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CHAPTER 2

Authority to Acquire Real Property

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AUTHORITY TO ACQUIRE REAL PROPERTY1. SCOPE.

This Chapter sets forth the authority for the acquisition of real property and interests therein applicable to the Department of the Navy.

2. LEGISLATIVE AUTHORIZATION REQUIRED.

No real estate or interest therein will be acquired until there is legislative authorization for the acquisition and an appropriation available for that purpose. (41 U.S.C. 14).

3. EXPRESS AUTHORIZATION REQUIRED.

No military department may acquire real property not owned by the United States unless the acquisition is expressly authorized by law. (10 U.S.C. 2676).

4. LEGISLATIVE AUTHORIZATION FOR MILITARY CONSTRUCTION PROJECTS.

Navy Department land acquisitions usually are provided for in an annual Military Construction Authorization Act (MCON). Specific projects are usually authorized based upon the justifications and limitations contained in the DD Form 1391 submitted as a part of the Navy's MILCON Program. There are also instances in which the authorization is a sum total for projects including land acquisition at "various locations" or where real estate acquisition is a part of a construction project. In those cases where the value of the land to be acquired is \$50,000 or less, it is generally not included in the MCON Program as Congress has granted general authority to acquire such land. (10 U.S.C. 2672).

5. LEGISLATIVE AUTHORIZATION FOR RESERVE FACILITIES.

The authority to acquire land for reserve facilities is derived in all instances from 10 U.S.C. 2233. While this authority is vested in the Secretary of Defense, the authority to acquire approved facilities has been successively redelegated to the Secretary of the Navy and to the Assistant Secretary of the Navy (Installations and Logistics). The general authority of 10 U.S.C. 2233 is limited by 10 U.S.C. 2233a, which provides that no expenditure that is more than \$50,000 may be made under that section for any facility until after the expiration of thirty days from the date upon which the Secretary of Defense or his designee notifies the Senate and the House of Representatives of the location, nature, and estimated cost of such facility. Any project authorized pursuant to Section 2233a which does not cost more than \$25,000 may be accomplished from appropriations available for maintenance and operations. (10 U.S.C. 2233a (2)).

6. ACQUISITION NOT EXCEEDING \$50,000.

The Secretary of the Navy may acquire, without further legislative authorization, any interest in land that he or his designee has determined is needed in the interest of national defense that does not cost more than \$50,000 (exclusive of administrative costs and the amounts of any deficiency judgments). This authority may not be used to acquire, as part of the same project, two or more parcels of land that together cost more than \$50,000. The authority to acquire an interest in land under 10 U.S.C. 2672 includes authority to make surveys and acquire interests in land (including temporary use), by gift, purchase, exchange of land owned by the United States, or otherwise.

7. TRANSFERS OF REAL PROPERTY FROM OTHER MILITARY SERVICES.

If either of the Military Secretaries concerned requests it and the other approves, real property may be transferred, without compensation, from one armed force to another. (10 U.S.C. 2571(a)).

8. TRANSFERS OF EXCESS REAL PROPERTY BY AUTHORITY OF THE ADMINISTRATOR OF THE GENERAL SERVICES ADMINISTRATION.

Section 202(a), Act of 30 June 1949 (Public Law 152, 81st Congress; 63 Stat. 384) as amended by Section 1(f), Act of 12 July 1952 (Public Law 522, 82d Congress; 66 Stat. 593) (40 U.S.C. 483(a)) provides for transfer of excess real property among Government agencies through the medium of the General Services Administration. Federal Property Management Regulations, Sub-chapter H, Part 101-47 (41 CFR 101-47), implements this law and prescribes policies relative to transfer of excess real property, including the circumstances under which reimbursement is required and the circumstances under which transfer may be made without reimbursement.

9. REASSIGNMENT FROM THE DEPARTMENTS OF THE ARMY AND THE AIR FORCE.

Section 202(c), of the Act of 30 June 1949 (Public Law 152, 81st Congress; 63 Stat. 384) as amended by the Act of 12 July 1952 (Public Law 522, 82nd Congress; 66 Stat. 593; 30 U.S.C. 483) authorizes reassignment of property among the military departments of the Department of Defense without reimbursement.

10. OTHER LEGISLATIVE AUTHORIZATIONS.

The authorities cited above are those ordinarily used for the acquisition of land by the Department of the Navy. Other authorities exist by which land is occasionally acquired. For a number of years, the annual Department of Defense Appropriation Act has included authority to acquire the land necessary for the expansion of industrial facilities. The Secretary of the Navy may accept gifts and bequests of real property under annual Military Construction Authorization Acts and for certain specified purposes, such as, schools, hospitals and other purposes. (10 U.S.C. 2601). The latter authority has been implemented by SECNAV

INSTRUCTION 4001.2B of 5 December 1967. Besides these authorizations, Congress, from time to time, authorizes acquisition by special legislation, usually for an exchange of lands for which general authorization is lacking.

11. AUTHORITY TO LEASE.

Except as noted in paragraph 12 below, no one single Act of Congress can be cited as the overall authority for the leasing of real property for naval use. The leasing or renting of real property for naval purposes is customarily provided for in annual Department of Defense Appropriation Acts. Military Construction Acts include special provisions that authorize the acquisition of lesser interests than the fee, including leaseholds.

12. AUTHORITY TO LEASE GENERAL PURPOSE SPACE.

Under Presidential Reorganization Plan No. 18 of 1950 (64 Stat. 1270), all functions in connection with the leasing of general purpose space were transferred to the General Services Administration. The Administrator delegated back this authority as to areas outside of General Services Administration defined urban centers listed in the Federal Property Management Regulations. Therefore, the exercise of the authority to lease is limited to the leasing of special purpose space and to the leasing of general purpose space outside of the listed urban centers.

13. FOREIGN LEASING.

10 U.S.C. 2675 provides that notwithstanding any other provision of law, the Secretary of a military department may acquire by lease, in any foreign country, structures and real property relating thereto that are not located on a military base and that are needed for military purposes. A lease under this section may not be for a period of more than five years. Further, a lease may not be entered into under this section if the average estimated annual rental during the term of the lease is more than \$250,000 until after the expiration of thirty days from the date upon which a report of the facts concerning the proposed lease is submitted to the Committees on Armed Services of the Senate and House of Representatives. Pursuant to authority contained in Section 602 of the Act of 13 July 1955 (69 Stat. 301; 31 U.S.C. 529i), rentals may be paid in advance in foreign countries for such periods as may be necessary to follow local custom.

14. AUTHORITY TO ACCEPT PERMITS.

The authority to acquire the use of real property by permit and/or license may be implied if the use or occupancy of real property is necessary to an authorized project or function.

15. REPORTS TO THE ARMED SERVICES COMMITTEES OF CONGRESS.

Title 10, U.S.C. Section 2662 provides, in part, that with respect to real estate in the United States and Puerto Rico, the Secretary of the

Navy, or his designee, may not enter into any of the following listed transactions by or for the use of the Department of the Navy until 30 days have expired from the date on which a report of the facts concerning the proposed action was submitted to the Armed Services Committees of the Congress:

(a) Fee title is to be acquired for an amount in excess of \$50,000;

(b) The estimated annual fair market rental value of leasehold interests to be acquired is in excess of \$50,000;

(c) Real estate is to be acquired by transfer from the Departments of the Army or Air Force with an estimated value in excess of \$50,000. Clearance action required for transfer of real estate between military departments normally will be initiated by the department acquiring the real estate.

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CHAPTER 13
LEASE OF REAL PROPERTY
FOR USE BY
THE DEPARTMENT OF THE NAVY

13-1. Bureau Responsibility. The Bureau of Yards and Docks is responsible for all action with respect to the acquisition by lease of real property for use by the Department of the Navy in the continental United States and its Possessions, except (a) Marine Corps inleases, and (b) real property leased for the Department of the Navy by the General Services Administration. The Bureau is also responsible for obtaining from General Services Administration general purpose space leased by it in designated urban areas in which it has retained responsibility for leasing such space, and for obtaining the use of space under the control of either the General Services Administration or the Post Office Department.

13-2. Reorganization Plan No. 18. Prior to July 1, 1950, the Navy Department had exclusive responsibility for the leasing of all real property required for naval uses. However, the President of the United States, acting pursuant to the provisions of the Reorganization Act of June 20, 1949 (63 Stat. 203), promulgated Reorganization Plan Number 18 of 1950, effective July 1, 1950 (64 Stat. 1270), Section 1 of which, in effect, transferred to the Administrator of General Services all functions of the Navy Department with respect to the acquisition of space in buildings by lease, except such space as may fall within the following categories which are expressly excluded from such transfer:

- (1) space in buildings located in any foreign country;
- (2) space in buildings which are located on the grounds of any fort, camp, post, arsenal, Navy yard, naval training station, air-field, proving ground, military supply depot, or school, or of any similar facility, of the Department of Defense, unless and to such extent as a permit for its use shall have been issued by the Secretary of Defense or his duly authorized representative;
- (3) space occupied by the Post Office Department in postoffice buildings and space acquired by lease for post-office purposes; and
- (4) space in other Government-owned buildings which the Administrator of General Services finds are wholly or predominately utilized for the special purposes of the agency having the custody thereof and are not generally suitable for the use of other agencies (including but not limited to hospitals, housing,

laboratories, mints, manufacturing plants, and penal institutions), and space acquired by lease for any such purpose.

In addition to the functions expressly excluded from those transferred to the General Services Administrator by Section 1 of Reorganization Plan Number 18, supra, the Administrator, acting pursuant to Section 3 thereof, may delegate to the heads of other departments or agencies of the Government the authority to perform any of the functions transferred to him by the Plan, Sections 3(b) and (c) thereof, reading as follows:

"(b) When authorized by the Administrator of General Services, any function transferred to him by the provisions of this Reorganization Plan may be performed by the head of any agency of the Executive Branch of the Government, or, subject to the direction and control of any such agency head by such officers, employees and organizational units under the jurisdiction of such agency head as such agency head may designate.

"(c) The Administrator of General Services shall prescribe such regulations as he may deem desirable for economical and effective performance of the functions transferred by the provisions of this Reorganization Plan."

Acting pursuant to the authority vested in him by Sections 3(b) and 3(c) or Reorganization Plan Number 18, supra, the Administrator of General Services, by letter of November 22, 1950, advised the Secretary of Defense that the General Services Administration on and after December 1, 1950, will perform all functions with respect to acquiring "general purpose space" in buildings by lease within the metropolitan areas of each of 128 selected cities therein enumerated and that the Department of Defense will perform all functions with respect to the acquiring of general purpose space in certain other buildings.

13-3. Limitation on Navy Authority to Lease. Reorganization Plan No. 18 had the effect of assigning the responsibility for the procurement of all general purpose space to the General Services Administration, except space falling within the categories which are expressly excluded from such transfer. The responsibility and authority for procuring space expressly excluded from the Plan remains in the Navy.

13-4. General Services Administration's Responsibilities in Urban Areas. Effective 1 December 1950 the General Services Administration assumed all functions with respect to the acquisition by lease of general purpose space, the assignment and reassignment of such leased space and of Government owned space, and the operation, maintenance, and custody thereof within the metropolitan area of each 128 selected cities (urban centers), enumerated in Appendix 19.

Effective July 6, 1959, General Services Administration assumed the same functions in these additional cities (urban centers) in Alaska — Anchorage, Juneau and Fairbanks. (Appendix 20).

13-5. Delegation of Authority by General Services Administrator. In formal implementation of his letter of November 22, 1950, to the Secretary of Defense, the General Services Administrator submitted as an enclosure thereto an express "Delegation of Authority", effective December 1, 1950, which provides in part as follows:

2. Pursuant to authority vested in me by the aforesaid Plan (Reorganization Plan No. 18), authority is hereby delegated to the Secretary of Defense to perform all functions with respect to acquiring space in buildings by lease for use of the Department of Defense, the assignment and reassignment of such space, and the operation, maintenance, and custody thereof:

(a) Situated outside the metropolitan area of the 131 urban centers. (Appendix 19 and 20); or

(b) When such space is required for use incidental to or in conjunction with space of any of the types listed in paragraph 13-7 hereof; or

(c) Leased for no rental, or for a nominal consideration of One Dollar (\$1.00) per annum.

3. The authority contained herein may be redelegated in accordance with Section 3(b) of the aforesaid Reorganization Plan.

13-6. "General-Purpose Space" Defined. The term "general-purpose space" is defined in the aforementioned letter of the General Services Administrator as including the following:

(1) Building space: Auditoriums, class rooms, dispensaries, filter centers, military police and shore patrol stations, out-patient clinics, prophylactic stations, record storage, recruiting and induction stations, theaters, and training facilities for Organized Reserve Corps, Air Reserves and Volunteer Reserves.

(2) Office space.

(3) Storage: Garage space (when leased on an annual basis and the lease covers designated areas susceptible to use by other agencies or for other purposes), and warehouses (except those used for storage purposes hereinafter found to be specialized space).

13-7. "Special Purpose Space" Defined. Special purpose space means space in buildings, including land incidental to the use thereof, wholly or predominantly utilized for the special purposes of an agency and not generally suitable for the use of other agencies; such as, but without limitation:

(1) Storage space: cold and freezer storage, depot storage, dock and piers, garage space held under a service contract, hangars and other airport operating facilities, lumber storage, mooring space, oil and gasoline storage, open storage, and ports of embarkation and debarkation.

(2) Building space: armories, hospitals, hotels, schools, housing, land (including aircraft and warning stations), laundries, mess halls; post exchanges, recreation centers, service clubs, testing laboratories, troop detachments and reserve training purposes.

13-8. Delegation of Authority to Secretary of the Navy. The Secretary of Defense, by memorandum dated 29 November 1950, to the service Secretaries redelegated the authority delegated to the Department of Defense by General Services Administration's letter of 22 November 1950, as follows:

The delegation of authority to the Department of Defense by the General Services Administration, except for space in the metropolitan Washington, D. C., area is hereby redelegated to the respective military departments.

13-9. Types of Action for Procurement of Space. Resulting from Reorganization Plan No. 18 and delegations of authority thereunder, there are four distinct types of action arising therefrom with which the Bureau and the District Public Works Officers are concerned. These are:

(1) Procurement of general purpose space from GSA in 131 urban areas;

(2) Procurement of space under the control of the Post Office Department in post-office buildings and space acquired by lease for post-office purposes;

(3) Direct leasing by the Navy, pursuant to the delegation of authority from GSA, of general purpose space:

- (a) Situated outside the metropolitan area of the urban centers; or
- (b) When such space is required for use incidental to and in conjunction with special purpose space as defined in paragraph 13-7; or
- (c) Leased for no rental, or for a nominal consideration of \$1.00 per annum;

(4) Direct leasing by the Navy of all other real property generally referred to as "special purpose space" which is excluded from the provisions of Reorganization Plan No. 18.

13-10. Delegation to Chief, Bureau of Yards and Docks. Secretary of the Navy Instruction (11011.20B of 18 September 1959) delegates authority to the Chief, Bureau of Yards and Docks to acquire general purpose space from General Services Administration or the Post Office Department as follows:

The Chief of the Bureau of Yards and Docks, or his designated representative, is authorized and directed to take all necessary action to acquire, administer and release general purpose space, except Departmental space in the metropolitan area of Washington, D. C., in buildings controlled by the General Services Administration or the Post Office Department or required to be leased by the General Services Administration, in accordance with the provisions of the letter of the Assistant Post Master General dated 27 July 1955, (Appendix 21) and General Services Administration regulations Title 2, Chapters II and III provided:

- (1) The commanding officer requesting the space has certified as to the need for the property.
- (2) The approval of the Department of Defense has been obtained if the space to be acquired involves an estimated annual rental in excess of \$25,000 and the requirements of 10 U.S.C. 2662, as amended, have been met even though the rent is paid by the General Services Administration.
- (3) In those instances where an acquisition requires a transfer of appropriations to the General Services Administration, the head of the activity concerned has advised that the bureau, office or headquarters having management control has agreed that funds to cover the cost of the space will be transferred to the General Services Administration. In the event the annual rental of the space exceeds \$25,000, the approval of the Department of Defense will be requested via the Office of the Assistant

Secretary of the Navy (Installations and Logistics).

The ~~Chief of the Bureau of Yards and Docks~~ ^{authority} is also authorized by this delegation ~~to redelegate authority and responsibility to District Public Works Officers and other officials as appropriate.~~ ^{may be}

13-11. Redlegation to Directors. The authority delegated to the Chief of the Bureau of Yards and Docks stated in paragraph 13-10 is hereby redelegated to Directors, Bureau of Yards and Docks Field Divisions, subject to the requirements stated in paragraphs 13-12 through 13-17. The term "all necessary action" includes authority to execute all forms and instruments necessary to acquire, administer, and release general purpose space covered by this delegation. The Directors shall be responsible for determining that all required approvals have been obtained prior to final execution of requests for the assignment, renewal of assignment, or release of space.

The authority delegated herein may be re-delegated but not below the Director, Real Estate Division. ^{The authority delegated herein may be redelegated.}

13-12. Policy. It is the policy of the Department of the Navy to obtain the use of real property pursuant to the provisions of Reorganization Plan No. 18 or enter into leases for the use of real property by the Navy only when the following conditions exist:

- (1) Property is required to meet a valid military need created by the assigned mission of an activity;
- (2) There is no Government-owned real property available which will adequately meet the military needs;
- (3) It is more advantageous to the Government to lease the property than to acquire fee title or other permanent interests;
- (4) Funds are available for the payment of rentals. (This does not apply to space made available to the Navy by General Services Administration unless made available on a reimbursable basis); and
- (5) Condemnation proceedings to acquire a leasehold interest shall be initiated only after all practical efforts to consummate an agreement with the property owner have proved unsuccessful.

13-13. Limitations on Rent, Repairs, Alterations and Improvements. The Economy Act of June 30, 1932, as amended (47 Stat. 412, as amended by 47 Stat. 1570 and 56 Stat. 247; 40 U.S.C. 278a, 278b), limits the rental consideration which may be paid for "any building or part of a building" to 15 percent of the fair market value of the rented premises on the date of the lease

where the consideration exceeds \$2,000 per annum. It also limits the amount which may be paid for alterations, improvements, and repairs of "any building or part of a building" rented by the Government to "twenty-five percentum of the amount of the rent for the first year of the rental term, or for the rental term if less than one year." However, this limitation is not applicable to leases executed during war or a national emergency. (Paragraph 13-14).

The rental limitation imposed by the Economy Act is not applicable to leasehold interests acquired by condemnation.

13-14. Exception to the Economy Act. The provisions of the Economy Act (47 Stat. 412 as amended by 47 Stat. 1517; 40 U.S.C. 278a) do not apply during war or national emergency declared by Congress or by the President to leases or renewals of existing leases of privately or publicly owned property as are certified by the Secretary of the Navy or his designee as covering premises for military, naval or civilian purposes necessary for the prosecution of the war or vital in the national emergency. (56 Stat. 247; 40 U.S.C. 278b).

13-15. Delegation of Authority to Chief of Bureau. The Secretary of the Navy, on 10 January 1946, delegated to the Chief, Bureau of Yards and Docks authority to execute the Certificates of Necessity authorized by 40 U.S.C. 278b.

13-16. Department of Defense Criteria. The Department of the Navy uses, wherever practicable, Government-owned property rather than leased property. Therefore, all suitable and available Government-owned real property, including property of the Departments of the Navy, Army and Air Force and other Government agencies, shall be surveyed in order to determine whether such property can be used rather than leased property.

Real property shall not be acquired by lease because of:

- (1) Desirability of locating activities in an urban area;
- (2) Reduced travel time for employees or business representatives;
- (3) Nominal savings in transportation costs;
- (4) Environmental considerations such as noise or traffic;
- (5) Desirability of having single offices instead of activities in split locations in close proximity to one another.

Real property may be acquired by lease if:

- (1) The geographical location of an activity is vital to the performance of an activity's

mission and there is no suitable Government-owned real property available at the location. Examples of activities for which the geographical location is of particular importance are recruiting stations (exclusive of kindred examining and induction units), air facilities, and facilities of the Navy and Marine Corps Air Reserve.

(2) The cost of altering, renovating, rehabilitating and repairing available Government-owned real property, together with moving costs, is out of proportion to the cost of acquiring or remaining in leased real property.

13-17. Approvals and Determinations Required. Prior to accepting the assignment of new space or a renewal of an assignment of space the Director will:

- (1) Determine that the certifications and approvals required by paragraph 13-10 have been obtained;
- (2) Obtain the approval of the Director of the Marine Corps Recruitment District concerned for Marine Corps Recruiting space;
- (3) Determine that the procurement and proposed use of space acquired is in keeping with the standards set forth in Part 101-20 of the Federal Property Management Regulations of the General Services Administration;
- (4) Determine that the procurement or continued use of GSA leased space is in keeping with the policy and criteria stated in paragraphs 13-12 and 13-16; and
- (5) Submit the data required by paragraph 13-31. Such data should be submitted to the Bureau four to six months in advance of the requirement for new space or for the renewal of space assignments to allow sufficient time for the procurement of the requisite approvals and sufficient time thereafter for appropriate action by GSA to provide the space.

13-18. Release of Assigned Space. Prior to releasing assigned space the Director shall obtain the approvals of:

- (1) The Commanding Officer of the using activity; or
- (2) The Director of the Marine Corps Recruiting District concerned for Marine Corps Recruiting space.

13-19. Action by the Director. The Director shall request the assignment of space from General Services Administration on G.S.A. Form 81 in accordance with the Regulations of G.S.A. Title 2. Immediately upon receipt of G.S.A. Form 65 showing assignment or release of general purpose space a copy thereof shall be forwarded to the Bureau of Yards and Docks (Code 61).

The District Public Works Officer shall request the assignment of space under the control of the Post Office Department from the Regional Real Estate Managers of that Department in accordance with the letter of the Assistant Postmaster General dated July 27, 1955. (Appendix 21). Upon the obtaining of an assignment of post office space or the termination thereof, the District Public Works Officer will inform the Bureau by copy of the letter or other communication effecting such action.

13-20. Reports. The District Public Works Officer shall prepare and forward the following reports:

(1) Standard Form 123, Report of Space Used by Building, shall be furnished annually to the appropriate Regional Office of General Services Administration pursuant to GSA Regulations 2-II-503.

(2) The Department of Defense requires within 15 days following the end of each quarter a report covering the Navy's requirements for general-purpose field space. Accordingly, the District Public Works Officer will forward to the Bureau, within 10 days following the end of each quarter, a report on NAVDOCKS Form 1770, (Appendix 30), showing the following information for each of the urban centers listed in Appendixes 19 and 20, except the District of Columbia and vicinity:

(a) The total square footage requested from the Public Buildings Service during the reporting period;

(b) The total square footage provided by the Public Buildings Service during the reporting period;

(c) The total requests for square footage pending at the end of the reporting period; and

(d) The additional square feet estimated to be required during the succeeding quarter.

The names of the activities will be listed under the urban center with a breakdown of the space in each column of the report. If an activity is located in an adjoining city, town or village included within an urban center such locations will be shown in parenthesis immediately following the activity name. This report has been assigned Report Control Symbol DD-P&I(Q)373(5910).

(3) An annual report as of 1 July of each year shall be furnished the Bureau of Yards and Docks (Code R-100) indicating all space occupied by the Navy and controlled by GSA and the Post Office Department. The report shall be submitted by August 15th of each year and shall indicate:

(a) The activity occupying the space;

(b) The address of the space;

(c) The square footage and room numbers or brief description of the space;

(d) The cost to the Government of the space;

(e) Whether reimbursable by Navy or not;

(f) Number of persons occupying space; and

(g) Probable duration of requirement.

Report Symbol BuDocks 5910-1 applies to this Report.

Direct Leasing by
the Department of the Navy

13-21. General. Paragraph 13-9 states that there are four distinct types of action arising from Reorganization Plan No. 18 with which the Bureau and the District Public Works Offices are concerned. The first two of these actions i. e. (1) the procurement of general purpose space from GSA in 131 urban areas and (2) the procurement of space under the control of the Post Office Department in post-office buildings and space acquired by lease for post-office purposes are governed by the provisions of paragraphs 13-1 to 13-20 inclusive. The last two types of action relate to direct leasing by the Navy. Although authority for each of these two types of action is derived from different sources, i. e., the one by delegation of authority from GSA as stated in paragraphs 13-5, 13-8, 13-10, and 13-11 and the other from authority granted to the Secretary of the Navy, the procedures for this accomplishment are identical.

13-22. Definition of "Lease". "Lease" is an agreement by which the Department of the Navy obtains possession of real property, not owned by the Federal Government, for a stated period of time and for a stated consideration.

13-23. Department of Defense Prohibition Against Permanent Construction on Leased Land. The Secretary of Defense has directed that no expenditure of Government funds will be made for construction of buildings or improvements of permanent type on land in which the rights of the Government are less than fee title or permanent easement, with the following exceptions:

(1) Property, including land or buildings, over which the Government currently holds the right of re-use by exercise of the National Security Clause;

(2) Property, including land or buildings, over which the Government holds the right of re-use by exercise of a national emergency use provision. Inasmuch as such rights inure to the Government only during the period or periods of national emergency as may be declared by the President or the Congress and are

extinguished by the termination thereof, every effort shall be made to negotiate a lease covering such property under terms that would provide for the right of continuous possession by the Government for a minimum of 25 years;

(3) Property used for industrial production and related purposes pursuant to existing law and procurement regulations;

(4) Property required as a site for installation of utility lines and necessary appurtenances thereto, provided a long term easement or lease can be secured at a consideration of \$1.00 per term or per annum;

(5) Property required for airbases of the armed forces, provided such property can be acquired by lease containing provisions for:

- a. Right of continuous use by the Government under firm term or right of renewal, for a minimum of 50 years;
- b. A rental consideration of \$1.00 per term or per annum;
- c. Reserving to the Government title to all improvements to be placed on the land and the right to dispose of such improvements by sale or abandonment;
- d. Waiver by the lessor of any and all claims for restoration of the leased premises; and
- e. Use of the property for "Government purposes" rather than for a specific purpose.

(6) Property required for facilities for civilian components of the armed forces, provided such property can be acquired by lease containing provisions detailed in a., b., c., and d. of subparagraph (5) above. Although not mandatory, every effort shall be made to avoid inserting in the lease a provision restricting the use of the land to a specific purpose; use of a term such as "for Government purposes" should be employed whenever possible;

(7) Property required for NIKE sites or aircraft warning stations, provided such property can be acquired by lease containing provisions detailed in b., c., and d. of subparagraph (5) above, and in addition thereto a right of continuous use by the Government under firm term or right of renewal, for a minimum of 25 years; and

(8) Construction projects performed with funds appropriated by the Department of Defense Appropriation Act, 1956, and subsequent years, not in excess of \$25,000 will not be considered as permanent construction for the purposes of the Directives of the Secretary of Defense.

Consideration of exceptions to the above will be on a case by case basis and will include evaluation of a summary of lease terms to which the proposed lessor will agree; a proximity map depicting sites surveyed with details on each as to availability for purchase, estimated value and disqualifying factors; estimated fee value of the property proposed for lease; estimated cost of existing and/or proposed construction by the Government; estimated period of time use of leased space will be required, and estimated net cost of ultimate restoration thereof. This data will be used to obtain the waiver provided for in paragraph 13-33.

13-24. Use of Formal Advertising. 10 U. S. C. 2304(a) requires the advertisement for bids for leases unless negotiation of the lease is authorized under one of the exceptions set out therein. Under the exceptions most frequently applicable, a lease may be negotiated without advertising if:

(1) it is determined that such action is necessary in the public interest during a national emergency declared by Congress or the President;

(2) the public exigency will not permit the delay incident to advertising;

(3) the aggregate amount involved is not more than \$2,500;

(4) the lessor is a university, college, or other educational institution;

(5) the property is located outside the United States, and its possessions;

(6) it is impracticable to obtain competition;

(7) it is for property determined to be for experimental, developmental, or research work, or for making or furnishing property for experiment, test, development, or research; or

(8) negotiation of the lease is otherwise authorized by law.

The determination that formal advertising is not necessary under any of the exceptions of 10 U. S. C. 2304(a) must be in strict conformance with Section III of "Navy Procurement Directives" and Section III of "Armed Services Procurement Regulations". 10 U. S. C. 2303(b) provides that the above requirements are not applicable to land but to all other property including, among others, public works, buildings and facilities. The term "land" as used in this section is interpreted to mean unimproved real property.

13-25. Advance Rental Payments. Payment of rental in advance is prohibited by R. S. 3648 (31 U. S. C. 529) which states in part "No advance

of public money shall be made in any case unless authorized by the appropriation concerned or other law." Specific exception is made to this provision of law by 31 U.S.C. 529i (69 Stat. 314) which provides for payment of rent in foreign countries for such periods as may be necessary to accord with local custom. (Paragraph 13.74)

13-26. Prohibition Against Obligation of Future Appropriations. Title 31 U.S.C. 665 (16 Stat. 251) provides in part that no officer or employee of the United States shall "involve the Government in any contract or other obligation, for payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law." Rental payments are made from annual appropriations. Therefore, this prohibition together with the prohibition against advance payments (paragraph 13-25) limit the term of a lease to the current fiscal year for which appropriations have been made unless a longer term is specifically authorized by law. This limitation does not prohibit including a provision in the lease granting to the Government the option to renew for additional one year terms.

13-27. Delegation of Authority to Directors. The Directors, Bureau of Yards and Docks Field Divisions, are authorized within the limitations of this publication, to take all necessary action to consummate, modify, amend, renew, administer and terminate leases of real property for use by the Department of the Navy except Marine Corps leases. ~~The authority delegated herein may be redelegated but not below the Assistant Director for Facilities Management, except that the authority to renew and administer leases may be redelegated to the Director, Real Estate Division.~~ *The authority delegated herein may be redelegated.*

13-28. Approvals Required for All Leases. The Director will take action to consummate, modify, amend or renew a lease on receipt of a request for such action from the Commanding Officer or head of the activity concerned and of a written recommendation from the District Commandant of the need for the specified property. He will also, prior to taking such action, ascertain that funds required under the lease are or will be available for payment of rental.

13-29. Additional Approvals Required for Leases of More than \$1,000 Annual Rental. The Director will obtain the approval of the Chief or head of the Bureau or Office having management control and the approval of the Chief of Naval Operations for leases requiring the payments of an annual rental of more than \$1,000. These approvals are required prior to the consummation of a lease and in cases of modifications or amendments imposing significant additional obligations on the Government.

These approvals are not required to renew a lease with an annual rental of \$25,000 or less.

13-30. Additional Approvals Required for Leases of more than \$25,000 Annual Rental. The approval of the Department of Defense is required prior to entering into a lease if the estimated annual rental is more than \$25,000. Such approval is not necessary to renew a lease.

Title 10 U.S.C. 2662 as amended, requires the submission of a report of the facts to the Armed Services Committees concerning a proposed lease of any real property to the United States if the estimated annual rental is more than \$50,000. The submission is not necessary to renew such a lease.

The approval of the Department of Defense will be obtained and the report of facts to the Armed Services Committees will be submitted by the Bureau of Yards and Docks.

Significant modifications of the leases mentioned above, which place substantial additional obligations on the Government or extend the term during which such leases may be renewed, will be forwarded to the Bureau for determination as to whether further approvals or action are required.

13-31. Data Required for Submission to Department of Defense and the Armed Services Committees. To obtain the approval of the Department of Defense for leases involving an estimated annual rental payment of more than \$25,000 required by paragraph 13-30, the Director will forward to the Bureau data to show that the criteria stated in paragraph 13-16 have been met and compliance with the Department of Defense directive concerning construction on leased land (paragraph 13-23), and will provide appraisals and title evidence required by paragraphs 13-35 and 13-36, together with any other information which may be of assistance to justify the leasing.

If the estimated annual rental to be paid is more than \$50,000 a completed Acquisition Report following the form provided as Appendix 24 will be forwarded to the Bureau.

The above data is required even though the rental is to be paid by General Services Administration, except that title evidence and appraisals are not required.

13-32. Termination Provision. It is beneficial to the Government to include a provision in a lease giving to the Government the right to terminate when the property is no longer needed. The usual period for providing notice of termination by the Government is thirty (30) days. If a lease provides for a period in excess of ninety (90) days for giving notice of termination by the Government, the approval of the Assistant Secretary of the Navy (Installations and Logistics) must be obtained prior to its consummation. To obtain this approval full justification for such a lease must be submitted to the Bureau.

13-33. Construction on Leased Land - Waiver. Paragraph 13-23 states the Department of Defense policy concerning permanent construction on leased land and the data required by the Department of Defense for consideration of an exception thereto. This data will be submitted to the Bureau via the District Commandant. After obtaining the approval of the management bureau or the Commandant of the Marine Corps, the Bureau will submit a request via the Assistant Secretary of the Navy (Installations and Logistics) for an exception by the Department of Defense.

13-34. Responsibility of the Director. It is the responsibility of the Director to ascertain that the approvals required by paragraphs 13-28 through 13-33, as are appropriate, have been obtained prior to execution of a lease or taking possession of the property to be leased.

13-35. Determination of Prospective Lessor's Interest. Whenever real property is to be leased the Director is responsible for determining, before negotiations are commenced, that the prospective lessor has such an interest in the property as will insure the validity of the lease. This determination will ordinarily be made after record searches by qualified personnel in the BUDOCKS Field Division, or when considered necessary or advisable, from title evidence obtained from title companies or abstractors.

In all cases in which the estimated annual rental exceeds \$25,000, or when the estimated cost of planned construction on the land exceeds \$25,000, title evidence will be obtained.

13-36. Estimated Rentals. Before negotiations for a lease of real property are commenced the Director will obtain an estimate of the fair annual rental value of the property. Ordinarily, a staff appraisal is suitable for this purpose except in cases where the indicated annual rental is in excess of \$25,000. In all cases where the indicated fair annual rental is in excess of \$25,000 an appraisal will be obtained from a contract appraiser.

13-37. Purpose of Negotiations. The purpose of negotiations is to reach an agreement for the fair rental to be paid for the use of the property to be leased and to establish the terms and conditions under which such use will be exercised. This agreement is only an offer until accepted by the contracting officer; this acceptance converts the agreement to a contract binding on both the Government and the lessor.

13-38. Designation of a Negotiator. The Director, or his Deputy, will designate a Negotiator, or Negotiators, to conduct negotiations for a lease with prospective lessors and other parties in interest. No person will be designated as a Negotiator who holds an interest in the

property or bears any relationship to the prospective lessor or other party in interest. A person holding any interest in a corporation owning or holding an interest in the property to be leased is also disqualified as a Negotiator.

13-39. Instructions to Negotiator. The Director of the Real Estate Division will instruct the Negotiator on the maximum amount which the Negotiator may not exceed in discussing rental payment with an owner and the terms and conditions which must be included in the agreement to meet the requirements of the Government. He will instruct the Negotiator on the limitations of his authority, particularly that he has no authority to state or indicate that the use of the property will or will not be acquired through condemnation proceedings, that his authority is limited to making all reasonable efforts to negotiate a satisfactory agreement and to submit the results of his negotiations to his supervisors. The Negotiator should understand that he is under no compulsion to reach an agreement with the owner.

13-40. Preparation by Negotiator. It is the responsibility of the Director of the Real Estate Division to review, with the Negotiator and with such other personnel as he considers necessary, all pertinent data relating to the ownership of the property, its value, fair rental value, the Government's requirement for the property, including the use to which it will be put, and the date possession will be required by the Government. Potential restoration problems will be reviewed with relation to the use to which the property will be put and to contemplated changes or improvements in order that claims therefor may be avoided or held to a minimum. The Negotiator will, prior to negotiations, make a physical inspection of the property to acquaint himself with any unusual features and its general condition. Where construction is involved, the Negotiator will coordinate his action with the construction division to the end that construction schedules may be met and the date of possession established.

13-41. Conduct of Negotiations. As the Negotiator has no authority to obligate the Government he will inform the owner that his authority is limited to the conduct of negotiations and to report the results of the negotiations to his supervisor. He must refrain from oral promises, understandings or commitments and must include all terms and conditions in the lease. The amount of the appraisals and the details of their preparation will not be disclosed. Statements will not be made which would indicate, by inference or otherwise, that the Navy will have its appraisals revised or new ones obtained.

Negotiations will be conducted in a fair and courteous manner and coercion or threats of condemnation proceedings will not be resorted to. Offers will be obtained from the prospective

lessor wherever possible. The Negotiator will not make statements in terms of offers for the payment of any specific rental but may indicate the terms and conditions he could recommend for acceptance.

Negotiations will cover all phases of the obligations to be assumed by the Government and the lessor, including those relative to the restoration of the premises. Upon the successful completion of negotiations, the agreement will be reduced to writing as soon as possible.

13-42. Preparation of Lease - Less than \$1000 Annual Rental. Leases providing for annual rental of less than \$1000 will be prepared on NavDocks 2393 "Lease of Real Property." (Appendix 25). The lease will be prepared in accordance with the following directions:

Identification of Lessor: The Lessor or Lessors shall each be identified by name in the opening paragraph of the lease, as follows:

If the Lessor is unmarried, as

John Doe, unmarried

If the Lessor is married, or the property is owned by husband and wife, as

John Doe and May Doe; his wife

If the Lessor is a partnership, the names of all the members of the partnership must be included in the opening paragraph, with the names of their wives, if any; except in those states in which a partnership is authorized by statute to hold and convey title to real property. In the latter case the name of the partnership only need be set forth.

If the Lessor is a private corporation, as

XYZ, a corporation organized and doing business under the laws of _____

If the Lessor is a public corporation, the name of the public corporation is to be set forth.

Wherever possible the name of the Lessor should be the same as appears in the title evidence.

ITEM 1. LOCATION AND DESCRIPTION OF PROPERTY: Insert a full description of the premises taken from the instrument through which the Lessor acquired title wherever possible. In the case of office space, or when an entire property is not leased, show room numbers, floor numbers, building numbers, street numbers, City, County and State and any other applicable information which will enable positive identification of the property under lease.

ITEM 2. ADDITIONAL SERVICES AND FACILITIES TO BE FURNISHED: List the

additional facilities and services to be rendered by the Lessor, if any, such as utilities, janitorial services or other considerations.

ITEM 3. TERM: The initial term of the lease may not include more than one fiscal year. It should begin with the date possession is to be surrendered to the Government and end with the final date of possession or the last day of the current fiscal year, whichever occurs earlier. The number of days prior to the date of expiration within which the Government may renew the lease should be 30 days, but may be for a longer period, not to exceed 90 days, if required by the Lessor.

ITEM 4. RENT: The agreed annual rental, the rate and the period covered by each payment, will be stated.

ITEM 5. RESTORATION NOTICE: Insert the number of days prior to expiration date or termination date of the lease within which the Lessor must give written notice to the Government that restoration will be required. This should be 10 days less than the number of days to be inserted in item 3 or 10 days less than the number of days specified in paragraph "C" of the General Provisions, whichever is the lesser.

ITEM 6. EXECUTION BY LESSOR: Leases will be executed in triplicate. Execution of the lease on behalf of the Lessor will be by the parties whose names appear in the opening paragraph, except in the case of a corporation or partnership authorized by statute to hold and convey title to real property. Execution for corporations, and partnerships authorized by statute to hold and convey title to real property, will be by the official duly authorized to do so and will be in the following manner:

XYZ Corporation XYZ Partnership
By _____ or By _____
Name and Title Name and Title

In the case of a private corporation the authority of the corporate official to execute the lease will be certified by the Secretary or Assistant Secretary of the corporation in the place provided in the lease. In the case of public and private corporations, a certified copy of the resolution of the proper corporate body authorizing the lease to the Government is to be obtained; and in the case of a partnership similar proof of authorization, as well as proof of authority of the partnership official in its behalf, is to be obtained. The execution by or on behalf of the lessor shall be witnessed, or acknowledged if required by local law, and the date of execution shown. If necessary, an additional page may be attached to provide sufficient space for signatures, notary's acknowledgment and appropriate certificate if a corporation.

ITEM 7. EXECUTION FOR AND ON BEHALF OF THE GOVERNMENT: Execution of a lease on behalf of the United States is to be by the Secretary of the Navy or by a contracting officer acting for him under an appropriate delegation of authority. District Public Works Officers and their Deputies are so authorized by paragraph 13-27. The execution on behalf of the Government shall be witnessed, or acknowledged if required by local law, and the date of execution shown.

ITEM 8. NAVY IDENTIFICATION AND ACCOUNTING DATA: An NOY(R) Contract number will be assigned by the District Public Works Office and the appropriation accounting data will be inserted as furnished by the activity providing funds for the payment of the rent.

ITEM 9. GENERAL PROVISIONS: No changes will be made to the General Provisions without prior Bureau approval, except that subparagraph (a)(Assignments) may be deleted when to the advantage of the Government, subparagraph (d)(Maintenance) may be deleted when the lessor is not to maintain the premises, and subparagraph (g) (Termination) may be changed to provide for the giving of not more than 90 days' notice of termination.

As subparagraph (h) through (l) are based on statutory requirements, no requests for changes therein shall be made.

ADDITIONAL PROVISIONS: Any additional provisions to be incorporated by insertion or otherwise in order to form a part of the agreement, must be listed under paragraph "M" of the General Provisions. Any such additional provisions must be approved by the District Public Works Office counsel as to legal form and a copy of the proposed lease submitted to the Bureau for approval prior to its execution.

13-43. Preparation of Lease - Annual Rental of \$1000 or More. Leases providing for annual rental of \$1000 or more will be prepared on U. S. Standard Form No. 2 (Revised), Approved by the Secretary of the Treasury May 6, 1935 (Appendix 26). The lease will be prepared in accordance with the following instructions which are an adaptation for Navy use of the 'Instructions To Be Observed In Executing Lease' printed on the last page of U. S. Standard Form No. 2.

1. Paragraph 1 will have inserted the date of execution and the full names and addresses of all lessors.

2. Paragraph 2 will contain a complete and accurate description of the property being leased. The language to be inserted at the end of Paragraph 2 of the lease will be 'Government Use', or if the lessor refuses to agree to the use of such language, then the use specified should be stated in the broadest language

possible. This rule will not be followed where substantial Government improvements are made and such improvements are of a type which could be utilized by private interests. Paragraph 4 of Lease, Standard Form No. 2, permits subletting to a desirable tenant for a similar purpose. If the use specified is 'Government Use' obviously subletting would not be possible to a private sublessee. Therefore, in order to recoup Government expenditures where the Government's use may end prior to the termination of the lease or any renewal thereof, the language inserted at the end of Paragraph 2 should state a use in language which will permit utilization by a private sublessee.

3. Paragraph 3 will contain the date of commencement of the term which ordinarily will be the date upon which possession of the property is to be taken. The date upon which the original term shall end cannot extend beyond the end of the fiscal year for which an appropriation is made unless otherwise expressly authorized by statute.

4. The right of the Government to sublet as provided in paragraph 4 will not be deleted or amended without prior Bureau approval in those cases where substantial Government expenditures for improvements are planned or anticipated.

5. The rental for renewal periods, the number of days prior to termination that notice of renewal must be given, and the date upon which occupancy must terminate will be stated in paragraph 5 as agreed to in negotiations. Ordinarily, the time prescribed for notice of renewal will be 30, 60 or 90 days, with the shorter period preferred. The District Public Works Officer will determine from the Management Bureau the maximum period of time the property will be required and will negotiate to obtain rights of renewal for such period or the maximum lesser period possible. If the right of renewal is not desired or cannot be secured, paragraph 5 may be deleted.

6. Paragraph 6 should contain notations as to the services, such as janitor, heat, light, water, gas, etc., which are to be provided under the lease rather than set out in a separate contract. The lease will also specify whether services are to be provided during usual business hours or on a 24-hour basis, including Sundays. If no utilities or services are to be provided by the lessor under the lease, the word 'none' should be inserted.

7. Paragraph 7 should be completed by stating the annual rental agreed unless the full term is less than a year. The time specified for payments shall be monthly, quarterly, semi-annually or annually, the longer term being preferred in order to reduce administrative costs.

8. The first portion of paragraph 8 will be retained in all leases and is quoted as follows: "The Government shall have the right, during the existence of this lease, to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased (provided such alterations, additions, structures, or signs shall not be detrimental to or inconsistent with the rights granted to other tenants on the property or in the building in which said premises are located); which fixtures, additions, or structures so placed in or upon or attached to the said premises shall be and remain the property of the Government and may be removed therefrom by the Government prior to the termination of this lease." With respect to the remainder of paragraph 8 which deals with the restoration obligation of the Government, such provisions should be stricken from all leases of vacant land for which there are no plans for construction. Whenever possible the remainder of paragraph 8 will be stricken and replaced with a provision fully releasing the Government from any obligation to restore the premises. If a release of the restoration obligations cannot be obtained such obligations shall be minimized by adding the following: "The Government shall have the option of making a cash settlement with the lessor and abandon such fixtures, additions or structures in lieu of an obligation to restore. Should a mutually acceptable settlement be made, the parties shall enter into a supplemental agreement effecting such settlement."

In the event restoration is required the number of days for notice of restoration to be given by the lessor will be inserted and will be 10 days less than the number of days required to be given by the Government to terminate the lease.

9. Paragraph 9 provides that the lessor will maintain the premises unless specified to the contrary in the lease. Wherever possible, the obligation to maintain the property should be placed upon the lessor. If that is not possible, the lease should, as a rule, require him to maintain the exterior of buildings, including roofs, and repair structural defects which is a normal covenant of the landlord. Where a lease does not expressly relieve the lessor from any obligation to maintain the premises, funds may be expended for repairs by the Government without an express provision. Lease agreements should contain a clause permitting the Government to terminate the lease at its option and upon reasonable notice to the lessor.

10. In case the premises consist of unimproved land paragraph 10 may be deleted.

11. Standard Form No. 2 contains the "Officials Not to Benefit Clause". This is re-

quired by statute in all leases. Certain other clauses are also required by law or Executive Order. These are "Covenant Against Contingent Fees", "Gratuities" and "Nondiscrimination in Employment" and must be made a part of each lease. They appear as sub-items i, j and k in the General Provisions of NavDocks 2393 (Appendix 25).

In addition to the above there must be included in all negotiated leases an "Examination of Records" clause and a clause stating that any necessary determinations and findings required by 10 U. S. C. 2304 have been made. These two clauses appear as sub-item l in the General Provisions of NavDocks 2393.

12. SecNavInst 11011.17 of 2 July 1956, requires that leases provide for termination by the Government on notice not to exceed 90 days unless otherwise approved by the Assistant Secretary of the Navy (Material). Therefore, the following clause will be inserted in each lease "The Government may terminate this lease at any time by giving thirty (30) days notice, in writing to the lessor, and no rental shall accrue after the effective date of termination." The 30 day period may, if necessary, be increased up to 90 days.

13. Any additional provisions to be added by insertion or otherwise must be approved by the District Public Works Office counsel as to legal form and a copy of the proposed lease submitted to the Bureau for approval prior to its execution.

14. Execution by Lessor. Leases will be executed in triplicate. Execution of the lease on behalf of the lessor will be by the parties whose names appear in the opening paragraph, except in the case of a corporation or partnership authorized by statute to hold and convey title to real property. Execution for corporations, and partnerships authorized by statute to hold and convey title to real property, will be by the official duly authorized to do so and will be in the following manner:

XYZ Corporation XYZ Partnership
By _____ or By _____
Name and Title Name and Title

In the case of a private corporation the authority of the corporate official to execute the lease will be certified by the Secretary or Assistant Secretary of the corporation in the place provided in the lease. In the case of public and private corporations, a certified copy of the resolution of the proper corporate body authorizing the lease to the Government is to be obtained; and in the case of a partnership similar proof of authorization, as well as proof of authority of the partnership official in its behalf, is to be obtained. The execution by or on behalf of the lessor shall be witnessed, or acknowledged if

required by local law, and the date of execution shown. If necessary, an additional page may be attached to provide sufficient space for signatures, notary's acknowledgment and appropriate certificate, if a corporation.

15. Execution for and on Behalf of the Government. Execution of a lease on behalf of the United States is to be by the Secretary of the Navy or by a contracting officer acting for him under an appropriate delegation of authority. District Public Works Officers and their Deputies are so authorized by paragraph 13-27. The execution on behalf of the Government shall be witnessed, or acknowledged if required by local law, and the date of execution shown.

16. Navy Identification and Accounting Data. An NOY(R) contract number will be assigned by the District Public Works Office and the appropriation accounting data will be inserted as furnished by the activity providing funds for the payment of the rent.

13-44. Distribution of Leases. When leases (NavDocks 2393; U. S. Standard Form No. 2) have been completed and fully executed, distribution will be made by the District Public Works Office as follows:

Original	Chief, Navy Audit Branch General Accounting Office 1901 - 13th Street Cleveland 14, Ohio
Executed Copy	Lessor
Executed Copy	District Public Works Office files
Conformed Copy	Bureau of Yards and Docks (Code R-100)
Conformed Copy	District Navy Regional Accounts Office (with Daily Report of Obligations)
Conformed Copies (2)	Management Bureau or Office
Conformed Copy	Commanding Officer or Head of Using Activity

Additional copies of the lease may be made and distributed to meet local requirements. In those cases in which there is to be no actual payment of rental, the original document need not be transmitted to the General Accounting Office, nor need a conformed copy be distributed to the Navy Regional Accounts Office. However, the original document must be retained by the District Public Works Office for future transmission to the General Accounting Office in the event a claim arises out of the lease. Distribution of the executed copy to the lessor may be accomplished by mail or personal delivery. If personal delivery is made to the

lessor a receipt acknowledging delivery will be obtained for the files of the District Public Works Office. Delivery of a conformed copy to the Bureau (Code R-100) will be accomplished by providing a copy of the transmittal letter addressed to the lessor with a conformed copy of the lease attached. These copies may be transmitted to the Bureau with a covering letter but in any event transmittal to the Bureau must clearly indicate Code R-100.

13-45. Condition Report Required. When possession of leased property is taken or immediately prior thereto, an inspection of the property will be made and a condition report will be prepared. The inspection will be made jointly by a representative of the District Public Works Office and the owner or his authorized representative. If the owner refuses to participate in the inspection or in the report, the representative of the District Public Works Office will make an independent inspection and his report will state that the owner refused to join therein.

If the inspection on behalf of the owner is to be made by his representative, the District Public Works Officer will obtain a written statement from the owner showing the authorization of the representative to make the inspection for and on behalf of the owner and to sign the report and file objections thereto. A copy of this authorization will be made a part of the report.

13-46. Purpose of Condition Report. The purpose of making a joint inspection of the property and preparing a condition report is to determine and show the condition of the property at the time the Government assumes possession in order to avoid any question as to the condition of the property at that time. This will enable the Government to properly perform any restoration obligation it has assumed, to settle any valid claims arising out of such obligation and to defend against improper claims.

13-47. Representative Making Inspection and Report. The representative of the District Public Works Office designated to inspect the property and prepare the report on behalf of the Government will be selected from personnel qualified in the fields of construction and maintenance and have had broad experience in evaluating the condition of buildings and other structures. The District Public Works Officer will assign additional personnel, when necessary, who are qualified to inspect and report on technical features such as boilers, elevators, sprinkler systems, piles and air conditioners.

13-48. Preparation of Report. The Condition Report will be prepared on the form included as Appendix 27. It is recognized that certain leased property such as school rooms for Reserve Training, one or more rooms for recruiting purposes or office space will not

require as detailed a report as would be needed for hotels, apartments, industrial facilities, warehouses, docks, piers and similar complex properties. In all instances sufficient factual information should be obtained and included in the report so as to avoid future controversies as to condition. Controversies are most apt to develop from the leasing of complex types of properties. Therefore, the inspection of such properties and the preparation of Condition Reports thereon will be made and prepared in a manner so as to resolve any question concerning the condition of the property at the time the Government takes possession. One word descriptions such as excellent, good, fair or poor unsupported by descriptive remarks, detailing the facts supporting such conclusion, are not acceptable.

13-49. Photographs. In every case photographs will be made a part of the Condition Report. Unless a lease covers an entire structure, general interior and exterior views thereof are not required. In such cases detailed photographs of the actual space to be occupied are required. In cases where entire structures are leased a few general interior and exterior views are sufficient. Pictures which are most helpful in depicting the condition of a structure are close-up photographs showing the details, especially defects in the improvements such as cracks, broken doors and windows, faulty or defective plumbing, evidence of overloading and all other defects which can be shown by photography. In cases where numerous defects of a single type are present, pictures of several of the typical ones will be taken and full data relative to the number of such defects, their character and extent will be placed in the written report.

13-50. Identification of Photographs. Each photograph will be identified by showing the following on the reverse side thereof:

- (1) Name of building and location;
- (2) Date taken;
- (3) Identification of the view; and
- (4) Name, home and office addresses of the photographer. If military personnel, his rating and serial number will also be shown.

Whenever possible, photographers who permanently reside in the area will be used. This is desirable so that they will be conveniently available to assist in resolving restoration or other claims.

13-51. Signing of Condition Reports. Condition Reports prepared completely by the representative of the District Public Works Officer and agreed to by the owner or his representative after a joint inspection of the property, will be certified as to accuracy by the dating and signing of the report in triplicate.

Condition Reports prepared in part by individuals assisting the representative of the District Public Works Officer or the owner or his representative will certify as to the accuracy of those portions of the reports prepared by them.

If there is a difference of opinion between the representative of the District Public Works Officer and the owner, as to the condition of any portion of the property a written statement of the objections of the owner or his representative should be obtained and made a part of the report. If the owner or his representative refuses to sign the report or provide such written statement, the report will so state.

13-52. Distribution. Condition reports will be distributed as follows:

(1) The original will be retained in the files of the District Public Works Office;

(2) One signed copy will be provided to the owner, except that no copy of the report will be furnished the owner if he or his representative refuse to join in the inspection of the property, sign the report or provide written objections thereon;

(3) One signed copy will be forwarded to the Bureau; and

(4) A conformed copy will be provided to the Commanding Officer or Head of the using activity.

13-53. Recordation of Leases. The Navy Department does not record all of its leases. Leases wherein the Government is granted an option to purchase the leased premises will be recorded. It may be desirable to record leases where failure to do so might prejudice the Government's rights under the lease. The District Public Works Officer, in his discretion, will, in such cases, cause the leases to be recorded. In every case in which it is determined that a lease will be recorded, it must be executed, witnessed and/or acknowledged in accordance with State law to make it eligible for recordation.

13-54. Payment of Rental. All invoices or claims for rent arising under a consummated lease should be submitted to the Commanding Officer or head of the using activity for approval and forwarding to the Navy Regional Accounts Office of the District in which the leased property is situated. Payment of rental will be made by the Navy Regional Accounts Office in accordance with Navy Comptroller Manual, Volume 4, Chapter 6. Payment of recurring rental charges may be made in accordance with Section 046366 of said Chapter.

13-55. Renewal of Leases. To renew a lease, with an annual rental not in excess of \$25,000, the District Public Works Officer will obtain a written recommendation from the

District Commandant of the need for the property for the renewal term, and will obtain from the Commanding Officer or head of the activity concerned a certification that funds are available for the payment of rental or will be made available upon appropriation and allotment thereof.

To renew a lease with an annual rental in excess of \$25,000, the District Public Works Officer will obtain the recommendation and certification required above. These will be submitted so as to reach the Bureau not later than 1 February of each year via the Bureau or Office having management control and the Chief of Naval Operations for their approvals. Advance copies of each submission will be provided the Bureau.

The District Public Works Officer is responsible for determining that the certification as to funds and all required approvals have been obtained. When this determination has been made, timely "Notice of Renewal of Government Lease" NAVDOCKS 211, Appendix 28, will be prepared and issued. This form will be used for the renewal of all leases.

As failure to renew a lease in accordance with its provisions will result in its termination at the end of the current lease term and may otherwise prejudice the rights of the Government, it may, in some cases, be necessary to issue renewal notices before all approvals are obtained. If the annual rental involved is \$25,000 or less, responsibility for the determination as to whether renewal notices will be issued rests with the District Public Works Officer. If the annual rental involved is in excess of \$25,000, responsibility for such determination rests with the Bureau and the District Public Works Officer will obtain the approval of the Bureau before issuing notices of renewal in these cases.

13-56. Distribution of Notice of Renewal. Notice of Renewal of Government Leases will be distributed in the same manner as the original leases. (Paragraph 13-44).

13-57. Modification or Amendment of Leases. The District Public Works Officer may, without further approval, modify or amend a lease provided such modification or amendment does not change the substance of the lease, detract from the rights of the Government thereunder or increase its obligations. However, prior to the modification or amendment of a lease which changes the substance thereof, detracts from the rights of the Government or increases its obligations thereunder, the District Public Works Officer will obtain the certification of the Commanding Officer or head of the activity concerned as to the availability of funds to meet any increased cost, and the approval of the District Commandant. If the annual rental provided for in the

lease being modified or amended is more than \$1,000, but not in excess of \$25,000, the District Public Works Officer will in addition to obtaining the approval and certification required above, obtain the approval of the Bureau or Office having management control and the approval of the Chief of Naval Operations as to military features.

If the annual rental is in excess of \$25,000, in addition to obtaining the above approvals, the District Public Works Officer will submit the proposed modification or amendment to the Bureau for its approval and determination as to whether any further approvals are required. Modifications or amendments of leases receive the same distribution as required for original leases (Paragraph 13-44).

13-58. Necessity for Filing Condemnation Proceedings. Where it has been determined to acquire the use of real property by lease, it is the policy of the Department of the Navy to do so by conducting negotiations with the owner of such property and to enter into a lease with him. Circumstances sometimes require the acquisition of a leasehold interest by the filing of condemnation proceedings. Occasions where this action is necessary are stated in paragraph 11-1. These statements are equally applicable to the acquisition of leasehold estates through condemnation, except subparagraph (3) thereof.

13-59. Authority to Condemn under 40 U.S.C. 257. The Department of the Navy's basic authority to acquire real property by condemnation is the Act of August 1, 1888 (25 Stat. 357; 40 U.S.C. 257). (Appendix 9). This Act does not contain a provision authorizing the taking of possession of real property upon the filing of the complaint in condemnation. works!

13-60. Authority to Condemn in Time or Imminence of War. 10 U.S.C. 2663 authorizes the Secretary of the Navy to cause proceedings to be instituted for the acquisition by condemnation of any interests in land, temporary use thereof or interests therein expressly enumerated in the Act. It also authorizes the acceptance of donations of land or interests therein or rights pertaining thereto for such purposes. It contains a provision that in time of war or when war is imminent the United States may, immediately upon the filing of a petition for condemnation, under the provisions of Subsection "A" of the Act, take and use the land to the extent of the interest sought to be acquired. In condemnation proceedings instituted pursuant to this Act of Congress, the Courts usually will enter Orders granting immediate possession of the property or interests therein to be used for military purposes. (Appendix 10).

13-61. Limitations on Authority. The Acts cited in paragraphs 13-59 and 13-60 are not authority to acquire lands but are procedural.

No one single Act of Congress can be cited as the overall authority for the leasing of real property for naval uses. The leasing or renting of land for naval purposes is customarily provided for in annual Department of Defense Appropriation Acts in specific authorization under the heading "Department of the Navy". Military Construction Acts include special provisions which, although varying as to the language used, provide in express terms for the acquisition of lesser interests than the fee, including leaseholds.

13-62. Procedure for Condemnation of Leasehold. The legal authority for condemnation and the judicial rules of procedure relating thereto cover all interests in real property. Therefore, the procedure to be followed in the condemnation of a leasehold estate is basically the same as the procedure for the condemnation of fee. The procedure set forth in paragraphs 11-7 through 11-33, with the exception of paragraph 11-19, is applicable to leasehold condemnations and will be followed in these cases.

13-63. Termination of Leases. The procedures for the termination of leases will be covered in the disposal portion of this Instruction.

13.63 MANAGEMENT RESPONSIBILITY FOR FAMILY HOUSING FOR PUBLIC QUARTERS. The Chief, Bureau of Yards and Docks exercises management control over all Department of the Navy family housing. The Chief of Naval Operations determines housing requirements. NAVDOCKS P-352 promulgated Department of Defense policies and procedures for "Leasing of Family Housing". Particular reference is made to that Publication inasmuch as the criteria for the leasing of housing for public quarters will not be incorporated in this Publication.

13.64 LIMITATIONS OF NAVDOCKS P-352. NAVDOCKS P-352 is applicable to all family housing leased by the Government for Department of the Navy personnel, with the exception of housing units leased for Military Assistance Advisory Group personnel and military mission and Naval Attache personnel in foreign countries. The leasing of housing for such excepted personnel, as well as space for other activities, in foreign countries will be covered in subsequent paragraphs of this Chapter.

13.65 STATUTORY AUTHORITY FOR LEASING IN FOREIGN COUNTRIES. Statutory authority for leasing in foreign countries is contained in 10 U.S.C. 2675 which provides "That, notwithstanding any other law, the Secretary of a military department may lease, for terms of not more than five years, offbase structures including real property relating thereto, in foreign countries, needed for military purposes".

13.66 SECNAVINST 11011,33 OF 1 AUGUST 1962.

This Instruction establishes policy for the leasing of real property in foreign countries by the Department of the Navy and delegates authority and responsibility to the Chief, Bureau of Yards and Docks, or his designated representative, and to the Commandant of the Marine Corps, or his designated representative, with respect to leases for Marine Corps activities, to carry out that policy within the limitations of the Instruction.

13.67 SCOPE OF AUTHORITY FOR FOREIGN LEASES. The following paragraphs of this chapter apply only to the leasing of real property in foreign countries pursuant to the delegation of authority contained in the SECNAV Instruction mentioned in paragraph 13.66. This Chapter does not apply to an agreement for use of real property in foreign countries acquired by and through the State Department or through an agency of a

foreign government pursuant to treaties, executive agreements, or other diplomatic arrangements. *The* *that* *has* *the* *is* *not* *to* *be* *delegated* *to* *any* *one* *person* *may* *be* *re-delegated*. *A.S.*

13.68 DEFINITIONS. As used in this Chapter "Real Property" means any right, title, or interest in land and buildings, fixed improvements, utilities, and other permanent additions to land.

13.69 POLICIES. Real property shall be acquired by lease in foreign countries only when the following conditions exist:

(1) The property is required to meet a valid military need created by an assigned mission of an activity.

(2) There is no United States Government controlled real property available which will adequately meet the military need.

(3) The lease is for a period of one year, except that leases for offbase structures, including real property related thereto, may provide for an initial term of up to but not in excess of five years, in accordance with 10 U.S.C. 2675, and in either case, the lease may provide for annual renewals at the option of the Government.

(4) Funds are available for payment of the rental.

13.70 DELEGATION OF AUTHORITY. The Director and the Deputy Director, Atlantic Division, Bureau of Yards and Docks; the Director and the Deputy Director, Pacific Division, Bureau of Yards and Docks; the Director and the Deputy Director, European Mid-East Division, Bureau of Yards and Docks; the Area Public Works Officer and the Deputy Area Public Works Officer, Caribbean; the Officer in Charge of Construction and the Deputy Officer in Charge of Construction, Marianas; are delegated authority to take all necessary action to acquire, renew, modify, and administer leases in foreign countries, except for Marine Corps activities, within their respective areas of responsibility, provided:

(1) Approval of the Chief of the cognizant bureau or office has been obtained for any new lease.

(2) Approval of the Chief of Naval Operations as to military features has been obtained for any new lease if the annual rental is more than \$2000.

(3) Approval of the Assistant Secretary of the Navy (Installations and Logistics) of the proposal to lease has been obtained for any new lease if the annual rental is in excess of \$25,000.

(4) Approval by the Assistant Secretary of Defense (Installations and Logistics) of the proposal to lease has been obtained for any new lease if the annual rental is in excess of \$25,000 and the initial term of the lease is more than one year.

(5) The head of the activity concerned or the Management Bureau or Office has made funds available for payment of the rental.

See the following paragraph for any lease proposal involving a rental in excess of \$25,000 per annum.

13.71 PROCUREMENT OF APPROVALS FOR LEASES OF MORE THAN \$25,000 ANNUAL RENTAL. Any new lease proposal involving an annual rental in excess of \$25,000 shall be submitted to the Bureau of Yards and Docks with a complete justification for the requirement and a detailed statement of facts concerning the property. The Bureau of Yards and Docks will obtain the approval of the Management Bureau; the Chief of Naval Operations; the Assistant Secretary of the Navy (Installations and Logistics); and the Assistant Secretary of Defense (Installations and Logistics) if required.

13.72 PREPARATION OF LEASES COVERING PROPERTY IN FOREIGN COUNTRIES. Leases providing for annual rental of less than \$1000 should be prepared on NAVDOCKS 2393 (Appendix 25). Leases providing for annual rental of \$1000 or more should be prepared on U.S. Standard Form Number 2 (Appendix 26). Instructions for the preparation and execution of these forms and assignment of a contract number are contained in Paragraphs 13.42 and 13.43 of this Chapter. In the event a satisfactory lease agreement cannot be consummated by using these forms such modification as may be required by local practice may be used provided the United States is fully protected.

X **13.73 LEASE CONSTRUCTION AGREEMENTS:** In certain foreign countries it may be found that the procurement of appropriate facilities will require the construction of additions to existing improvements for the construction of new buildings. In some instances it has been necessary to enter into Lease - Construction Agreements in order to procure such facilities. In order to assure to the owner the early amortization of a substantial portion of the construction cost, the Lease - Construction Agreements generally provide for larger advance payments annually during the initial five-year term of the lease. The format of a typical

Lease - Construction Agreement is attached as Exhibit 13-A to this Chapter.

13.74 ADVANCE RENTAL PAYMENTS. Advance rental payments in foreign countries may be necessary in accordance with local custom. The statutory authority for making advance rental payments is 31 U.S.C. 529i (69 Stat 314).

13.75 DISTRIBUTION OF LEASES. Distribution of leases in foreign countries and Lease - Construction Agreements shall be made as set forth in Paragraph 13.44 of this Chapter.

13.76 CONDITION REPORTS. Paragraphs 13.45 through 13.52 of this Chapter apply to the requirement for, preparation of, and distribution of condition reports on leased properties. Those paragraphs were intended primarily for leased properties in the United States of America and its possessions. However, similar procedures will be followed with respect to leases made in foreign countries.

13.77 PAYMENT OF RENTAL. The applicable provisions of Paragraph 13.54 of this chapter apply to the payment of rental under leases in foreign countries.

13.78 RENEWAL OF LEASES. The provisions of Paragraph 13.55 apply to the renewal of all leases procured in foreign countries. Distribution of Notices of Renewal (Appendix 28) shall be handled as provided for in Paragraph 13.56 of this Chapter.

13.79 MODIFICATION OR AMENDMENT OF LEASES IN FOREIGN COUNTRIES. See Paragraphs 13.30 and 13.57 of this Chapter with respect to the modification or amendment of leases in the United States and its possessions. These procedures will apply to all leases entered in foreign countries.

13.80 LEASING OF HOUSING OR OTHER SPACE FOR NAVAL ATTACHE PERSONNEL. Procedures for the consummation, modification, amendment, administration, and renewal of leases of real property for use and occupancy by Naval Attache personnel in foreign countries including office space or other facilities are set forth as Paragraphs 13.81 through 13.89 of this Chapter.

13.81 CRITERIA FOR LEASING FOR NAVAL ATTACHE PERSONNEL IN FOREIGN COUNTRIES. Naval Attache personnel are frequently required to rent housing in foreign countries. This type of quarters is difficult to

obtain in certain countries and rental costs exceed basic quarters allowances. It is necessary, therefore, for the Government to lease such quarters, including furnishings, and make them available in lieu of quarters allowances. Similar conditions often prevail with respect to space requirements for office use or other purposes. Such space must also be leased by the Navy if it is not made available by the host countries or through the Department of State.

13.82 AUTHORITY FOR NAVAL ATTACHE PERSONNEL LEASES. The statutory authority for such leases is 10 U.S.C. 2675. Funds are provided by the Annual Appropriation Bills of the Department of Defense which are administered by the Chief of Naval Operations.

13.83 APPROVALS FOR LEASING FOR NAVAL ATTACHE PERSONNEL. All leases for Naval Attache personnel are authorized and approved by the Director of Naval Intelligence, Office of the Chief of Naval Operations, and funds for the payment of rent are made available by that Office. The Director of Naval Intelligence places responsibility upon the Naval Attache to determine that the rental cost is in line with comparable rentals in the area where the property is to be leased.

13.84 PROCEDURES FOR LEASING FOR NAVAL ATTACHE PERSONNEL. Each request for approval to lease housing or space in foreign countries for use and occupancy by Naval Attache personnel is directed to the Chief of Naval Operations, Director of Naval Intelligence, with an appropriate justification for the property and the estimated fair value rental thereof. The Director of Naval Intelligence has issued appropriate instructions to Naval Attaches to provide guidelines for space requirements and lease negotiations in foreign countries. If a lease proposal submitted to the Director of Naval Intelligence is approved, the appropriate Naval Attache will be so advised by the Director of Naval Intelligence and informed that the required funds will be made available for the payment of the rent. The Director of Naval Intelligence will also inform the Naval Attache that the Bureau of Yards and Docks will assign an NOy(R) contract number and issue a delegation of authority to a named person to execute the lease agreement.

13.85 DELEGATION OF AUTHORITY TO NAVAL ATTACHE PERSONNEL TO EXECUTE LEASES. Upon receipt of a request from the Director of Naval Intelligence, the Bureau of Yards and Docks

will issue a delegation of authority to the named individual for the particular lease and assign the appropriate contract number to cover the transaction. This action will be accomplished by message and request the following distribution of the executed lease forms:

- (1) Original signed and two conformed copies to the Bureau of Yards and Docks.
- (2) Executed copy to Lessor.
- (3) Executed copy to Naval Attache.

13.86 FORM OF NAVAL ATTACHE LEASE. NAVDOCKS 2393 should be used for leases providing for annual rental of less than \$1000 (Appendix 25). U.S. Standard Form Number 2 should be used for leases providing for annual rental of \$1000 or more (Appendix 26). However, where necessary, lease agreements conforming to local practice may be used in lieu of these forms, provided the United States is fully protected.

13.87 CONDITION REPORTS ON NAVAL ATTACHE LEASED PROPERTY. The provisions of Paragraph 13.76 apply to Naval Attache leases.

13.88 PAYMENT OF RENTAL FOR NAVAL ATTACHE LEASES. The applicable provisions of Paragraph 13.54 apply to payment of rental for Naval Attache leases.

13.89 RENEWAL OF NAVAL ATTACHE LEASES. See Paragraph 13.78 of this Chapter on lease renewals. Appendix 28 is the approved form for lease renewals. Distribution of the Notice of Renewal should be made in the same manner as indicated in Paragraph 13.85 for the original lease.

13.90 LEASING OF HOUSING OR OTHER SPACE FOR MILITARY MISSION PERSONNEL. At the present time Navy Military Mission personnel are stationed only in certain South American countries. Housing for such personnel is leased by the assigned individual and the housing rental is paid by the individual from quarters allowance funds. This matter is currently under review by the Chief of Naval Operations to determine whether housing or other space requirements for Navy Military Mission personnel should be covered by Navy leasing procedures. In the event an affirmative determination is made with respect to such leasing by the Navy, appropriate instructions will be issued to supersede this paragraph.

13.91 LEASING OF HOUSING OR OTHER SPACE FOR MILITARY ASSISTANCE ADVISORY GROUP PERSONNEL. Under current procedures arrangements for housing or other space requirements for use by MAAG personnel are usually consummated under diplomatic agreements between the Host Government and the Department of State. Under this procedure "compounds" are generally established on which housing and other space requirements are provided by the Host Government or may be constructed by the United States. Any facilities not so provided, such as additional housing, warehousing, or other space, can be acquired under Navy leasing procedures. The

requirement for such additional facilities must be approved by the Chief of Naval Operations, and the Chief, Bureau of Yards and Docks will issue the delegation of authority to a named individual to consummate the lease. The procedures set forth in Paragraphs 13.81 through 13.89 of this chapter with respect to leasing of real property for Naval Attache personnel also apply to the leasing of real property for MAAG personnel.

13.92 TERMINATION OF LEASES. The procedures for the termination of leases, regardless of where the leased property may be located, are covered in Chapters 23 and 24 of the Publication.