

CHANGE REQUEST COVER SHEET

Change Request Number: 12-77A

Date Received: 6/14/2012

Title: Updates to Real Property Guidance relating to single source and sustainability

Name: Susan Freericks

Phone: 202-267-8374

Policy OR Guidance: Guidance

Section/Text Location Affected: Sections 1.1.3.1, 1.1.5.2, 2.2.4, 2.4.16, 7.4, and 7.6

Summary of Change: Revisions to real property guidance relating to single source and sustainability issues for content and clarity.

Reason for Change: Based on questions and comments from the field, the real property guidance for single source and sustainability needed edits for content and clarity.

Development, Review, and/or Concurrence: ALO-200, ALO-300, AGC-520, WLSA, ELSA, and CLSA

Target Audience: Real Estate Contracting Officers

Potential Links within FAST for the Change: N/A

Briefing Planned: No

ASAG Responsibilities: None

Potential Links within FAST for the Change: N/A

Links for New/Modified Forms (or) Documents (LINK 1) [null](#)

Links for New/Modified Forms (or) Documents (LINK 2) [null](#)

Links for New/Modified Forms (or) Documents (LINK 3) [null](#)

SECTIONS REMOVED:

Real Estate Guidance :

Section 7.9 : Legal Review and Concurrence Form - Note Template is now available in the RE Template Library [\[Old Content\]](#)

SECTIONS EDITED:

Real Estate Guidance :

Section 1.1.3.1 : Environmental / Sustainability / Energy [\[Old Content\]](#)[\[New Content\]](#)
[\[RedLine Content\]](#)

Real Estate Guidance :

Section 1.1.5.2 : Succeeding Leases/Lease Renewals [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Real Estate Guidance :

Section 2.2.4 : Succeeding Leases/Lease Renewals [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Real Estate Guidance :

Section 2.4.16 : Environmental / Sustainability / Energy [\[Old Content\]](#)[\[New Content\]](#)
[\[RedLine Content\]](#)

Real Estate Guidance :

Section 7.4 : Real Property Actions Coordinated with the Office of Chief Counsel (AGC-500) or Region or Center Counsel [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Real Estate Guidance :

Section 7.6 : Real Property Acquisition: Documentation Required to be Submitted for Legal Review [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

SECTIONS REMOVED:

Real Estate Guidance :

Section 7.9 : Legal Review and Concurrence Form - Note Template is now available in the RE Template Library.

PROJECT: (Describe project here: e.g. FSDO space lease located in Las Vegas, NV)

TYPE of LEGAL REVIEW NEEDED: (e.g. Non-competitive, Space Lease, Lease Renewal, Condemnation, ETC.)

Please check the materials have been given to legal counsel for review. If not all required documents are included, please note in the comments section a date by which the missing documentation will be provided.

- A copy of the Market Survey, if one was conducted. If no Market Survey was conducted, a statement explaining the determination not to conduct one must be included;
- The Statement of Work (SOW), Solicitation for Offers (SFO), Screening Information Request (SIR), or other documentation that sets forth the requirements for the acquisition;
- If the acquisition was conducted utilizing competitive procedures, a summary of the offers received and the evaluation of the strengths and weaknesses of each;
- If the acquisition is non-competitive, a statement in support of the non-competitive acquisition, executed by the RECO;

FAST Archive 07/2012

CR 12-77A

p. 2

- A determination that funding is available for the acquisition;
- If a leasehold acquisition, the final Lease document, with an explanation of any revisions to the standard clauses, if applicable;
- Copies of all RETS notes pertaining to the acquisition;
- A copy of the Lease versus Purchase Analysis;
- An appraisal report, if applicable;
- A title report, and title insurance binder, if applicable; and
- The draft, or executed final version, of the Negotiator's Report, if applicable.

ADDITIONAL COMMENTS/INFORMATION PROVIDED TO LEGAL:

Date Delivered to Legal Counsel: _____

Name of RECO: Signature _____

Legal Concurrence:

- Concur without comments
- Concur with comments

- Nonconcur with comments

Legal Counsel _____ (date)

If RECO received a Nonconcur with comments, the documentation must be revised to address the issues raised in the non-concurrence, and resubmitted.

Resubmitted for Review and Concurrence on _____ (Date)

- Concur without comments
 - Concur with comments
-
-
-

- Nonconcur with comments
-
-
-
-

RECO Comments

Legal Counsel _____ (date)

FAST Archive 07/2012

CR 12-77A

p. 4

SECTIONS EDITED:

Section 1.1.3.1 : Environmental / Sustainability / Energy

Old Content: Real Estate Guidance :

Section 1.1.3.1 : Environmental / Sustainability / Energy

During the land acquisition process, Real Estate Contracting Officers (RECOs) are required to follow the requirements as set forth below in the following laws, executive orders, regulations, policies and orders:

1. Energy Policy Act (EPA) of 2005, Publ.L.No.109-58
2. Energy Independence and Security Act (EISA) of 2007, Pub.L.No.110-140
3. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
4. National Environmental Policy Act (NEPA)
5. FAA EDDA Order 1050.19B: “Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions” and any revisions thereto or subsequently published Orders pertaining to environmental compliance
6. Resource Conservation and Recovery Act (RCRA)
7. Executive Order 11988, Floodplain Management
8. Executive Order 11990, Protection of Wetlands

A. Environmental Due Diligence Audits (EDDA) Requirements

FAA real property transactions are subject to the requirements of FAA Order 1050.19B, Environmental Due Diligence Audits (EDDA) in the Conduct of FAA Real Property Transactions, in order to identify and minimize potential environmental liabilities associated with the condition of the property and past activities at the site. After the EDDA process, the determination of whether to waive the performance of an EDDA must be completed prior to the execution of contracts for the acquisition or disposal of real property per 1050.19B.

Off-airport land acquisitions of new sites, or that result in the expansion of an existing site, require an EDDA per 1050.19B. All on-airport leases or no-cost on-airport acquisitions that utilize the Memorandum of Agreement (MOA) template will use the Hazardous Substance Contamination clause, preferably the version included in the template, unless an EDDA is required pursuant to FAA Order 1050.19B. In accordance with FAA Order 1050.19B, any revisions to the Hazardous Substance Contamination clause must be reviewed by and concurred by the appropriate Regional Counsel’s office or the Office of the Assistant Chief Counsel for Acquisition and Commercial Law (AGC-500). Any revisions to the Hazardous Substance Contamination clause will not be approved if such revisions result in a provision that increases FAA’s potential environmental liability beyond that which can be proven to have resulted directly from FAA’s use of the site and/or operation of equipment on site.

Question and Answers concerning FAA Order 1050.19B

Q 1: Is the RECO required to obtain a memorandum as stated in 1050.19B 1-9b(3) or an EDDA if the RECO is renewing a land lease?

A 1: At this time and until further notice, FAA Order 1050.19B 1-9b(3), the requirement for an EDDA order requirement remains in place. The EDDA order is in the process to be revised to amend this part of the order requirement. The RECO shall cite this section in their lease file when they are unable to obtain an "EDDA-not-required" memorandum.

Q 2: Are we required to use the "hazardous substance clause" in its entirety for an airport lease or MOA?

A 2: If the requirements imposed upon the Airport Sponsor by FAA conflict with that Sponsor's requirements under state law, and provided that any revisions to, or deletions from the clause which received the concurrence of the appropriate FAA Regional or Center Counsel or the Office of the Chief Counsel for Acquisition and Commercial Law (AGC-500), then the RECO has the authority to revise the Hazardous Substance Contamination clause found in the "Land On Airport Lease Template" (clause #21) and the "MOA". However, under no circumstances may the clause be revised to increase FAA's potential liability beyond that incurred as a direct result of FAA's actions installing, operating, and/or maintaining of the facility or equipment that FAA has placed on the demised premises. An example of an acceptable revision to the Hazardous Substance Contamination clause is set forth below:

HAZARDOUS SUBSTANCE CONTAMINATION (MAY-00): The Government agrees to remediate, at its sole cost, all hazardous substance contamination on the leased premises that is found to have occurred as a direct result of the installation, operation, and/or maintenance of the (type of facility) facility. The Lessor agrees to remediate at its sole cost, any and all other hazardous substance contamination found on the leased premises. ~~The Lessor also agrees to save and hold the Government harmless for any and all costs, liabilities and/or claims by third parties that arise out of hazardous contamination found on the leased premises not directly attributable to the installation, operation and/or maintenance of the (type of facility) facility.~~

B. National Environmental Policy Act (NEPA) Requirements

In accordance with the requirements of FAA Order 1050.1E, Change 1, Policies and Procedures for Considering Environmental Impacts, before acquiring (by lease, purchase, or otherwise) any additional land (new sites or expanding existing sites), the FAA must comply with the requirements of the National Environmental Policy Act (NEPA) to the extent applicable to such acquisitions. The appropriate level of environmental review must be determined by the program office Environmental Specialist or the project designated Environmental Specialist.

The three levels of environmental review include:

- Categorical Exclusion (CATEX),
- Environmental Assessment (EA), or
- Environmental Impacts Statement (EIS).

In the absence of Extraordinary Circumstances (e.g., the presence of wetlands), most real property acquisition transactions can be categorically excluded by the program office from further environmental review. Chapter 3 of FAA Order 1050.1E, Change 1 provides information on CATEXs and the application of extraordinary circumstances. Specifically, paragraph 310 provides the list of categorical exclusions for FAA actions involving facility siting, construction and maintenance.

If there are extraordinary circumstances directly applicable to the site acquisition, and consequently, the action cannot be categorically excluded from further environmental review then the EA must be initiated by the Environmental Specialist. If the impacts are not significant the environmental review will end with a Finding of No Significant Impact (FONSI).

If any impact to the site attributable to FAA's acquisition or the proposed use of the site, is found to be significant and cannot be mitigated then an EIS must be initiated by program office. The EIS process ends in a Record of Decision.

The environmental review process must be complete before negotiating the acquisition of any new and additional land interests. The RECO must obtain written notification from the program office that all applicable NEPA requirements have been met, which would include all required EDDA documentation, prior to proceeding with the land acquisition including all required EDDA documentation. The written notification and additional documentation must be placed in the real estate lease file. Once the RECO receives the written notification, the RECO can proceed with the real property transaction for any new or additional land acquisition. The office requesting the land acquisition is responsible for keeping the official documentation for the NEPA review. It is not necessary for the RECO to obtain copies of the CATEX, EA, FONSI, EIS or Record of Decision.

New Content: Real Estate Guidance :

Section 1.1.3.1 : Environmental / Sustainability / Energy

During the land acquisition process, Real Estate Contracting Officers (RECOs) are required to follow the requirements as set forth below in the following laws, executive orders, regulations, policies and orders:

1. Energy Policy Act (EPA) of 2005, Publ.L.No.109-58
2. Energy Independence and Security Act (EISA) of 2007, Pub.L.No.110-140
3. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
4. National Environmental Policy Act (NEPA)
5. FAA EDDA Order 1050.19B: "Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions" and any revisions thereto or subsequently published Orders pertaining to environmental compliance
6. Resource Conservation and Recovery Act (RCRA)
7. Executive Order 11988, Floodplain Management
8. Executive Order 11990, Protection of Wetlands

A. Environmental Due Diligence Audits (EDDA) Requirements

FAST Archive 07/2012

CR 12-77A

p. 7

FAA real property transactions are subject to the requirements of FAA Order 1050.19B, Environmental Due Diligence Audits (EDDA) in the Conduct of FAA Real Property Transactions, in order to identify and minimize potential environmental liabilities associated with the condition of the property and past activities at the site. After the EDDA process, the determination of whether to waive the performance of an EDDA must be completed prior to the execution of contracts for the acquisition or disposal of real property per 1050.19B.

Off-airport land acquisitions of new sites, or that result in the expansion of an existing site, require an EDDA per 1050.19B. All on-airport leases or no-cost on-airport acquisitions that utilize the Memorandum of Agreement (MOA) template will use the Hazardous Substance Contamination clause, preferably the version included in the template, unless an EDDA is required pursuant to FAA Order 1050.19B. In accordance with FAA Order 1050.19B, any revisions to the Hazardous Substance Contamination clause must be reviewed by and concurred by the appropriate Regional Counsel's office or the Office of the Assistant Chief Counsel for Acquisition and Commercial Law (AGC-500). Any revisions to the Hazardous Substance Contamination clause will not be approved if such revisions result in a provision that increases FAA's potential environmental liability beyond that which can be proven to have resulted directly from FAA's use of the site and/or operation of equipment on site.

Question and Answers concerning FAA Order 1050.19B

Q 1: Is the RECO required to obtain a memorandum as stated in 1050.19B 1-9b(3) or an EDDA if the RECO is executing a new or succeeding lease or exercising an option to renew the land lease?

A 1: At this time and until further notice of a change to the FAA Order 1050.19B, the requirements to obtain an EDDA, EDDA waiver, or memorandum remain in place and are the responsibility of the service/office requester to provide to the RECO. If the memorandum is not provided, the RECO can cite in the Negotiator Report that the EDDA memorandum required for the lease renewal transaction was not received from the LOB requester per FAA order 1050.19B 1-9b(3).

Q 2: Are we required to use the "hazardous substance clause" in its entirety for an airport lease or MOA?

A 2: If the requirements imposed upon the Airport Sponsor by FAA conflict with that Sponsor's requirements under state law, and provided that any revisions to, or deletions from the clause which received the concurrence of the appropriate FAA Regional or Center Counsel or the Office of the Chief Counsel for Acquisition and Commercial Law (AGC-500), then the RECO has the authority to revise the Hazardous Substance Contamination clause found in the "Land On Airport Lease Template" (clause #21) and the "MOA". However, under no circumstances may the clause be revised to increase FAA's potential liability beyond that incurred as a direct result of FAA's actions installing, operating, and/or maintaining of the facility or equipment that FAA has placed on the demised premises. An example of an acceptable revision to the Hazardous Substance Contamination clause is set forth below:

HAZARDOUS SUBSTANCE CONTAMINATION (MAY-00): The Government agrees to remediate, at its sole cost, all hazardous substance contamination on the leased premises that is found to have occurred as a direct result of the installation, operation, and/or maintenance of the (type of facility) facility. The Lessor agrees to remediate at its sole cost, any and all other hazardous substance contamination found on the leased premises. ~~The Lessor also agrees to save and hold the Government harmless for any and all costs, liabilities and/or claims by third parties that arise out of hazardous contamination found on the leased premises not directly attributable to the installation, operation and/or maintenance of the (type of facility) facility.~~

B. National Environmental Policy Act (NEPA) Requirements

In accordance with the requirements of FAA Order 1050.1E, Change 1, Policies and Procedures for Considering Environmental Impacts, before acquiring (by lease, purchase, or otherwise) any additional land (new sites or expanding existing sites), the FAA must comply with the requirements of the National Environmental Policy Act (NEPA) to the extent applicable to such acquisitions. The appropriate level of environmental review must be determined by the program office Environmental Specialist or the project designated Environmental Specialist.

The three levels of environmental review include:

- Categorical Exclusion (CATEX),
- Environmental Assessment (EA), or
- Environmental Impacts Statement (EIS).

In the absence of Extraordinary Circumstances (e.g., the presence of wetlands), most real property acquisition transactions can be categorically excluded by the program office from further environmental review. Chapter 3 of FAA Order 1050.1E, Change 1 provides information on CATEXs and the application of extraordinary circumstances. Specifically, paragraph 310 provides the list of categorical exclusions for FAA actions involving facility siting, construction and maintenance.

If there are extraordinary circumstances directly applicable to the site acquisition, and consequently, the action cannot be categorically excluded from further environmental review then the EA must be initiated by the Environmental Specialist. If the impacts are not significant the environmental review will end with a Finding of No Significant Impact (FONSI).

If any impact to the site attributable to FAA's acquisition or the proposed use of the site, is found to be significant and cannot be mitigated then an EIS must be initiated by program office. The EIS process ends in a Record of Decision.

The environmental review process must be complete before negotiating the acquisition of any new and additional land interests. The RECO must obtain written notification from the program office that all applicable NEPA requirements have been met, which would include all required EDDA documentation, prior to proceeding with the land acquisition including all required EDDA documentation. The written notification and additional documentation must be placed in

the real estate lease file. Once the RECO receives the written notification, the RECO can proceed with the real property transaction for any new or additional land acquisition. The office requesting the land acquisition is responsible for keeping the official documentation for the NEPA review. It is not necessary for the RECO to obtain copies of the CATEX, EA, FONSI, EIS or Record of Decision.

Red Line Content: Real Estate Guidance :

Section 1.1.3.1 : Environmental / Sustainability / Energy

During the land acquisition process, Real Estate Contracting Officers (RECOs) are required to follow the requirements as set forth below in the following laws, executive orders, regulations, policies and orders:

1. Energy Policy Act (EPA) of 2005, Publ.L.No.109-58
2. Energy Independence and Security Act (EISA) of 2007, Pub.L.No.110-140
3. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
4. National Environmental Policy Act (NEPA)
5. FAA EDDA Order 1050.19B: “Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions” and any revisions thereto or subsequently published Orders pertaining to environmental compliance
6. Resource Conservation and Recovery Act (RCRA)
7. Executive Order 11988, Floodplain Management
8. Executive Order 11990, Protection of Wetlands

A. Environmental Due Diligence Audits (EDDA) Requirements

FAA real property transactions are subject to the requirements of FAA Order 1050.19B, Environmental Due Diligence Audits (EDDA) in the Conduct of FAA Real Property Transactions, in order to identify and minimize potential environmental liabilities associated with the condition of the property and past activities at the site. After the EDDA process, the determination of whether to waive the performance of an EDDA must be completed prior to the execution of contracts for the acquisition or disposal of real property per 1050.19B.

Off-airport land acquisitions of new sites, or that result in the expansion of an existing site, require an EDDA per 1050.19B. All on-airport leases or no-cost on-airport acquisitions that utilize the Memorandum of Agreement (MOA) template will use the Hazardous Substance Contamination clause, preferably the version included in the template, unless an EDDA is required pursuant to FAA Order 1050.19B. In accordance with FAA Order 1050.19B, any revisions to the Hazardous Substance Contamination clause must be reviewed by and concurred by the appropriate Regional Counsel’s office or the Office of the Assistant Chief Counsel for Acquisition and Commercial Law (AGC-500). Any revisions to the Hazardous Substance Contamination clause will not be approved if such revisions result in a provision that increases FAA’s potential environmental liability beyond that which can be proven to have resulted directly from FAA’s use of the site and/or operation of equipment on site.

Question and Answers concerning FAA Order 1050.19B

FAST Archive 07/2012

CR 12-77A

p. 10

Q 1: Is the RECO required to obtain a memorandum as stated in 1050.19B 1-9b(3) or an EDDA if the RECO is ~~renewing~~*executing* a *new or succeeding lease or exercising an option to renew the* land lease?

A 1: At this time and until further notice, ~~of a change to the~~ FAA Order 1050.19B ~~1-9b(3)~~, the ~~requirement~~*requirements to for obtain* an EDDA, ~~EDDA order~~*waiver, requirement or memorandum* ~~remains~~*remain* in place. ~~The EDDA order is in~~ *and are the responsibility of* the ~~process~~*service/office* ~~to be revised~~*requester to provide* to ~~amend this~~*the part* ~~RECO.~~ *of* ~~If the~~ ~~order~~*memorandum* requirement ~~is~~ *The* ~~not provided, the~~ RECO ~~shall~~*can* cite ~~this~~*in* section in their lease file ~~when they are unable to obtain an~~ *the Negotiator Report that the EDDA memorandum required for the lease renewal "EDDA transaction was not required" memorandum received from the LOB requester per FAA order 1050.19B 1-9b(3).*

Q 2: Are we required to use the “hazardous substance clause” in its entirety for an airport lease or MOA?

A 2: If the requirements imposed upon the Airport Sponsor by FAA conflict with that Sponsor’s requirements under state law, and provided that any revisions to, or deletions from the clause which received the concurrence of the appropriate FAA Regional or Center Counsel or the Office of the Chief Counsel for Acquisition and Commercial Law (AGC-500), then the RECO has the authority to revise the Hazardous Substance Contamination clause found in the “Land On Airport Lease Template” (clause #21) and the “MOA”. However, under no circumstances may the clause be revised to increase FAA’s potential liability beyond that incurred as a direct result of FAA’s actions installing, operating, and/or maintaining of the facility or equipment that FAA has placed on the demised premises. An example of an acceptable revision to the Hazardous Substance Contamination clause is set forth below:

HAZARDOUS SUBSTANCE CONTAMINATION (MAY-00): The Government agrees to remediate, at its sole cost, all hazardous substance contamination on the leased premises that is found to have occurred as a direct result of the installation, operation, and/or maintenance of the (type of facility) facility. The Lessor agrees to remediate at its sole cost, any and all other hazardous substance contamination found on the leased premises. ~~The Lessor also agrees to save and hold the Government harmless for any and all costs, liabilities and/or claims by third parties that arise out of hazardous contamination found on the leased premises not directly attributable to the installation, operation and/or maintenance of the (type of facility) facility.~~

B. National Environmental Policy Act (NEPA) Requirements

In accordance with the requirements of FAA Order 1050.1E, Change 1, Policies and Procedures for Considering Environmental Impacts, before acquiring (by lease, purchase, or otherwise) any additional land (new sites or expanding existing sites), the FAA must comply with the requirements of the National Environmental Policy Act (NEPA) to the extent applicable to such acquisitions. The appropriate level of environmental review must be determined by the program office Environmental Specialist or the project designated Environmental Specialist.

The three levels of environmental review include:

- Categorical Exclusion (CATEX),
- Environmental Assessment (EA), or
- Environmental Impacts Statement (EIS).

In the absence of Extraordinary Circumstances (e.g., the presence of wetlands), most real property acquisition transactions can be categorically excluded by the program office from further environmental review. Chapter 3 of FAA Order 1050.1E, Change 1 provides information on CATEXs and the application of extraordinary circumstances. Specifically, paragraph 310 provides the list of categorical exclusions for FAA actions involving facility siting, construction and maintenance.

If there are extraordinary circumstances directly applicable to the site acquisition, and consequently, the action cannot be categorically excluded from further environmental review then the EA must be initiated by the Environmental Specialist. If the impacts are not significant the environmental review will end with a Finding of No Significant Impact (FONSI).

If any impact to the site attributable to FAA's acquisition or the proposed use of the site, is found to be significant and cannot be mitigated then an EIS must be initiated by program office. The EIS process ends in a Record of Decision.

The environmental review process must be complete before negotiating the acquisition of any new and additional land interests. The RECO must obtain written notification from the program office that all applicable NEPA requirements have been met, which would include all required EDDA documentation, prior to proceeding with the land acquisition including all required EDDA documentation. The written notification and additional documentation must be placed in the real estate lease file. Once the RECO receives the written notification, the RECO can proceed with the real property transaction for any new or additional land acquisition. The office requesting the land acquisition is responsible for keeping the official documentation for the NEPA review. It is not necessary for the RECO to obtain copies of the CATEX, EA, FONSI, EIS or Record of Decision.

Section 1.1.5.2 : Succeeding Leases/Lease Renewals

Old Content: Real Estate Guidance :

Section 1.1.5.2 : Succeeding Leases/Lease Renewals

General Requirements: In general, when a lease for land for an off-airport NAS facility is expiring, the requirements are not re-competed, unless a compelling reason to relocate is established. This is due to the long service life of facilities installed on the leased land, as well as the cost of installation. Prior to determining whether to enter into a succeeding lease (this is a new lease because the lease expires at the end of the term and succeeds the prior lease), or renew an existing lease (this is the exercise of an option to stay in the existing location for the amount of time stated in the option(s) to renew), the RECO must consult with the tenant organization and obtain a statement of continuing need. The

RECO must ensure that all new and revised clauses are incorporated in the succeeding lease agreement. In addition, if the term of a lease is less than 20 years, including options, and if the RECO determines that the best method to fulfill a short term continuing need is by extending the current lease, the Supplemental Lease Agreement must contain all new and revised clauses.

When to sign a succeeding lease: In accordance with the provisions of 49 USC 40110(c)(1), the RECO may enter into a lease with a term of up to 20 years, regardless of whether appropriations sufficient to pay the rent for the entirety of the lease term have been obligated. This means that the RECO can sign a lease now, even when rent commences in the next fiscal year.

Example: The RECO diligently negotiates for a succeeding lease for an off airport navaid and obtains the lease signed by the lessor in the month of July 2010. The rent does not commence until October 1, 2010 (the start of FY-2011). In order to consummate the lease, the RECO must sign the lease AND award it in the PRISM system in July 2010. The RECO can obtain either a zero dollar PR or a subject to availability of funds PR for the award of the lease.

Timing of renewal efforts: In order to allow sufficient time for completion, and prevent FAA from becoming a holdover tenant, the RECO must commence the renewal process, or the process of entering into a succeeding lease, at least 18 months prior to the lease expiration date. This time period should be extended if the RECO is aware of issues that could jeopardize timely completion of the lease transaction.

NOTE: If a lease is to be terminated and not renewed, the RECO must ensure that the lease and any associated utility or other associated contracts are appropriately terminated and that accounting is notified to ensure that lease and associated utility payments are terminated at the appropriate time.

New Content: Real Estate Guidance :

Section 1.1.5.2 : Succeeding Leases/Lease Renewals

General Requirements: In general, when a lease for land for an off-airport NAS facility is expiring, the requirements are not re-competed, unless a compelling reason to relocate is established. This is due to the long service life of facilities installed on the leased land, as well as the cost of installation. Prior to determining whether to enter into a succeeding lease (this is a new lease because the lease expires at the end of the term and succeeds the prior lease), or renew an existing lease (this is the exercise of an option to stay in the existing location for the amount of time stated in the option(s) to renew), the RECO must consult with the tenant organization and obtain a statement of continuing need. If the tenant organization indicates a need to remain in the same location, the RECO may initiate filling in the single source justification form and send to the tenant organization for concurrence prior to initiating the procurement. Legal review is not required when exercising an option to renew or executing a succeeding lease at the same location where the RECO is either establishing a new lease term and/or a new rental price (as agreed in the previously negotiated option or negotiated new price in the succeeding lease) and no material provision is changed. In such instances, the RECO is not required to complete the Single Source Justification Form. The RECO must ensure that all new and revised clauses are incorporated in the succeeding lease agreement. In addition, if the term of a lease is less than 20 years, including options, and if the RECO determines that the best method to

fulfill a short term continuing need is by extending the current lease, the Supplemental Lease Agreement must contain all new and revised clauses that may be added by reference.

When to sign a succeeding lease: In accordance with the provisions of 49 USC 40110(c)(1), the RECO may enter into a lease with a term of up to 20 years, regardless of whether appropriations sufficient to pay the rent for the entirety of the lease term have been obligated. This means that the RECO can sign a lease now, even when rent commences in the next fiscal year.

Example: The RECO diligently negotiates for a succeeding lease for an off airport navaid and obtains the lease signed by the lessor in the month of July 2010. The rent does not commence until October 1, 2010 (the start of FY-2011). In order to consummate the lease, the RECO must sign the lease AND award it in the PRISM system in July 2010. The RECO can obtain either a zero dollar PR or a subject to availability of funds PR for the award of the lease.

Timing of renewal efforts: In order to allow sufficient time for completion, and prevent FAA from becoming a holdover tenant, the RECO must commence the renewal process, or the process of entering into a succeeding lease, at least 18 months prior to the lease expiration date. This time period should be extended if the RECO is aware of issues that could jeopardize timely completion of the lease transaction.

NOTE: If a lease is to be terminated and not renewed, the RECO must ensure that the lease and any associated utility or other associated contracts are appropriately terminated and that accounting is notified to ensure that lease and associated utility payments are terminated at the appropriate time.

Red Line Content: Real Estate Guidance :

Section 1.1.5.2 : Succeeding Leases/Lease Renewals

General Requirements: In general, when a lease for land for an off-airport NAS facility is expiring, the requirements are not re-competed, unless a compelling reason to relocate is established. This is due to the long service life of facilities installed on the leased land, as well as the cost of installation. Prior to determining whether to enter into a succeeding lease (this is a new lease because the lease expires at the end of the term and succeeds the prior lease), or renew an existing lease (this is the exercise of an option to stay in the existing location for the amount of time stated in the option(s) to renew), the RECO must consult with the tenant organization and obtain a statement of continuing need. **If the tenant organization indicates a need to remain in the same location, the RECO may initiate filling in the single source justification form and send to the tenant organization for concurrence prior to initiating the procurement. Legal review is not required when exercising an option to renew or executing a succeeding lease at the same location where the RECO is either establishing a new lease term and/or a new rental price (as agreed in the previously negotiated option or negotiated new price in the succeeding lease) and no material provision is changed. In such instances, the RECO is not required to complete the Single Source Justification Form.** The RECO must ensure that all new and revised clauses are incorporated in the succeeding lease agreement. In addition, if the term of a lease is less than 20 years, including options, and if the RECO determines that the best method to fulfill a short term continuing need is by extending the current lease, the Supplemental Lease Agreement must contain all new and revised clauses **that may be added by reference.**

When to sign a succeeding lease: In accordance with the provisions of 49 USC 40110(c)(1), the RECO may enter into a lease with a term of up to 20 years, regardless of whether appropriations sufficient to pay the rent for the entirety of the lease term have been obligated. This means that the RECO can sign a lease now, even when rent commences in the next fiscal year.

Example: The RECO diligently negotiates for a succeeding lease for an off airport navaid and obtains the lease signed by the lessor in the month of July 2010. The rent does not commence until October 1, 2010 (the start of FY-2011). In order to consummate the lease, the RECO must sign the lease AND award it in the PRISM system in July 2010. The RECO can obtain either a zero dollar PR or a subject to availability of funds PR for the award of the lease.

Timing of renewal efforts: In order to allow sufficient time for completion, and prevent FAA from becoming a holdover tenant, the RECO must commence the renewal process, or the process of entering into a succeeding lease, at least 18 months prior to the lease expiration date. This time period should be extended if the RECO is aware of issues that could jeopardize timely completion of the lease transaction.

NOTE: If a lease is to be terminated and not renewed, the RECO must ensure that the lease and any associated utility or other associated contracts are appropriately terminated and that accounting is notified to ensure that lease and associated utility payments are terminated at the appropriate time.

Section 2.2.4 : Succeeding Leases/Lease Renewals

Old Content: Real Estate Guidance :

Section 2.2.4 : Succeeding Leases/Lease Renewals

General Requirements: Prior to determining whether to enter into a succeeding lease (this is a new lease because the lease expires at the end of the term and succeeds the prior lease), or renew an existing lease (this is the exercise of an option to stay in the existing location for the amount of time stated in the option(s) to renew), the RECO must consult with the tenant organization and obtain a statement of continuing need. The RECO must ensure that all new and revised clauses are incorporated in the succeeding lease agreement. In addition, if the term of a lease is less than 20 years, including options, and if the RECO determines that the best method to fulfill a short term continuing need is by extending the current lease, the Supplemental Lease Agreement must contain all new and revised clauses. However, if the lease has met its 20 year authority, the RECO must negotiate a new lease.

When to sign a succeeding lease: In accordance with the provisions of 49 USC 40110(c)(1), the RECO may enter into a lease with a term of up to 20 years, regardless of whether appropriations sufficient to pay the rent for the entirety of the lease term have been obligated. This means that the RECO can sign a lease now, even when rent commences in the next fiscal year.

Example: The RECO diligently negotiates for a succeeding lease for an off airport nevoid and obtains the lease signed by the lessor in the month of July 2010. The rent does not commence

until October 1, 2010 (the start of FY-2011). In order to consummate the lease, the RECO must sign the lease AND award it in the PRISM system in July 2010. The RECO can obtain either a zero dollar PR or a subject to availability of funds PR for the award of the lease.

Timing of renewal efforts: In order to allow sufficient time for completion, and prevent FAA from becoming a holdover tenant, the RECO must commence the renewal process, or the process of entering into a succeeding lease, at least 18 months prior to the lease expiration date. For all GSA controlled space, the RECO must commence the renewal process at least 24 months prior to the lease expiration date. Further, this time period should be extended if the RECO is aware of issues that could jeopardize timely completion of the lease transaction.

NOTE: If a lease is to be terminated and not renewed, the RECO must ensure that the lease and any associated utility or other associated contracts are appropriately terminated and that accounting is notified to ensure that lease and associated utility payments are terminated at the appropriate time.

New Content: Real Estate Guidance :

Section 2.2.4 : Succeeding Leases/Lease Renewals

General Requirements: Prior to determining whether to enter into a succeeding lease (this is a new lease because the lease expires at the end of the term and succeeds the prior lease), or renew an existing lease (this is the exercise of an option to stay in the existing location for the amount of time stated in the option(s) to renew), the RECO must consult with the tenant organization and obtain a statement of continuing need. If the tenant organization indicates a need to remain in the same location, the RECO can initiate filling in the single source justification form and send to the tenant organization for concurrence prior to initiating the procurement. Competition is the preferred method of acquisition for administrative space; however, if a single source is in the best interest of the Government, the single source form must have signature concurrence from the line of business. In addition, if the term of a lease is less than 20 years, including options, and if the RECO determines that the best method to fulfill a short term continuing need is by extending the current lease, the Supplemental Lease Agreement must contain all new and revised clauses. However, if the lease has met its 20 year authority, the RECO must negotiate a new lease using the current lease template.

When to sign a succeeding lease: In accordance with the provisions of 49 USC 40110(c)(1), the RECO may enter into a lease with a term of up to 20 years, regardless of whether appropriations sufficient to pay the rent for the entirety of the lease term have been obligated. This means that the RECO can sign a lease now, even when rent commences in the next fiscal year.

Example: The RECO diligently negotiates for a succeeding lease for an off airport nevoid and obtains the lease signed by the lessor in the month of July 2010. The rent does not commence until October 1, 2010 (the start of FY-2011). In order to consummate the lease, the RECO must sign the lease AND award it in the PRISM system in July 2010. The RECO can obtain either a zero dollar PR or a subject to availability of funds PR for the award of the lease.

Timing of renewal efforts: In order to allow sufficient time for completion, and prevent FAA from becoming a holdover tenant, the RECO must commence the renewal process, or the process of entering into a succeeding lease, at least 18 months prior to the lease expiration date. For all GSA controlled space, the RECO must commence the renewal process at least 24 months prior to the lease expiration date. Further, this time period should be extended if the RECO is aware of issues that could jeopardize timely completion of the lease transaction.

NOTE: If a lease is to be terminated and not renewed, the RECO must ensure that the lease and any associated utility or other associated contracts are appropriately terminated and that accounting is notified to ensure that lease and associated utility payments are terminated at the appropriate time.

Red Line Content: Real Estate Guidance :
Section 2.2.4 : Succeeding Leases/Lease Renewals

General Requirements: Prior to determining whether to enter into a succeeding lease (this is a new lease because the lease expires at the end of the term and succeeds the prior lease), or renew an existing lease (this is the exercise of an option to stay in the existing location for the amount of time stated in the option(s) to renew), the RECO must consult with the tenant organization and obtain a statement of continuing need. ~~The~~ If the tenant organization indicates a need to remain in the same location, the RECO must ensure that all can initiate filling in new the single source justification form and revised clauses send to are the tenant organization for concurrence prior to initiating the procurement. Competition is the preferred method of acquisition for administrative space; however, incorporated if a single source is in the succeeding best lease interest of the Government, the single source form must have signature agreement concurrence from the line of business. In addition, if the term of a lease is less than 20 years, including options, and if the RECO determines that the best method to fulfill a short term continuing need is by extending the current lease, the Supplemental Lease Agreement must contain all new and revised clauses. However, if the lease has met its 20 year authority, the RECO must negotiate a new lease using the current lease template.

When to sign a succeeding lease: In accordance with the provisions of 49 USC 40110(c)(1), the RECO may enter into a lease with a term of up to 20 years, regardless of whether appropriations sufficient to pay the rent for the entirety of the lease term have been obligated. This means that the RECO can sign a lease now, even when rent commences in the next fiscal year.

Example: The RECO diligently negotiates for a succeeding lease for an off airport nevoid and obtains the lease signed by the lessor in the month of July 2010. The rent does not commence until October 1, 2010 (the start of FY-2011). In order to consummate the lease, the RECO must sign the lease AND award it in the PRISM system in July 2010. The RECO can obtain either a zero dollar PR or a subject to availability of funds PR for the award of the lease.

Timing of renewal efforts: In order to allow sufficient time for completion, and prevent FAA from becoming a holdover tenant, the RECO must commence the renewal process, or the process of entering into a succeeding lease, at least 18 months prior to the lease expiration date. For all GSA controlled space, the RECO must commence the renewal process at least 24 months prior

to the lease expiration date. Further, this time period should be extended if the RECO is aware of issues that could jeopardize timely completion of the lease transaction.

NOTE: If a lease is to be terminated and not renewed, the RECO must ensure that the lease and any associated utility or other associated contracts are appropriately terminated and that accounting is notified to ensure that lease and associated utility payments are terminated at the appropriate time.

Section 2.4.16 : Environmental / Sustainability / Energy

Old Content: Real Estate Guidance :

Section 2.4.16 : Environmental / Sustainability / Energy

2.4.16 - Environmental/Sustainability/Energy

A. Guidance

FAA is required to significantly reduce the negative environmental effects of constructing, leasing, operating and maintaining and demolishing buildings. Some of the potential results from successful reduction of negative environmental effects may include: 1) a reduction in total life-cycle costs of facilities through the improvement of energy efficiency and the implementation of alternative energy technologies; 2) a reduction in total adverse environmental impacts by the reduction of carbon emissions; and 3) an enhancement of the safety, health and productivity of FAA employees through the reduction in the use of toxic chemicals in buildings.

1. High Performance Sustainable Buildings

Executive Order (EO) 13423, Strengthening Federal Environmental, Energy, and Transportation Management, dated January 24, 2007, and EO 13514, Federal Leadership in Environmental, Energy, and Economic Performance, dated October 5, 2009, require federal agencies to comply with the Guiding Principles for High Performance and Sustainable Buildings (Guiding Principles). The Guiding Principles establish building standards for:

- Integrated design,
- Energy performance,
- Water conservation,
- Indoor environmental quality, and
- Building materials.

The Interagency Sustainability Working Group (ISWG), established by EO 13423, issued the current version of the Guiding Principles on December 1, 2008, which includes standards for building construction and major renovation, as well as standards for building operation and maintenance (HPSB Appendix).

The EOs direct the FAA to incorporate the HPSB Guiding Principles into 15% of its existing owned and directly leased occupied building inventory greater than 5,000 square feet (it should be noted that Energy Independence and Security Act (EISA) requires Energy Star labeled buildings for 10,000 gross square feet or above) by 2015 and demonstrate annual progress thereafter toward 100% conformance. FAA's strategy to meet this mandate includes acquiring green leases.

New or succeeding lease space and space which FAA shall continue to occupy through a succeeding lease must meet the Guiding Principles (HPSB Appendix). A RECO can identify buildings that will meet the Guiding Principles by looking for Energy Star labeled buildings or buildings that have received Leadership in Energy and Environmental Design (LEED) certification. A RECO may pay more for sustainable lease spaces to the extent that funds are available. The space acquisition shall be considered financially feasible if the rental offer for space in a conforming building is no more than 10% greater than the market rate for a comparable conventional building in the same rental market. If the market does not support buildings that meet the Guiding Principles (e.g., the RECO is unable to obtain sufficient competition for HPSBs, the offered rental rates are excessive, etc.), then the RECO must provide written justification for the inability to meet the Guiding Principles in the Negotiator Report. Notwithstanding the foregoing, the RECO shall include within the solicitation all AMS provisions applicable to the acquisition of sustainable or "green" space.

2. Energy Star Buildings

As of December 19, 2010, Section 435 of the EISA mandates that, if financially feasible, all new space must be acquired in buildings having either an Energy Star label for the most recent year, or a commitment from the Lessor to earn the Energy Star label within one year of signing the lease. The acquisition shall be considered financially feasible if the proposed rental is no more than 10% over the market rate for a comparable building in the same rental market. Regardless of whether or not acquiring space in an Energy Star designated building is financially feasible, the RECO shall incorporate all AMS provisions applicable to the acquisition of sustainable or "green space", which include the provisions for Energy Star designation, into the Solicitation for Offer (SFO).

In addition to financial infeasibility, there are four other exemptions to the requirement for the Energy Star label that are allowable. They are the following:

1. No space is offered in a building with an Energy Star label in the delineated area that meets the functional requirements of an agency, including location needs;
2. The agency will remain in a building they currently occupy;
3. The lease will be in a building of historical, architectural, or cultural significance verified by listing or eligibility for listing on the National Register of Historic Places; or
4. The lease is for no more than 10,000 gross square feet of space.

The determination of whether or not a particular building meets the requirements for an exception to the requirement for an Energy Star label, shall be based upon a review of supporting documentation submitted to the RECO by the Lessor/Offeror. If the documentation submitted is

determined sufficient to establish such an exception, the Lessor/Offeror shall be required to renovate the subject building with all energy efficiency and conservation improvements that would be cost effective over the life of the lease. As mentioned in the HPSB Guidance, a RECO may pay more for sustainable lease spaces to the extent that funds are available. The acquisition of space that complies shall be considered financially feasible if the rental offered for a conforming building is no more than 10% over the market rate for a comparable conventional building in the same rental market. As stated previously, if unable to obtain space designated as Energy Star compliant, the RECO must provide written justification for such inability in the Negotiator Report.

B. Applicability of Sustainability Requirements to FAA Space Acquisition

The requirements of this section apply to all FAA owned and leased buildings reported in the Real Estate Management System (REMS). The FAA has updated its inventory of buildings and is working towards meeting the EO 13423 and 13514 and EISA requirements regarding High Performance Sustainable Buildings (HPSB). HPSB requirements apply to space and buildings having the following characteristics: 1) owned or leased; 2) occupied; 3) and over 5,000 square feet (Guiding Principles).

C. Laws, Executive Orders, Regulations and Other Policies Applicable to Sustainability

Legal and other programmatic requirements for the acquisition of space in sustainable buildings include:

1. Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, 74 FR 52117, October 5, 2009
2. Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, 72 FR 2763, January 23, 2007
3. Office of Management and Budget (OMB) Circular No. A-11, June 27, 2002
4. Federal Leadership in High Performance and Sustainable Buildings Memorandum of Understanding
5. Energy Policy Act (EPA) of 2005, Publ.L.No.109-58
6. Energy Independence and Security Act of 2007, Pub.L.No.110-140
7. Implementing Instructions - Sustainable Locations for Federal Facilities
8. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
9. National Environmental Policy Act (NEPA)
10. Resource Conservation and Recovery Act (RCRA)
11. Knowledge Services Network (KSN)
12. FedCenter and The Whole Building Design Guide (WBDG) Websites

D. Definitions

See Appendix E to this Guidance for a full listing of terms and definitions applicable to HPSB. Set forth below are some of the most commonly used terms and definitions applicable to sustainability.

- **Energy Intensity** - energy consumption per square foot of building space, including industrial or laboratory facilities (EO 13514, Section 19(f)).
- **Environmental** - environmental aspects of internal agency operations and activities, including those aspects related to energy and transportation functions (EO 13514, Section 19(g)).
- **Sustainability** - to create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirement of present and future generations of Americans (EO 13423, Section 9 and EO 13514, Section 19(l)).

E. Operation and Maintenance

The Guiding Principles (HPSB APPENDIX) include standards for both building construction and major renovation as well as for the operation and maintenance (O&M) of buildings and space. The O&M program for leased buildings should be monitored by the Lessor throughout the lease term and O&M information provided to the RECO to ensure it conforms to the O&M requirements of the Guiding Principles.

F. Tracking and Reporting Sustainability Compliance

Tracking and reporting on agency progress towards reaching the sustainable buildings goals is a requirement of EOs 13423 and 13514 and EISA 432. To leverage existing resources related to real property management, sustainable building inventory data is reported in the Federal Real Property Profile (FRPP) database via FRPP data element #25 "Sustainability". In order to select "Yes (1)" for data element #25, the new, existing or non-GSA leased building must meet the Guiding Principles (HPSB APPENDIX). The rate of building conformance to the Guiding Principles is reported by the Department of Transportation (DOT) to Office of Management and Budget (OMB) annually with mid-year progress updates via the Sustainability Scorecard.

1. Tools to use for Reporting:

The following are the systems and tools that must be used to report data on HPSB in order to meet the requirements of EOs 13514 and 13423 and EISA:

1. Real Estate Management System (REMS) - Submit the Federal Real Property Portfolio (FRPP) annually as well as additional information on buildings that meet the criteria for HPSB. Users are assigned and managed by ALO-300.
2. Energy Star Portfolio Manager - Generates a Guiding Principle checklist for reporting HPSBs for FAA. For all leased buildings, the Lessor is required to use this tool to track progress towards meeting the Guiding Principles. The Energy Star Portfolio Manager GP checklist should be provided to the RECO.

Also, the Energy Star Portfolio Manager can help FAA track and report on its progress in acquiring leased Energy Star buildings. Federal agencies assessing their existing building inventory against the Guiding Principles for HPSBs can use the Guiding Principles Checklist. Access the Guiding Principles Checklist from the [Energy Star](#) website.

New Content: Real Estate Guidance :

Section 2.4.16 : Environmental / Sustainability / Energy

A. Guidance

FAA is required to significantly reduce the negative environmental effects of constructing, leasing, operating and maintaining and demolishing buildings. Some of the potential results from successful reduction of negative environmental effects may include: 1) a reduction in total life-cycle costs of facilities through the improvement of energy efficiency and the implementation of alternative energy technologies; 2) a reduction in total adverse environmental impacts by the reduction of carbon emissions; and 3) an enhancement of the safety, health and productivity of FAA employees through the reduction in the use of toxic chemicals in buildings.

1. High Performance Sustainable Buildings

Executive Order (EO) 13423, Strengthening Federal Environmental, Energy, and Transportation Management, dated January 24, 2007, and EO 13514, Federal Leadership in Environmental, Energy, and Economic Performance, dated October 5, 2009, require federal agencies to comply with the Guiding Principles for High Performance and Sustainable Buildings (Guiding Principles). The Guiding Principles establish building standards for:

- Integrated design,
- Energy performance,
- Water conservation,
- Indoor environmental quality, and
- Building materials.

The Interagency Sustainability Working Group (ISWG), established by EO 13423, issued the current version of the Guiding Principles on December 1, 2008, which includes standards for building construction and major renovation, as well as standards for building operation and maintenance (HPSB Appendix).

The EOs direct the FAA to incorporate the HPSB Guiding Principles into 15% of its existing owned and directly leased occupied building inventory greater than 5,000 square feet (it should be noted that Energy Independence and Security Act (EISA) requires Energy Star labeled buildings for 10,000 gross square feet or above) by 2015 and demonstrate annual progress thereafter toward 100% conformance. FAA's strategy to meet this mandate includes acquiring green leases.

New or succeeding lease space and space which FAA shall continue to occupy through a succeeding lease must meet the Guiding Principles (HPSB Appendix). A RECO can identify buildings that will meet the Guiding Principles by looking for Energy Star labeled buildings or buildings that have received Leadership in Energy and Environmental Design (LEED) certification. A RECO may pay more for sustainable lease spaces to the extent that funds are available. The space acquisition shall be considered financially feasible if the rental offer for space in a conforming building is no more than 10% greater than the market rate for a

comparable conventional building in the same rental market. If the market does not support buildings that meet the Guiding Principles (e.g., the RECO is unable to obtain sufficient competition for HPSBs, the offered rental rates are excessive, etc.), then the RECO must provide written justification for the inability to meet the Guiding Principles in the Negotiator Report. Notwithstanding the foregoing, the RECO shall include within the solicitation all AMS provisions applicable to the acquisition of sustainable or "green" space.

2. Energy Star Buildings

As of December 19, 2010, Section 435 of the EISA mandates that, if financially feasible, all new space must be acquired in buildings having either an Energy Star label for the most recent year, or a commitment from the Lessor to earn the Energy Star label within one year of signing the lease. The acquisition shall be considered financially feasible if the proposed rental is no more than 10% over the market rate for a comparable building in the same rental market. Regardless of whether or not acquiring space in an Energy Star designated building is financially feasible, the RECO shall incorporate all AMS provisions applicable to the acquisition of sustainable or "green space", which include the provisions for Energy Star designation, into the Solicitation for Offer (SFO).

In addition to financial infeasibility, there are four other exemptions to the requirement for the Energy Star label that are allowable. They are the following:

1. No space is offered in a building with an Energy Star label in the delineated area that meets the functional requirements of an agency, including location needs;
2. The agency will remain in a building they currently occupy;
3. The lease will be in a building of historical, architectural, or cultural significance verified by listing or eligibility for listing on the National Register of Historic Places; or
4. The lease is for no more than 10,000 gross square feet of space.

The determination of whether or not a particular building meets the requirements for an exception to the requirement for an Energy Star label, shall be based upon a review of supporting documentation submitted to the RECO by the Lessor/Offeror. If the documentation submitted is determined sufficient to establish such an exception, the Lessor/Offeror shall be required to renovate the subject building with all energy efficiency and conservation improvements that would be cost effective over the life of the lease. As mentioned in the HPSB Guidance, a RECO may pay more for sustainable lease spaces to the extent that funds are available. The acquisition of space that complies shall be considered financially feasible if the rental offered for a conforming building is no more than 10% over the market rate for a comparable conventional building in the same rental market. As stated previously, if unable to obtain space designated as Energy Star compliant, the RECO must provide written justification for such inability in the Negotiator Report.

B. Applicability of Sustainability Requirements to FAA Space Acquisition

The requirements of this section apply to all FAA owned and leased buildings reported in the Real Estate Management System (REMS). The FAA has updated its inventory of buildings and

is working towards meeting the EO 13423 and 13514 and EISA requirements regarding High Performance Sustainable Buildings (HPSB). HPSB requirements apply to space and buildings having the following characteristics: 1) owned or leased and 2) over 5,000 square feet (Guiding Principles).

C. Laws, Executive Orders, Regulations and Other Policies Applicable to Sustainability

Legal and other programmatic requirements for the acquisition of space in sustainable buildings include:

1. Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, 74 FR 52117, October 5, 2009
2. Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, 72 FR 2763, January 23, 2007
3. Office of Management and Budget (OMB) Circular No. A-11, June 27, 2002
4. Federal Leadership in High Performance and Sustainable Buildings Memorandum of Understanding
5. Energy Policy Act (EPA) of 2005, Publ.L.No.109-58
6. Energy Independence and Security Act of 2007, Pub.L.No.110-140
7. Implementing Instructions - Sustainable Locations for Federal Facilities
8. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
9. National Environmental Policy Act (NEPA)
10. Resource Conservation and Recovery Act (RCRA)
11. FAA Order 1050.19B, Environmental Due Diligence Audits (EDDA) in the Conduct of FAA Real Property Transactions
12. Knowledge Services Network (KSN)
13. FedCenter and The Whole Building Design Guide (WBDG) Websites

Question and Answers concerning FAA Order 1050.19B

Q 1: Is the RECO required to obtain a memorandum as stated in 1050.19B 1-9b(3) or an EDDA if the RECO is executing a new or succeeding lease or exercising an option to renew the land lease?

A 1: At this time and until further notice of a change to the FAA Order 1050.19B , the requirements to obtain an EDDA, EDDA waiver, or memorandum remain in place and are the responsibility of the service/office requester to provide to the RECO. If the memorandum is not provided, the RECO can cite in the Negotiator Report that the EDDA memorandum required for the lease renewal transaction was not received from the LOB requester per FAA order 1050.19B 1-9b(3).

D. Definitions

See Appendix E to this Guidance for a full listing of terms and definitions applicable to HPSB. Set forth below are some of the most commonly used terms and definitions applicable to sustainability.

- **Energy Intensity** - energy consumption per square foot of building space, including industrial or laboratory facilities (EO 13514, Section 19(f)).
- **Environmental** - environmental aspects of internal agency operations and activities, including those aspects related to energy and transportation functions (EO 13514, Section 19(g)).
- **Sustainability** - to create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirement of present and future generations of Americans (EO 13423, Section 9 and EO 13514, Section 19(l)).

E. Operation and Maintenance

The Guiding Principles (HPSB APPENDIX) include standards for both building construction and major renovation as well as for the operation and maintenance (O&M) of buildings and space. The O&M program for leased buildings should be monitored by the Lessor throughout the lease term and O&M information provided to the RECO to ensure it conforms to the O&M requirements of the Guiding Principles.

F. Tracking and Reporting Sustainability Compliance

Tracking and reporting on agency progress towards reaching the sustainable buildings goals is a requirement of EOs 13423 and 13514 and EISA 432. To leverage existing resources related to real property management, sustainable building inventory data is reported in the Federal Real Property Profile (FRPP) database via FRPP data element #25 "Sustainability". In order to select "Yes (1)" for data element #25, the new, existing or non-GSA leased building must meet the Guiding Principles (HPSB APPENDIX). The rate of building conformance to the Guiding Principles is reported by the Department of Transportation (DOT) to Office of Management and Budget (OMB) annually with mid-year progress updates via the Sustainability Scorecard.

1. Tools to use for Reporting:

The following are the systems and tools that must be used to report data on HPSB in order to meet the requirements of EOs 13514 and 13423 and EISA:

1. Real Estate Management System (REMS) - Submit the Federal Real Property Portfolio (FRPP) annually as well as additional information on buildings that meet the criteria for HPSB. Users are assigned and managed by ALO-300.
2. Energy Star Portfolio Manager - Generates a Guiding Principle checklist for reporting HPSBs for FAA. For all leased buildings, the Lessor is required to use this tool to track progress towards meeting the Guiding Principles. The Energy Star Portfolio Manager GP checklist should be provided to the RECO.

Also, the Energy Star Portfolio Manager can help FAA track and report on its progress in acquiring leased Energy Star buildings. Federal agencies assessing their existing building inventory against the Guiding Principles for HPSBs can use the Guiding Principles Checklist. Access the Guiding Principles Checklist from the [Energy Star](#) website.

Red Line Content: Real Estate Guidance :

Section 2.4.16 : Environmental / Sustainability / Energy

2.4.16 - Environmental/Sustainability/Energy

A. Guidance

FAA is required to significantly reduce the negative environmental effects of constructing, leasing, operating and maintaining and demolishing buildings. Some of the potential results from successful reduction of negative environmental effects may include: 1) a reduction in total life-cycle costs of facilities through the improvement of energy efficiency and the implementation of alternative energy technologies; 2) a reduction in total adverse environmental impacts by the reduction of carbon emissions; and 3) an enhancement of the safety, health and productivity of FAA employees through the reduction in the use of toxic chemicals in buildings.

1. High Performance Sustainable Buildings

Executive Order (EO) 13423, Strengthening Federal Environmental, Energy, and Transportation Management, dated January 24, 2007, and EO 13514, Federal Leadership in Environmental, Energy, and Economic Performance, dated October 5, 2009, require federal agencies to comply with the Guiding Principles for High Performance and Sustainable Buildings (Guiding Principles). The Guiding Principles establish building standards for:

- Integrated design,
- Energy performance,
- Water conservation,
- Indoor environmental quality, and
- Building materials.

The Interagency Sustainability Working Group (ISWG), established by EO 13423, issued the current version of the Guiding Principles on December 1, 2008, which includes standards for building construction and major renovation, as well as standards for building operation and maintenance (HPSB Appendix).

The EOs direct the FAA to incorporate the HPSB Guiding Principles into 15% of its existing owned and directly leased occupied building inventory greater than 5,000 square feet (it should be noted that Energy Independence and Security Act (EISA) requires Energy Star labeled buildings for 10,000 gross square feet or above) by 2015 and demonstrate annual progress thereafter toward 100% conformance. FAA's strategy to meet this mandate includes acquiring green leases.

New or succeeding lease space and space which FAA shall continue to occupy through a succeeding lease must meet the Guiding Principles (HPSB Appendix). A RECO can identify buildings that will meet the Guiding Principles by looking for Energy Star labeled buildings or buildings that have received Leadership in Energy and Environmental Design (LEED) certification. A RECO may pay more for sustainable lease spaces to the extent that funds are

available. The space acquisition shall be considered financially feasible if the rental offer for space in a conforming building is no more than 10% greater than the market rate for a comparable conventional building in the same rental market. If the market does not support buildings that meet the Guiding Principles (e.g., the RECO is unable to obtain sufficient competition for HPSBs, the offered rental rates are excessive, etc.), then the RECO must provide written justification for the inability to meet the Guiding Principles in the Negotiator Report. Notwithstanding the foregoing, the RECO shall include within the solicitation all AMS provisions applicable to the acquisition of sustainable or "green" space.

2. Energy Star Buildings

As of December 19, 2010, Section 435 of the EISA mandates that, if financially feasible, all new space must be acquired in buildings having either an Energy Star label for the most recent year, or a commitment from the Lessor to earn the Energy Star label within one year of signing the lease. The acquisition shall be considered financially feasible if the proposed rental is no more than 10% over the market rate for a comparable building in the same rental market. Regardless of whether or not acquiring space in an Energy Star designated building is financially feasible, the RECO shall incorporate all AMS provisions applicable to the acquisition of sustainable or "green space", which include the provisions for Energy Star designation, into the Solicitation for Offer (SFO).

In addition to financial infeasibility, there are four other exemptions to the requirement for the Energy Star label that are allowable. They are the following:

1. No space is offered in a building with an Energy Star label in the delineated area that meets the functional requirements of an agency, including location needs;
2. The agency will remain in a building they currently occupy;
3. The lease will be in a building of historical, architectural, or cultural significance verified by listing or eligibility for listing on the National Register of Historic Places; or
4. The lease is for no more than 10,000 gross square feet of space.

The determination of whether or not a particular building meets the requirements for an exception to the requirement for an Energy Star label, shall be based upon a review of supporting documentation submitted to the RECO by the Lessor/Offeror. If the documentation submitted is determined sufficient to establish such an exception, the Lessor/Offeror shall be required to renovate the subject building with all energy efficiency and conservation improvements that would be cost effective over the life of the lease. As mentioned in the HPSB Guidance, a RECO may pay more for sustainable lease spaces to the extent that funds are available. The acquisition of space that complies shall be considered financially feasible if the rental offered for a conforming building is no more than 10% over the market rate for a comparable conventional building in the same rental market. As stated previously, if unable to obtain space designated as Energy Star compliant, the RECO must provide written justification for such inability in the Negotiator Report.

B. Applicability of Sustainability Requirements to FAA Space Acquisition

The requirements of this section apply to all FAA owned and leased buildings reported in the Real Estate Management System (REMS). The FAA has updated its inventory of buildings and is working towards meeting the EO 13423 and 13514 and EISA requirements regarding High Performance Sustainable Buildings (HPSB). HPSB requirements apply to space and buildings having the following characteristics: 1) owned or leased; ~~2) occupied~~ and; ~~3) and~~ over 5,000 square feet (Guiding Principles).

C. Laws, Executive Orders, Regulations and Other Policies Applicable to Sustainability

Legal and other programmatic requirements for the acquisition of space in sustainable buildings include:

1. Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, 74 FR 52117, October 5, 2009
2. Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, 72 FR 2763, January 23, 2007
3. Office of Management and Budget (OMB) Circular No. A-11, June 27, 2002
4. Federal Leadership in High Performance and Sustainable Buildings Memorandum of Understanding
5. Energy Policy Act (EPA) of 2005, Publ.L.No.109-58
6. Energy Independence and Security Act of 2007, Pub.L.No.110-140
7. Implementing Instructions - Sustainable Locations for Federal Facilities
8. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
9. National Environmental Policy Act (NEPA)
10. Resource Conservation and Recovery Act (RCRA)
- 11. FAA Order 1050.19B, Environmental Due Diligence Audits (EDDA) in the Conduct of FAA Real Property Transactions**
12. Knowledge Services Network (KSN)
13. FedCenter and The Whole Building Design Guide (WBDG) Websites

Question and Answers concerning FAA Order 1050.19B

Q 1: Is the RECO required to obtain a memorandum as stated in 1050.19B 1-9b(3) or an EDDA if the RECO is executing a new or succeeding lease or exercising an option to renew the land lease?

A 1: At this time and until further notice of a change to the FAA Order 1050.19B, the requirements to obtain an EDDA, EDDA waiver, or memorandum remain in place and are the responsibility of the service/office requester to provide to the RECO. If the memorandum is not provided, the RECO can cite in the Negotiator Report that the EDDA memorandum required for the lease renewal transaction was not received from the LOB requester per FAA order 1050.19B 1-9b(3).

D. Definitions

See Appendix E to this Guidance for a full listing of terms and definitions applicable to HPSB. Set forth below are some of the most commonly used terms and definitions applicable to sustainability.

- **Energy Intensity** - energy consumption per square foot of building space, including industrial or laboratory facilities (EO 13514, Section 19(f)).
- **Environmental** - environmental aspects of internal agency operations and activities, including those aspects related to energy and transportation functions (EO 13514, Section 19(g)).
- **Sustainability** - to create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirement of present and future generations of Americans (EO 13423, Section 9 and EO 13514, Section 19(l)).

E. Operation and Maintenance

The Guiding Principles (HPSB APPENDIX) include standards for both building construction and major renovation as well as for the operation and maintenance (O&M) of buildings and space. The O&M program for leased buildings should be monitored by the Lessor throughout the lease term and O&M information provided to the RECO to ensure it conforms to the O&M requirements of the Guiding Principles.

F. Tracking and Reporting Sustainability Compliance

Tracking and reporting on agency progress towards reaching the sustainable buildings goals is a requirement of EOs 13423 and 13514 and EISA 432. To leverage existing resources related to real property management, sustainable building inventory data is reported in the Federal Real Property Profile (FRPP) database via FRPP data element #25 "Sustainability". In order to select "Yes (1)" for data element #25, the new, existing or non-GSA leased building must meet the Guiding Principles (HPSB APPENDIX). The rate of building conformance to the Guiding Principles is reported by the Department of Transportation (DOT) to Office of Management and Budget (OMB) annually with mid-year progress updates via the Sustainability Scorecard.

1. Tools to use for Reporting:

The following are the systems and tools that must be used to report data on HPSB in order to meet the requirements of EOs 13514 and 13423 and EISA:

1. Real Estate Management System (REMS) - Submit the Federal Real Property Portfolio (FRPP) annually as well as additional information on buildings that meet the criteria for HPSB. Users are assigned and managed by ALO-300.
2. Energy Star Portfolio Manager - Generates a Guiding Principle checklist for reporting HPSBs for FAA. For all leased buildings, the Lessor is required to use this tool to track progress towards meeting the Guiding Principles. The Energy Star Portfolio Manager GP checklist should be provided to the RECO.

Also, the Energy Star Portfolio Manager can help FAA track and report on its progress in acquiring leased Energy Star buildings. Federal agencies assessing their existing building inventory against the Guiding Principles for HPSBs can use the Guiding Principles Checklist. Access the Guiding Principles Checklist from the [Energy Star](#) website.

Section 7.4 : Real Property Actions Coordinated with the Office of Chief Counsel (AGC-500) or Region or Center Counsel

Old Content: Real Estate Guidance :

Section 7.4 : Real Property Actions Coordinated with the Office of Chief Counsel (AGC-500) or Region or Center Counsel

The following actions will be reviewed in accordance with the legal coordination policy as set forth in 1.2.15 and 4.2.3.1 of AMS policy. Legal coordination is required for all non-competitive real property acquisitions exceeding a total value of \$10,000 and for all other real property acquisitions, including, but not limited to, new or succeeding leases, lease renewals, and lease modifications having a total value over \$100,000; all condemnations, purchases and disposals of interests in real property, regardless of total value; and all additions and revisions, other than those revisions to correct typographical errors, to the published real property document provisions/clauses.

a. For purposes of this policy, the following would be considered "competitive real property acquisitions;" however, this list is not all-inclusive, and RECOs are advised to consult with Counsel if they are uncertain whether a real property acquisition (e.g., lease for land or space) is competitive:

- The RECO and/or Engineering Section and/or Program Office conducts a site-selection process with initial consideration of multiple (at least 2) sites owned by different entities that are then compared to the requirements of the Program Office and are eliminated from consideration for failing to meet one or more of those requirements ("down-selected"); provided that the RECO receives a written statement from a Source Selection Authority (SSA) or Engineer in the Program Office that includes a discussion of the site needs; the sites surveyed; and the reasons why a site was selected, or conversely, eliminated from consideration; **[NOTE: currently developing form]**
- The RECO conducts a Market Survey for either land or space, completes a cost analysis (including a cost estimate to move a facility and/or equipment), obtains a Business Case, if appropriate, and determines it is in the best interest of the government to renew at an existing location; or
- All land leases with federal entities.

b. If the Real Estate acquisition is considered non-competitive, the RECO must provide either a completed Non-Competitive Determination form, or other written statement justifying the non-competitive acquisition, for Regional or Center Counsel to review in order to determine whether the decision has a rational basis, and is otherwise legally supportable.

c. The following types of real property transactions will be submitted for legal review and concurrence in accordance with the thresholds stated in Section 7.1.

1. Land Acquisition

- All Purchases of land, regardless of dollar value
- Quit Claim Deeds or Warranty Deed-In general, the United States does not accept Quit Claim Deeds, since a Quit Claim Deed does not guarantee that the owner has good and marketable title to the real property being conveyed. However, under certain circumstances; e.g., the Owner is another government entity and has no legal authority to convey real property other than by Quit Claim Deed, FAA may consider accepting a conveyance of real property by Quit Claim Deed.
- Off-airport leases (if the acquisition is non-competitive and valued at more than \$10,000 or is valued at more than \$100,000 and has been acquired competitively)
- On-airport cost leases (if the acquisition is non-competitive and valued at more than \$10,000 or is valued at more than \$100,000 and has been acquired competitively)
- Renewals for both Off and On airport leases
- Space Acquisitions (subject to the thresholds mentioned in Section 7.1)
- Standard leases
- Small leases

2. Other Real Property Actions

All Condemnation actions, regardless of dollar value

- Acquisition of Eminent Domain
- Declaration of Taking

All Disposal actions, regardless of dollar value

- All disposal actions where FAA will be selling real property assets to a non-governmental entity and/or transfer agreements.

3. Supplemental Lease Agreements ("SLA") that meet the review thresholds are required to be submitted for legal review, unless the SLA is solely for the purpose of implementing rental increases that were negotiated during the initial acquisition, or to exercise an option to extend the term of lease that was negotiated during the initial acquisition. However, no option to extend the lease term may be exercised that would result in a term in excess of 20 years. In addition, if the SLA, although primarily executed to implement a previously negotiated rental increase or term extension, includes an amendment or modification to any other provisions or requirements of the underlying lease, the SLA must be submitted for legal review and concurrence.

4. **In addition**, any proposed deviations from, or additions to, the printed templates, including, but not limited to, the MOA, Outgrant, Antenna and Rack Space Lease, Utility Contracts and the Lease forms shall be approved by the Regional or Center Counsel prior to execution by the

RECO. Please note for all Utility contracts, the RECO will use discretion in requesting reviews if the deviation would clearly impact the rights and responsibilities of the parties.

- A determination to renew a lease for land if the RECO documents that no suitable alternative exists for this site and/or the facility and/or equipment cannot be relocated without an expense to the FAA that would outweigh the benefits of relocation

Any permanent, or universal, changes to the real estate clauses or forms will require the approval of the Assistant Chief Counsel for Acquisition and Commercial Law, AGC-520 and Planning, Policy and Budget Division, ALO-200.

New Content: Real Estate Guidance :

Section 7.4 : Real Property Actions Coordinated with the Office of Chief Counsel (AGC-500) or Region or Center Counsel

The following actions will be reviewed in accordance with the legal coordination policy as set forth in 1.2.15 and 4.2.3.1 of AMS policy. Legal coordination is required for all non-competitive real property acquisitions exceeding a total value of \$10,000 and for all other real property acquisitions, including, but not limited to, new or succeeding leases, lease renewals, and lease modifications having a total value over \$100,000; all condemnations, purchases and disposals of interests in real property, regardless of total value; and all additions and revisions, other than those revisions to correct typographical errors, to the published real property document provisions/clauses.

a. For purposes of this policy, the following would be considered "competitive real property acquisitions;" however, this list is not all-inclusive, and RECOs are advised to consult with Counsel if they are uncertain whether a real property acquisition (e.g., lease for land or space) is competitive:

- The RECO and/or Engineering Section and/or Program Office conducts a site-selection process with initial consideration of multiple (at least 2) sites owned by different entities that are then compared to the requirements of the Program Office and are eliminated from consideration for failing to meet one or more of those requirements ("down-selected"); provided that the RECO receives a written statement from a Source Selection Authority (SSA) or Engineer in the Program Office that includes a discussion of the site needs; the sites surveyed; and the reasons why a site was selected, or conversely, eliminated from consideration; See Single Source Justification Template.
- The RECO conducts a Market Survey for either land or space, completes a cost analysis (including a cost estimate to move a facility and/or equipment), obtains a Business Case, if appropriate, and determines it is in the best interest of the government to renew at an existing location; or
- All land leases with federal entities.

b. If the Real Estate acquisition is considered non-competitive, the RECO must provide a completed Single Source Justification Form for Regional or Center Counsel to review in order to determine whether the decision has a rational basis, and is otherwise legally supportable.

- Legal review is not required when exercising an option to renew or executing a succeeding lease at the same location where the RECO is either establishing a new lease term and/or a new the rental price (as agreed in the previously negotiated option or negotiated new price in the succeeding lease) and no material (impact on price, delivery, performance, or scope of the lease) provision is changed. In such instances, the RECO is not required to complete the Single Source Justification Form. Examples of material change include adding more land to the lease, modifications to rental rates, and changes to access rights. For additional clarification, please consult Regional Counsel.

c. The following types of real property transactions will be submitted for legal review and concurrence in accordance with the thresholds stated in Section 7.1.

1. Land Acquisition

- All Purchases of land, regardless of dollar value
- Quit Claim Deeds or Warranty Deed-In general, the United States does not accept Quit Claim Deeds, since a Quit Claim Deed does not guarantee that the owner has good and marketable title to the real property being conveyed. However, under certain circumstances; e.g., the Owner is another government entity and has no legal authority to convey real property other than by Quit Claim Deed, FAA may consider accepting a conveyance of real property by Quit Claim Deed.
- Off-airport leases (if the acquisition is non-competitive and valued at more than \$10,000 or is valued at more than \$100,000 and has been acquired competitively)
- On-airport cost leases (if the acquisition is non-competitive and valued at more than \$10,000 or is valued at more than \$100,000 and has been acquired competitively)
- Renewals for both Off and On airport leases
- Space Acquisitions (subject to the thresholds mentioned in Section 7.1)
- Standard leases
- Small leases

2. Other Real Property Actions

All Condemnation actions, regardless of dollar value

- Acquisition of Eminent Domain
- Declaration of Taking

All Disposal actions, regardless of dollar value

- All disposal actions where FAA will be selling real property assets to a non-governmental entity and/or transfer agreements.

3. Supplemental Lease Agreements ("SLA") that meet the review thresholds are required to be submitted for legal review, unless the SLA is solely for the purpose of implementing rental increases that were negotiated during the initial acquisition, or to exercise an option to extend the term of lease that was negotiated during the initial acquisition. However, no option to extend

the lease term may be exercised that would result in a term in excess of 20 years. In addition, if the SLA, although primarily executed to implement a previously negotiated rental increase or term extension, includes an amendment or modification to any other provisions or requirements of the underlying lease, the SLA must be submitted for legal review and concurrence.

4. **In addition**, any proposed deviations from, or additions to, the printed templates, including, but not limited to, the MOA, Outgrant, Antenna and Rack Space Lease, Utility Contracts and the Lease forms shall be approved by the Regional or Center Counsel prior to execution by the RECO. Please note for all Utility contracts, the RECO will use discretion in requesting reviews if the deviation would clearly impact the rights and responsibilities of the parties.

- A determination to renew a lease for land if the RECO documents that no suitable alternative exists for this site and/or the facility and/or equipment cannot be relocated without an expense to the FAA that would outweigh the benefits of relocation

Any permanent, or universal, changes to the real estate clauses or forms will require the approval of the Assistant Chief Counsel for Acquisition and Commercial Law, AGC-520 and Planning, Policy and Budget Division, ALO-200.

Red Line Content: Real Estate Guidance :

Section 7.4 : Real Property Actions Coordinated with the Office of Chief Counsel (AGC-500) or Region or Center Counsel

The following actions will be reviewed in accordance with the legal coordination policy as set forth in 1.2.15 and 4.2.3.1 of AMS policy. Legal coordination is required for all non-competitive real property acquisitions exceeding a total value of \$10,000 and for all other real property acquisitions, including, but not limited to, new or succeeding leases, lease renewals, and lease modifications having a total value over \$100,000; all condemnations, purchases and disposals of interests in real property, regardless of total value; and all additions and revisions, other than those revisions to correct typographical errors, to the published real property document provisions/clauses.

a. For purposes of this policy, the following would be considered "competitive real property acquisitions;" however, this list is not all-inclusive, and RECOs are advised to consult with Counsel if they are uncertain whether a real property acquisition (e.g., lease for land or space) is competitive:

- The RECO and/or Engineering Section and/or Program Office conducts a site-selection process with initial consideration of multiple (at least 2) sites owned by different entities that are then compared to the requirements of the Program Office and are eliminated from consideration for failing to meet one or more of those requirements ("down-selected"); provided that the RECO receives a written statement from a Source Selection Authority (SSA) or Engineer in the Program Office that includes a discussion of the site needs; the sites surveyed; and the reasons why a site was selected, or conversely, eliminated from consideration; ~~[NOTE: See currently developing Single Source form]~~ Justification Template.

- The RECO conducts a Market Survey for either land or space, completes a cost analysis (including a cost estimate to move a facility and/or equipment), obtains a Business Case, if appropriate, and determines it is in the best interest of the government to renew at an existing location; or
- All land leases with federal entities.

b. If the Real Estate acquisition is considered non-competitive, the RECO must provide ~~either a completed Non-Competitive Determination form, or other written statement justifying~~ Single the Source non-competitive Justification acquisition, Form for Regional or Center Counsel to review in order to determine whether the decision has a rational basis, and is otherwise legally supportable.

- *Legal review is not required when exercising an option to renew or executing a succeeding lease at the same location where the RECO is either establishing a new lease term and/or a new the rental price (as agreed in the previously negotiated option or negotiated new price in the succeeding lease) and no material (impact on price, delivery, performance, or scope of the lease) provision is changed. In such instances, the RECO is not required to complete the Single Source Justification Form. Examples of material change include adding more land to the lease, modifications to rental rates, and changes to access rights. For additional clarification, please consult Regional Counsel.*

c. The following types of real property transactions will be submitted for legal review and concurrence in accordance with the thresholds stated in Section 7.1.

1. Land Acquisition

- All Purchases of land, regardless of dollar value
- Quit Claim Deeds or Warranty Deed-In general, the United States does not accept Quit Claim Deeds, since a Quit Claim Deed does not guarantee that the owner has good and marketable title to the real property being conveyed. However, under certain circumstances; e.g., the Owner is another government entity and has no legal authority to convey real property other than by Quit Claim Deed, FAA may consider accepting a conveyance of real property by Quit Claim Deed.
- Off-airport leases (if the acquisition is non-competitive and valued at more than \$10,000 or is valued at more than \$100,000 and has been acquired competitively)
- On-airport cost leases (if the acquisition is non-competitive and valued at more than \$10,000 or is valued at more than \$100,000 and has been acquired competitively)
- Renewals for both Off and On airport leases
- Space Acquisitions (subject to the thresholds mentioned in Section 7.1)
- Standard leases
- Small leases

2. Other Real Property Actions

All Condemnation actions, regardless of dollar value

FAST Archive 07/2012

CR 12-77A

p. 35

- Acquisition of Eminent Domain
- Declaration of Taking

All Disposal actions, regardless of dollar value

- All disposal actions where FAA will be selling real property assets to a non-governmental entity and/or transfer agreements.

3. Supplemental Lease Agreements ("SLA") that meet the review thresholds are required to be submitted for legal review, unless the SLA is solely for the purpose of implementing rental increases that were negotiated during the initial acquisition, or to exercise an option to extend the term of lease that was negotiated during the initial acquisition. However, no option to extend the lease term may be exercised that would result in a term in excess of 20 years. In addition, if the SLA, although primarily executed to implement a previously negotiated rental increase or term extension, includes an amendment or modification to any other provisions or requirements of the underlying lease, the SLA must be submitted for legal review and concurrence.

4. **In addition**, any proposed deviations from, or additions to, the printed templates, including, but not limited to, the MOA, Outgrant, Antenna and Rack Space Lease, Utility Contracts and the Lease forms shall be approved by the Regional or Center Counsel prior to execution by the RECO. Please note for all Utility contracts, the RECO will use discretion in requesting reviews if the deviation would clearly impact the rights and responsibilities of the parties.

- A determination to renew a lease for land if the RECO documents that no suitable alternative exists for this site and/or the facility and/or equipment cannot be relocated without an expense to the FAA that would outweigh the benefits of relocation

Any permanent, or universal, changes to the real estate clauses or forms will require the approval of the Assistant Chief Counsel for Acquisition and Commercial Law, AGC-520 and Planning, Policy and Budget Division, ALO-200.

Section 7.6 : Real Property Acquisition: Documentation Required to be Submitted for Legal Review

Old Content: Real Estate Guidance :

Section 7.6 : Real Property Acquisition: Documentation Required to be Submitted for Legal Review

The acquisition package submitted for legal review should demonstrate and establish that the acquisition has a legal and rational basis, and, at a minimum, must include the following:

- a. A copy of the Market Survey, if applicable.
- b. A description of the requirement, or Solicitation for Offers (SFO), or other documentation that sets forth the requirements for the project;

- c. If the acquisition is competitive, a detailed statement discussing the acquisition process, which statement may either stand alone, or be included in the Negotiator's Report;
- d. If the acquisition is non-competitive, a statement in support of the non-competitive acquisition, as described above;
- e. If a leasehold acquisition, the final draft of the Lease document, with an explanation of any revisions to the standard clauses, if applicable;
- f. Copies of all RETS notes pertaining to the project, unless the information is included in the Negotiator's Report;
- g. A copy of the Lease versus Purchase Analysis, if applicable;
- h. An appraisal report, if applicable;
- i. A title report, and title insurance binder, if applicable;
- j. If a condemnation, purchase, or any acquisition requiring Chief Financial Officer (CFO) review and approval (any contract having an estimated value of \$10,000,000 or more), a copy of the Business Case prepared by the appropriate office; and
- k. The draft, or executed final version, of the Negotiator's Report.

The Legal Review and Concurrence Form shall be submitted with the other review documentation. The RECO may e-mail a scanned copy of the above-referenced documents to Region and Center Counsel for review.

New Content: Real Estate Guidance :

Section 7.6 : Real Property Acquisition: Documentation Required to be Submitted for Legal Review

The acquisition package submitted for legal review should demonstrate and establish that the acquisition has a legal and rational basis, and, at a minimum, must include the following:

- a. A copy of the Lease versus Purchase Analysis, if applicable;
- b. A copy of the Market Survey analysis or Solicitation for Offers (SFO) evaluation data, if applicable;
- c. A copy of the Chief Financial Officer (CFO) review and approval if estimated value of lease is over \$10,000,000 or more;
- d. A current appraisal report, land survey and title report, if applicable;
- e. A detailed description of the requirement;
- f. The draft, or executed final version, of the Negotiator's Report; and
- g. The final draft of the Lease document, with an explanation of any revisions to the standard clauses, if applicable.

The Legal Review and Concurrence Form shall be submitted with the other review documentation. The RECO may e-mail a scanned copy of the above-referenced documents to Region and Center Counsel for review.

Red Line Content: Real Estate Guidance :

Section 7.6 : Real Property Acquisition: Documentation Required to be Submitted for Legal Review

The acquisition package submitted for legal review should demonstrate and establish that the acquisition has a legal and rational basis, and, at a minimum, must include the following:

- a. -A copy of the ~~Market~~Lease Survey~~versus Purchase Analysis~~, if applicable;~~b.;~~
- ~~b. -A description~~copy of the ~~requirement~~Market Survey analysis or Solicitation for Offers (SFO);~~or other documentation that sets forth the requirements~~evaluation for data, the project~~if applicable~~; ~~c.;~~
- ~~c. A~~ If the acquisition is ~~copy of the Chief~~ competitive~~Financial a~~Officer detailed~~(CFO)~~ statement discussing the acquisition~~review and approval if~~ process~~estimated~~ which statement may either stand ~~value of lease is over~~ alone~~\$10,000,000~~ or be included in the Negotiator's Report~~more~~; ~~d.~~
- ~~d. If the~~A acquisition is ~~current appraisal~~ non-competitive~~report~~, a statement in support~~land~~ of the ~~survey and~~ non-competitive~~title~~ acquisition~~report~~, as described~~if~~ above~~applicable~~; ~~e.~~
- ~~e. If a leasehold acquisition, the final draft of the Lease document, with~~A an explanation~~detailed description~~ of any revisions to the standard clauses, if applicable~~requirement~~; ~~f.~~
- ~~f. Copies of all RETS notes pertaining to the~~The project~~draft~~, unless the~~or~~ information is ~~executed final~~ included~~version~~, in~~of~~ the Negotiator's Report; ~~g. and~~
- ~~g. The~~ A copy~~final draft~~ of the Lease ~~versus Purchase Analysis~~, if applicable; ~~h. An appraisal report, if applicable;~~ ~~i. A title report, and title insurance binder, if applicable;~~ ~~j. If a condemnation, purchase~~document, or any acquisition requiring Chief Financial Officer (CFO) review and approval (any contract having~~with~~ an estimated value of \$10,000,000 or more), a copy~~explanation~~ of the Business Case~~any~~ prepared by~~revisions to~~ the appropriate office; and ~~k. The draft, or executed final~~standard version~~clauses~~, of the Negotiator's ~~if~~ Report~~applicable~~.

The Legal Review and Concurrence Form shall be submitted with the other review documentation. The RECO may e-mail a scanned copy of the above-referenced documents to Region and Center Counsel for review.
