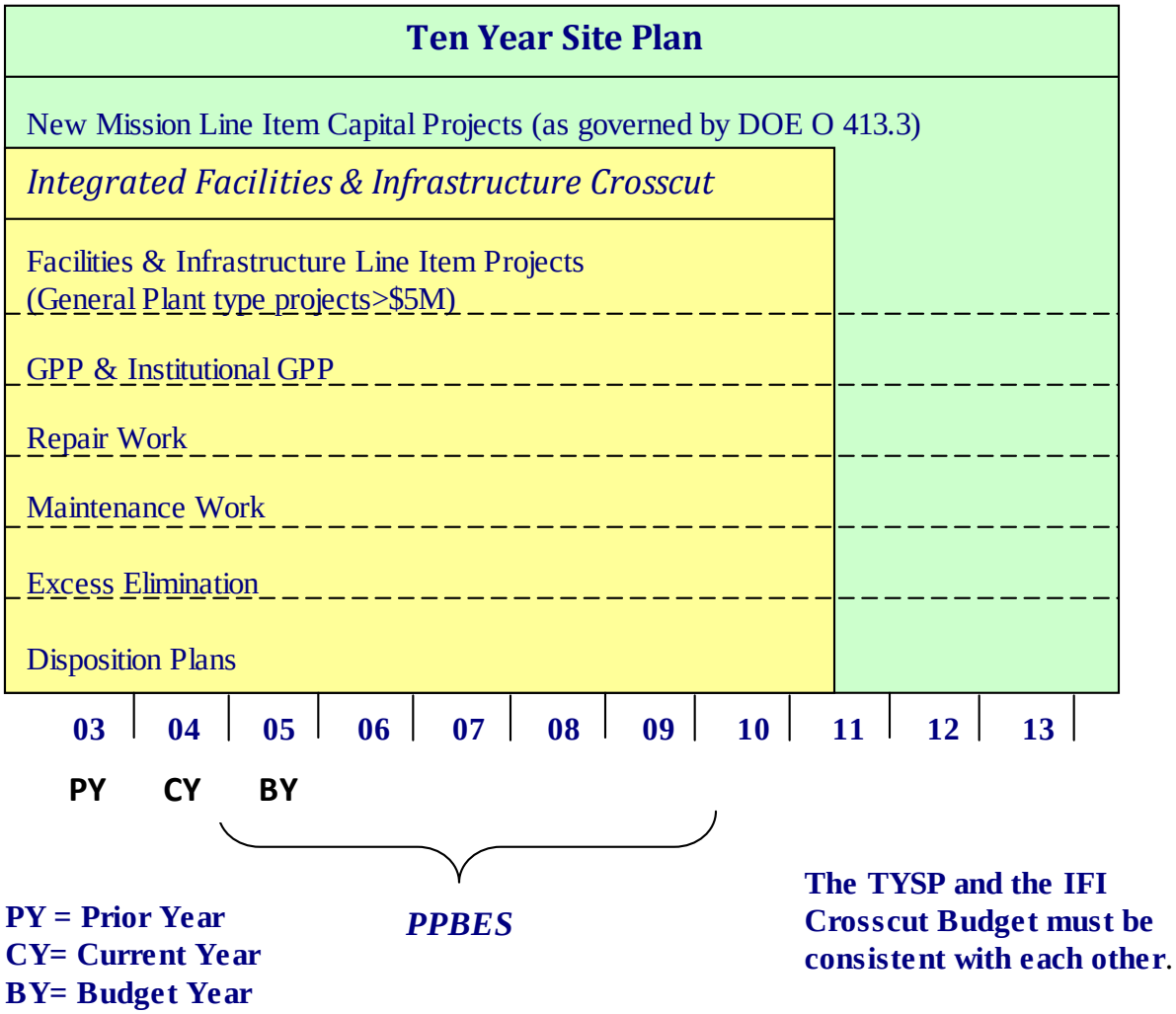


Figure 1. Ten-Year Site Plan (TYSP);
Integrated Facilities and Infrastructure (IFI) Crosscut Budget; and Planning, Programming, Budgeting, and Evaluation System (PPBES)

Chapter 4: *Real Estate Function*

The Real Property Asset Management (RPAM) Order (DOE O 430.1B) directs that an integrated, systematic approach be used in managing the real estate function of DOE.

The real estate function encompasses several key activities over the life cycle of real property assets. These activities involve acquisition by lease or purchase; planning and management, including taking inventory, making assignments, conducting utilization surveys, and tracking assets; screening for excess real property assets; and disposal of real property assets.

(1) The Secretary's authority to acquire, manage, and dispose of real property can be re-delegated, with the exception of accepting donations, initiating condemnation actions or executing declarations of takings. In exercising the delegated authority, all real estate actions to acquire, manage, and dispose of real property assets are to be reviewed and approved by a DOE CRS before executing the action. The SRO in OAPM will provide the review and approval for those site offices without a CRS.

(2) A CRS must be involved in planning, acquisitions, utilization surveys, excess declarations, disposal by demolition or sale of real property assets. These actions are performed in accordance with the requirements in 41 CFR, Chapter 102, Federal Management Regulation and DOE real property authorities. The DOE *Real Estate Process-Desk Guide for Real Estate Personnel* provides detailed guidance and procedures for completing real estate actions. These actions will be reflected in the Ten Year Site Plans (TYSP).

(3) Land-use planning and management integrates land uses at each site and examines multiple land-use options. Land-use planning must be consistent with DOE O 430.1B. The land-use plan provides a clear view of the land-use issues, capabilities, opportunities, and limitations of the site. It identifies all land needed to support the site mission through annual utilization surveys. The plan is kept current and supports development identified in the site TYSP. At cleanup and closure sites, identified uses must by law be consistent with a Record of Decision's anticipated future or end-point use.

Land-use plans are tailored to local site conditions and follow the National Environmental Policy Act (NEPA), site planning and asset management, Long Term Stewardship (LTS) plans, institutional control plans, stakeholder public participation, economic development under community reuse organizations, privatization of assets, environmental law, cultural asset management, historic preservation, and natural resource management.

Land-use planning and management is established through one or more of the following, as approved by the Lead Program Secretarial Office (LPSO) responsible for the site.

(a) Disposition plans, and LTS plans at cleanup or closure sites.
(b) Implementation of a site-wide National Environmental Policy Act document that addresses land-use or resource management.
(c) A Land-Use Control Action Plan under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
(d) Administrative mechanisms to assign use to areas that support implementation of the

TYSP.

(4) Real property assets not fully utilized or excess to mission needs are identified to facilitate reuse or disposal as follows.

(a) Lead Program Secretarial Offices/Cognizant Secretarial Offices/ Program Secretarial Offices (LPSOs/CSOs/PSOs) annually identify all project/program mission terminations to site/field managers. This is normally accomplished in program planning documents.

(b) Except for environmental closure sites, site/field managers annually report to responsible LPSOs/CSOs/PSOs any real property identified as not utilized through utilization surveys. This may be accomplished through updates to TYSPs to reflect planned excess facilities and disposition schedules. Utilization status will be recorded in FIMS.

(c) LPSOs/CSOs annually excess real property reported to them as not utilized and not needed to support their program missions. These formal declarations are transmitted to OAPM no later than December 31st of each year.

(d) OAPM screens all LPSO/CSO (including NNSA) declared excess real property with remaining useful life with all other LPSOs/CSOs/PSOs (including NNSA) to determine if the property is excess to all programs in the Department.

(e) If not accepted for transfer by another program, the responsible LPSOs/CSOs/PSOs (or NNSA) then plan and program for the elimination of excess real property through reuse, demolition, disposal (except economic disposal conveyances at formerly used nuclear defense sites) by GSA, transfer, or sale by GSA based on reducing risks and minimizing life-cycle costs. The report must compare the budget authority against the actual expenditures and the performance outcomes achieved in the last full fiscal year of execution.

(5) Excess real property assets located at defense nuclear facilities, that are appropriate for economic-development transfer should be identified and considered for disposal in accordance with 10 CFR 770, Transfer of Real Property at Defense Nuclear Facilities for Economic Development.

(6) Real estate actions for out-grant are performed in accordance with applicable DOE directives. Out-leasing actions under the authority of the Hall Amendment follow the Joint DOE/EPA interim Policy Statement on Leasing Under the Hall Amendment, dated June 30 1998, (http://fimsinfo.doe.gov/RE/Joint_DOE-EPA_%20Policy_Statement.pdf) Clear definition of roles, responsibilities, and liabilities have been developed to ensure safety and protection of the workers, the public, and the environment in accordance with Guidance on Protection of Workers Utilizing DOE Leased Facilities for all stakeholders of Departmental real property assets that are leased to private parties.

(7) Headquarters (Office of General Counsel; Office of Management; and LPSOs/CSOs) must be notified 90 days before all disposals by sale or lease under DOE authorities. Notification must be accomplished as follows:

(a) For non-economic-development leases, e-mail notifications are acceptable.

(b) For economic-development-related leases and sales, a notification package must be submitted to Congress, 30 days before transfer by sale or lease.

(c) For sales of land that do not use the standard Federal practices of 41 CFR, Chapter

102, a notification to the Energy and Water Appropriations Committee is required 60 days before any proposed sale of land. The notification is to provide a detailed explanation for the waiver of Federal practices for the sale of property.

(d) Any action including those above that requires submission to or through OMB.

(8) Real Estate Records and Reports.

FIMS is the Department's real property asset inventory system and fulfills the requirement in 41 CFR, Chapter 102, for each Agency to have a real property inventory system. FIMS data will be used to meet routine reporting requirements.

(a). FIMS data should be maintained as complete and current throughout the life cycle of real property assets, including real property related institutional controls.

(b). FIMS data should be archived after disposal of real property assets. Those necessary for Long Term Stewardship (LTS) should be identified, reviewed, and retained.

(c). Site/field managers should ensure that FIMS data is verified annually as complete and accurate using a quality control process.

On February 4, 2004 the President of the United States signed Executive Order (EO) 13327 – Federal Real Property Asset Management. The policy related in this EO is to promote the efficient and economical use of America's real property assets and to assure management accountability for implementing Federal real property management reforms. Based on this policy, executive branch departments and agencies shall recognize the importance of real property resources through increased management attention, the establishment of clear goals and objectives, improved policies and levels of accountability, and other appropriate action.

A summary of the major elements of the EO are as follows:

Purpose:

1. To promote the efficient and economical use of America's real property assets.
2. To assure management accountability for implementing Federal real property management reforms.
3. Directs executive branch departments and agencies to recognize importance of real property resources through increased management attention, the establishment of clear goals and objectives, improved policies and levels of accountability, and other appropriate action.
4. In short, to improve the overall management of Federal real property assets on a Government-wide level.

Summary of Major Provisions:

1. Establishes position of Senior Real Property Officer at all major executive agencies.
2. Senior Real Property Officers to develop and implement agency asset management plans.
3. Creates interagency Federal Real Property Council.
4. Development of single and descriptive database of Federal real properties.

Senior Real Property Officer:

1. Designates a senior official in each major Federal landholding agency to develop and

implement an agency asset management plan.

2. Asset management plan will identify and categorize real property inventory owned, leased, or otherwise managed by agency; prioritize actions to be taken to improve operational management of inventory; identify and pursue goals with appropriate deadlines; and measure progress against such goals and deadlines.
3. Serves on Federal Real Property Council.
4. Submits asset management plan to OMB.
5. Makes annual reports regarding agency real property inventory data to OMB andGSA.

Federal Real Property Council:

1. Established by the order.
2. Develops guidance for and facilitates implementation of agency asset management plans.
3. Establishes appropriate asset management performance measures.
4. Composed exclusively of all agency Senior Real Property Officers, Controller of the Office of Management and Budget and Administrator of General Services.
5. OMB Deputy Director for Management serves as member and chairs the Council.

Public Lands:

1. Order also maintains the Public Lands section of the Reagan order, which directs the Departments of Agriculture and the Interior to take such steps as are necessary to improve the management of public lands.

Revoke 1985 EO:

1. The order revokes EO 12512 (signed into law by President Reagan on April 29, 1985).
2. Maintains many of the same concepts and ideals of the Reagan order, but provides for a more specific and detailed plan for improving Federal real property asset management.

Chapter 5: *Acquisition of Interests in Real Property*

DOE AUTHORITIES

1. PL 95-91 DOE Organization Act, Section 647 (42 USC 7257)
   http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00007257----000-.html

2. PL 83-703 The Atomic Energy Act of 1954, Section 161g (42 USC 2201(g))
   http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00002201----000-.html

3. PL 105-85 National Defense Authorization Act for FY 1998 (50 USC 2811)
   http://www.law.cornell.edu/uscode/html/uscode50/usc_sec_50_00002811----000-.html

4. PL 106-580 Federal Property and Administrative Services Act of 1949, As Amended (40 USC 101 et seq.)
   http://www.law.cornell.edu/uscode/html/uscode40/usc_sup_01_40_08_I.html

5. PL 91-646 Uniform Relocation Assistance and Property Acquisition Act of 1970 (42 USC 4601 et seq.)
   http://www.law.cornell.edu/uscode/html/uscode42/usc_sup_01_42_10_61.html

ESTABLISHING THE NEED

Real property acquisition is governed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646)(42 USC 4601 et seq.). To apply PL 91-646, a single rule was adopted by all agencies and codified in 49 CFR Part 24. Real property acquisition actions by DOE should comply with 49 CFR Part 24, Subpart B "Real Property Acquisition." Additionally, the General Services Administration issued the Federal Management Regulation (FMR) describing policies relating to real property management for agencies subject to the authorities of the Administrator of General Services, which can be found in 41 CFR Part 102-73, and applies to acquisition activities in some instances.

With certain limitations that are discussed in this Chapter, the DOE Organization Act of 1977 (PL 95-91)(42 USC 7101 et seq.) authorizes DOE to acquire real property. When new programs, expanding requirements of existing programs, administrative requirements or other factors need additional land and/or improvements, then the appropriate program or management personnel should quantify the need for real property in the project acquisition plan. This should include identifying what property interest is needed, for what period of time, and where and why it is required. Any decision should be based on a coordinated analytical effort by fiscal, legal and technical personnel, as well as program and real property representatives. The real property representative should ensure that input from all appropriate offices is solicited and considered.

In quantifying the need, describe the minimum real estate interest needed to satisfy the project requirements in such a way that the reviewing levels will have a clear understanding of the

nature of the requirement. Information, with backup documentation, on the following should be included:

- Proposed uses of real property
- Air, surface, and subsurface rights required
- Estimated period of need
- Amount of real property required, including, as appropriate, interim requirements based on the latest available GSA guidelines
- Physical characteristics
- Access and transportation requirements
- Availability of funds
- Environmental impacts
- Security considerations
- Utilities requirements
- Required proximity to other Government or commercial facilities
- Availability of skilled labor
- Demographic considerations based on proposed use (e.g., public safety and sensitivity of programs)
- Decommissioning and decontamination requirements at project completion
- Sustainability

On October 13, 2011, the Deputy Secretary of Energy issued a Policy Memorandum entitled, "Setting an Average Office Space Standard: 200SF/Person." Pursuant to this Memorandum, the office space allocation standard is an average of 200 square feet of usable area (using ANSI/BOMA measurement method) per person for all Federal employees and their support contractors. The Memorandum calls for the standard to be incorporated into DOE O 430.1B on or about May 1, 2012. The 200 sf/person standard does not apply to M&O contractors, because their space allocation needs are site-specific.

Increases in facility area, as a result of new construction projects, must be offset by transfer, sale, or demolition of excess buildings and facilities of equivalent size at each site. Waivers permitting the 1:1 offset requirement to be met by reduction of excess facilities at another site can be sought (DOE O 430.1B).

Construction on land already owned by the Government is covered in DOE Real Property Asset Management (RPAM), DOE O 430.1B.

The real property aspects of construction projects should be coordinated among budgeting, accounting, engineering, technical, legal, and real property staffs in the field elements for review and concurrence. Construction project schedules should include adequate time to acquire real property interests, and the CRS should determine how much time is necessary to complete acquisition.

If Government-owned lands and/or improvements are available that meet the minimum programmatic needs, they should be utilized. After determining that no property within DOE's jurisdiction is available, the acquiring office should contact the GSA regional office and request

information on excess or under-utilized Government-owned property. A determination should be made as to whether the requirement can be satisfied by available Government-owned property. Reasons for not using such property should be documented in the project file.

General purpose office space to house Federal employees is outside the lease acquisition authority of DOE under PL 95-91. However, DOE may seek delegation of leasing authority for office space less than 20,000 square feet from GSA on a case-by-case basis. Also, DOE has its own authority to lease certain other types of space, as well as land. A more detailed discussion is included in Chapter 6 of this Guide.

If the space can be provided within the authority of DOE and is temporary, such as to house people during a construction project, then relocatable personal property, such as a trailer, should be considered.

ACQUISITION PLANNING

Acquisition of real estate interests is often one component of a capital project. Capital project planning is governed by DOE Order 413.3B "Program and Project Management for the Acquisition of Capital Assets." Guidance on analysis of alternatives and selection of an acquisition method is found in DOE Guide 413.3-13 "Acquisition Strategy Guide for Capital Asset Projects." When an alternative under consideration would require acquisition of real estate interests, then a CRS should participate in the analysis. The CRS may provide input in the form of a Preliminary Real Estate Plan (PREP).

For acquisitions not governed by DOE O 413.3B, the CRS should prepare a (PREP) whenever there is a requirement to acquire additional realty interest by:

- Fee purchase
- Lease, if the term (including all options) is 5 years or greater; and the total rent, including the cost of initial alterations averaged over the term of the lease, exceeds $500,000 per year
- Any contract, which will result in construction of DOE-owned property improvements on non-DOE land, which will be funded as a line item construction project and where the estimated cost of the project will exceed $10 million
- Transfer of excess Government-owned property from another agency to DOE, or withdrawal of land from the public domain

The intent of the PREP is to identify the preferred alternative early in the planning cycle. The PREP should include the following information:

- A brief description of the program or project
- An analysis of all viable options and alternatives considered, along with advantages and disadvantages of each
- A recommended option, for which the following information should be provided:
    - Site and/or building size and probable site boundaries (copy of plat, if available)
    - Preferred area of consideration, with an area map
    - Cost estimate for the recommended alternative

- If a leasing action or fee acquisition requires a particular or unique property, then pertinent information for that site only will be included

PURCHASE OF PROPERTY

Site Selection

To acquire privately-owned real property, specific appropriated funds must be obtained. Planning should continue while awaiting funding authority. In some cases, a site for a new facility may be so closely associated with an existing site or facility that only one site can reasonably be considered. In such cases, a sole source justification fully supporting that conclusion should be prepared. Where multiple sites will be considered, a site investigation team should be formed to search for appropriate sites.

Legislative authority, sufficient appropriated funds, and appropriate authorization are required before a CRS may commit the Government to a real property action. Title to all real property purchased by DOE or by the contractor for DOE on a fully reimbursable basis must vest in the Government at the time of acquisition unless other action is authorized by specific legislation.

The DOE site investigation teams should have three to five members drawn from the local field element, the PSO for the requesting program, and other Headquarters Elements, as appropriate. The real estate representative from the acquiring office should be a member of this team. The function of the team is fact finding and advisory only and it will prepare recommendations, which will not be made public. The team should take the following actions:

Comply with EO 12372

Determine applicability of EO 12372, "Intergovernmental Review of Federal Programs," to the specific real property action. Guidance on applicability and implementing instructions are contained in 10 CFR 1005.

Arrange for Public Notice

When a requirement for acquisition of non-Government-owned real property is known, and multiple sites will be considered, it should be advertised to the public. Notice of this intent to select and acquire a site should be given by paid advertising in local newspapers. The notice may also be posted on appropriate internet sites. A copy of the notice should be sent to any property owners known to be interested. The advertisement should contain the following information:

- Desired boundaries
- Amount and type of space needed
- Unique characteristics or requirements, if any
- Date realty is required
- Planned schedule for acquisition and displacement of property occupants, if any
- Source where further information may be obtained.

Competition must be solicited in all acquisitions except in those cases where sole source can be justified. In sole source cases, the file should be thoroughly documented.

Contact owners of any additional sites not offered in response to the advertisement that are

considered suitable to meet DOE needs to determine their willingness to sell.

Inspect Sites

Inspect Sites in the area, which are offered for sale and appear to meet DOE requirements. Owners of the property will be given the chance to accompany the team during its onsite investigation. Property owners may request payment to gain entry (for testing or other information) and such payment is authorized, in amounts reasonably related to the entry and testing rights obtained.

Collect and Evaluate Information

Collect information required to evaluate the alternative sites. The level of detail for backup data for preliminary site evaluation is a matter of judgment. However, the file should fully document the reasons for recommending a particular site. It should also identify potential real property acquisition problems. Any such problems should be identified as early as possible so that corrective action can be taken. The SRO, or NNSA headquarters as applicable, should be consulted regarding acquisition problems.

Select the Site

The site evaluation report should be forwarded to the official making the selection, who will be named by the appropriate program official, and who should not be a member of the site selection team.

Documentation

The data described below should be collected or developed for all sites and evaluated in making the recommendation for a specific site.

Description of Real Property and Real Property Interests

Include a general description of each parcel being considered, total acreage, availability for purchase, and possible method of acquisition.

Environmental Requirements

Compliance with:

- the National Environmental Policy Act (NEPA)(PL 91-190)
- the National Historic Preservation Act (P.L. 89-665)
- the Endangered Species Act (PL 93-2059)
- the Resource Conservation and Recovery Act (PL 94-580)
- Floodplain Management (EO 11988)
- Protection of Wetlands (EO 1190)
- the Comprehensive Environmental Response, Compensation and Liability Act (42 USC 9601 et seq.) as amended by the Superfund Amendments and Reauthorization Act (PL 99-499)
- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (EO 12898)
- Other applicable requirements identified below. Reviews for compliance with these requirements should be completed prior to the submission of any real property for review and/or approval. Information on DOE's responsibilities under these requirements can be obtained from:

- DOE National Environmental Policy Act implementing procedures (DOE NEPA Regulations), 10 CFR 1021, which establish Departmental procedures for implementing the procedural provisions of NEPA pursuant to the Council on Environmental Quality regulations. See also: DOE NEPA Compliance Guide (http://nepa.energy.gov/guidance.htm), and; DOE O 451.1B, NEPA Compliance Program (http://nepa.energy.gov/documents/DOEO451.1BChg2_06_25_10.pdf)
- DOE G 450.4-1B, Integrated Safety Management System
- DOE Regulations for Compliance with Floodplain/Wetlands Environmental Review Requirements (10 CFR 1022)
- The NEPA Compliance Officer(s) for Programs and Site Offices, whose responsibilities include assisting in the planning and execution of NEPA compliance activities
- The DOE Office of NEPA Policy and Compliance (GC-54) for general assistance in compliance with NEPA
- The Office of NEPA Oversight (EH-25) for assistance in compliance with NEPA
- DOE P 141.1, Management of Cultural Resources

Toxic and Hazardous Substances Requirements

Toxic and hazardous substances should be addressed prior to any commitments being made to acquire land and/or improvements. As a practical matter, acquisition of environmentally contaminated sites should be avoided if at all possible.

The management of hazardous substances is addressed under numerous Federal statutes, with a comprehensive definition covering all statues provided under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). A complete list of CERCLA hazardous substances can be found in 40 CFR 302.4.

State and local regulations may also address management of hazardous substances, or control the sale of property containing or potentially containing toxic/hazardous waste.

Properties being considered for acquisition should be thoroughly investigated including onsite investigations of land and buildings, review of previous occupancies and records of local, state, and Federal regulatory agencies, review of possible contamination from adjoining properties and other steps appropriate to ensure no contamination exists. Personnel qualified in hazardous site investigations should be used to ensure all potential contamination is considered. This investigation can be accomplished through a Phase I Environmental Site Assessment, which should be performed in accordance with ASTM standards for environmental site assessments for commercial real estate transactions (ASTM Standard E 1527-94 and E 1528-93).

The identification and assessment of such contaminants as:

- Friable asbestos
- Equipment containing Polychlorinated Biphenyls
- Underground storage tanks
- Radioactive materials (including Radon)
- Urea formaldehyde insulation

- Pesticides

If a contaminated site will be considered, special care should be exercised, particularly for sites listed or having potential to be listed on the CERCLA National Priorities List. Having the seller conduct the site cleanup, in accordance with State and Federal environmental requirements prior to purchase, is the preferred solution. The following additional actions should be taken prior to purchase:

- Assure that the acquisition agreement contains adequate language to protect DOE from liability;
- Determine costs of site cleanup (if DOE will be responsible);
- Determine the length of time required for cleanup; and
- Coordinate with the State and Federal environmental authorities.
- Consult with the Office of Health, Safety and Security and the Assistant General Counsel for Environment, or NNSA Environmental Counsel as applicable.

The follow-up required includes tasking qualified personnel to monitor cleanup, ensure compliance and obtain environmental agencies approval of work accomplished.

Considerations of safety, health, and comfort should be included, taking into account applicable regulations and standards such as those issued by the Occupational Safety and Health Administration, National Fire Protection Association, American Association of Heating, Air-Conditioning and Refrigeration Engineers, and other organizations as applicable.

Seismic Standards

The degree of compliance with EO 12699, dated January 5, 1990, will be described, to ensure compliance with appropriate seismic design and construction standards.

Parcel Descriptions

Descriptions should include perimeter descriptions for use in acquisition by purchase or condemnation. A perimeter or tabular description of the total area should be based on acceptable survey data. A parcel description from the available public records should be furnished for each separate ownership.

List of Owners

List owners of all parcels and their addresses, including owners of easements and other rights.

Estates to be Acquired

List property interests to be acquired for each parcel of land. Certain interests, such as mineral rights, water rights, and timber rights may be separate from the remaining interests in real property. When such rights are separate, a determination should be made whether acquisition of the separate interest is required. If it is not required, it will be excluded from the acquisition. Whenever real property or capital improvements are to be constructed on the land, fee title must be acquired, unless Congress authorizes a less-than-fee interest.

Current Use

List present residential, industrial, commercial, or agricultural uses, described in enough detail so that reviewers will have a full understanding of the present utilization of all parcels.

Subsurface Rights

This should include information on any underground water rights and on mining, oil, or gas activities within the parcels proposed for acquisition, as well as in the general area. This documentation should:

- Identify minerals being removed, subsidence, the period during which the mining operations have taken place, possibility of termination of such operations, and whether surface or subsurface mining operations are conducted.
- Provide an evaluation of the possibility of minerals being developed, and if such development would interfere with proposed DOE operations.
- Identify mineral interests under separate ownership and include the names and addresses of the owners.
- Information on mineral characteristics of the lands and mineral production may be obtained from the local offices of the U.S. Geological Survey or the Bureau of Mines. Comments and recommendations on the acquisition of mineral interests or their exclusion will be made. Recommendations will also be made on terms and conditions under which the mineral rights may be exercised if they are to be excluded, considering security problems, likely exploration, and their effect on DOE use of the land.

Estimated Acquisition Costs

Estimated costs for each alternative being considered should be obtained by the real property representative. The estimate should include both the costs of acquiring the needed property and fees associated with procuring information necessary to complete the transaction. Specific items to be considered in preparing an acquisition cost estimate include:

- Property-owner entitlements, which include property value, loss in value to remaining lands, and relocation benefits. Relocation benefits address relocation housing payments, rent supplements, moving costs, interest differential, and transfer costs.
- Acquisition services, including title information, appraisal fees, legal closing costs, and possible condemnation expenses.
- If leasing is being considered, a preliminary market survey should be prepared to determine rental prices per square foot of similar buildings in the area and a description of lease terms currently being offered in the market.
- This information should be developed only to the extent necessary to aid selection of an alternative.

Submerged Areas

Determine ownership of any submerged area adjacent to high lands being considered, because ownership of high lands does not always allow the right to construct, to fill, or to deposit spoil in the abutting submerged areas.

Taxes

Name and address of the taxing authority, amount of the taxes paid during the preceding tax years, current assessed value of the property to be acquired, and current tax rate.

Easements

Copies of, or information on, all existing easements, licenses, leases, or other rights of third parties, and a recommendation on extinguishment or acquisition of each interest.

Vicinity Map

A map showing the location of the real property to be acquired and its proximity to major highways, railroads, rivers, airfields, and metropolitan areas. Any significant features in its immediate and general vicinity, which might affect its acquisition or its proposed use should be noted.

Property Map

A map showing:

- Exterior and parcel boundaries of the real property to be acquired
- General location of major improvements and structures
- Siting of proposed DOE construction
- Location of existing rights-of-way for roads, highways, railways, utilities, and other purposes
- Proposed route of relocation of any existing rights-of-way
- Approximate location and direction of flow of natural water courses
- Other pertinent information that may affect acquisition or use of the real property

Relocation Assistance

Provide an estimate of the funds needed to cover payments and services given to persons who will be displaced as a result of the acquisition. Such assistance must be provided according to PL 91-646, so that disproportionate economic losses are not suffered by the former occupant(s) as a result of the move. Relocation assistance includes providing funds for moving and related expenses, costs incurred in searching for another location, and actual direct losses experienced as a result of the move. In addition to monetary aid, PL 91-646 also requires that advisory services be provided to displaced persons.

Acquisition Assistance from Other Agencies

In areas where DOE real property expertise or resources are not available, the services of another Government agency, such as GSA or the U.S. Army Corps of Engineers (USACE), may be requested. If services from another agency are not available, then a contract may be issued. Requests for services from USACE should come to the SRO, if the local USACE office should obtain approval of the work from its Headquarters. For NNSA, requests for services should come through a NNSA CRS. Prior approval or coordination is not required for informal contacts with other agencies, for assistance from GSA and other Federal agencies for actions otherwise within the authority of the field elements, or for assistance from USACE that does not require the USACE Headquarters approval.

Decision

When the site evaluation report is completed and the recommendation prepared, the entire package is presented to the site selection official, who then makes the decision.

Acquiring Title

After a recommended site is selected, the acquiring office should proceed as follows:

Ownership Data

Information for all property being acquired should be verified and a complete legal

description for each parcel should be obtained, if not already assembled in the site evaluation phase. Property boundaries should be identified before contracts are entered into for appraisal, title evidence, and survey. The identity of the property owner and the legal description may be obtained from the local registry of deeds, a title insurance company, land court, or tax assessor. If a plat plan is not available in the legal description, the city clerk or tax assessor may be able to furnish one. Should the area to be acquired consist of less than the total area owned, a description of the area to be acquired should be prepared based on and reconciled to the description of the land as contained in the deed of record.

Title Services

The need for the services of a title company begins early in the acquisition process and continues through to completion of the action. Title evidence should be procured by contract and should be obtained from qualified attorneys, abstracters or title companies. Title evidence for all federal land acquisition should comply with "Department of Justice Title Standards 2001(Title Standards)" which is available at: http://www.justice.gov/enrd/2001-title-standards.pdf. The Title Standards apply to acquisition of: fee simple; easements; covenants and restrictions, and; leases with terms of thirty years or more.

Title Evidence

One of the following types of title evidence should be obtained:

- Title Insurance Policy. A contract insuring interests acquired in property against all defects in title
- Certificate of Title. A contract in which a title company certifies that title to a specific parcel of land is good and unencumbered except for the defects and encumbrances shown. This form of title evidence is acceptable only when a title insurance policy cannot be obtained

Review and Approval of Title

No real property interest subject to the Title Standards may be purchased until the DOJ, or its delegee, has approved the title. After an acceptable title document has been received, it should be forwarded to the Environment and Natural Resources Division of DOJ, or its delegee, for examinations and preliminary title opinion, as required under 40 U.S. C. 3111. A copy of the offer to sell from the owner, if any, and a draft of the deed should accompany the title evidence as part of the submittal.

DOJ has delegated authority to review and approve titles to various Government agencies. DOE has received delegated title approval authority from DOJ for acquisitions by the Bonneville, Western and Southwestern Power Administrations and also for atomic energy property as successor to the Atomic Energy Commission (AEC). Title should be reviewed by a qualified Attorney. The Title Standards recommend that reviewing attorneys have at least three years of experience reviewing titles. Agencies using delegated authority are subject to general supervision by DOJ. To exercise this supervision, agencies using delegated authority must submit the following documents to DOJ:

- Preliminary (pre-acquisition) title opinion
- Final (post-acquisition) title opinion

- Final title evidence reviewed (title insurance policy, e.g.)
- Recorded deed to the United States
- Certificate of inspection and possession

DOJ has requested all title submissions to be made by e-mail to: DelegatedTitles.Enrd@usdoj.gov

DOJ reviews a random sampling of materials submitted by agencies with title approval delegation.

Federal agencies assisting DOE with acquisition, such as USACE, may be able to use their own delegated authority to approve title for acquisitions they are handling.

The Environment and Natural Resources Division of DOJ can review and approve title itself upon request. If DOJ will review and approve title, then the first step is to provide the title evidence to DOJ with a request for a preliminary opinion of title. A final opinion of title from DOJ must then be obtained prior to closing.

The SRO should be consulted regarding the requirements for title approval.

Appraisals

Appraisals are required for all acquisitions of interests in real property per P.L. 91-646. Detailed information on appraisal requirements, choosing an appraiser, and obtaining an appraisal is given later in this chapter.

Topographical and Boundary Survey

A survey is made to identify individual parcels and land rights needed for the project and, if necessary, to provide the metes and bounds description. A right of entry for survey and exploration should be obtained if the surveyor is going to enter the land. The survey will verify the legal description contained in the title evidence. A notification should be sent to the property owners that the survey will be made. Surveys should be performed to American Land Title Association (ALTA) standards.

Making Offer to Owner

Per P.L. 91-646, the property owner shall be furnished with a written statement of the amount established by DOE as just compensation, including a summary of the basis for this amount (the "Statement of Just Compensation"). Just compensation must be no less than the approved appraised value of the interests to be acquired. Where appropriate, the just compensation for the property to be acquired and for damages to the remainder should be separately stated. An Offer to Sell should accompany the Statement of Just Compensation. The CRS, subject to his or her approval authority, should prepare the offer letter and statement of just compensation. The CRS is encouraged to consult with the SRO with any questions about establishing the amount of just compensation. 49 CFR 24.102 provides more detailed information on just compensation and offer requirements under P.L. 91-646.

Negotiations

Negotiations are initiated with the property owner following submission of an offer, but not before receiving acquisition authority. Prior to starting negotiations with the property owner, the negotiator should review the appraisal, title evidence, and preliminary title opinion; become completely familiar with the Government project and the property to be acquired; and be aware of any curative title work that may be needed. The negotiator should also be aware of any information

which might have an effect on the property value, such as the presence of tenants with or without lease. Negotiations should be conducted in a businesslike and courteous manner. The negotiator should not resort to coercion or threats of condemnation and should fully explain the owner's right to relocation assistance, if applicable. The negotiator should begin the negotiations by offering, in writing, the amount established by the DOE as just compensation. If an agreement cannot be reached on an acceptable price through negotiations, then condemnation may be required. Acquisition by condemnation is described later in this Chapter.

Required Elements for Negotiation are:

- Negotiator's Report. A written report of negotiations on each parcel should be prepared by the negotiator. The report should be a chronological history of the negotiations, factors considered in evaluating the owner's offer, and justification for acceptance or rejection of the offer.
- Time Limits. Negotiations should be completed within a time that is determined reasonable by the CRS. The time should be reasonable, taking into consideration such items as the number of owners involved, the value of the real property, the possibilities of reaching settlements, and the complexity of the acquisition.

Acquisition from Members of Congress or DOE Employees

When a member of Congress or an employee of DOE or its agent has a direct interest in real property being acquired by DOE, the tract should be acquired by condemnation.

Reservations in Contract to Sell

Reservations or exceptions of crops, timber, or improvements, with the right to these for a specified period of time, will be permitted if determined to be in the best interest of the Government. The reservation should indicate that, should the reserved crops, timber, or improvements not be removed within the period of the reservation or any extension thereof granted by the Government, title to such crops, timber, or improvements shall vest in the Government.

Subsurface Rights

It is generally necessary to obtain all subsurface rights to minerals, coal, oil, or gas. Where these rights need not be extinguished, provisions should be made in the offer and the deed to subordinate such rights to protect DOE use. This may be done by restricting these rights so that there will be no interference with DOE operations on the property, and so that they will not preclude later sale or other disposition of the Government or DOE interest.

Interim Occupancy

Under certain circumstances, depending on when DOE needs the property, the owner(s) or tenant(s) may be permitted to continue to occupy the property for a limited time under a rental agreement. This should be determined during negotiations and made a part of the formal settlement package.

Deed

The deed will be prepared in accordance with the DOJ Title Standards. Once the deed is executed, it must be recorded in the local jurisdiction or municipal offices so that the Government can protect its title to the property.

Closing

Closing of fee acquisitions may be handled by the title company or attorney that prepared the title evidence. The closing agent or attorney is responsible for ensuring that proper closing procedures are used. If closing expertise is not available from the title company under contract or USACE, assistance should be requested from the SRO. When the closing attorney is satisfied that all objections to the title are eliminated, the purchase price will be paid to the property owner, and DOE will simultaneously take possession of the property. All instruments releasing liens or encumbrances will be recorded with the clerk of the court or registrar of conveyances prior to the deed being recorded.

Preoccupancy Inspection

On the date that title passes to the United States, a DOE employee should inspect the acquired property and prepare a "Certificate of Inspection and Possession." A sample format may be found in "A Procedural Guide for the Acquisition of Real Property by Governmental Agencies," Environment and Natural Resources Division, DOJ, 1972.

Final Title Opinion

A final title assembly should be submitted to the Attorney General or her/his delegee as soon after closing as possible. Information submitted with the request for preliminary and final title opinions should meet the requirement of the DOJ Title Standards.

Recorded Disposition

The Attorney General's, or delegee's, opinion on the title and related documents, along with a copy of the deed, will be made a part of the official property file at the acquiring office. If persons or businesses are to be relocated, the field organization should submit a report on the relocation program to the SRO, or NNSA headquarters as applicable.

Condemnation

If the Government is unable to acquire the needed property at a just and reasonable price through negotiation, DOE may request the DOJ to condemn the property. If USACE is assisting DOE with the acquisition, then USACE may coordinate the request to DOJ. Condemnation procedures are discussed later in this chapter.

TRANSFER FROM ANOTHER GOVERNMENT AGENCY

Authority

Section 202a of the Federal Property and Administrative Services Act of 1949, as amended (40 USC 521), authorizes GSA to provide for transfer of excess real estate among Federal agencies. These transfers will be made according to the Federal Management Regulations (FMRs).

Notice of Availability

GSA regularly issues notices of availability of excess property (known as screening).

Reimbursement

Current policy requires that an agency budget for the property and pay the appraised fair market value to GSA before the property is transferred to the requesting agency, unless a waiver is obtained. See 41 CFR 102-75.205 through 75.230 for more information on compensation and waivers.

Documentation

A request for excess Federal property should be supported by:

- Complete information on the intended use of the property and the justification for the transfer
- Identity and location of the property with adequate descriptions thereof, including copies of real estate maps of the land areas and a vicinity map showing location of the property in relation to the installation requesting it
- GSA Form 1334, "Request for Transfer of Excess Real Property and Related Personal Property," fully completed for transmittal to GSA. This form can be obtained from the GSA website: http://www.gsa.gov/portal/forms/download/1B4111396138611B85256A2A00525BE1

WITHDRAWAL OF PUBLIC DOMAIN LANDS

Authority and Policy

The authority vested in the President to withdraw and reserve public domain lands has been delegated to the Secretary of the Interior. In accordance with PL 95-91, DOE may request the Department of the Interior to withdraw public domain land for DOE use. Only the minimum area required is to be withdrawn and reserved for DOE use. Procedures for withdrawal of public lands are as follows. The requirement for public lands is developed by the real property representative in coordination with the program office. An application for withdrawal of public land, following the requirements in 43 CFR 2310, is submitted by the field element to the appropriate Bureau of Land Management (BLM) office. The application will contain a complete justification for the withdrawal and will include information regarding:

- Number of acres and location of the area involved, including a detailed description of exterior boundaries and a map outlining the boundaries of the area to be withdrawn
- Whether the use will result in contamination of the area, and if so, an indication of the type of contamination, the areas involved, and whether periodic decontamination action is required
- Length of time the area is required
- Use of water resources and whether the right to use conforms to State laws and procedures

Before a withdrawal aggregating 5,000 acres or more can be finalized, the Secretary of the Interior must notify both Houses of Congress. Congress then has a minimum 90 days to take no action or adopt a concurrent resolution stating that it does not approve the withdrawal (See PL 94-579 (43 U.S.C. 1701), Federal Land Policy and Management Act of 1976). If prompt use of the land is needed, the application for withdrawal will include a request to the BLM office to expedite action. The field element will be responsible for presenting the DOE position in any hearings held by the State director of the BLM on a proposed withdrawal. Usually there will be no local hearings on withdrawals that require legislation since hearings before Congress are considered to be public hearings.

When approved by the Department of the Interior, a public land order will be issued by that Department, withdrawing and reserving the land for DOE use. This will be published in the Federal Register. A copy of the land order and/or items in the Federal Register should be made a part of

the real property file at the field element.

Under PL 94-579, new withdrawals can be for a maximum of 20 years, at which time the withdrawal must be re-justified and re-approved by the Department of the Interior (43 CFR 2310.3-4). If a withdrawal is needed for more than 20 years, congressional approval of the longer term is required. Information on withdrawals may be obtained from the local office of the BLM.

DONATIONS

On rare occasions, real property is acquired by DOE through donation. The acquisition procedures are the same as for fee purchase. The guidelines of this chapter for acquisition by purchase should be addressed, as appropriate.

Donations must be accepted by the Secretary of Energy or designee. An agreement should be entered into setting forth the terms and conditions of the donation and conveyance to the United States. An appraisal is required, and title clearance and closing are processed in the same manner as a fee acquisition.

ACQUISITION BY LEASE

Often, budgetary and management considerations will lead to the conclusion that acquisition of a leasehold interest in real property is more beneficial to the Government than fee ownership. See Chapter 6 of this Guide for a more detailed discussion of acquisition by lease. The DOE has authority to lease certain types of property pursuant to PL 95-91 and PL 83-703. The Department may also authorize its contractors to acquire leased space to house contractor personnel, but DOE is responsible for overseeing the lease procurement of its contractor when the rental is directly reimbursed under the DOE contract; however the contractor may procure such space under its own corporate authority, without reimbursement under the DOE contract, without DOE approval. When real property is leased by a contractor to perform work for DOE, and the cost of the lease rent is reimbursed under the DOE contract, acquisition of the leasehold interest will follow the same procedures and be subject to the same requirements as though DOE were signing the lease. The General Services Administration is generally responsible for the acquisition of general purpose office and related space needed by DOE, but has delegated to DOE authority to lease certain types of space. See 41 CFR 102-73.145 to 155 for information on categorical space delegations. See 41 CFR 102-73.160 to 165 and 185 for information on special purpose delegations.

ACQUISITION OF OTHER INTERESTS

Easements

Permanent easements are used to acquire linear rights-of-way for such uses as roads, railroads, pipelines, and utilities, or to restrict the use of another's property by acquiring specific rights in that property. When an easement is the appropriate estate and permanent improvements will be made by the Government, permanent rather than temporary easements should be used. Permanent easements should be sought at no less than the appraised fair market value. When it is necessary to purchase an easement, the field element will follow the procedures for purchase of property. The acquisition of easements may be required for rights-of-way for access roads and utility lines that cross or encroach on the rights-of-way or property of railroad companies, public utility companies, cities, counties, and States. In this case, an easement from the owner of the underlying fee is required and an agreement from all easement and right-of-way holders should be obtained equal in duration to the life of the easement. If the grantor demands payment of more than

the appraised value of the right to be acquired, or if the grantor is not vested with authority to grant the needed easement rights, consideration will be given to the acquisition of a permanent easement by condemnation.

Temporary easements are sought to gain short-term or one-time access to a property or right-of-way across it. For example, for hauling material during a project construction phase, or nondestructive testing. If the cost of a temporary easement exceeds $10,000, an appraisal supporting that cost is required. The acquiring office may obtain an appraisal if the cost is less than $10,000; but in any event the file should be documented to demonstrate that the cost agreed to is fair and reasonable.

Licenses and permits

DOE is authorized to acquire temporary use of real property by license or permit under PL 95-91, PL 83-703 and the Federal Property and Administrative Services Act of 1949, as amended (40 USC 101 et seq.). Licenses or permits will be obtained when the proposed use is of a temporary nature. No permanent construction will be placed on land where the Government has only a temporary interest. Since licenses or permits contain no warranty of title, it should be determined that the owner has sufficient interest in the property to grant temporary use. Licenses and permits may be reviewed by legal counsel to ensure legal sufficiency prior to execution. The terms "license" and "permit" apply to the same property interests, however, the term "permit" applies only when a Government agency grants the use of its property to another Government agency, whereas the term "license" applies when the licensee is a private party. Contractors may acquire temporary use of property by license with approval by a CRS, for uses required to fulfill contract commitments.

The owner should be notified in writing when the temporary interest is no longer required. A joint inspection should be made with the property owner, or designated agent, prior to the end of the use period. Any necessary restoration work should be completed within the use period, to avoid a claim for additional rental compensation.

Use of Real Property Accepted as a Gift

Real property accepted as a gift or its proceeds, must "be used as nearly as possible in accordance with the terms of the gift, bequeath, or devise," per section 652 of the Department of Energy Organization Act.

Improvements to Non-Government-Owned Property

Under decisions of the Comptroller General, the Government is generally precluded from using appropriated funds to make improvements to non-Government-owned property. In addition, the Comptroller General has established as governmental policy that, in general, permanent improvements may not be made to non-Government-owned land. The Comptroller General has considered this issue on a case-by-case basis and has concurred with exceptions to this policy. The Comptroller General has allowed exceptions to the policy when the Government's interests in the overall project are adequately protected. The Comptroller General has established the following general criteria that should be addressed in order to allow the use of Federal funds for such improvements: (a) the expenses of the improvements are nominal in comparison with the total price of the contract; (b) the improvements are incidental and essential for the accomplishment of the authorized purpose of the appropriation; and (c) improvements are used for the principal benefit of the Government (46 Comp. Gen. 26, 27, (1966); 42 Comp. Gen. 480 (1963)). It should be

emphasized that it is unusual to allow permanent improvements to non-Government-owned real property. Any such action under consideration should be submitted to the SRO, or NNSA headquarters as applicable, for approval.

ACQUISITION BY CONDEMNATION

It is DOE policy to acquire real property by direct purchase, at a just and reasonable negotiated price. However, in certain circumstances it will be necessary to initiate condemnation proceedings. Condemnation occurs when the Government exercises its right of eminent domain to take property for public use. Under the Constitution, a person cannot have his or her property taken for public use without due process of law and without just compensation. The Attorney General, upon request by DOE, will institute condemnation proceedings and prosecute the proceedings to completion.

Need for Condemnation Proceedings

Condemnation may be undertaken when:

- There are title defects which preclude acquisition by voluntary conveyance
- There are multiple owners and agreement cannot be reached with all owners
- The property owner refuses to negotiate or sell at a reasonable price in relation to fair market value as determined by appraisal
- Immediate possession of the property by the Government is essential, and there is not sufficient time for negotiations
- The property owners cannot be located
- Request by owners that title to their properties or interests be acquired through condemnation.
- Where owners such as States, Cities, Counties or other municipalities are without legal authority to sell or otherwise dispose of interest in real property.
- A member of Congress has a direct interest in the property

Authority

Unless otherwise delegated, recommendations for condemnation actions will be approved by the Office of Counsel of the appropriate field element and will be submitted to the SRO, for review. A "Complaint in Condemnation" and "Declaration of Taking" should be submitted with the recommendation and should cite the congressional authorization, appropriations acts for the particular project and any other applicable acts of Congress. Unless otherwise delegated, the Secretary or the Under Secretary must approve condemnation actions.

Condemnation Assembly

The request to condemn shall include the items, information, and certifications required by the DOJ in "A Procedural Guide for the Acquisition of Real Property by Governmental Agencies," Chapter I, "Acquisition by Condemnation Proceeding." One additional copy of all items should be included.

Notice to Owners and Tenants

When a decision is made to recommend condemnation, a notice will be sent to the property owners and tenants. If the reason for condemnation is disagreement over value, then the owner

should be given a definite time period to accept the most recent offer before condemnation is initiated.

Order of Possession

Upon filing of a "Declaration of Taking," the court is authorized to establish the time and the terms on which the property owners shall surrender possession to the Government. The letter of transmittal to the Attorney General will give the date by which the Government desires possession of the property. Based on this letter, the DOJ will have the U.S. Attorney obtain an Order of Possession or right-of-entry based on the needs involved.

Condemnation with Agreements to Purchase

If parcels on which there are agreements for purchase are contained in the condemnation proceedings, for the purpose of curing title defects for example, the U.S. Attorney should be provided with a signed copy of the agreement.

Deposit of Funds

The appropriate DOE finance office will provide a check for the estimated just compensation to the U.S. Attorney for deposit in the Registry of the Court at the time of the filing.

Interim Occupancy

When property owners or tenants are allowed to remain on the property, the conditions and terms under which such persons will remain on the property should be stated in a lease agreement.

Actions Following Filing of a Declaration of Taking

When notified that a "Declaration of Taking" has been filed, the following actions should be undertaken by the field organization acquiring the property:

- Post the property indicating it is now Government property, once an Order of Possession has been signed by the court
- Inspect the property and complete a Certificate of Inspection and Possession for retention in the file
- Update the title evidence as of the date of recordation of the "Declaration of Taking"
- Have appraisals updated to the date of taking

Settlement

At the direction of the U.S. Attorney, an authorized representative of DOE may discuss offers of settlement with property owners as to the amount of compensation to be paid for the property. Upon reaching a satisfactory agreement as to price, a stipulation approved by the U.S. Attorney may be executed.

Court Awards

If the court awards an amount in excess of the deposit by DOE in the Registry of the Court, the U.S. Attorney will notify DOE and request a check for the deficient amount to be sent to the U.S. Attorney for deposit in the Registry of the Court.

Appeals

If the court award seems unreasonable, DOE should consult with the DOJ. In exceptional circumstances, an appeal or motion for a new trial may be considered.

Record Disposition

Certified copies of the final judgment and documentation from the Attorney General should be retained in permanent DOE property records.

APPRAISALS

An appraisal is a written opinion of the value of a property as of a specific date, prepared by a qualified appraiser, and supported by presentation and analysis of relevant market, cost, and income information. Appraisals are prepared for the purpose of facilitating decision-making, as well as complying with the requirements of PL 91-646. Appraised values commonly requested include:

- Fair Market Value (FMV) – for acquisition and disposal of fee simple and permanent easement rights in real property;
- Fair Rental Value (FRV) –for in-leasing and out-leasing of real property; and
- Value for Offsite Removal (VOR) –where real property is acquired or disposed of without the underlying land and must be relocated from its present site.

Fair market value is the price at which a willing seller would sell and a willing buyer would buy, neither being under undue or abnormal pressure. This definition presumes awareness by both the seller and buyer of the market forces which affect value. The value estimated by the appraiser is based upon an analysis of similar properties in the area using one or more of the three appraisal approaches: market; cost, and income.

Fair rental value is the rent that space currently commands in a competitive market under specific lease terms and conditions. The appraiser must be given the solicitation, if applicable, a copy of the proposed lease terms and conditions (but not the proposed rent), and architectural and layout drawings when available, so that the property can be appraised on the exact terms and conditions proposed. Additionally, the appraiser should be instructed to separately estimate base rent, the value of any utilities or services included in the proposed lease, and the value of any other items that are part of the rent such as taxes, insurance, maintenance, space build-out, etc.The contract rent should not exceed the fair rental value estimated by the appraiser. Justification for approving rent in excess of the appraised fair rental value should be documented in the file.

Obtaining appraised value for offsite removal is applicable to buildings, structures, and related machinery and equipment, which DOE intends to remove from the site. The value is determined by establishing whether the property has value offsite and, if not, by estimating the costs to dismantle, demolish, or remove the property and restore the site. This cost is often obtained through a written estimate from a salvage contractor. The cost may be partially or completely offset by any salvage value.

Appraisals and PL 91-646

All acquisitions of real property from private owners shall comply with the policies set forth in PL 91-646, Title III. In general, Title III requires that every effort be made to acquire the property amicably and to provide disclosure of essential information necessary for the owner to evaluate the reasonableness of DOE's offer, and it forbids any coercive action to bring settlement. Procedurally, the Act requires that:

- Real property be appraised before beginning negotiations
- The owner be provided an opportunity to accompany the appraiser on an inspection of the property

- The Agency offer just compensation, which cannot be less than the Agency's approved appraisal
- The owner be provided an offer letter setting forth the amount of just compensation and separately stating any loss in value to the remainder
- In the case of condemnation, deposit in court an amount not less than the approved appraisal of fair market value
- The Agency offer to acquire any unusable remaining tract (uneconomic remnant)

Per 49 CFR 24.102(c)(2), an appraisal is not required if the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at $10,000 or less, based on a review of available data. When the CRS determines an appraisal is unnecessary, a "waiver valuation" should be prepared. The person performing the waiver valuation, preferably a CRS, must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation. The $10,000 waiver valuation threshold may be increased, up to a maximum of $25,000, if the property owner is offered the option of having DOE appraise the property.

Selection of Appraisers

Only qualified, state-licensed appraisers should be selected to prepare appraisals for DOE. Those selected should have successfully completed appraisal courses sponsored by nationally recognized appraisal organizations and have prepared similar appraisals for other Federal or State agencies. Appraisers who have received a professional designation from the Appraisal Institute are generally acceptable. Specialists should be assigned to appraise unique or complex property such as special machinery, equipment, mineral deposits, or timber.

Procurement of appraisal services may be accomplished through utilizing the USACE under the existing DOE-USACE memorandum of understanding and related interagency agreements. Alternately, DOE may obtain appraisal services through established procurement procedures.

Appraisal documentation must be consistent with the "Uniform Appraisal Standards for Federal Land Acquisition", of 2000 and professional standards of nationally recognized appraisal organizations. The data and analysis prepared by the appraiser should explain, substantiate, and document the value appraised.

Appraisal Review

The appraisal must be reviewed and approved before authorizing expenditure of Federal funds for the planned real estate action and payment of the appraisal fee. Persons reviewing the appraisal should have a fundamental knowledge of appraisal principles and techniques. CRSs have established thresholds for approving appraisals; however, the CRS responsible for approving the realty action should not review and approve the appraisal for that action. Appraisals should be reviewed by: another CRS; the SRO; other qualified DOE staff; qualified staff from other agencies; or a fee review appraiser. Review by qualified DOE staff, qualified staff from other agencies, or a fee review appraiser is recommended for complex or high-value appraisals.

Chapter 6: *Acquisition by Lease*

When real property requirements would best be served by a less-than-fee interest, then leasing the required space should be explored.

TYPES OF LEASES

A lease conveys the right to occupy property belonging to another for a period of time in return for payment of rent. All leased space should be acquired, designed, and occupied in compliance with all legal and regulatory requirements. Many of those requirements are detailed in the United States Department of Energy Leasing Handbook dated February, 1997. The different types of leases are characterized by who signs them and under what authority:

- DOE under PL 95-91 (42 USC 7101 et seq.), the DOE Organization Act (http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00007257----000-.html)
- DOE under Atomic Energy Act, Section 161g (42 USC 2201(g)) (http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00002201----000-.html)
- A DOE contractor as authorized under the management and operations contract with DOE
- A DOE contractor under its own corporate authority
- GSA for space assigned for use by DOE
- DOE under a delegation of authority from GSA

Leases Signed by DOE under PL 95-91 (42 USC 7101)

PL 95-91 (42 USC 7101) and the Atomic Energy Act (42 USC 2201(g)) authorize DOE to acquire by lease real property, other than general purpose office space, necessary to accomplish its mission. Leases may be used to acquire special purpose facilities and land.

DOE may lease special purpose space for more than a firm term of a year provided that no-year funds are obligated either: (1) for the entire amount of the firm term rent; or (2) the amount of the payment due in the event of termination, where applicable, plus rent to the date on which termination may be exercised. Office of Management and Budget Circular A-11 (http://www.whitehouse.gov/omb/circulars_a11_current_year_a11_toc/) provides additional guidance regarding obligations criteria.

GSA has delegated to DOE authority augmenting PL 95-91(42 USC 7101), which is further discussed later in this chapter.

Alternative Financing

Alternative Financing ("AF") is a process whereby DOE and its operational elements obtain the use of privately-developed capital assets through a lease. AF may be used by the DOE itself, or by DOE Management and Operations ("M&O") contractors with the prior approval of the DOE, to obtain the use of real property assets as appropriate. If the lease is a DOE lease, payments would be made directly by the Departmental element to the property owner. If the lease is with the M&O contractor, the lease cost may be reimbursed by DOE through the M&O contract.

For more information on Alternative Financing, refer to the "Alternative Financing Guide" (DOE G 430.1-7) available at: https://www.directives.doe.gov/directives-documents/0430.1-EGuide-07

Leases Signed by Contractors

When real property is leased by a contractor to perform work for DOE, and the cost of the lease rent is reimbursed under the DOE operating contractor contract, acquisition of the leasehold interest (a "covered" contractor lease) should follow the guidelines and processes in this Guide. Covered contractor leases should be reviewed and approved by:

- A CRS for the appropriate program office, within the CRS' approval authority, or
- The SRO
- NNSA headquarters

The qualifications of contractor personnel should be evaluated by a CRS, the SRO, or NNSA headquarters as applicable, and, if acceptable, approved in writing. When a CRS issues such approval, a copy should be submitted to the SRO, or NNSA headquarters as applicable, along with documentation of the experience, training and any other qualifications of the contractor personnel. Depending on the terms of their individual contracts, contractors may not be required to provide information on the qualifications of their personnel. However, providing such information is a condition for receiving greater autonomy from DOE oversight. Such approval may be subject to conditions and limitations, and is revocable at any time. If a contractor does not have qualified leasing personnel, or declines to seek approval of its leasing system, then leasing actions will be approved by the CRS, SRO, or NNSA headquarters, with review at each step in the process.

Whenever provisions of this Guide apply to covered contractor leases and GSA standard forms are referenced, it is understood that GSA standard forms may be modified for use by contractors.

The contractor may not lease general purpose office space to house DOE or other governmental personnel.

Emergency Contractor Leasing

If space is needed to house either new DOE contractors in transition to new contracts, or existing contractors with urgent and compelling short term requirements, then the standard requirements are waived except:

- The space requirements should be approved by the CRS or SRO
- The term of the lease should not exceed 18 months
- Competition should be sought
- Reasonableness of price should be demonstrated by an appraisal of fair annual rental or a market survey which includes documentation of three or more current comparable lease rentals or three or more documented competitive offers
- Initial and subsequent alterations should not exceed 25 per cent of the annualized base rent without DOE approval
- If leased space is determined to be necessary for the contractor's long term requirements, then the contractor should have a lease agreement for the permanent space completed as

soon as reasonably feasible. If the emergency space will be replaced by leased space, the solicitation for replacement space should not include moving costs as an award factor

Leases Signed by a Contractor at No Risk to the Government

A DOE contractor may enter into a lease for a period beyond that of the fiscal year or the period of the DOE contract, as long as DOE is not identified as being liable for any of the lease costs in the event the contract is terminated. The contract should contain a clause which expressly states that the terms of the lease and all associated costs are the sole responsibility of the contractor and/or the contractor's corporate headquarters, as appropriate. The lease between the lessor and the contractor should not in any manner or form identify DOE as a potential correspondent who may be liable for any lease payments or any other associated costs not paid by the contractor. As a matter of policy, nothing in the lease should bind or purport to bind the Government to the lease.

Allowable costs for the lease will be in accordance with Federal Acquisition Regulation 31.205-36, Rental Costs.

GUIDELINES AND PROCESSES

The guidelines and processes of this chapter are aligned with GSA procedures and are a time proven and established method of leasing real property. The guidelines and processes should be followed for leasing actions under delegated authority from GSA. Leasing actions using DOE's independent authorities may not need to follow all steps in the guidelines and processes. Legal counsel, the SRO, or NNSA headquarters as applicable, should be consulted prior to using procedures other than these guidelines and processes to conduct a leasing action.

In cases where authority and funding have been obtained, refer to the regulations set out by GSA in 41 CFR Chapter 102. Subsequent statutes and regulations such as the General Services Administration Acquisition Regulation, Competition in Contracting Act, repeal of Section 322 of the Economy Act, modified appraisal requirements for small leases, etc., should be complied with as appropriate. Some of the requirements are further explained in ensuing paragraphs.

Any lease for a public building, as defined in Section 13 of the Public Buildings Act of 1959, with a net annual rent over the "Prospectus Threshold" (currently $2,790,000) is subject to the requirement that a prospectus be submitted to GSA for obtaining approval of the appropriate Committees of Congress prior to any commitment by the Government. This is limited to GSA delegated lease actions. It should be noted the Prospectus Threshold is subject to adjustment annually based on changes to the Department of Commerce Composite Index of Construction Costs. The updated Prospectus Threshold is available from GSA at: http://www.gsa.gov/portal/content/101522

Forms

The guidelines and processes contain references to various Standard Forms and GSA Forms. These forms should be used for leasing actions under delegated authority from GSA. Use of these forms is also encouraged for leasing actions under DOE's independent authorities to the extent practicable. Legal counsel should review and approve any forms other than the Standard Forms and GSA Forms prior to use.

Simplified Lease Acquisition Procedures

The Simplified Lease Acquisition Procedures (SLAP) found in GSAM Subpart 570.2 may

be followed for leases at or below the Simplified Lease Acquisition Threshold (SLAT). The SLAT is defined in FAR Part 2.101, is subject to adjustment, and is currently $150,000 average annual rent including option periods, but excluding the cost of operational services.

Office Space Allocation Standard

On October 13, 2011, Deputy Secretary of Energy Daniel B. Poneman issued a Policy Memorandum entitled, "Setting an Average Office Space Standard: 200SF/Person." Pursuant to this Memorandum, the office space allocation standard is an average of 200 square feet of usable area (using ANSI/BOMA measurement method) per person for all Federal employees and their support contractors. The Memorandum calls for the standard to be incorporated into DOE O 430.1B on or about May 1, 2012. The 200 sf/person standard does not apply to M&O contractors, because their space allocation needs are site-specific.

Delineated Area

The delineated area should be large enough to provide adequate competition. In addition, FMR require that preference be given to locations within the central business district of the central city within a Standard Metropolitan Statistical Area unless such a location is incompatible with the DOE mission. Location outside the central business district should be fully justified and documented in accordance with the Rural Development Act.

Advertising

A new requirement for leased space should be advertised to the public. Paid advertisements should be placed in local newspapers or advertised on the internet, including on FedBizOps. The public notice will include the delineated area, amount and type of space needed, date space is required, term of the lease (both firm and renewal options), and the source where further information may be obtained.

Advertising is not required for leases under SLAP, however, at least three sources should be solicited to promote competition. If only one source is solicited, the file should be documented to explain the lack of competition.

Sole Source

Competition for leased space should be obtained except in those cases where sole source acquisition can be justified. Justification should be documented and approved per the requirements of the Federal Acquisition Regulation (FAR) Part 6.1 through 6.3, prior to initiating a sole source acquisition.

Market Survey

After responses to the advertisement are received, a market survey should be conducted by DOE or contractor representatives to inspect properties offered, and any others available in the market that meet or can be adapted to meet the Government's needs. The file should be carefully documented for any properties rejected. The market survey will set the posture for the balance of the leasing action. Therefore, the individual representing DOE or the contractor should have full knowledge of the requirements so that only those properties that can meet the requirements are accepted for further consideration.

Solicitation for Offers

For leases above the SLAT, a set of minimum specifications will be prepared in the form of a solicitation for offers (SFO). The SFO should contain as attachments the Standard Form 2 or

contractor modified version of the Lease for Real Property, "Mandatory and Recommended Clauses," GSA Form 3517, "General Clauses," and GSA Form 3518, "Representations and Certifications." Leases under the SLAT may use a short form lease or SFO. Requirements should be based on performance and may include:

- required levels of heat, light, and power
- fire protection
- partitioning
- any special equipment installation needed
- responsibility for utilities and janitorial services
- hours the building is open
- parking needed
- outside maintenance such as snow removal or landscape maintenance
- required occupancy date
- proximity to another location
- availability of eating establishments, transportation and other facilities, etc.

As of the writing of the 2011 update to this Guide, GSA is in the process of implementing various reforms in the federal leasing process. One proposed reform would eliminate the SFO and replace it with a new document titled, "Request for Lease Proposal" (RLP). Should such reforms be implemented, all references in this Guide to the SFO should be read to refer to the RLP.

The solicitation for offers will be distributed to all known offerors of space that have the potential to meet the Government's requirements. Those offerors will then be asked to submit a written offer to lease at a specified rent. Offerors who do not respond should be contacted and asked the reasons for non-response. Information on the required contents of the solicitation for offers will be found in the Leasing Handbook and GSA Acquisition Regulation.

The solicitation should require that the space will be altered to DOE's specifications prior to acceptance, and that the cost will be amortized as part of the rent. All maintenance, janitorial services, and cost of utilities should be the responsibility of the lessor under the lease. In analyzing proposals for leases, the offerors are to submit detailed operating cost elements on a GSA Form 1217, "Lessor's Annual Cost Statement." In any case where there are deviations from this paragraph, the file will be documented with justification.

The solicitation may include the requirement for renewal options if justified by mission need. If such options are solicited, priced options should be required and evaluated for price, as part of the award evaluation.

Escalator Clauses

Escalator clauses for operating costs may be used in multiyear leases. The escalator should be based on the Consumer Price Index (CPI) for Wage Earners and Clerical Workers, U.S. City Average, All Items Figure, as published by the Bureau of Labor Statistics. Other forms of escalation may be considered for increases in real estate taxes, but not for the net rent, however, the file should be documented with an explanation of why the CPI was not used. In all leases with escalation clauses, a GSA Form 1217, "Lessor's Annual Cost Statement," should be prepared

annually and retained as part of the lease file.

Tax Adjustment

Tax adjustment in multiyear leases should be made in accordance with a clause similar to the following:

- The Government shall pay additional rent for its share of increases in real estate taxes over taxes paid for the calendar year in which its lease commences (base year). Payment will be in a lump sum and become due on the first workday of the month following the month in which paid tax receipts for the base year and the current year are presented, or the anniversary date of the lease, whichever is later. The Government will be responsible for payment only if the receipts are submitted within 60 calendar days of the date the tax payment is due**.** *If no full tax assessment is made during the calendar year in which the Government lease commences, the base year will be the first year of a full assessment.*
- The Government's share of the tax increase will be based on the ratio of the square feet occupied by the Government to the total rentable square feet in the building. If the Government's lease terminates before the end of a calendar year, payment will be based on the percentage of the year in which the Government occupied space. The payment will not include penalties for non-payment or delay in payment. If there is any variance between the assessed value of the Government's space and other space in the building, the Government may adjust the basis for determining its share of the tax increase.
- The Government may contest the tax assessment by initiating legal proceedings on behalf of the Government and the lessor, or the Government alone. If the Government is precluded from taking legal action, the lessor shall contest the assessment upon reasonable notice by the Government. The Government shall reimburse the lessor for all costs and shall execute all documents required for the legal proceedings. The lessor shall agree with the accuracy of the documents. The Government shall receive its share of any tax refund. If the Government elects to contest the tax assessment, payment of the adjusted rent shall become due on the first workday of the month following conclusion of the appeal proceedings.
- In the event of any decreases in real estate taxes occurring during the term of occupancy under the lease, the rental amount will be reduced accordingly. The amount of any such reductions will be determined in the same manner as increases in rent provided under this clause.

The solicitation should include all applicable clauses from the most recent version of the GSA SFO or RLP form, including those related to Green Leasing, LEED, Energy Star and sustainability.

Negotiations

After offers are received, negotiations will be conducted with all offerors to clarify any

remaining issues, attempt to make all offers responsive to the SFO, and attempt to negotiate the rentals offered as low as is economically reasonable. Award should be made to the responsible offeror with the lowest price. If factors other than price are to be considered in the award of a lease contract, then those award factors should be stated in the solicitation or they may not be used. Award factors requiring subjective evaluation should not be used since they are a major source of protests. Objective award factors to which dollar values can be assigned and supported are preferred. All offers should be evaluated using the same criteria and should be reviewed for responsiveness to all requirements of the solicitation. A record of negotiations, with reasons for rejecting offers and details of discussions with each offeror, should be prepared and placed in the lease file prior to award of a lease.

Cancellation Clause

"Termination for Convenience" is not a term properly used in a lease. A clause that provides the Government or contractor with the right to end the lease after a given time is a cancellation clause. To enter into a lease with such a clause, an amount equal to the full year's rent and the amount of the cancellation payment due on that date, if any, should be specifically obligated or committed to the lease contract. The total amount of the Government's liability for the payment under the terms of a lease should be committed at all times during the term of that lease.

Lease Extensions

Lease extensions will be avoided wherever possible. Succeeding leases will be used instead, providing the opportunity for update to current Government lease acquisition statutes, regulations and policy.

Appraisal

After offers are received, negotiations completed, and the low responsive offer is identified, an appraisal is usually obtained to determine the fair rental value. Per GSAM 570.110, proposed rent may be evaluated through either an appraisal or market survey. Full appraisals are strongly recommended for leases in excess of the SLAT. A format similar to the GSA Form 1241E, "In-Lease Appraisal" should be used for leases that are at or below the SLAT: (http://www.gsa.gov/portal/forms/download/CBD78326EFABF30285256BF100579B23).

A complete discussion of the adjustment of comparables to the subject should be included, as well as maps, photographs and other details adequate for a reviewer to fully understand the appraisal conclusions. The lease files should contain an appraisal review document to verify compliance with the appraisal provisions in Chapter 5 of this Guide.

Fair Annual Rental Value

The Government or the contractor should negotiate the lowest possible economic rent. It is general DOE practice, in real estate acquisition, not to exceed the approved appraisal by more than 15 percent. No lease rental may exceed the approved appraisal by more than 15 percent without the prior review and approval of the SRO, or NNSA headquarters as applicable. In any lease action where the appraised fair rental value is exceeded, the file should be documented to show that vigorous negotiations were conducted prior to acceptance of a rental or before submittal to Headquarters for approval.

Lease Award

If the rent falls within the required limits, the CRS in the acquiring office will approve the documents and the lease may be awarded. At the time of award, other offerors are to be advised

in writing that an award has been made. The award is made by sending a letter of acceptance from the CRS to the successful offeror, together with the Standard Form 2 or contractor modified version of the Lease for Real Property, "Mandatory and Recommended Clauses," GSA Form 3517, "General Clauses," GSA Form 3518, "Representations and Certifications" (http://www.gsa.gov/portal/forms/download/0229458E3B14A6CC85256A2C00515A4F), the solicitations, and any additional paragraphs that have been negotiated. Please note that, at the time of drafting the 2011 update to this Guide, GSA's lease process reform was not yet complete. However, the reforms are expected to include significant changes to lease forms and the revised GSA forms should be used once available.

The lease should have a date of occupancy at the time of award; and, while the contract is binding as of the date of award, rent does not begin until the effective date of the lease, which is the date the space is completed and ready for occupancy by the Government or its contractors. If the occupancy date changes, and the change is approved by the Government or contractor, then a supplemental agreement should be executed. The lease is unsigned by the Government when it is mailed to the offeror, and is signed and dated only after it is returned. Care must be taken to assure that the lease is properly signed, witnessed, and dated by the lessor, or duly authorized representative, and by a Government realty officer acting within proper limits of his/her authority. The lease will be prepared in an original and three copies, with the original retained by the acquiring office, an executed copy to the lessor, and a copy to the appropriate Departmental finance office.

Inspection

Prior to acceptance and occupancy of the facility by the Government, representatives of both the lessor and DOE should inspect the property and determine that it meets the terms of the lease. An inspection report should be made setting out the results of the inspection.

Inspections are also encouraged during the term of the lease to ascertain compliance with the terms and conditions of the lease. It is important that these condition reports be adequate and accurate so that they may serve as a reliable measure of any change in the condition of the property. They should be signed by both parties. Similarly, an inspection of the property should also be conducted upon termination of the lease. The final condition report, when compared with the initial reports, will serve to determine any restoration obligation under the lease. Include digital photos with the report.

Modification to Lease

Lease renewal options, justified extensions, amendments and modifications, may be approved by the CRS up to the amount of his or her lease approval authority, by the SRO, or by NNSA headquarters as applicable. Any modification to the terms of the lease that is a deviation from the provisions of this Guide, or from any of the regulations applicable to Government leasing, should be reviewed and approved by legal counsel.

All Lease renewal options or justified extensions will be submitted to the CRS for approval and should include:

- A market survey to validate current rental rates
- Mission Need Justification Statement

- An explanation if any modification to the terms of the lease is a deviation from the provision of this Guide, or from any of the regulations applicable to Government leasing.

Condemnation

If a leasehold interest cannot be acquired through negotiations, condemnation action may be considered but would likely only be approved in those instances where there is no alternative. Any proposal to condemn a leasehold interest should be undertaken in accordance with the procedures for condemnation outlined in Chapter 5 of this Guide.

Quasi-Real Property Actions

Some real property requirements may be more efficiently acquired by a service or supply contract or a purchase order. Those considered appropriate for discussion in this Guide are:

- Apartments for personnel on travel status.
  - Contract terms should be less than a year
  - Volume of use by travelers and cost of occupancy should justify this arrangement by cost comparison to standard travel lodging facilities
  - The acquisition must be competed, or sole source justification should be documented
- Apartments for summer intern/student use
  - Contract terms should be less than a year
  - The acquisition must be competed, or sole source justification should be documented
- Commercial storage units not including warehouses.
  - Contract term should be less than a year
  - The acquisition must be competed, or sole source justification should be documented

LEASES SIGNED BY GSA FOR DOE SPACE

When general purpose office space is required to house DOE employees, or a mix of DOE and contractor employees, the requirements should be quantified as for any other space need. A package containing the following should be submitted to the Director of Real Estate in the appropriate GSA Regional Office:

- justification for the space requested
- the delineated area
- date the space is required
- completed Standard Form 81, “Request for Space,” and Standard Form 81A, “Space Requirements Worksheet,” (forms can be obtained from the GSA website)
- complete listing of special requirements

Any space request to be submitted to GSA that does not comply with Federal office space utilization policy should be submitted to the SRO, or NNSA headquarters as applicable, for review and approval. The submittal should justify the need to exceed the national space-use guidelines and best practices as may be established by GSA. Headquarters will forward the space request to the appropriate GSA regional office after review and approval.

After GSA has advertised the space requirement, the acquiring office must be invited to

accompany GSA personnel on the market survey, and GSA may issue solicitations only to offerors jointly agreed to by GSA and DOE. Once DOE agrees to issue the solicitation to a potential offeror, DOE has agreed to accept that space if it is the lowest responsive offer. GSA must obtain DOE approval of the solicitation for offers before it is distributed. The copy is submitted for review and approval to the requesting office by GSA. Once the solicitation is approved by DOE, it binds DOE to accept any space that meets the requirements set out. Therefore, the solicitation should be promptly and carefully reviewed to assure that all of the requirements are included and properly stated, and that DOE review time does not delay GSA's schedule to permit timely acquisition of the space. If there is a dispute, the SRO, or NNSA headquarters as applicable, should be advised immediately. There are few valid grounds for objecting to the issuance, if the space is within the delineated area and the offeror can alter or renovate it to meet the minimum requirements, at an economic rent, by the required date.

Once a lease is awarded, GSA should work with the acquiring agency to obtain a layout of the space acceptable to the needs of DOE. Again, DOE should make certain that delays on its part do not prevent GSA from taking action to acquire the space by the time it is needed. GSA will enter into a lease agreement directly with the lessor. GSA and DOE will enter into an occupancy agreement setting out the terms and conditions of DOE's use of the leased space.

LEASING OF SPACE UNDER GSA DELEGATED AUTHORITY

When space is leased under a delegation of authority from GSA, DOE may enter into a long-term lease, as specified in the delegation, without obligating funds beyond the current year liability. A GSA delegation may be for a one-time specific space requirement or a generic delegation for certain classes of space needs.

The General Services Administration is generally responsible for the acquisition of general-purpose office and related space needed by DOE, but has delegated to DOE authority to lease certain types of space. On September 25, 1996, GSA delegated authority to Federal agencies, including DOE, for leases below the prospectus threshold. This delegated authority was amended on November 19, 2007 to include only leases of general purpose office space of less than 20,000 square feet. Further, GSA authorization is required prior to instituting any new, succeeding, extension or superseding lease action of general purpose office space less than 20,000 square feet. Leasing actions of general purpose office space 20,000 square feet and above will be conducted by GSA. GSA authorization is also required for leasing actions involving special purpose space of 2,500 square feet or more. These requirements apply only to leases acquired under delegated GSA authority.

The GSA Leasing Desk Guide is available as a source of guidance for leasing under delegated authority from GSA. The GSA Leasing Desk Guide is available at: http://www.gsa.gov/portal/content/184265

ALTERATIONS TO LEASED SPACE AFTER INITIAL OCCUPANCY

Alterations to leased space may be accomplished after initial occupancy of the leased premises. Alterations should be fully justified as to need and cost. Regardless of whether the alterations are performed by the lessor or the tenant, an attempt should be made to obtain a waiver of restoration from the lessor (as well as an agreement to maintain the alterations if the lessor is performing the work). The real estate file should contain a record of all alterations.

Payment for alterations performed by the lessor subsequent to initial occupancy and not included in the original rental rate may be accomplished by lump sum payment. It is generally preferred for the improvements to remain the property of the lessor. This limits potential liabilities of the lessee arising from the alterations. Alterations by the lessor should be accomplished by supplemental agreement to the lease.

Alterations may be made by the lessee in which case the lessee should retain ownership of the materials used to perform the alterations. Alterations by the lessee are discouraged because of potential liabilities arising from alterations to the real property of the lessor. When such alterations must be performed by the lessee, every reasonable attempt should be made to obtain the right to abandon the alterations in place in lieu of the obligation to remove and restore. CRSs in the field of leasing are authorized to approve alterations to leased space, subject to all other normal approvals for real estate transactions, up to the amount of their lease approval authority. Projects exceeding this threshold should be referred to the Office of Acquisition and Project Management or appropriate NNSA for review and approval. Alterations to contractor leased space should be reviewed by a CRS in the field of leasing whenever the cost of an alteration project exceeds $25,000.

LEASING LAND

Unimproved or vacant land may be leased using DOE's independent statutory authorities. Such leases should be limited to one-year terms; however, they may contain nonbinding annual renewal options to be exercised at DOE's discretion. A Preliminary Real Estate Plan (see "Acquisition Planning" in chapter 5) may be required for some land leases. Environmental laws and regulations, including NEPA and CERCLA, may be applicable to the proposed land use. The need for land should be publicly advertised and a market survey should be conducted, unless a particular or unique property is required, in which case a sole source justification should be prepared. Negotiations should be conducted with all owners of suitable property. Legal counsel should be engaged to prepare a lease agreement. Depending on the intended use of the land, an Environmental Site Assessment may be advisable. Fair rental value should be documented by an appraisal, market survey, or other market data. Following award and execution of the lease, the CRS should prepare a Negotiators Report (see "Negotiations" in chapter 5).

Chapter 7: *Land and Property Rights Management*

AUTHORITIES:

- PL 95-91 (42 USC 7256-7257) DOE Organization Act, Section 646 & 647
  http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00007257----000-.html

- PL 83-703 (42 USC 2201(g)) The Atomic Energy Act of 1954, Section 161g
  http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00002201----000-.html

- PL 105-85 (50 USC 2811) National Defense Authorization Act for FY 1998, Section 3158, and associated regulations in 10 CFR 770
  http://www.law.cornell.edu/uscode/html/uscode50/usc_sec_50_00002811----000-.html
  http://www.access.gpo.gov/nara/cfr/waisidx_11/10cfr770_11.html

- PL 106-580 (40 USC 101 et seq.) Federal Property and Administrative Services Act of 1949, As Amended
  http://www.law.cornell.edu/uscode/html/uscode40/usc_sup_01_40_08_I.html

- Federal Credit Unions - Allotment of Space in Federal Buildings or Federal Land (12 U.S.C. 1770)
  http://www.law.cornell.edu/uscode/html/uscode12/usc_sec_12_00001770----000-.html

- PL 104-104 (47 USC 332) Telecommunications Act of 1996
  http://www.law.cornell.edu/uscode/html/uscode47/usc_sec_47_00000332----000-.html

- EO 13423: Strengthening Federal Environmental, Energy, and Transportation Management
  http://edocket.access.gpo.gov/2007/pdf/07-374.pdf

- EO 13514: Federal Leadership in Environmental, Energy, and Economic Performance
  http://edocket.access.gpo.gov/2009/pdf/E9-24518.pdf

CONVEYANCE OF LESS-THAN-FEE INTERESTS IN REAL PROPERTY

Granting of licenses, permits, and easements, as well as out-leasing, (all known and referred to as "out-grants") are conveyances of less-than-fee interests in real property.

If land or facilities controlled by DOE are temporarily underutilized, they may be out-granted to others for use during an interim period, with certain limitations, if the proposed use is consistent with Departmental mission requirements, security, and public safety. Prior to out-granting any interest in DOE-controlled real property, field elements should review Section 106 of the National Historic Preservation Act. The order of preference for out-grants when more than one party is

interested in the property, and no compelling reasons dictate otherwise, is:

- Other Federal agencies
- State and local Governments
- Private organizations or individuals

Out-granting DOE property for private use by lease will be accomplished by obtaining competitive offers through advertising whenever feasible. Competitive offers are not required when:

- Granting licenses or permits for a firm term of a year or less or to other Federal agencies
- Granting short term licenses to local Governments or public service groups
- Granting leases to local, county or State governments
- Granting easements where it can be documented from the file that competition is impractical or unnecessary
- Transfers of real property, by lease, at defense nuclear facilities for economic development pursuant to 10 CFR 770
- Out-leases under the "Hall Amendment," section 646(e)(1) of the DOE Organization Act. The Hall Amendment allows DOE to lease property (for up to ten years) if it is temporarily not needed or excess at DOE facilities to be closed or reconfigured. A lease can include an option to renew for more than ten years if the field organization determines that a renewal promotes national security or is in the public interest. Including the initial term and all options, the total term of the lease may not exceed 40 years. In order to qualify for leasing under the Hall Amendment, the property must be located on acquired land. Acquired property and related personal property are described as those properties which:
    - are located at a DOE facility to be closed or reconfigured
    - at the time the lease is entered into, are not needed by DOE
    - are under the control of DOE

Granting Out-leases

Temporarily underutilized DOE-controlled property may be out-granted by lease under PL 95-91 or PL 83-703; however, terms of such leases, including all options, may not exceed 5 years for leases under the authority of PL 95-91, except for leases under the Hall Amendment (see above). There is no specific limit in PL 83-703 for the length of lease terms, but see "Long-term Out-leases" below for additional guidance. Appraisals should be obtained, and payment received should not be less than the appraised fair market rental value, except in cases where it is clearly in the best interest of the Government to accept less. Such cases should be documented in the file. All leases should specify:

- the amount of realty to be utilized and/or occupied and its specific location
- a beginning and an ending date with any options
- hours for use or access
- amount of rent to be paid
- who is responsible for operation of the leased property

- who is responsible for furnishing maintenance, utilities, and services.

If the Government is to provide more than just the space, rates should be developed and added to the rent, if they were not included in the appraised fair rental value. Rental monies received should be deposited by the fiscal officer in the appropriate accounts in the Treasury.

Leases granting the lessee possession and use of improvements should require the lessee to insure such improvements for their full value, if practicable; to make certain the improvements will be available for future DOE use. Out-leased property should not be subleased or assigned without the lessee notifying and obtaining approval from the CRS, or contracting officer where applicable. The out-lease instruments should include a clause restricting sublease or assignment.

Long-term Out-leases

As discussed above, leasing is commonly an interim, short-term use. A long-term lease could be viewed as providing a lessee with a level of control over property that approaches fee ownership. Real property that is not essential to DOE's mission should generally be declared "excess" to GSA or be disposed of by fee simple conveyance under independent DOE authority. There is no specific limit in PL 83-703 for the length of lease terms, but DOE has historically disfavored leases with terms exceeding 20 years with a 20-year renewal option.

There are circumstances where property is not suitable for disposal and long-term leasing is an appropriate option. For example, some sites contain land that needs to be retained in DOE ownership, but is capable of being developed without impacting operations. In order to secure financing to construct improvements, a lessee needs to demonstrate sufficient control of the leased property. Many financial institutions require a lessee to have a minimum 50-year lease term to be considered for a loan.

One specific class of development that may justify long-term leasing is renewable energy generation. Renewable energy facilities require a significant capital investment to construct, and often need to remain operational for several decades to provide a return. Allowing long-term leases under these circumstances furthers DOE's missions to promote economic development and renewable energy.

Leases of DOE real property under the authority of PL83-703 should generally be limited to terms of 20 years or less, except where all of the following conditions apply:

1. DOE needs to retain ownership for mission purposes or cannot otherwise convey fee simple title within the term of the proposed lease;
2. The lessee's proposed use of the real property does not negatively impact DOE operations or mission;
3. The nature and timeframe of the proposed use reasonably require a lease term of greater than 20 years.

Leasing is not recommended for development of nuclear power facilities.

In order to ensure appropriate oversight and guidance, it is recommended that the Site provide notification, in writing or via e-mail, to the responsible Program Office and the Office of Property Management, Personal Property and Real Estate Policy Division at least 30 days prior to executing a lease of DOE real property with a term greater than 20 years. Additionally, the Office of General Counsel should review any lease over 40 years (including all renewal options) prior to

execution.

Granting Easements

Easements granted upon DOE lands place encumbrances on the property that could affect DOE use and disposal. Therefore, easements should be granted only when the rights granted do not conflict with DOE use or when the easement provides a clear benefit to DOE. When an easement is granted, DOE should ensure that the Government's interest in adjoining property and its remaining interest in the easement area are protected. Examples of purposes for which easements may be granted include roads, railroads, pipelines, and utility lines.

Fair market value should be charged for easements. In those cases where the grantee is a State or local Government or nonprofit organization, or when the grant will primarily benefit the Government, the easement may be granted without charge and the file should be documented to show the reason. DOE has authority to grant the following kinds of easements:

Easements for road widening are granted pursuant to 40 U.S.C. 1304(b). This law provides that, upon application by a State or a political subdivision, the Head of the Executive Agency having control over the property may, with or without charge, convey, or transfer such interest in the property consistent with the best interest of the Federal Government.

General easement authority is contained in 40 U.S.C. 1314. This authority is unlimited as to purposes for which easements may be granted; however, it should not be used for purposes which another statute specifically authorizes. The authority can be used to grant an easement requested by a State, or its political subdivision, for roads or streets on land that is under the exclusive legislative jurisdiction of the Federal Government, if it is determined to be in the best interest of the Government to relinquish entire or concurrent jurisdiction to the State. Easements for roads and streets may be granted in perpetuity.

General easement authority is also granted under section 161g of the Atomic Energy Act (see 42 USC 2201(q)).

Terms and Conditions

Terms and conditions of easements should include the following:

- The grantee shall maintain the property in good condition and promptly make necessary repairs
- Use of the property by the grantee shall not interfere with Government operations, but this may be omitted from easements for Federal-aid highways
- Relocation of any facilities constructed by the grantee that interfere with Government operations will be required at the expense of the grantee. This relocation provision may be omitted when such provision would be impractical or unreasonably burdensome to the grantee
- The easement will be terminated for default, for nonuse for a period of 2 consecutive years, or if the easement is abandoned

Licenses and Permits

Licenses or permits may be granted for temporary use of Departmental property and should

be revocable at any time with written notification. DOE may allow other Federal agencies to use DOE property through issuance of a permit, as long as the use does not interfere with the Departmental mission. Other Federal agencies should pay market rate, as established by the CRS, for use of the real property. The term of the permit should be limited to the actual time required for contemplated use and may be for any period, so long as it is revocable at any time with written notification. The maximum term for a Permit is normally 10 years, but may be for a longer term, or may be renewed with proper justification.

Non-federal government users may be granted a license to use DOE property. Payment of fair market value is required, unless (a) the proposed use will benefit only the Government, or (b) the user is a local Government entity. Amount of payment is usually based on local practice. Advice on charges may be obtained from the USACE, BLM, or local appraisers.

When a commercial user, such as a bank or service station, requests a license to use DOE land, the field element should have a justifiable need for the offered service that cannot be filled offsite, should give all other like organizations the right to compete, and should require the recipient of the license to pay not less than fair market value for the use of the Government property.

TELECOMMUNICATIONS EQUIPMENT

The Telecommunications Act of 1996 (P.L. 104-104) includes provisions for making federal real property available for placement of telecommunications equipment by duly authorized providers. On March 29, 1996, GSA published a Notice in the Federal Register outlining the guiding principles and actions necessary for Federal agencies to implement the antenna siting program promulgated by the Act. In response to inquiries from the wireless telecommunications industry regarding the Federal Government's progress in this program, GSA held three Antenna Siting Forums in 1997. Issues raised from these forums were:

- Development of a uniform evaluation process, including timely response and an appeals process, to facilitate and explain the basic application process
- Site pricing to enable Federal agencies to retain flexibility in establishing the antenna rates
- Site competition to provide timely response to requests and, where feasible, encourage industry collocation
- Fee reimbursement to provide payment to the Federal Government for services and resources provided as part of the siting request process
- Site security, access, and rights-of-way to identify roles and responsibilities of both the Federal Government and the wireless telecommunications service provider; and Site request denial tracking to enable GSA and the wireless telecommunications industry to track antenna requests and denials.

GSA subsequently identified environmental and historic resource implications. The collaborative effort fostered a better understanding of the process and procedures required between Federal agencies and the telecommunications industry and facilitated the implementation of the Telecommunications Act of 1996 and development of the "Procedures for Processing Telecommunications Site and Facility Requests by DOE" (Appendix 2 to this Guide). These

procedures provide a comprehensive, step-by-step guide for processing applications from telecommunications providers.

CREDIT UNIONS

Specific legislative authority, at 12 U.S.C. 1770, "Allotment of Space in Federal Buildings or Federal Land," permits assignment of available space in Federal buildings or on federal lands under exclusive or concurrent federal jurisdiction, at no cost, for use by credit unions. To be eligible for such space, at least 95 percent of the members of the credit union must be Federal employees or were Federal employees at the time they joined the credit union. Members of their immediate families are also eligible. Credit unions that do not meet the requirements for free space but do provide service to DOE or onsite contractor employees, are eligible for space on a noncompetitive basis, although fair rental value must be charged. If more than one credit union desires the space, then the space must be competed among the credit unions.

AUTOMATIC TELLER MACHINES (ATM)

By memorandum dated December 4, 1985, the Director of Administration established DOE policy regarding ATMs, which is as follows:

- If the ATM is solely for the use of members of a Federal or contractor credit union, which is authorized space on a DOE facility, then the installation of an ATM should be authorized on a no-cost basis. It is recommended that a license be issued to the credit union rather than a lease
- An ATM, which services commercial banking customers as well as credit union members, may be allowed provided that the ATM is operated by the credit union and not the bank
- A lease is the proper vehicle to authorize the installation of an ATM when it is installed by a commercial banking institution and is presently in place on DOE-controlled property. Space should be leased at not less than the fair market rental value. Installation of additional ATMs, which are not operated by Federal or contractor credit unions, should either be competed or, if one financial institution is allowed to install an ATM without competition, then all financial institutions should be allowed to install an ATM if they so request

ANNEXATION

Annexation is an action taken by a municipality to incorporate DOE lands into its corporate limits. It is the policy of DOE not to oppose annexation except where such action would not be in the best interest of the Government. Such determinations are to be submitted to appropriate headquarters level functions for review and concurrence.

PAYMENT IN LIEU OF TAXES (PILT)

Local governments are compensated for certain Federal lands within their borders under the Payments in Lieu of Taxes (PILT) program established in accordance with Section 168 of the Atomic Energy Act of 1954 (42 U.S.C. 2208). The program is applicable only to properties acquired by DOE or one of its predecessor organizations, which were previously subject to state or local taxation, and on which the Department carries on activities authorized by the Atomic Energy Act of 1954. For such properties, Section 168 authorizes the Atomic Energy Commission (now

DOE) "to make payments to State and local governments in lieu of property taxes." Such payments are to be "in the amounts, at the times, and upon such terms as the [Department] deems appropriate, but the [Department] shall be guided by the policy of not making payments in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon the State or local government by activities of [DOE]."

The policy and procedures for carrying out the PILT program are contained in DOE Order 143.1, *Payments in Lieu of Taxes*. This Order is issued by the Office of the Chief Financial Officer, Office of Financial Policy, which is responsible for authorizing new and revised payments in lieu of taxes; developing policies and procedures relating to such payments; assuring that funding for approved payments, as requested by the program offices, is included in DOE's budget submission; and making sure that appropriated and apportioned funds for payments in lieu of taxes are properly allotted. It is the responsibility of the field CRS to provide support to the payments program by identifying specific properties and acreage subject to payment in lieu of taxes calculations.

FORESTRY MANAGEMENT

When DOE-controlled land contains areas suitable for the conservation and management of forest resources, a forest management program should be established. This program should include forest administration, timber management, timber sales and harvesting, reforestation, forest protection, and all other elements related to timber production. On land withdrawn from the public domain, DOE should coordinate forest management activities with the Bureau of Land Management.

SOIL AND WATER CONSERVATION

To assure that maximum benefits are derived from existing natural resources and to prevent needless expenditure of funds for the preservation of these resources, a soil, water, and plant conservation plan should be developed and maintained by the field elements, and funds should be made available for the execution of the plan. The plan should be in accordance with current conservation and land-use practices, include proposed changes in land use and drainage patterns, and outline all soil and water conservation problems and requirements. In addition, the conservation plan should contain:

- Brief description of land and water areas
- DOE use requirements
- Pertinent soil, climate, or erosion conditions
- Technical guidance criteria for recurring actions required to economically preserve, improve, or sustain the area
- Any special problems in connection with the conservation of these resources

A copy of the soil and water conservation plan will be kept on file in the appropriate field elements.

FISH AND WILDLIFE MANAGEMENT

All installations having suitable land and water areas may have programs for the harvesting

of fish and wildlife by the public. Any hunting, fishing, and trapping allowed will be in accordance with the fish and game laws of the State and appropriate State licensures are required. Provisions may be made for controlled public access to DOE property for hunting, fishing, and trapping, provided it does not interfere with missions. Fish and wildlife management should be integrated with other natural resources activities. Cooperation with State and Federal fish and conservation agencies is required, pursuant to 16 U.S.C. 661, 470, 1536, 703, 1431, and 668; 42 U.S.C. 4331; 7 U.S.C. 136; and 33 U.S.C. 1401. A management program that complies with accepted scientific practices should be established.

CULTURAL RESOURCE MANAGEMENT

Prior to out-granting any interest in DOE-controlled real property, field elements must comply with the requirements and intent of Section 106 of the National Historic Preservation Act. In managing cultural resources, field elements should be further guided by the Archaeological Resources Protection Act and American Indians Religious Freedom Act.

NATIONAL ENVIRONMENTAL RESEARCH PARKS

Suitable DOE-owned or leased land may be designated as a national environmental research park. Property holdings should be reviewed periodically and may be set aside for the exclusive use of non-manipulative environmental research for definite or indefinite periods of time.

Chapter 8: *Disposal of Real Estate*

AUTHORITIES

- Federal Property and Administrative Services Act of 1949, as amended (40 USC 101 et seq.) http://www.law.cornell.edu/uscode/html/uscode40/usc_sup_01_40_08_I.html

- Federal Management Regulation (41 CFR 102) http://www.access.gpo.gov/nara/cfr/waisidx_09/41cfrv3_09.html

- Atomic Energy Act section 161g (PL 83-807)(42 USC 2201(g)) http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00002201----000-.html

- Atomic Energy Community Act of 1955 (42 USC 2301 et seq.) http://www.law.cornell.edu/uscode/html/uscode42/usc_sup_01_42_10_24.html

- Energy Reorganization Act of 1974, as amended (42 USC 5821(b)(1)(B)) http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00005821----000-.html

- National Defense Authorization Act for FY 1998 (PL 105-85) (50 USC 2811), Section 3158, and associated regulations in 10 CFR 770 http://www.law.cornell.edu/uscode/html/uscode50/usc_sec_50_00002811----000-.html http://www.access.gpo.gov/nara/cfr/waisidx_11/10cfr770_11.html

- McKinney-Vento Homeless Assistance Act, Title V (42 USC 11411 et seq.) and associated regulations in 24 CFR 581 http://www.gpo.gov/fdsys/pkg/USCODE-2012-title42/pdf/USCODE-2012-title42-chap119-subchapV.pdf http://www.gpo.gov/fdsys/pkg/CFR-2013-title24-vol3/pdf/CFR-2013-title24-vol3-part581.pdf

DISPOSAL OF UNITED STATES-OWNED LAND AND/OR IMPROVEMENTS

Real property holdings of DOE and its contractors should be limited to the minimum required to accomplish assigned missions. Real property is excess when it is not needed to fulfill current requirements and DOE has no need for it in the foreseeable future.

The Federal Property and Administrative Services Act of 1949, as amended (40 USC 101 et seq., the "Property Act"), provides that each Federal agency will report excess real property under its control, except in foreign countries, to GSA. Supervision and direction of disposal of surplus real property, except in foreign countries, is generally the responsibility of GSA. DOE has authority to dispose of real property under the jurisdiction of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201(g)). In other cases, disposal of certain real property is authorized by

specific acts of Congress. All other disposal of real property should be made under the authority of the Property Act and implementing regulations issued by GSA.

Utilization Surveys

Real property utilization surveys are required by 41 CFR 102-75.60. The intent of the surveys is to identify real property that can be declared excess and reported for disposal. The surveys apply to all DOE sites except those sites consisting exclusively of land withdrawn from the public domain. DOE typically uses the survey report format prescribed by GSA, or as may be subsequently amended by the Federal Real Property Council. DOE Headquarters will attempt to keep field elements informed of changes in the format.

Annual reviews as described in 41 CFR 102-75.60 should be made by all Federal agencies on their real property holdings, including leased properties. Initial reviews should be based on onsite inspections. The report summarizing the survey findings should be kept on file and available for review in the field office.

Reporting Excess Real Property to GSA

When the PSO or designee makes a determination that certain real and related personal property are no longer required by a program after having completed internal DOE screening, the appropriate real property representative should prepare a Request For Disposition stating that the property is excess to the program needs, together with a completed Standard Form 118, "Report of Excess Real Property," (SF 118) and a HUD – Title V Checklist, giving the recommended method of removing the property from DOE accountability. All appropriate local concurrences (such as counsel, environmental, etc.) should be obtained. The memorandum should be approved in writing by a CRS or by the SRO if the action exceeds the field element's authority. If Headquarters approval of the disposal action is not required, the field element would report the property to GSA for all other federal agency screening and HUD Title V screening (for the homeless). See 41 CFR 102-75, Real Property Disposal, for additional guidance on reporting and disposing of excess real property. The field element would then notify headquarters when such a report is submitted to GSA and provide a copy of the report.

For disposition of Government-owned land and improvements, the Request for Disposition should address the following items:

- Summary of the affected site and DOE mission and reasons why this property is no longer required in support of the mission
- General description, location, size, acquisition cost, nature of real estate interest proposed for disposal, brief history, effects upon severance, mineral and other rights, impact upon the natural resource conservation program of the installation, existence of facilities of cultural or historical significance as defined by 36 CFR 800, and any other relevant information, which explains the proposed disposal action
- Environmental characterization as may be required by CERCLA section 120(h)(1)-(2) and 40 CFR 373
- A brief discussion of the environmental and economic impact of the proposed disposal action, with a summary of any applicable environmental requirements

- Number of personnel affected
- Estimate of one-time closing and other costs and of recurring annual savings, including operational and maintenance cost savings
- Disposition of, and impact upon, tenants of the installation
- Justification for portions of the installation proposed for retention, if any
- Nature of existing out-grants, permits, or permitted temporary uses
- Any recent appraisal reports which are available
- Any restrictions to be imposed on the excess land
- Proposed date the facilities will be vacated
- For disposals of real property with an estimated fair market value of $3,000,000 or more, evidence of compliance with the requirements of 41 CFR 102-75.270, "Applicability of Anti-Trust Laws"
- A site and vicinity real estate map identifying the parcels
- Photographs, if available
- Number, type, use, size, age, and general condition of facilities and utilities proposed for disposal
- Any known interest in acquiring the property
- Indication that DOE has not contemplated acquisition of any land for similar use at or near this location and that the property has been screened at the site
- Certification that requirements of DOE G 450.4-1B Integrated Safety Management System; Section 120(h) of CERCLA; and any other Federal, State, or local regulations have been met for residual radioactive material and any other hazardous substances. This applies whether Government-owned land, improvements, or both, are being disposed
- Completed SF 118 and other documentation per 41 CFR 102-75.115-120, ready for transmittal to GSA
- Certification of compliance with 40 CFR 761 regarding use and storage of Polychlorinated Biphenyl (PCB) where PCBs may have been utilized (transformers)
- A statement regarding presence or absence of friable asbestos, and
- Any underground storage tanks should be identified in Block 18 of the SF 118 as to location, size, and former use

In addition to other information, the SF 118 should include all related or appurtenant easements, licenses, and related personal property. Decontamination data should be included, if appropriate, in accordance with 41 CFR 102-75.130. Information on flood hazards should be included as may be required by 41 CFR 102-75.125(f).

GSA will normally review the submission to assure that the documentation is complete, that the property is not encumbered, and that it has a marketable title. GSA would then advise the field element of the acceptance date of the report of excess. DOE has responsibility for maintenance and safety until the property is transferred or disposed, unless GSA agrees to take

responsibility for the property, per 41 CFR 102-75.980.

Subject to the approval of the Administrator of GSA, reports of excess may be withdrawn or corrected at any time prior to disposition of the property by filing a modified SF 118 with the GSA regional office. Approval of the official signing the report of excess is required for significant corrections or withdrawals. (SF 118a, "Buildings, Structures, Utilities and Miscellaneous Facilities," 118b, "Land," and 118c, "Related Personal Property," are available on the GSA web site.)

Interim Use

Interim use of excess and surplus property is permitted under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471). GSA has general supervision, direction, and approval authority over interim use of such properties pending final transfer or disposal. As general guidelines, GSA will limit interim use to 1 year with the right to cancel on 30-day notice from GSA. Interim use may be by lease, license, or permit.

Interagency Transfers - Consideration

When real property is transferred from one agency to another, it is GSA's policy under 41 CFR 102.75.190 that the benefiting agency must pay fair market value for the property. Waivers may be requested from OMB by GSA.

Fissionable Materials Reservations - Release

At one time reservations of uranium, thorium, and other fissionable materials were routinely retained in conveyances of surplus real property. The Government's interest in these estates has been released by 42 U.S.C. 2098.

CERCLA and Real Property Disposal

Whenever DOE enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, was known to have been released, or was disposed of, the contract must include notice of the type and quantity of such hazardous substance and notice of the time at which such storage, releases, or disposal took place, to the extent such information is available on the basis of a complete search of the DOE files. The applicability of the requirement, and the contents of the notice are further specified in CERCLA section 120(h)(1)-(2), and 40 CFR 373.

In compliance with CERCLA section 120(h)(3): in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, was known to have been released, or was disposed of, each deed entered into from the transfer of such property by the United States to any other person or entity shall contain:

- to the extent such information is available on the basis of a complete search of DOE files,
    - a notice of the type and quantity of such hazardous substances
    - notice of the time at which such storage, release, or disposal took place
- a description of the remedial action taken, if any
- a covenant warranting that
    - all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer

- any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States.
- a clause granting the United States access to the property in any case in which remedial action or corrective action is found to be necessary after the date of such transfer

(The requirements regarding remedial action should not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property.)

Disposals may be made without including these covenants, when the requirements for "early transfer" have been made in accordance with CERCLA section 120(h)(3)(c). The covenants are deferred at the time of conveyance, but will be provided to the new owner following completion of remedial action.

DISPOSAL OF DOE-OWNED IMPROVEMENTS WITHOUT THE UNDERLYING LAND

When real and related personal property are to be disposed of without the underlying land, it should be screened internally for potential offsite removal. The accountable office will follow the same procedures as for disposal with the land, but only if there is interest in the property and any structures are usable and in a decent, safe and sanitary condition. In addition to the documentation required for disposal of land and/or improvements listed above, if abandonment in place or demolition of the property is recommended, at least two independent estimates of salvage value should also be obtained. If no one within DOE has a need for the property and there are no purchasers during the GSA screening process, GSA will notify DOE and the accountable office may proceed with demolition. The authority for this disposal was delegated to Executive agencies by GSA in 41 C.F.R. 102-75.296(c)(2).

Destruction of improvements is regulated in 41 CFR 102-75. 41 CFR 102-75.990(b) authorizes destruction when improvements have no commercial value or when care and handling costs exceed estimated sale proceeds and 102-75.1000 requires a duly authorized official to certify this in writing. 102-75.1040 requires public notice, with offer to sell improvements, prior to destruction. 102-75.1045 provides exceptions, including "value so low" or care and handling costs "so great" that retaining property for the time it takes to post public notice is "clearly not economical," and a duly authorized Federal agency official must make a written finding of this.

Once GSA has advised DOE that the excess property has been screened and no interest has been expressed, the entire financial and administrative responsibility rests with DOE. Cost for whatever future actions are required should be committed prior to close out of the contract or project.

Custody of Documents

When GSA is processing a transfer or disposal of excess property, the field element will retain custody of legal documents relating to the acquisition, temporary use, or disposal of the property. During this period, the field element will make available to appropriate GSA officials copies of property documents needed to proceed with the transfer or disposal action. Originals of legal documents will be furnished to GSA to affect a final transfer or disposal of the property.

Personal Property

Personal property at installations due to be discontinued should be disposed of in accordance with DOE Property Management Regulations (PMR) 109-43.304 and PMR 109-50.

Excess Property Not Reported

No reports to GSA are required for:

- Excess non-Government-owned property held under lease, permit, license, easement, or similar instrument, when Government-owned improvements are to be transferred to the owner of the land in restoration settlement and:
    - The lease or other similar instrument is subject to termination by the grantor or owner of the premises within 9 months
    - The remaining term of the lease or other instrument, including renewal rights, will provide for less than 9 months of use and occupancy
    - The term of the lease or other instrument would preclude transfer to, or use by, another Federal agency or disposal to a third party
    - The lease or other instrument provides for use and occupancy of space for office, storage, and related facilities, which do not exceed a total of 2,500 square feet. Unless Government-owned improvements are located on the premises or the continued use, occupancy, or control of the property by the Government is needed for the operation, production, or maintenance of other property owned or controlled by the Government that has been reported excess or is required to be reported to GSA
- Leased space assigned by GSA and land and improvements owned by and permitted from other Government agencies
- Excess timber, sand, gravel, and stone-quarried products and growing crops on non-excess land regardless of value
- Excess withdrawn or reserved public domain lands, regardless of value, which are offered to and accepted by the Department of the Interior for return to the public domain
- Excess prefabricated movable structures, such as Butler-type storage warehouses and Quonset huts, and house trailers (with or without undercarriages), which are located on non-excess land. For disposal only, such structures should be reported as personal property and disposed of in accordance with DOE PMR 109-43

DOE AUTHORITY FOR DISPOSAL OF REAL PROPERTY

DOE can dispose of real property and related personal property under certain statutory authorities when the proposed action meets the provisions and requirements of the specific authority. Per DOE Order 430.1B, Headquarters must be notified 90 days before all disposals by sale or lease (including transfers for no consideration) under DOE authorities. Notification should be made to: Office of General Counsel; NNSA General Counsel as applicable; NNSA Contracting Officer as applicable; Office of Management; Office of the Chief Financial Officer; and

LPSOs/CSOs. The Order calls for notification to be accomplished as follows:

- For non-economic leases, e-mail notifications are acceptable
- For economic-development-related leases and sales, a notification package must be submitted to Congress 30 days before transfer by sale or lease
- For sales of land that do not use the standard Federal practices of 41 CFR, Chapters 101 and 102 (reference d), a notification to the Energy and Water Appropriations Committee is required 60 days before any proposed sale of land. The notification is to provide a detailed explanation for the waiver of Federal practices for the sale of property (note: the processes outlined in this Desk Guide follow the Federal practices).

McKinney-Vento Act Screening for Disposals under DOE Authorities

Federal agencies are generally required to sumbit unutilized, underutilized, excess and surplus real properties to the Department of Housing and Urban Development (HUD) for screening under Title V of the McKinney-Vento Homeless Assistance Act. Submittal of properties to HUD may not be legally required in all instances when real property will be disposed of under one of DOE's independent authorities. However, the Office of Acquisition and Project Management recommends that all DOE Sites and Program Offices submit real property to HUD for screening prior to disposal. The administrative burden of submitting properties to HUD is minimal and McKinney Act screening does not add significant time to the disposal process.

Atomic Energy Act

Under section 161g of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(g), DOE is authorized to "sell, lease, grant, and dispose of such real property as provided in this Act." Use of this authority is limited to those functions under the jurisdiction of the Act.

Atomic Energy Community Act

Under the Atomic Energy Community Act of 1955 (42 U.S.C. 2301), DOE has authority to dispose of real property within the atomic energy communities of:

- Oak Ridge, Tennessee
- Richland, Washington
- Los Alamos, New Mexico

These sites were originally owned and managed by the Atomic Energy Commission. This Act establishes the terms, conditions, and procedures for the disposal of property in those communities.

Power Marketing Administration

Under the Bonneville Project Act of 1937 (16 U.S.C. 832), the Administrator of the Bonneville Power Administration has authority "to sell, lease, or otherwise dispose of…such real property and interests in land acquired in connection with construction or operation of electric transmission lines or substations as in his judgment are not required for the purposes of this Chapter…" (16 U.S.C. 832a(e)). Exercise of this authority is subject to approval of the President. Note, however, that the generic authority contained in 50 U.S.C. 1622(d)(Appendix) limits the disposal of surplus power transmission lines, providing that if a State or Federal agency certifies that the surplus transmission line "is needed for or adaptable to the requirements of any public or cooperative power project, such line and the right-of-way acquired for its construction shall not be sold, leased for more than a year, or otherwise disposed of, except as provided in… this section,

unless specifically authorized by Act of Congress."

Naval Petroleum Reserves

Authority "to alienate from the United States the use, control, or possession of any part of the Naval Petroleum Reserves" or to exchange land is subject to consultation with the Senate and House Committees on Armed Services and the approval of the President, pursuant to 10 U.S.C. 7431(a).

Energy Reorganization Act of 1974, as Amended, 42 U.S.C. 5821(B)

Section 111(b) of this Act provides that for facilities constructed from funds provided to DOE under authority of this Act:

> "Fee title to all such facilities and items of equipment shall be vested in the United States, unless the Administrator or designee determine in writing that the research, development, and demonstration authorized by such Act would best be implemented by permitting fee title or any other property interest to be vested in an entity other than the United States; but before approving the vesting of such title or interest in such entity, the Administrator shall (i) transmit such determination, together with all pertinent data, to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and (ii) wait a period of 30 calendar days (not including any day in which either House or Congress is not in session because of adjournment of more than 3 calendar days to a day certain), unless prior to the expiration of such period each such committee has transmitted to the Administrator written notice to the effect that such committee had no objection to the proposed action."

As a general rule, this transfer authority is exercised at the beginning of a project. The SRO should be consulted prior to using this authority.

50 U.S.C. 2811: Transfers of real property at certain DOE facilities

DOE may transfer, by sale or lease, real property at defense nuclear facilities for economic development purposes. DOE may also transfer, by lease only, improvements at defense nuclear facilities on land withdrawn from the public domain, that are excess, temporarily underutilized, or underutilized, for economic development purposes. Such transfers require 30 days notification to the congressional defense committees. See 10 CFR 770 for details regarding the procedures and requirements for such transfers.

SALE

If DOE is authorized by specific statute or by delegation from GSA to sell real property to private parties, sale will be accomplished by competitive bidding, unless otherwise limited by contractual obligations. DOE will not offer for sale any real property which has been contaminated with explosive or toxic materials or other harmful elements before full compliance with DOE decontamination procedures, except in the cases where an "early transfer" is permitted. As a general rule, all collection received by DOE shall be deposited as miscellaneous receipts to the General Fund of the Department of the Treasury unless otherwise authorized by statute.

DISPOSAL UNDER GRANTS

Grants will be governed by standards set out in Attachment N, OMB Circular A-110, and 10 CFR 600.132. These cover the management and disposal of property furnished by the

Government, paid for in whole or in part with Federal funds, or charged to a project supported by a Federal grant. DOE actions in such management and disposal will comply with the requirements therein, using this Guide for implementation. Consideration should also be given to cooperative agreements covered by the DOE Assistance Rules, 10 CFR 600.117.

RELINQUISHMENT OF WITHDRAWALS

Relinquishments must comply with the procedures prescribed in 43 CFR 2372.1:

- File a notice of intention to relinquish withdrawn lands with the local office of the Bureau of Land Management
- There is no standard form for the notice, but it should contain:
    - DOE contact information
    - Citation to the land withdrawal order
    - Legal description of the land and description of any improvements
    - Extent and nature of any contamination, along with cleanup or protective measures taken or proposed
    - Changes to the land since withdrawal, other than by construction of improvements
    - Disturbance of land or resources and actions taken or proposed to recondition
    - If improvements are abandoned, certification that GSA procedures for disposal have been exhausted and the improvements have no value
    - Easements or other rights and privileges granted over the land
    - Any terms and conditions deemed necessary to protect the public interest in future dispositions
    - Expressions of interest in the property from other agencies or individuals
    - Recommendations for future disposition (i.e., disposition by GSA)

DISPOSAL OF PROPERTY ACQUIRED THROUGH FORFEITURE

On a few occasions, the DOE has guaranteed loans that were made in connection with research and demonstration projects. An example is where a company borrows money from a bank to construct and operate an ethanol plant, with DOE promising to repay the loan in case of company default. Under the terms of the guarantee, title to the real estate comprising the plant passes to DOE if the company defaults on the loan. DOE may subsequently dispose of the real estate and, theoretically, recoup the amount it paid the bank.

Property acquired by DOE in this manner is neither “acquired land” nor “withdrawn land” as those terms are normally used in government. However, such property is real estate and, therefore, its disposal is subject to all of DOE’s real estate rules and procedures. The disposal cannot be conducted without the review and approval of a CRS.

Chapter 9: *Facilities Information Management System (FIMS); Real Estate Records*

FACILITIES INFORMATION MANAGEMENT SYSTEM (FIMS)

The Real Property Asset Management Order, DOE O *430.1B*, paragraph 4 b (8) (a) states:

> FIMS is the Department's real property asset inventory system and fulfills the requirement in 41 CFR 102 (reference d) for each Agency to have a real property inventory system. FIMS data will be used to meet routine reporting requirements. Therefore the following are required:
>
> 1. FIMS data must be maintained as complete and current throughout the life cycle of real property assets, including real property related institutional controls.
> 2. FIMS data must be archived after disposal of real property assets. Those necessary for Long Term Stewardship (LTS) must be identified, reviewed, and retained.
> 3. Site/field managers will ensure that FIMS data is verified annually as complete and accurate using a quality control process.

BACKGROUND

FIMS is a Department-wide system that is managed by OAPM for the office of Management. The governing body of FIMS is the Facilities Data Development Committee (FDDC), composed primarily of DOE Headquarters FIMS stakeholders. FIMS Advisory Committee (FAC), comprised of DOE and contractor personnel, was established in 1993 to improve FIMS data integrity, and provide a mechanism for continuous improvement. The FAC evaluates problems or issues regarding development, operation, or administration of FIMS, makes recommendations to the FDDC, and implements FDDC-approved changes. The FAC has authored the *FIMS Administrative Guide*, which is now a part of the *FIMS User's* Guide.

USE OF FIMS

FIMS provides direct access to current verified real property information through ad hoc queries and standard reports. It provides an accurate inventory and management tool that is used to assist Headquarters and all DOE field offices and sites with planning and efficiently managing their assets. This system produces departmental annual statistical reports via the FIMS website, fiscal year real estate summary of real property holdings, deferred maintenance reports, congressional energy management reports, excess elimination reports, and automates the preparation of the annual worldwide inventory of Government-owned and -leased real property for submission to the General Services Administration as required by FMR Part 84 (41 CFR 102-84). FIMS was also used to electronically submit data to the Federal Emergency Management Agency in accordance with EO 12941 (Seismic Safety of Existing Federally Owned or Leased Buildings).

The system allows users to manage all real property including land and its natural resources, any additions and alterations, trailers/modulars, permanent fixtures and equipment. The information provided by FIMS addresses the condition of property, identifies dimensions and potential hazard categories associated with the property, indicates the replacement value and the cost of maintenance expenditures, occupancy information, and the amount of land acreage. It also provides

details on leased property, including lease terms and rental, institutional control property, out-grants and permits. It is designed to provide users with verified information, and assist managers in decisions regarding real property assets. Guidance on accessing the database, data entry, maintenance, reporting, uploading and downloading FIMS data is contained in the *FIMS User's* Guide and *FIMS Reporting* Guide. Copies of these documents may be obtained from the FIMS web site (***http://fimsinfo.doe.gov/***).

INPUT RESPONSIBILITY

FIMS is updated regularly so that reliable and current data is consistently available and system integrity is maintained. It is essential that information be obtained from the site function with the most direct knowledge of the specific areas covered by the FIMS data elements. Each site assigns responsibility to individuals with applicable information. The Realty Specialist is the source for a substantial amount of the basic site information. This includes key data on property reported to GSA as excess and on GSA-assigned space, land information (including acquisition method, date and acreage), and leasing information (including location, terms, square footage and rental). The *FIMS Administrative Guide*, from the *FIMS User's Guide*, provides detailed information on FIMS participants, their roles and responsibilities, the overall operation of the system, and the development of quality assurance plans.

QUALITY ASSURANCE

In order to assure a high degree of data accuracy and thoroughness in FIMS the field manager is the responsible element for a quality assurance process. A FIMS Quality Assurance Plan prepared by the Field/Operations Offices should address the methods to be used in overseeing the site FIMS programs. It should provide for current verification of site data accuracy, oversight of contractor performance, and confirmation that site QA processes are operational. The site QA Plans should cover the internal organization established to manage FIMS, the processes to assure timely updates, the site's verification processes, role of the DOE and contractor and method of problem correction. Essential to the plan's success is the provision of accurate, thorough and timely data by the site elements (Realty Specialist, Building Manager, etc.).

REAL ESTATE RECORDS

CREATION OF RECORDS/FILES

LPSO's/CSO's should maintain all records pertaining to land, interests in land, or rights to land of the United States under DOE control, including the original or an executed copy of all real estate instruments with maps and backup data. Two separate and distinct sets of real estate records should be kept: permanent cadastral files and operations/working files. Cadastral records are those records pertaining to the rights and interests in land of the United States of America that are under the administrative control of DOE. Cadastral records include such items as muniments, contracts, maps, charts, plats, sketches, and other derivative records. Muniments are any and all of the various instruments that document and authenticate the estate which the Government has in real property and include such items as deeds, certificates of title, condemnation proceedings, licenses, permits, transfer documents and acceptances, reports of excess, easements, and related or referenced plats or sketches.

CADASTRAL RECORDS

Cadastral records should be created and contain originals, or duplicates if originals are not available, of all muniments of all land holdings within the administrative control of the Site or Program Office for the following types of interests:

- Fee acquisition
- Withdrawal from the public domain
- Permanent easements
- Permanent disposals
- Jurisdiction
- Outgrants
- Ingrants
- Other actions in the discretion of the Site or Program Office

The following muniments should be kept in cadastral files:

- Acquisition of fee or permanent easement
  - By purchase or donation
    - Final opinion of title and related documents
    - Title insurance policy or certificate of title
    - Deed
    - Certificate of inspection and possession
    - Appraisal
    - Purchase agreement
    - Negotiator's report
    - Survey, map or drawing
    - Legal description
  - By condemnation – all of the above, as applicable, and
    - Request to Attorney General to institute condemnation
    - Complaint in condemnation
    - Declaration of taking
    - Order of possession
  - By withdrawal from the public domain
    - Application for withdrawal to the Department of Interior
    - Description and map
    - Public Land Order
  - By transfer from another Federal agency
    - Request for transfer (SF-1334, typically)
    - Agency official transfer letter
    - Muniments and related papers
- Disposal
  - Report of Excess (SF-118), if applicable, and supporting documents
  - Letter of transfer to another Federal agency, if applicable
  - Quitclaim Deed
- Legislative jurisdiction
  - Letter to Governor of State requesting Federal jurisdiction or accepting Federal

jurisdication
- Documents evidencing State cession and acceptance of Federal jurisdiction
- Documents evidencing modification and retrocession

When responsibility for a land interest is transferred from one DOE organization to another, cadastral records should be transferred to the organization accepting responsibility.

OPERATIONS/WORKING FILES

Operations/working files should be created to document the conduct of current business. These files should be labeled and organized by facility/site and type of action in a manner similar to the system used for cadastral records.

MAINTENANCE AND USE OF RECORDS/FILES

- Cadastral and operations/working files should be maintained to accurately reflect the current status of actions.
- Cadastral records should be updated with completed actions affecting the subject property.
- Operations/working files should be used to track ongoing actions and actions not of a permanent nature.
- Once an action is completed and qualifie for storage as a cadastral record, all original muniments should be removed from the operations/working file and placed in the cadastral records.
- Nonpermanent actions, when completed, should remain in the operations/working file.
- Any information stored in the cadastral or operations/working files should be preserved in such a manner as to prevent loss or destruction. In some cases, these files may be the only records available to document the Government's legal rights. Even if a deed or lease has been recorded elsewhere, these files serve as a backup and have the advantage of being readily accessible when needed.

DISPOSAL OF RECORDS/FILES

- Records should be stored and subsequently disposed of in accordance with applicable DOE policy, including records retention schedules.
- Originals of all title papers should be retained in the Site or Program Office until the property is:
  - Reported excess to GSA
  - Transferred to another Federal agency, or
  - Disposed of under DOE independent authority or special legislation
- Disposal through GSA: Original muniments should be assembled and forwarded to GSA with the Report of Excess.
- Transfer to another Federal agency: Original muniments of title should be forwarded to the transferee.
- Disposal by DOE: No documents evidencing title to the United States need to be furnished if the disposal is to a non-Federal entity because the disposal action will create documents of title to the new owner.

Chapter 10: *Real Estate Certification Program*

As of May, 2013, information on the Real Estate Certification Program is located in the Acquisition Certifications Program Handbook:
http://energy.gov/management/downloads/acquisition-certifications-program-handbook

CRS, RECO and Delegations of Authority Roles and Relationships

Certified Realty Specialist (CRS)

Per DOE 430.1B, a CRS must review and approve all actions to acquire, manage and dispose of real property. To receive designation as a CRS, a Realty Specialist must meet experience and training requirements established by MA-60 and receive the recommendation of a committee of 5 senior-level Realty Specialists. CRS designations specify the type and dollar value of real estate actions that a CRS is authorized to review and approve.

Real Estate Contracting Officer (RECO)

In 2013, the Director, Office of Property Management (MA-65) was designated the Head of Contracting Activity (HCA) for real property management which includes the authority to issue RECO warrants. Subsequently, all then-current CRS's were appointed as RECOs. A RECO has the authority to execute real estate agreements and instruments within limits prescribed in his or her certificate of appointment. To be appointed as a RECO, a Realty Specialist must already possess a CRS designation, so the requirement in 430.1B for CRS review and approval is satisfied when a RECO executes an action.

Delegations of Authority

There are various delegations of authority to officials in Program and Site Offices that include real estate actions. An official holding such a designation may execute real estate agreements and instruments within the scope of the delegation, but review and approval by a CRS is required. Alternatively, the RECO may execute the action instead of the official holding the delegation.

The decision to pursue any particular real estate action is a management decision of the Program Office. The role of the CRS is to ensure that applicable real estate laws, regulations and policies are observed in the decision-making process and resulting agreement and/or instruments.

Appendix 1: *Links to Referenced Documents*

DOE Order 430.1B, Real Property Asset Management:
https://www.directives.doe.gov/directives/current-directives/430.1-BOrder-bc2/view

DOE Real Estate Process (Appendix to 2004 Desk Guide)
http://energy.gov/management/downloads/real-estate-process

Facilities Asset Management Best Practices:
http://energy.gov/management/office-management/operational-management/facilities-and-infrastructure/best-practices

Good Practice Guide GPG-FM-024, Site Selection Process:
http://energy.gov/sites/prod/files/maprod/documents/Site_Selection_Process.pdf

EO 13327, Federal Real Property Asset Management:
http://edocket.access.gpo.gov/2004/pdf/04-2773.pdf

Code of Federal Regulations, Title 10, Part 770, Transfer of Real Property at Defense Nuclear Facilities for Economic Development:
http://www.gpo.gov/fdsys/pkg/CFR-2010-title10-vol4/pdf/CFR-2010-title10-vol4-part770.pdf

Code of Federal Regulations, Title 41, Chapter 102, Federal Management Regulations:
http://www.gpo.gov/fdsys/pkg/CFR-2010-title41-vol3/xml/CFR-2010-title41-vol3-subtitleC-chap102.xml

Code of Federal Regulations, Title 49, Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs
http://www.access.gpo.gov/nara/cfr/waisidx_10/49cfr24_10.html

DOE Office of NEPA Policy and Compliance:
http://energy.gov/nepa/office-nepa-policy-and-compliance

DOE Order 451.1B, NEPA Compliance Program https://www.directives.doe.gov/directives/451.1-BOrder-bc2/view

EO 12898, Environmental Justice in Minority Populations and Low-Income Populations:
http://www.archives.gov/federal-register/executive-orders/pdf/12898.pdf

Code of Federal Regulations, Title 10, Part 1021, National Environmental Policy Act Implementing Procedures:

http://www.access.gpo.gov/nara/cfr/waisidx_10/10cfr1021_10.html

Code of Federal Regulations, Title 10, Part 1022, Compliance with Floodplain and Wetlands Environmental Review Requirements:
http://www.access.gpo.gov/nara/cfr/waisidx_10/10cfr1022_10.html

Integrated Safety Management System:
https://www.directives.doe.gov/directives/current-directives/450.4-EGuide-1bv1/view

Management of Cultural Resources:
https://www.directives.doe.gov/directives/current-directives/141.1-APolicy/view

Department of Justice Title Standards 2001:
http://www.justice.gov/enrd/2001-title-standards.pdf

GSA Form 1334, Request for Transfer of Excess Real Property and Related Personal Property:
http://www.gsa.gov/portal/forms/download/1B4111396138611B85256A2A00525BE1

Code of Federal Regulations, Title 43, Public Land Withdrawals:
http://www.access.gpo.gov/nara/cfr/waisidx_10/43cfr2300_10.html

General Services Administration Acquisition Manual:
https://www.acquisition.gov/gsam/current/html/GSAMTOC.html

Federal Acquisition Regulation:
https://www.acquisition.gov/Far/

GSA Leasing Desk Guide:
http://www.gsa.gov/portal/content/184265#LDGCH

GSA Lease Process Reform:
http://www.gsa.gov/portal/content/211925

GSA Forms:
http://www.gsa.gov/portal/forms/type/TOP

GSA Form 1241E, In-Lease Appraisal:
http://www.gsa.gov/portal/forms/download/CBD78326EFABF30285256BF100579B23

GSA Form SF-2, Lease for Real Property:
http://www.gsa.gov/portal/forms/download/57A58CDEC8239E0485256BFA004F65F3

GSA Form 3517, General Clauses:
http://www.gsa.gov/portal/forms/download/F101D63C517436F285256A2C0050F191

GSA Form 3518, Representations and Certifications:
http://www.gsa.gov/portal/forms/download/0229458E3B14A6CC85256A2C00515A4F

GSA Form SF81, Request for Space:
http://www.gsa.gov/portal/forms/download/FB702F0B69C02BC385256A3E005EF9EE

GSA Form SF81A, Space Requirements Worksheet:
http://www.gsa.gov/portal/forms/download/17E96A22AEBBDEE6862573E100587B81

GSA Realty Service Letter re: Leasing Delegation Approval and Oversight:
http://www.gsa.gov/graphics/pbs/RSL_2007-1091_w122607_R2-y08-l_0Z5RDZ-i34K-pR.pdf

GSA Realty Service Letter re: Appraisal Requirements for Lease Acquisition:
http://www.gsa.gov/graphics/pbs/arla_R2-uJ4L_0Z5RDZ-i34K-pR.pdf

GSA Policies Effective (Lease Acquisition Circulars and Realty Service Letters):
http://www.gsa.gov/portal/content/101755

GSA Realty Service Letter re: Energy Star Requirement for Lease Acquisition:
http://www.gsa.gov/graphics/pbs/Energy_Star_RSL_2010-02-FINAL-508.pdf

GSA Realty Service Letter re: Green Lease Policies and Procedures for Lease Acquisition:
http://www.gsa.gov/graphics/pbs/RSL2007-12_R2-y08-l_0Z5RDZ-i34K-pR.pdf

EO 13423: Strengthening Federal Environmental, Energy, and Transportation Management:
http://edocket.access.gpo.gov/2007/pdf/07-374.pdf

EO 13514: Federal Leadership in Environmental, Energy, and Economic Performance:
http://edocket.access.gpo.gov/2009/pdf/E9-24518.pdf

DOE Order 143.1, Payments in Lieu of Taxes:
https://www.directives.doe.gov/directives/current-directives/143.1-BOrder/view

HUD Title V Checklist:
http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_13004.pdf

GSA Form, SF 118, Report of Excess Real Property:
http://www.gsa.gov/portal/forms/download/C46E97AB78A3053585256A3E00610E01

Facilities Information Management System (FIMS) homepage:
http://fimsinfo.doe.gov/

FIMS/Real Estate site:
http://fimsinfo.doe.gov/real_estate.htm
(includes "Real Estate Process" which contains 4300.1C, Leasing Handbook, forms, etc.)

GSAM 501.6 – Career Development, Contracting Authority, and Responsibilities
https://www.acquisition.gov/gsam/current/html/Part501.html#wp1858604

Management Concepts, Inc. (MCI), Leasing Courses:
https://www.managementconcepts.com/portal/server.pt/community/acquisition_and_contracting/302/selecting_appropriate_courses

Keres Consulting, Inc., Federal Real Property Utilization and Disposal training:
http://www.keresnm.com/training.asp

U.S. Army Corps of Engineers, Learning Center:
http://pdsc.usace.army.mil/

Appraisal Institute, Education:
http://www.appraisalinstitute.org/education/default.aspx

International Right of Way Association (IRWA), Education:
http://www.irwaonline.org/eweb/dynamicpage.aspx?site=IRWA2010&webcode=education

Joint DOE/EPA interim Policy Statement on Leasing Under the Hall Amendment, dated June 30 1998:
http://fimsinfo.doe.gov/RE/Joint_DOE-EPA_%20Policy_Statement.pdf

OMB Circular A-11
http://www.whitehouse.gov/omb/circulars_a11_current_year_a11_toc/

Appendix 2: *Telecommunications Siting Procedures*

Section I – Purpose:
To establish DOE (DOE) procedures for processing telecommunications site and facility requests for siting on DOE land. This procedure for processing requests for the siting of telecommunications facilities is not intended to apply to lands held by the United States in trust for individual or Native American tribal governments.

Section II – Authorities:
1. Telecommunications Act of 1996, Section 704(c), PL 104-104 (February 8, 1996)(47 USC 332)
2. GSA Bulletin FPMR D-242, procedures implementing section 704(c), June 11, 1997.

Section III – Background
1. On February 8, 1996, the President approved the Telecommunications Act of 1996 (PL 104-104), which included a provision for making Federal property available for placement of telecommunications equipment by duly authorized providers.
2. On March 29, 1996, GSA published a Notice in the Federal Register outlining the guiding principles and actions necessary for Federal agencies to implement the antenna siting program promulgated by the Telecommunications Act of 1996.
3. In response to inquiries from the wireless telecommunications industry regarding the Federal Government's progress in this program, GSA held three Antenna Siting Forums in 1997. Issues raised from these forums were:
    a. Development of a uniform evaluation process, including timely response and an appeals process, to facilitate and explain the basic application process;
    b. Site pricing to enable Federal agencies to retain flexibility in establishing the antenna rates;
    c. Site competition to provide timely response to requests and, where feasible, encourage industry collocation;
    d. Fee reimbursement to provide payment to the Federal Government for services and resources provided as part of the siting request process;
    e. Site security, access, and rights-of-way to identify roles and responsibilities of both the Federal Government and the wireless telecommunications service provider; and
    f. Site request denial tracking to enable GSA and the wireless telecommunications industry to track antenna requests and denials.
4. GSA subsequently identified environmental and historic resource implications.
5. The collaborative effort fostered a better understanding of the process and procedures required between Federal agencies and the telecommunications industry and facilitated the implementation of the Telecommunications Act of 1996 and development of the following Procedures for Processing Telecommunications Site and Facility Requests by DOE.

Section IV – Procedures for Processing Telecommunication Site and Facility Requests:
1. Submission of a Proposal Letter by Lease/License Applicant.

a. This is the first step in the process and is crucial to a timely, comprehensive review of the proposal. The initial request can never contain too much information, as more details make it easier to conduct a preliminary review of the proposed antenna site. Failure to provide sufficient information will delay the initial review process.

b. Elements of information that should be included with the submission of a proposal are shown in the Application Form (Appendix 1-A).

2. Preliminary Review.

a. The DOE Site Office (the "Site Office") will review the proposal to determine if it contains sufficient information. If so, the Site Office will determine the extent and any programmatic impact of placing commercially owned antennas on their property. The results of this determination will be sent to OAPM along with the Site Office decision to approve or deny the siting request and any justification for a denial action.

b. If the proposal contains insufficient information, it will be returned to the applicant with a request for additional information.

3. Review Response

a. A written response will be provided by OAPM to the potential lessee not later than 60 days after receipt of the initial request. This response will provide either a preliminary acceptance of the request, or a denial. If the proposal is denied, the potential lessee will be provided with an explanation as to why the proposal was unacceptable. A preliminary acceptance, however, represents only an indication that the proposed lease is acceptable in concept, but further analysis and coordination will be required before a final approval of the project may be given. A copy of the Site Office decision to approve or deny the siting request should be forwarded to OAPM.

b. The evaluation of these applications is concerned with any potential interference with the Federal mission, both at the site and on adjacent Federal locations. In general, the proposal will be initially evaluated to ensure that it does not create any of the following problems:

(1) Impair, interfere or degrade the Federal mission of the site or its operations.

(2) Affect the security of the site in any manner.

(3) Interfere with other radio frequency (RF) activities used by the site or any organizations on or adjacent to the site.

(4) Create an obstruction to aircraft operations or cause other safety concerns.

(5) Create a visual nuisance or present a negative aesthetic appearance.

(6) Negatively impact sensitive environmental habitat, endangered species, or other natural and cultural resources.

(7) Affect the quality of life of employees or visitors.

(8) Disrupt any site transportation, circulation, or utility infrastructure system.

(9) Prevent or interfere with future development of additional site facilities that may be necessary to meet new, emerging mission requirements.

c. Other issues which must be resolved before a final approval of the proposed action can be granted include the determination of required environmental documentation, legal description, appraised value of the site, form and value of compensation to be received, form and length of term of the real estate agreement to be executed, and negotiation of any special terms/conditions. Each of these issues is addressed below in more detail.

(1) Environmental Documentation

(a.) Requirements for Environmental Documentation

i. Appropriate environmental documentation (i.e., an Environmental Baseline Survey (EBS) for a lease or Preliminary Assessment Screening (PAS) for a license or permit) must be completed in order to satisfy the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) responsibilities. The more complicated or potentially environmentally damaging a proposed project may be, the more sophisticated the level of environmental documentation that will be required. There are three potential levels of environmental documentation required. They include a Record of Environmental Consideration (REC) for a Categorical Exclusion, an Environmental Assessment (EA), or an Environmental Impact Statement (EIS), listed in order of least to most complex.

ii. If applicable, the applicant will be required to provide all necessary cultural resource documentation required by Section 106 of the NHPA, including conducting of surveys and site evaluations, determining eligibility for National Register listing, determining mitigation or monitoring requirements, and drafting a finding of effect. Any required cultural resource documentation will first be reviewed and approved by DOE, then forwarded to the State Historic Preservation Officer (SHPO) and Advisory Council for concurrence.

iii. Once completed, all environmental documentation must be reviewed and approved, by DOE, including approval of any required mitigation measures. All mitigation costs will be borne by the applicant. Completion of the environmental review process is mandatory before final approval of the proposed project can be granted.

(b.) Reasonable precautions are necessary in locating and operating transmitting antennas because of potential adverse radio frequency biological effects. In light of the numerous variables regarding power and frequency levels for each installation, electromagnetic radiation impacts will have to be evaluated on a site-specific basis taking into account any existing nearby emission sources.

(c.) A statement that the proposed antenna installation meets all American National Standards Institute's (ANSI) time averaged radio frequency exposure standards should be made part of the environmental

assessment.

(d) All expenses related to completion of the environmental documentation process are borne by the applicant.

(e) It is the applicant's responsibility to provide appropriate environmental documentation acceptable to DOE for project approval. Advance coordination with the Site Office is required before starting the environmental documentation process. This early coordination will provide valuable insight on any sensitive environmental issues which could be affected by the antenna and a determination as to the probable form of environmental documentation needed (CatEx, EA, or EIS) in support of the antenna site.

(2) Form of Land Use Agreement.

(a) A lease will be used for construction of towers

(b) A license or permit will be used where only an antenna placement is needed.

(3) Term of Agreement.

Federal laws and policies limit the authority as to the length of the term of such agreements. Under current guidelines, the term cannot be longer than five years if mobile service antennas are to be installed on existing structures or up to twenty years if the construction of a new structure is required.

(4) Preference of Siting Locations

(a) DOE prefers to site new telecommunication facilities on or near existing structures or building(s) in order to avoid encumbering land that may eventually be required to meet federal missions. However, should DOE agree with construction of a new facility on available land, the applicant may be required to construct the facility in a manner that would enable the future accommodation of equipment belonging to other wireless service carriers. Once approved, a project facility may only be used for installation, operation, maintenance, and removal of antenna(s) and communication equipment in conjunction with the applicant's primary business of mobile communication services.

(b) Schedule a site visit and survey to determine that the site meets the telecommunications provider's requirements.

(5) Appraisal Process

Applicable Federal laws, regulations, and policies require that fair market value be obtained. The DOE site office will contract out for the appraisal. Expenses related to the appraisal process will be borne solely by the applicant. Once an appraisal report has been completed it must be reviewed and approved by a DOE CRS.

(6) Form and Value of Compensation.

(a) The total value of compensation received by the Government is based on

two criteria:

(1) the fair market rental (appraisal) value, as determined by an DOE Realty Officer, for the facility being proposed and the desired location of the facility and

(2) the length of term for siting of the facility.

(b) After a final agreement has been reached between the parties as to the value of compensation to be received, this information will be incorporated in the real estate document.

(7) Legal Description.

In addition to agreement on compensation issues, the real estate document must include an adequate legal description identifying the specific portion of the legal description of the facility itself, legal descriptions will also be required to define any additional easement(s) on the project which may be needed to access supporting utility requirements, such as electrical power or telephone line hook-ups. Any expenses associated with obtaining these legal descriptions are the sole responsibility of the applicant.

4. Correspondence.

Applicant should provide a copy of any project related correspondence to/from any other government agency to: Department Of Energy, Attn: Realty Officer, 1000 Independence Avenue, SW/MA-50, Washington, DC 20585.

5. Federal Aviation Administration Concurrence.

The applicant must coordinate with the Federal Aviation Administration (FAA) and obtain FAA siting approval for any commercial telecommunication facility that is proposed to be located in proximity to an existing FAA facility. FAA approval of the proposed project site will be required before final approval of the project may be granted. Any commercial telecommunication facility that is proposed for location within a five nautical mile radius of any military airfield must be coordinated with and approved by that installation's air traffic control authorities. Siting of such facilities in vicinity of an air station must comply with FAA and military airfield siting criteria.

6. Resolution of Interference Issues.

The applicant must understand and acknowledge that resolution of any communication interference issues becomes the applicant's sole responsibility. Should such interference issues arise, as a result of the applicant's impact on the site, other tenant facilities, or any previously existing commercial telecommunication facilities on the site, the applicant shall be required to eliminate such interference at their sole cost and expense.

a. The lessee shall incur all costs associated with resolution of such problems, including any required surveys. In the event that a Government emitter should interfere with the communication system, the applicant shall have sole responsibility to resolve the problem at their expense.

b. Prior to granting final approval of the real estate document, DOE must receive written verification that the proposed project will not interfere with other military or commercial

telecommunication facilities located in proximity to the new site. The lessee should initially provide this verification,

7. Use of Joint Spectrum Center (JSC) on Interference Issues.

When the Realty Officer deems it required, an Electromagnetic Compatibility (EMC) analysis must also be completed by the Department of Defense's Joint Spectrum Center (JSC) in Annapolis, Maryland. This analysis by the JSC will normally be completed at the lessees' expense and may require an on-site review by JSC personnel. Once the electromagnetic compatibility analysis is completed, a report of its findings will be provided to the project applicant.

a. History: The JSC has been supporting the Federal Government in EMC and spectrum management matters for over 30 years. They store and maintain the frequency assignment, technical characteristics, and topographic databases necessary to do EMC analyses on military and civilian equipment. Many of these databases do not exist elsewhere and mostare not available to the civil sector. They have developed the automated models to analyze the potential for EMC problems quickly and efficiently, even where the number of transmitters and receivers in the electromagnetic environment (EME) is huge. Further, they work on a day to day basis with the intelligence community and have a procedure in place for determining whether proposed equipment could pose any interference to highly classified systems that may exist on Federal property. A typical analysis can be done and results delivered in six to eight weeks.

b. Procedures for Initiating a Joint Spectrum Center (JSC) Review:

(1) The Telecommunication Service Provider (TSP) discusses their proposal with the facilities and frequency management personnel. They come to a tentative agreement on location, tower height, etc. This needs to be done first because the TSP should not pay for an EMC/EMI/RADHAZ analysis if the site is not acceptable for other reasons.

(2) The TSP needs to have their equipment/site design completed. A change in tower location, height, output power, antenna gain, etc. during the analysis could cause the JSC to have to restart the analysis at additional time and cost.

(3) The JSC and the TSP personnel make contact and discuss the analysis in general terms. The TSP provides the JSC with a letter requesting support and the needed technical data.

(4) The JSC prepares a Project Plan describing what will be done, for how much, and in what time frame. JSC attaches it to a Memorandum of Agreement (MOA) and forwards it to the TSP for signature.

(5) The TSP returns the signed MOA with a check to start the official support. A copy of the fully executed MOA will be provided DOE prior to the start of any support activities.

(6) JSC personnel will travel to the base to do a site survey, compare base records to the JSC database, and determines what future systems are planned for that site. JSC personnel will meet with the TSP technical personnel at the proposed site to verify the technical data on the site and proposed equipment.

(7) JSC then performs the analysis. If JSC identifies EMC problems during the analysis, JSC will inform the TSP and Project personnel. If necessary, the JSC, TSP and Project personnel will meet on site to discuss options available. If none are available, JSC will stop the analysis and return unused funds to the TSP. If the problems can be solved, JSC will fold the changes into the analysis and work will continue.

(8) When the analysis is complete, JSC will provide the results to the TSP, DOE and the Project Manager by e-mail, with a follow up letter and a JSC Consulting Report. The JSC e-mail address for this work is: msp@jsc.mil. The specific point of contact is: Mr. Frank Tushoph, Deputy Director for Marine Corps, DOD JSC, 120 Worthington Basin, Annapolis, MD 21402-5064. Phone: 410-293-2555; Fax: 410-293-2631, E-mail: tushoph@jsc.mil

(9) JSC will return any unused funds to the TSP.

(10) If DOE receives a screening request, it will pass the request to: Joint Spectrum Center (JSC-J8M), 120 Worthington Basin, Annapolis, MD 21402-5064.

(11) The JSC will evaluate the proposed antenna siting telecommunication service for potential electromagnetic interference to the existing or planned telecommunications operations of the affected government facility.

(12) The commercial vendor is required to reimburse the JSC for the costs of this evaluation.

(13) The JSC shall inform the DOE Site Manager at the Subject Site and the Director, Office of Property Management, U. S. Department of Energy/MA-65, 1000 Independence Ave., SW, Washington, DC 20585 of the results of the assessment in order to assist in making the decision as to grant or deny the request.

8. Review of Final Construction Plan.

Prior to the Site Office review of the real estate document, the applicant must provide the Site Office with three complete copies of the project's "final" construction plans. Should any issues of concern arise during review of the final construction plans, the project applicant will be advised and requested to resolve the issue(s) prior to final approval of the proposal.

a. The final construction plans must also illustrate the applicant's desired path for access to utility connections, if applicable. If desired utility connections are not readily available, an additional and separate easement must be negotiated for linking the applicant's facility to the closest point of connection for the utility service(s). Any fees or service charges associated with use of such supporting utilities will be born solely by the applicant and paid directly to the utility company.

b. If that it is not practical for the project applicant to contract for such services directly, and project utility connections are readily available (as may be the case for an antenna installed on an existing facility), a determination will be made by the Site Office as to the capability to furnish such service. If available, such utility services will be separately metered, installed at the applicant's expense, and payment made to the US Department of Energy.

9. Requirement for Pre-Construction Meeting.

After final approval for the project has been granted through execution of the required real estate instrument, the project applicant and the applicant's construction contractor (if a contractor is used to construct the project) must participate in a pre-construction meeting before construction on the project may begin. This meeting is normally held at the Site Office and is used as a final opportunity to review construction safety issues, to review any entry procedures into a secure area, to provide information on sensitive environmental areas of the project, and to confirm the envisioned project construction timeline. This requirement to participate in a pre-construction meeting is mandatory and will be incorporated into the real estate agreement.

10. Construction Guidelines.

Regardless of the siting location (i.e., whether installed on an existing building/structure or constructed as a new structure) any installed equipment visible from the exterior of the building/structure will normally be required to be painted or camouflaged to blend with the surrounding terrain or the existing background of other equipment, structures, or fixtures. No signs or billboards containing any advertising will be authorized on the facility. The applicant will be required to fence any newly constructed facility/structure to prohibit unauthorized access and to landscape the facility to help it blend with its surroundings. The installation of appropriate safety features, such as aircraft obstruction lighting, may be required of the applicant as a condition of approval. Finally, construction of the facility must comply with, and be subject to, all environmental constraints as identified in the appropriate environmental documentation. Such requirements as fencing, camouflaging, landscaping, and installing of safety devices at the facility must be accomplished to the satisfaction of the Site Office.

a. Other general construction guidelines include such matters as antenna size and overall height of any structure that may be erected. The proposed height of any structure or associated antenna device above ground level (AGL) will be closely scrutinized. Any proposed facility of a height in excess of the height of existing terrain and/or lighted structures in the vicinity poses a potential aircraft obstruction hazard, and thus, a safety concern to low altitude vehicles. Installation of antenna(s), pole(s), tower(s), cabling and related equipment shall be done in accordance with existing Federal, state, and local codes, including the National Electrical Code and other codes that directly relate to the construction, installation, operation and maintenance of communication equipment. If codes differ, the most stringent code will prevail.

b. In the event the applicant constructs a facility capable of accommodating additional antenna apparatus belonging to other commercial carriers, the applicant's real estate instrument with DOE will prevail.

11. Final Decision.

a. Final decisions should be rendered in writing and in a timely manner after completion of all necessary reviews, evaluations and assessments. Denial of a request will provide a written explanation of the reason for the denial.

b. A real estate instrument, such as, a license, lease, permit, or other legal instrument will be created and executed to document the terms, conditions, and responsibilities of both the Federal Government and the telecommunications service antenna provider.

c. Once the real estate instrument has been executed by a DOE CRS, the applicant is authorized to proceed with the pre-construction meeting (Section 9) and development of the project.

12. Point of Contact.

a. The following individuals are designated as the points of contact at DOE: Director, Office of Property Management/MA-65, Forrestal Building, US Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585. Office telephone number: (202) 586-1784 and the Site Manager at the Subject Site.

b. A point of contact for the telecommunications service provider including name, address and telephone number will be provided to the Site Office and the DOE initial point of contact as soon as available.

c. Either party may change their point of contact by providing the other party with written notification to that effect.

Application Form for Telecommunication Request

Applicants should, as a minimum, provide the following information:

A. Background

1. General Information: Provide:
   a. Name of the applicant.
   b. Address of the applicant.
   c. Telephone number of the applicant.
   d. if applicable, provide:
      (1) Name,
      (2) Address,
      (3) Telephone number of a representative authorized to act on behalf of the applicant during the course of the project.

2. Written acknowledgement - that the applicant intends to pay Fair Market Value for siting of the proposed facility.

3. Experience and Background
   Provide copies of instruments establishing the applicant as an entity with the legal capacity to enter into leases and other binding contractual obligations.
   a. Corporations should provide the name and address of an authorized representative and evidence of current corporate status.
   b. Partnerships/joint ventures should provide the name and address of an authorized representative and evidence of current partnership/joint venture status.
   c. A sole proprietor should provide current address and summary of business activity.

4. Signing of Application
   An official authorized to act on behalf of the potential Lessee must sign the application. If the lessee is a corporate or governmental entity, then the signature must show the official capacity of the signer.

B. Intended Use

1. Subleasing
   State whether the applicant intends to use the property or sublease the property to a third party. If subleasing, identify the prospective sublessee(s).

2. Effective Date
   State when the applicant wants the lease to begin.

3. Lease Term
   State the requested duration of the lease.

4. Property Description
   a. If using an existing structure, specific building (or structure) name or building number and address (or longitude and latitude), or other site specific property identifier.

b. If proposing a new building or structure, desired location of the facility (including a map with sufficient detail to easily identify the area of the project or installation where this facility is being proposed).

c. General conceptual drawing of the site plan.

d. General description of the facility (including photos if possible) clearly depicting its physical appearance along with any utility requirements and any supporting ancillary equipment such as equipment shelters, power boxes, antenna poles, etc. that may be required. If the antenna is located on an existing building, include any special modifications required.

e. Identification of any buildings or other improvements requested.

f. Type and size of the antenna installation, to include the description of the overall dimensions of the facility, including maximum height above ground, footprint size, and estimated square-footage of land needed to construct and operate the facility.

g. Right-of-ways and access required.

5. Specific Submission Requirements

The following materials shall be submitted with each antenna installation proposal:

a. Statement of need, including justification for the size of the antenna, justification for multiple antenna installations, and other appropriate data regarding the installation of the antenna equipment.

b. Site plan and building elevations (for antennas mounted on a building) showing the form, dimensions, and location of the proposed antenna(s), any existing-to-remain antennas, and proposed screening elements.

c. Construction drawings showing the proposed method of installation to include the ft/lb capacity required.

d. Description of the texture and color of antenna materials to be used.

e. Screening plan, where antenna can be seen by the public, including proposed materials, color and texture of screening elements for rooftop and ground-level installations. For ground-level installations only, the number, species, and sizes of trees and shrubs to be used as a screen.

f. Sight line studies of the proposed installation and alternatives considered, illustrating the extent to which the proposed antenna(s) will be visible from the surrounding streets, public open spaces, and nearby residential areas.

g. Description of alternatives considered meeting the telecommunication needs of the submitting applicant.

h. Whether exclusive use of the proposed facility/site is required or desired, or if collocation with a similar (or previously established) facility is feasible.

6. Environmental Information

a. Reasonable precautions are necessary in locating and operating transmitting antennas because of potential adverse radio frequency biological effects. In light of the numerous variables regarding power and frequency levels for each installation, electromagnetic radiation impacts will have to be evaluated on a site-specific basis taking into account any existing nearby emission sources.

b. All applications for a transmitting antenna should be accompanied by an environmental assessment. The environmental assessment shall include an estimate of the electromagnetic radiation levels at 10, 50, 100, 500, 1,000 and 2,000 feet from the installation in milliwatts per square centimeter and the safeguards proposed to protect the public from any potential adverse biological effects.

c. A manufacturer's certification as to electromagnetic radiation at the above distances and a statement that the proposed antenna installation meets all American National Standards Institute (ANSI) time averaged radio frequency exposure standards should be made part of the environmental assessment.

7. Radio Frequency Issues

a. Identification of the RF (radio frequency) ranges, output power levels antenna gain, and antenna polarization to be utilized during operation of the facility.

b. A copy of the Federal Communications Commission (FCC) license which authorizes the applicant to provide this type of service in the project area.

8. Payment

Rent must be for fair market value.

C. Operational Requirements

1. Identify the approximate amount and the expected provider of electricity required;
2. Identify the type, approximate amount required and the expected provider(s)of fuels, e.g., natural gas, propane, heating oil, required;
3. Identify the amount and the expected provider of potable water required;
4. Identify any other requirements required and the expected provider of such service for utility services (the grantee will pay for installation of any utility meters if they plan to tap into DOE provided utilities);
5. Describe any construction, improvements or other alterations to the property required enabling any of the services described in response to the preceding requests to be delivered or provided to the property;
6. Describe any construction, improvements or other alterations to the property proposed to carry out applicant activities on the property;
7. Identify the organization that will construct the antenna site, if different from the applicant;
8. Identify typical facility maintenance requirements (e.g., projected number and frequency of site maintenance visits required per month, type of vehicles required to perform maintenance, on-base access route to be used, and average time required per maintenance visit);
9. Identify how the antenna connects with the telephone system (microwave, landline, other).
10. Identify how, in case of termination, the facility/installation will be removed from its location and how restoration of the existing premises will be accomplished.
11. As appropriate, the proposed method of achieving environmental and historic sensitivity compliance.

AGENCY CONTACT POINTS FOR THE PLACEMENT OF ANTENNAS ON FEDERAL BUILDINGS

Bonneville Power Administration, Office of General Counsel, 905 Northeast 11th Avenue, Portland, OR, 97232, (503) 230-5904

Federal Communications Commission, Operations Management and Service Division (1110B), 1919M St., NW, Room 404, Washington, DC 50554, (202) 418-1950

National Academy of Science, National Research Council, 2101 Constitution Avenue, NW, Mail Stop (HA-274), Washington, DC 20418, (202) 334-3384

National Aeronautics & Space Administration, Facilities Engineering Division, NASA Headquarters, Code JX, 300 E Street, SW, Washington, DC 20546-0001, (202) 358-1090

National Archives & Records Administration (NAFM), 8601 Adelphi Road, Room 2320, College Park, MD 20740-6001, (301) 713-6470

National Science Foundation, Property Administrator, 4201 Wilson Blvd., Room 295, Arlington, VA 22230, (703) 306-1123

Tennessee Valley Authority, Facilities Services--Asset Management, 1101 Market Street, Mail Stop: (WR4A-C), Chattanooga, TN 37402-2801, (423) 751-2127

U. S. Army Corps of Engineers, Management and Disposal Division in the Real Estate Directorate, 20 Massachusetts Ave., NW, Room 4224, Washington, DC 20314-1000, (202) 761-0511

U. S. Department of Agriculture, Property Management Division, AG Box 9840, Washington, DC 20250, (202) 720-5225

U. S. Department of Commerce, Office of Real Estate, 14th & Constitution Ave., NW, Room 1040, Washington, DC 20230, (202) 482-3580

U. S. Department of Defense: Commercial companies who wish to place antennas on DOD property should first contact that property's Installation Commander. If unknown, please contact the following office. Deputy Assistant Secretary of Defense (Installations), Attention: Director, Installations Management, 3300 Defense Pentagon, Washington, DC 20301-3340, (703) 6044616

U. S. Department of Education, Office of the Director for Management, 600 Independence Ave., SW, Room 2164, Washington, DC 20202, (202) 401-0470

U. S. Department of Energy, Engineering & Space Management Branch, 1000 Independence Ave., SW, Mail Stop: HR211, Room IF-039, Washington, DC 20585, (202) 586-1557

U. S. Department of Health & Human Services, Division of Policy Coordination, 300 Independence Ave., SW, Room 421, Washington, DC 20201, (202) 619-2018

U. S. Department of Interior, Bureau of Land Management, 1849C Street, NW, Room 1O00-LS, Washington, DC 20240-9998, (202) 452-7777

U. S. Department of Interior, National Park Service, Radio Frequency Manager, Field Operations, 12795 W. Alameda Parkway, PO Box 25287, Denver, CO 80225-0287, (303) 969-2084

U. S. Department of Justice, Real Property Management Services, Suite 1060, National Place Building, Washington, DC 20530, (202) 616-2266

U. S. Department of Labor, Office of Facility Management, 200 Constitution Avenue, NW, Room S 1521/0FM, Washington, DC 20210, (202) 219-6434

U S. Department of State, Office of Real Property, 2201 C Street, NW, Room 1878, Washington, DC 20520, (202) 647-2810

U. S. Department of Transportation, Office of the Secretary, 400 7th Street, SW, Mail Stop: M72, Room 2318, Washington, DC 20590, (202) 366-9724

U S. Department of Treasury, Office of Real and Personal Property Management, Office of the Deputy Assistant Secretary for Departmental Finance and Management, 1500 Pennsylvania Ave.,NW, Room 6140--ANX, Washington, DC 20220, (202) 622-0500

U S. Department of Veterans Affairs, Land Management Service, 811 Vermont Ave., NW, Mail Stop: 184A, Washington, DC 20005, (202)565-5026

U. S. Environmental Protection Agency, Architecture, Engineering and Real Estate Branch, Facilities Management and Services Division, 401 M Street, SW, Room 3204, Washington, DC 20460, (202) 260-2160

U. S. General Services Administration: Commercial companies who wish to place antennas on GSA property should first contact the appropriate Regional Office of the Public Buildings Service. If unknown, please contact the Public Buildings Service, 1800 F St., NW, Washington, DC 20405, (202) 501-1100

U S. Government Printing Office, Office of Administrative Support, 710 North Capitol St., NW, Mail Stop: OA, Washington, DC 20401-0501, (202) 512-1074

U S. Information Agency, Office of Administration--B/A, Cohen Building, 330 Independence Ave., SW, Washington, DC 20547, (202) 619-3988

U. S. Postal Service, Realty Asset Management, 475 L'Enfant Plaza West, SW, Washington, DC 20260-6433, (202) 268-5765

Appendix 3: *Funding Off-Site Public Road Work*

DOE has no authority to make payments for developing, improving, and maintaining public roads (collectively, "road work") unless provided by specific legislation or included in the Budget Request for the appropriate fiscal year. If DOE or any of its components are to pay for road work, funds must be appropriated as a construction line item in the annual Budget Request to Congress to satisfy 41 U.S.C. 12, which provides that no contract can be issued for any public work in excess of funds appropriated for that specific purpose.

State and local highway agencies have the same responsibility for developing, improving, and maintaining adequate roads and highways (collectively, "road work") to serve DOE-owned sites as they do for roads and highways serving private industrial establishments or any other traffic generators. Roadwork in the vicinity of DOE-owned sites should receive the same consideration and priority as is given to other roadwork.

Whether the taxing entity intends to fund the road work by special assessment or by general revenue funding, DOE will consider a request for payment only if the amount requested of DOE is equitable in comparison to the amount requested of the other property owners who will also benefit from the road work and if the funding approach is consistent with the way the taxing entity normally funds such road work.

On a case-by-case basis, and as a one-time event, DOE may consider approval of a special request from a local taxing entity for payment by DOE for work to be performed on a specific road. If approved by DOE, funds for the project will either be requested in specific legislation or included in the Budget Request for the appropriate Fiscal Year. The request will be considered only if the road abuts a DOE owned site, and the road is a public road that provides primary access to the DOE site, and the current condition of the road creates a security or safety concern. An exception would be funding for roadwork off DOE-owned sites that is an essential part of a broader benefits package negotiated pursuant to authorization by law.

Requests for such payments will be considered only if the request is accompanied by thorough and detailed information from the taxing entity making the request, including the following:

- The estimated total cost of the work to be performed on the road in question and the method of calculating that cost.
- The criteria used to determine the universe of all property owners who will contribute to the cost of the roadwork.
- The calculation of each property owner's contribution to the cost of the roadwork to be performed, including DOE's contribution.

DOE will make no payments for roadwork that has already been completed, is already under construction, or for which construction has already been funded by the local taxing entity at the time of the request to DOE.

When specific legislation already exists for road work, the procedure to follow should be consistent with the legislation. In all other cases, when the local DOE official responsible for a DOE site determines that a request from a local taxing entity conforms to this policy, that official will submit the request, together with an analysis of the request and a recommendation, to the appropriate Assistant Secretary or Office Director. The Assistant Secretary or Office Director, in consultation with the Associate Deputy Secretary for Field Management, the Chief Financial Officer and the General Counsel, will consider whether the recommendation is consistent with this policy statement, determine DOE's funding capability, and render a decision on whether or not DOE will seek funding for implementing the road work.

If the Assistant Secretary or Office Director approves the recommendation, the recommendation will then be transmitted to the Secretary and, upon Secretarial approval, the Office of the Assistant Secretary for Congressional and Intergovernmental and International Affairs and/ or the Office of the Chief Financial Officer will take appropriate action.

Appendix 4: *Table of Authorities*

Authority	Applicability	Actions	$ Limit	Time Limit	Other
DOE Organization Act - 42 USC 7257	labs, research/test facilities, quarters, related accomodations	Acquisition, *inleasing, condemnation, or "otherwise"	subject to CRS' individual approval authority limit	inleasing for 1 yr or right to terminate after 1 yr	In-leasing authority does not include general purpose office space
DOE Organization Act - 42 USC 7256(c)	closed/ reconfigured facilities	Outleasing	below FMV ok; in-kind services ok	10 yrs + 10 yr. renewal	DOE retains proceeds for lease admin, maint., repair, envt'l. restoration at same facility
P.L. 105-85 § 3158 - 42 USC 7274(l)	personal property at closed/ reconfigured facilities	Out-grant	below FMV, if mitigates adverse economic impacts	not applicable	Listed for reference purposes as relates to outleasing at closed/reconfigured facilities. Personal property disposal procedures, and personnel, should be used.
Atomic Energy Act - 42 USC 2201	Atomic Energy Act property	Acquisition, *inleasing, disposal, out-lease	subject to CRS' individual approval authority limit	term limit not specified	
Atomic Energy Defense Act - 50 USC 2811	DOE defense nuclear facilities	Out-lease or sale for economic development	No cost up to Fair Market Value	term limit not specified	Economic Development Transfer Authority. DOE may indemnify transferee against injury from environmental contamination
GSA 10-5-2007 RSL	General purpose office space, Special Purpose space	*Inleasing	Prospectus	20 years	General purpose space below 20,000sf, but requires GSA pre-authorization; Special purpose space 2500sf and above requires pre-authorization
41 CFR 102-73.185	Special purpose space	*Inleasing	Prospectus	20 years (fiscal year basis for land lease)	Facilities housing special purpose or special location activities of the Atomic Energy Commission
41 CFR 102-73.145 to 155	Categorical space	*Inleasing	Prospectus	20 years	See 41 CFR 102-73.155 for list of categorical space types

*All in-leases are subject to scoring rules contained in OMB Circular A-11, Section 8, Appendix B. All multi-year leases, regardless of source of authority, must be scored if the lease does not contain a termination clause in any one year period.

Appendix 5: *Leasing-Related Statutes & Executive Orders*

I. Federal Statutes

1. Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 note)

Transferred all functions with respect to acquiring space in buildings by lease, and all functions with respect to assigning and reassigning space in buildings, to GSA.

2. Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 490(h»

Provides GSA with 20 year leasing authority.

3. Public Buildings Act of 1959 (40 U.S.C. § 606)

Section 7 of this Act requires Congressional committee approval of leases with annual rental, excluding services and utilities, in excess of $2,790,000. Further requires Congressional committee approval for lease alteration projects in excess of $1,395,000. The numbers above are applicable for Fiscal Year 2011 and are indexed annually.

4. Competition in Contracting Act of 1984 (41 U.S.C. § 251 et seq.)

GSA acquires leased space through the use of full and open competitive procedures mandated by this Act.

5. Public Buildings Cooperative Use Act of 1976 (40 U.S.C. §§ 601a 612a)

Requires GSA to afford a preference to historic properties in the leasing process. Also provides for the outleasingto the public of vacant Federal space when no Federal tenancy needs are present.

6. The Small Business Act (15 U.S.C. §§ 631-647)

Requires a positive effort by Federal contractors to place subcontracts with small and small disadvantaged business concerns. The Act also requires publication of Federal procurement requirements, requires large businesses to submit small business subcontracting plans, and provides for liquidated damages for failure to meet subcontracting plan goals.

7. Rural Development Act of 1972 (42 U.S.C. § 3122)

Requires Federal agencies to give first priority to rural areas in locating facilities. See also EO 12072 regardingthe location of Federal facilities in urban areas

8. Contract Disputes Act of 1978 (41 U.S.C. §§ 601-613)

Requires disputes arising from federal contracts to be adjudicated by established process and procedures.

9. Prompt Payment Act (31 U.S.C. §§ 3901-3907)

Requires Federal payments to contractors to be made in an expeditious manner, provides penalties for late payment by the Government, and requires that the Government be entitled to discounts for early payment.

10. Assignment of Claims Act of 1940 (31 U.S.C. §3727)

Allows contractors to assign rights to payment, including rent, to established financing institutions.

11. The Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151-4152)

Requires that public buildings be made accessible to the physically handicapped through construction and alterations to provide for suitable accessibility, restrooms, plumbing, water fountains, elevators, etc. The requirements of this Act are implemented through the Uniform Federal Accessibility Standards.

12. Fire Administration Authorization Act of 1992 (15 U.S.C. § 2227)

Requires that an entire building be sprinklered or provide an equivalent level of life safety when Federal funds are used to lease 35,000 square feet or more of space in a building (under 1 or more leases) and some portion of the leased space is on or above the 6th floor. Also requires that all hazardous areas be sprinklered in all Government leases.

13. Earthquake Hazards Reduction Act of 1977 (42 U.S.C. § 7705b)

Required adoption of standards for assessing the seismic safety of existing buildings constructed for or leased by the Government which were designed and constructed without adequate seismic design and construction standards.

14. Energy Policy Act of 1992 (42 U.S.C. § 8253)

Required the Federal Government to meet 20 percent energy reduction targets by the year 2000. This

includes Federally leased space

.15. Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651-678)

Requires GSA to ensure that space leased and assigned to agencies provides safe, healthful working conditions, including building features such as lighting, guard rails, indoor air quality, fire safety, emergency elevator requirements, etc.

16. The National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq.)

Requires an assessment of the environmental impacts associated with major Federal actions, including Government leasing.

17. National Historic Preservation Act of 1966 (16 U.S.C. §§ 470 - 470w-6)

Requires listed historical properties to be protected from harm as a result of Federal actions, including leasing.

18. Randolph-Sheppard Act (20 U.S.C. § 107)

Requires that licensed blind vendors be authorized to operate vending facilities on any Federal property, including leased buildings. The Act imposes a positive obligation on GSA to acquire space in buildings which have suitable sites for vending facilities.

19. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.)

Requires the payment of relocation benefits to persons displaced as a result *of* Federal actions. This Act is potentially applicable to persons displaced as a result of GSA lease-construction projects on sites designated by the Government.

20. Intergovernmental Cooperation Act of 1968 (40 U.S.C. §§ 531-535)

Requires GSA to consult with planning agencies and local elected officials and to coordinate federal projects (i.e., usually large projects requiring Congressional prospectus approval) with development plans and programs of the state, region, and locality where the project is to be located.

21. Drug-Free Workplace Act *of* 1988 (41 U.S.C. §§ 701-707)

Requires contractors to make certifications regarding actions to reduce the possibility of drug use at the site of the performance of work. The requirements of the Act do not apply to contracts below the simplified acquisition threshold for leasing.

22. Prohibitions Against Payments to Influence (31 U.S.C. § 1352)

Requires certifications from contractors that funds have not and will not be paid to any person to influence the award of a Federal contract.

23. Officials Not To Benefit (41 U.S.C. § 22)

Prohibits any member of Congress from receiving any benefit arising from a Federal contract.

24. Covenant Against Contingent Fees (41 U.S.C. § 254(a)

Requires that no individuals other than full-time bona fide employees or established bona fide agents maintained by the contractor have been retained to solicit or obtain a Federal contract. This requirement is not applicable to contracts below the simplified acquisition threshold for leasing.

25. Anti-Kickback Act of 1986 (41 U.S.C. § 51)

Prohibits a contractor from soliciting or receiving kickbacks from subcontractors in return for subcontract awards. The requirements of this Act are not applicable to contracts below the simplified acquisition threshold for leasing.

26. Anti-Lobbying (18 U.S.C. § 1913)

Prohibits the use of appropriated funds to lobby Congress.

27. Examination of Records (P.L. 103-355, § 2251)

Authorizes the head of an agency and the Comptroller General to inspect records *of* Federal contractors. This authority is not applicable to contracts below the simplified acquisition threshold for leasing.

28. Davis-Bacon Act of 1931 (40 U.S.C. §§ 276a-276a-7)

Provides for payment of prevailing wages to laborers on Federal construction projects. This Act is potentially applicable to lease acquisitions when an offeror proposes to construct a building or completely reconstruct or rehabilitate an existing building for the predominant use of the Government.

29. Contract Work Hours and Safety Standards Act of

1962 (40 U.S.C. §§ 327-333)

Imposes 40-hour workweek and time and a half overtime requirements on certain contracts. This Act is potentially applicable to lease acquisitions when an offeror proposes to construct a building or completely reconstruct or rehabilitate an existing building for the predominant use of the Government. The Act does not apply to contracts below the simplified acquisition threshold.

30. Copeland Act of 1934

(18 U.S.C. § 874; 40 U.S.C. § 276c)

This Act makes it unlawful for a contractor to force a kickback from any person employed in the construction or repair of a public building or public work. The Act also requires contractors and subcontractors to furnish compliance statement with respect to wages paid to employees. This Act is potentially applicable to lease acquisitions when an offeror proposes to construct a building or completely reconstruct or rehabilitate an existing building for the predominant use of the Government.

II. Executive Orders

1. **EO 11246 –**
   Equal Employment Opportunity
   (1965. 30 Fed. Reg. 12319)
   Prevents Federal contractors from discriminating against any employee or applicant for employment because of race, color, religion, sex, or national origin.

2. **EO 11988 –**
   Floodplain Management
   (1977. 42 Fed. Reg. 26951)
   Precludes GSA from leasing space in buildings located within floodplains unless there are no practicable alternatives.

3. **EO 11990 –**
   Protection of Wetlands
   (1977, 42 Fed. Reg. 26961)
   Precludes GSA from leasing space in wetland areas unless there are no practicable alternatives.

4. **EO 12072 –**
   Federal Space Management
   (1978, 43 Fed. Reg. 36869)
   Requires that first consideration be given to locating Federal facilities in urban areas within central business districts.

5. **EO 12699 –**
   Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction (1990, 55 Fed. Reg. 835) Requires that new buildings constructed for lease to the Government are designed and constructed in accord with appropriate seismic design and construction standards.

6. **EO 12902 –**
   Energy Efficiency and Water Conservation at Federal Facilities
   (1994, 59 Fed. Reg. 11463)
   Requires that appropriate consideration be given to efficient buildings in the leasing process. Increases Federal energy reduction goals to 30 percent by the year 2005.

7. **EO 12941 –**
   Seismic Safety of Existing Federally Owned or Leased Buildings (1994, 59 Fed. Reg. 62545)
   Adopted standards of the Interagency Committee on Seismic Safety in Construction (ICSSC) as the minimum level acceptable for use by Federal departments and agencies in assessing the seismic safety of their owned and leased buildings and in mitigating unacceptable seismic risks in those buildings.

8. **EO 13006 –**
   Locating Federal Facilities on Historic Properties in Our Nations Central Cities (1996, 61 Fed. Reg. 26071)

   Subject to the Rural Development Act and EO 12072, directs that Executive agencies give first consideration to locating Federal facilities in historic properties within historic districts when operationally appropriate and economically prudent.

9. **EO 13327-**
   Federal Real Property Asset Management
   This EO Requires:

   Appoimtment of a senior management official as a Senior Real Property Officer (SRPO) by the Agencies as of March 4, 2004.

   Establishment of a Federal Real Property Council

chaired by the Deputy Director for Management of OMB and comprised of all agency Senior Real Property Officers, OMB Controller, and the Administrator of General Services.

Development and implementation of a agency asset management plan.

Development of real property management performances indicators to measure effectives of acquiring, repairing, disposing, and utilizing real property.