

**Real Estate Guidance - (07/2014)**

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7.4 Real Property Actions Coordinated with the Office of Chief Counsel (AGC-500) or  
Region or Center Counsel Revised 7/2014

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#### **7.4 Real Property Actions Coordinated with the Office of Chief Counsel (AGC-500) or Region or Center Counsel** Revised 7/2014

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 rental price (as agreed in the previously negotiated option or negotiated new price in the succeeding lease) and no material (impact on 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/space to the lease, 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. For purposes of this provision, it is not a deviation if the instructions to the templates give the RECO discretion to remove clauses. 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.