

# CHANGE REQUEST COVER SHEET

**Change Request Number:** 14-09

**Date Received:** 12/18/2013

**Title:** Real Property Guidance Space Changes

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**Name:** Charles Baldwin

**Phone:** 571-205-8427

**Policy OR Guidance:** Guidance

**Section/Text Location Affected:** 1.2, 2.4.5, 2.5

**Summary of Change:** Revisions to Guidance for Rent-Free Space and the clause matrices for Land and Space.

**Reason for Change:** The changes reflect modifications to the guidance for rent free space and adjustments to the land and space clause matrices to be consistent with prior changes to other lease documents.

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

**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)**

**Links for New/Modified Forms (or) Documents (LINK 2)**

**Links for New/Modified Forms (or) Documents (LINK 3)**

**SECTIONS EDITED:**

- Real Estate Guidance :  
**Section 1.2 : Land Clause Matrix** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)
- Real Estate Guidance :  
**Section 2.4.5 : Appendix E: Rent-Free Guidance** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)
- Real Estate Guidance :  
**Section 2.5 : Space Clause Matrix** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)
- Real Estate Guidance :  
**Section 2.4.16 : Environmental / Sustainability / Energy** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)
- Real Estate Guidance :  
**Section 6.2 : Real Estate Contracting Officer/Specialist (RECO/Realty Specialist) Certification** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)
- Real Estate Guidance :  
**Section 6.1 : Introduction** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)
- Real Estate Guidance :  
**Section 6.3.1 : Real Estate Contracting Officer/Specialist (RECO/Realty Specialist) Warrants** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)
- Real Estate Guidance :  
**Section 6.3.2 : Warrant Levels** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)
- Real Estate Guidance :  
**Section 6.3.3 : Maintaining Warrants** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

**SECTIONS EDITED:**

**Section 1.2 : Land Clause Matrix**

**Old Content:** Real Estate Guidance :  
**Section 1.2 : Land Clause Matrix**

**Legend:**

**Mandatory (M)** – When applicable these clauses shall be included in leases/agreements without any changes unless other party is prohibited legally from executing the document with the provision as written. These clauses are either: 1.) mandated by law; 2.) set by legal precedent; 3.) and/or established by FAA policy.

**Recommended (R)** – In general these clauses provide useful protection to the government. These clauses, or a modified version, should be used in all applicable circumstances. The RECO may tailor the clause to meet a specific situation. Changes that have legal impact require region/center legal approval.

**Optional (O)** – The RECO decides whether or not these clauses or a modified version should be included in the lease. Deviations from the suggested wording must have the region/center legal approval, if there is a legal impact.

CLAUSE TITLE	DATE OF CLAUSE	ON AIRPORT	OFF AIRPORT	MEMORANDUM OF AGREEMENT (MOA)	PRESCRIPTION

Anti-Kickback	Oct-96	M	M	M	Insert in all leases IAW 41 U.S.C. 51-58.  In the MOA incorporated by reference.
Assignment of Claims	Oct-96	N/A	R	N/A	Insert in all leases unless the terms of the lease prohibit assignment of claims.
Cancellation	Aug-02	M	M	M	Insert in all leases and MOAs to preserve the Governments rights to terminate for our convenience. In the MOA this clause is inserted in the Terms and Condition clause.
Contractor Identification Number—Data Universal Numbering System (DUNS) Number - Real Property	Jan-13	M	M	N/A	Must be included with SAM Clause above or deleted if CO grants an exception to use of SAM.
Certification of Registration in System for Award Management (SAM)	Jan-13	M	M	N/A	Must be included with SAM Clause above or deleted if CO grants an exception to use of SAM.
Contractor Payment Information – Non-SAM	Jan-13	M*	M*	N/A	*Insert in all leases where the CO has documented and granted an exception to use of SAM per provisions of Guidance Section 3.1.4.1 : System for Award Management (SAM). If this clause is used, delete the following clauses: “System for Award Management - Real Property”, “Contractor Identification Number—Data Universal Numbering System (DUNS) Number - Real Property”, and “Certification of Registration in System for Award Management (SAM)”.
Consideration (Cost)	Aug-02	M	M	N/A	Insert in all leases where we pay money for a lease term. This clause is required by the basic contracting principle that all leases must have clearly defined consideration. The dollar amount represents only the firm term portion of this lease.
Consideration (No Cost)	Aug-02	M	M	M	Insert in all leases where we do not pay money for a lease term or for MOAs. This clause is required by the basic contracting principle that all leases must have clearly defined consideration.
Contract Disputes	Nov-03	M	M	N/A	Insert in all leases to establish the FAA regulations regarding Protests and Disputes under the AMS.
Covenant Against Contingent Fees	Oct-96	M	M	M	Insert in all leases IAW 41 USC 254. For MOA incorporated by reference.
Day-to-Day Lease Extension	Aug-02	O	O	N/A	This clause should be used where the requiring activity desires some flexibility

					for the end date of the lease. If this clause is used in a lease where cost is the consideration or part of the consideration, the total term of the lease, <u>including the total NTE days included in this clause</u> must not exceed the twenty year FAA leasing authority (49 USC 40110). No cost leases can be executed for the expected life of the system supported by the land lease.
Examination of Records	Aug-02	M	M	M	Insert in all leases.
FAA Facilities	Oct-05	N/A	N/A	M	This clause must be inserted in all MOAs. It references the most recent Airport Layout Plan (ALP) and defines the list of facilities placed under this agreement.
Funding Responsibility For Government Facilities	Oct-96	M	N/A	M	This clause must be inserted in all on airport leases. It ensures that the sponsor will pay for the relocation, replacement and/or modification of Government equipment unless the change is specifically requested in writing by the Government.
Hazardous Substance Contamination	May-00	M*	N/A	M	Insert in all <b>on airport</b> leases and MOAs. This clause requires the lessor to hold the Government harmless for environmental contamination found in the property that is not associated with Government activity. Having this clause may allow the requiring office to waive the requirement to conduct an environmental due diligence audit (EDDA) prior to the property transaction (see FAA Order 1050.19B). If the lessor does not agree to this clause, an approved EDDA (or EDDA waiver) must be obtained prior to the real estate transaction.
Interest For Late Payments	Aug-02	N/A	O	N/A	The AMS exempts the FAA from the Prompt Payment Act. However, the RECO may use this clause as an added benefit to the lessor when negotiating an off airport lease. Since airports have an inherent benefit from installed FAA equipment, an added incentive is not needed for on airport leases.
Interference with Government Operations	Oct-96	M	N/A	M	Insert in all <u>on airport</u> leases and MOAs. This clause ensures that the sponsor will conform to the approved airport layout Plan (ALP). The clause does not relieve the RECO of the requirement to obtain real property rights for the technical clear zone.
Lease Succession	Aug-02	M	M	M	Insert in follow-on contracts to track

					continuity of data.
Non-Restoration	Oct-96	M	M	M	<p>Insert in all leases in order to make the Government's intention of not restoring the premises and abandoning the equipment. This clause is needed to clearly convey the Governments intentions and the agreement between the parties upon termination or expiration of the lease. It is the policy of the FAA not to restore.</p> <p>This clause is mandatory for a MOA; however the RECO can remain silent on this clause if the airport sponsor will agree.</p>
Notification of Change in Land Title	Aug-02	M	M	N/A	Insert in all leases. This clause protects the lease rights of the Government in case of change in ownership of the property.
Notices	Oct-96	M	M	M	Insert in all leases and MOAs. This information is needed for contract administration; all contractual communication should be done through these contacts. A change in this information requires a contract modification.
Officials Not to Benefit	Oct-96	M	M	M	Insert in all leases IAW 41 U.S.C. 22
Payment by Electronic Fund Transfer	Jan-13	M	M	N/A	Insert in all "cost" leases IAW 31 U.S.C. 333.
Premises	Aug-02	M	M	N/A	Insert in all leases. This clause is required by the basic contracting principle that all leases must clearly define the leased premises. This should include a description of the leased air rights.
Purpose	Oct-05	N/A	N/A	M	Insert in all MOAs to define the FAA air traffic activities with airport sponsor.
Protest	Nov-03	M	M	N/A	Insert in all leases to establish the FAA regulations regarding Protests and Disputes under the AMS.
Quiet Enjoyment	Oct-96	M	M	N/A	Insert in all leases. This clause is required by the basic contracting principle to protect the FAA's full rights to the property.
Renewal Options	Jul-07	M	M	N/A	Insert in all leases that have Options in order to comply with basic contracting principle that all options must be clearly defined. RECO can modify the clause to reflect the correct number of lease options. NOTE: This clause requires the RECO to provide the lessor 60 days notice of the Government's intent to

					exercise the option or its intent to vacate the premises at the end of the current lease term. It also requires the RECO to send the lessor written documentation of the option exercise; it is our policy that a contract modification would be issued to document that the option has been exercised.
Restoration Clause – Alternate A	Jan-07	O	N/A	O	This is an alternate restoration clause to be used for On-Airport Leases and MOAs. The policy is still not to restore however this clause may be used on a case by case basis when non-restoration is not feasible or appropriate. Also need to get the LOB to provide written concurrence on this alternate clause.
Restoration Clause – Alternate B	Jan-07	N/A	O	N/A	This is an alternate restoration clause to be used for Off-Airport leases. The policy is still not to restore however this clause may be used on a case by case basis when non-restoration is not feasible or appropriate. Also need to get the LOB to provide written concurrence on this alternate clause.
Signature Block	Aug-02	M	M	M	Insert in all leases and MOAs in order to comply with the basic contracting principle that all leases must be signed by authorized parties to the agreement. This clause must be modified to comply with recording requirements of the local jurisdiction, i.e. the local recording office may require the signature to be notarized.
Subordination, Nondisturbance and Attornment	Oct-96	M	M	N/A	Insert in all leases to protect the rights of the FAA under this lease during a subordination, nondisturbance and/or attornment.
System for Award Management - Real Property	Jan-13	M	M	N/A	Insert in all cost leases, unless the RECO grants an exception to use of SAM per provisions of Guidance Section "3.1.4.1 : System for Award Management (SAM)".
Term	Aug-02	M	M	M	Insert in all leases in order to comply with the basic contracting principle that all leases must have a clearly defined term. 1. <u>This clause is used in all firm term leases that will be incrementally funded; this is the preferred type of lease.</u> 2. This clause is also used in leases that are structured with options. In this case, the term set out in this clause is <u>only</u> the firm term part of the lease. NOTE: Leases, where cost is part of the consideration, <u>may not exceed 20 years</u> (including all option periods and the Day-to-Day Lease Extension

					period). However, "no cost leases" can be executed for the expected life of the system supported by the land lease. Delete last sentence for On-Airport is a no cost lease.  Insert in all MOAs, this clause is labeled "Term and Conditions". The term of MOA is to be for the greatest number of years (life expectancy) of a FAA facility.
Title to Improvements	Oct-05	N/A	N/A	M	Insert in all MOAs to define title to improvements.
FORMS	Oct-05	N/A	N/A	M	Any modifications or additions to this list must be signed by the lessor and the FAA.
List of Facilities					

**New Content: Real Estate Guidance :**  
**Section 1.2 : Land Clause Matrix**

**Legend:**

**Mandatory (M)** – When applicable these clauses shall be included in leases/agreements without any changes unless other party is prohibited legally from executing the document with the provision as written. These clauses are either: 1.) mandated by law; 2.) set by legal precedent; 3.) and/or established by FAA policy.

**Recommended (R)** – In general these clauses provide useful protection to the government. These clauses, or a modified version, should be used in all applicable circumstances. The RECO may tailor the clause to meet a specific situation. Changes that have legal impact require region/center legal approval.

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Assignment of Claims	Oct-96	N/A	R	N/A	Insert in all leases unless the terms of the lease prohibit assignment of claims.
Cancellation	Aug-02	M	M	M	Insert in all leases and MOAs to preserve the Governments rights to terminate for our convenience. In the MOA this clause is inserted in the Terms and Condition clause.
Contractor Identification Number—Data Universal Numbering System	Jan-13	M	M	N/A	Insert in all new "cost" leases or bilateral modifications to existing leases IAW AMS T3.3.1.A-4 : System for Award Management (SAM). Note: If vendor is determined to be exempt pursuant

(DUNS) Number - Real Property					T3.3.1.A-4, and then exclude this clause from contract.
Certification of Registration in System for Award Management (SAM)	Jan-13	M	M	N/A	Required on all cost contracts, unless vendor is exempted from SAM. If RECO is referencing the clause they need to request the DUNS number from the lessor.
Contractor Payment Information – Non-SAM	Jan-13	M*	M*	N/A	*Insert in all leases where the CO has documented and granted an exception to use of SAM per provisions of Guidance Section 3.1.4.1 : System for Award Management (SAM). If this clause is used, delete the following clauses: “System for Award Management - Real Property”, “Contractor Identification Number—Data Universal Numbering System (DUNS) Number - Real Property”, and “Certification of Registration in System for Award Management (SAM)”.
Consideration (Cost)	Aug-02	M	M	N/A	Insert in all leases where we pay money for a lease term. This clause is required by the basic contracting principle that all leases must have clearly defined consideration. The dollar amount represents only the firm term portion of this lease.
Consideration (No Cost)	Aug-02	M	M	M	Insert in all leases where we do not pay money for a lease term or for MOAs. This clause is required by the basic contracting principle that all leases must have clearly defined consideration.
Contract Disputes	Nov-03	M	M	N/A	Insert in all leases to establish the FAA regulations regarding Protests and Disputes under the AMS.
Covenant Against Contingent Fees	Oct-96	M	M	M	Insert in all leases IAW 41 USC 254. For MOA incorporated by reference.
Day-to-Day Lease Extension	Aug-02	O	O	N/A	This clause should be used where the requiring activity desires some flexibility for the end date of the lease. If this clause is used in a lease where cost is the consideration or part of the consideration, the total term of the lease, <u>including the total NTE days included in this clause</u> must not exceed the twenty year FAA leasing authority (49 USC 40110). No cost leases can be executed for the expected life of the system supported by the land lease.
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FAA Facilities	Oct-05	N/A	N/A	M	This clause must be inserted in all MOAs. It references the most recent Airport Layout Plan (ALP) and defines

					the list of facilities placed under this agreement.
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Hazardous Substance Contamination	May-00	M*	N/A	M	Insert in all <b>on airport</b> leases and MOAs. This clause requires the lessor to hold the Government harmless for environmental contamination found in the property that is not associated with Government activity. Having this clause may allow the requiring office to waive the requirement to conduct an environmental due diligence audit (EDDA) prior to the property transaction (see FAA Order 1050.19B). If the lessor does not agree to this clause, an approved EDDA (or EDDA waiver) must be obtained prior to the real estate transaction.
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Interference with Government Operations	Oct-96	M	N/A	M	Insert in all <u>on airport</u> leases and MOAs. This clause ensures that the sponsor will conform to the approved airport layout Plan (ALP). The clause does not relieve the RECO of the requirement to obtain real property rights for the technical clear zone.
Lease Succession	Aug-02	M	M	M	Insert in follow-on contracts to track continuity of data.
Non-Restoration	Oct-96	M	M	M	Insert in all leases in order to make the Government's intention of not restoring the premises and abandoning the equipment. This clause is needed to clearly convey the Governments intentions and the agreement between the parties upon termination or expiration of the lease. It is the policy of the FAA not to restore.  This clause is mandatory for a MOA; however the RECO can remain silent on this clause if the airport sponsor will agree.

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Notices	Oct-96	M	M	M	Insert in all leases and MOAs. This information is needed for contract administration; all contractual communication should be done through these contacts. A change in this information requires a contract modification.
Officials Not to Benefit	Oct-96	M	M	M	Insert in all leases IAW 41 U.S.C. 22
Payment by Electronic Fund Transfer	Jan-13	M	M	N/A	Insert in all "cost" leases IAW 31 U.S.C. 333.
Premises	Aug-02	M	M	N/A	Insert in all leases. This clause is required by the basic contracting principle that all leases must clearly define the leased premises. This should include a description of the leased air rights.
Purpose	Oct-05	N/A	N/A	M	Insert in all MOAs to define the FAA air traffic activities with airport sponsor.
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Restoration Clause – Alternate A	Jan-07	O	N/A	O	This is an alternate restoration clause to be used for On-Airport Leases and MOAs. The policy is still not to restore however this clause may be used on a case by case basis when non-restoration is not feasible or appropriate. Also need to get the LOB to provide written

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Subordination, Nondisturbance and Attornment	Jan-14	M	M	N/A	Insert in all leases to protect the rights of the FAA under this lease during a subordination, nondisturbance and/or attornment.
System for Award Management - Real Property	Jan-13	M	M	N/A	Insert in all cost leases, unless the RECO grants an exception to use of SAM per provisions of Guidance Section "3.1.4.1 : System for Award Management (SAM)".
Term	Aug-02	M	M	M	<p>Insert in all leases in order to comply with the basic contracting principle that all leases must have a clearly defined term. 1. <u>This clause is used in all firm term leases that will be incrementally funded; this is the preferred type of lease.</u> 2. This clause is also used in leases that are structured with options. In this case, the term set out in this clause is <u>only</u> the firm term part of the lease. NOTE: Leases, where cost is part of the consideration, <u>may not exceed 20 years</u> (including all option periods and the Day-to-Day Lease Extension period). However, "no cost leases" can be executed for the expected life of the system supported by the land lease. Delete last sentence for On-Airport is a no cost lease.</p> <p>Insert in all MOAs, this clause is labeled "Term and Conditions". The term of MOA is to be for the greatest number of years (life expectancy) of a FAA facility.</p>
Title to Improvements	Oct-05	N/A	N/A	M	Insert in all MOAs to define title to improvements.
FORMS	Oct-05	N/A	N/A	M	Any modifications or additions to this list must be signed by the lessor and the

List of Facilities					FAA.
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**Red Line Content: Real Estate Guidance :**  
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Contractor Identification Number—Data Universal Numbering System (DUNS) Number - Real Property	Jan-13	M	M	N/A	<del>Must be</del> <u>Insert</u> included with SAM in all new Clause "cost" above leases or deleted <u>bilateral</u> if CO grants an exception to <u>modifications to existing leases IAW AMS use T3.3.1.A-4 of: System for Award Management (SAM).</u> <u>Note: If vendor is determined to be exempt pursuant T3.3.1.A-4, and then exclude this clause from contract.</u>
Certification of Registration in System for Award Management (SAM)	Jan-13	M	M	N/A	<del>Must be included with</del> <u>Required on all cost SAM contracts, Clause above or deleted if unless vendor is exempted from CO SAM. grants an If RECO exception is referencing the clause they need to use of request the SAM DUNS number from the lessor.</u>
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Protest	Nov-03	M	M	N/A	Insert in all leases to establish the FAA regulations regarding Protests and Disputes under the AMS.
Quiet Enjoyment	Oct-96	M	M	N/A	Insert in all leases. This clause is required by the basic contracting principle to protect the FAA's full rights to the property.
Renewal Options	Jul-07	M	M	N/A	Insert in all leases that have Options in order to comply with basic contracting principle that all options must be clearly defined. RECO can modify the clause to reflect the correct number of lease options. NOTE: This clause requires the RECO to provide the lessor 60 days notice of the Government's intent to exercise the option or its intent to vacate the premises at the end of the current lease term. It also requires the RECO to send the lessor written documentation of the option exercise; it is our policy that a contract modification would be issued to document that the option has been exercised.
Restoration Clause – Alternate A	Jan-07	O	N/A	O	This is an alternate restoration clause to be used for On-Airport Leases and MOAs. The policy is still not to restore however this clause may be used on a case by case basis when non-restoration is not feasible or appropriate. Also need to get the LOB to provide written concurrence on this alternate clause.
Restoration Clause – Alternate B	Jan-07	N/A	O	N/A	This is an alternate restoration clause to be used for Off-Airport leases. The policy is still not to restore however this clause may be used on a case by case basis when non-restoration is not feasible or appropriate. Also need to get the LOB to provide written concurrence on this alternate clause.
Signature Block	Aug-02	M	M	M	Insert in all leases and MOAs in order to

					comply with the basic contracting principle that all leases must be signed by authorized parties to the agreement. This clause must be modified to comply with recording requirements of the local jurisdiction, i.e. the local recording office may require the signature to be notarized.
Subordination, Nondisturbance and Attornment	<del>Oct</del> <del>Jan-</del> <u>9614</u>	M	M	N/A	Insert in all leases to protect the rights of the FAA under this lease during a subordination, nondisturbance and/or attornment.
System for Award Management - Real Property	Jan-13	M	M	N/A	Insert in all cost leases, unless the RECO grants an exception to use of SAM per provisions of Guidance Section "3.1.4.1 : System for Award Management (SAM)".
Term	Aug-02	M	M	M	<p>Insert in all leases in order to comply with the basic contracting principle that all leases must have a clearly defined term. 1. <u>This clause is used in all firm term leases that will be incrementally funded; this is the preferred type of lease.</u> 2. This clause is also used in leases that are structured with options. In this case, the term set out in this clause is <u>only</u> the firm term part of the lease. NOTE: Leases, where cost is part of the consideration, <u>may not exceed 20 years</u> (including all option periods and the Day-to-Day Lease Extension period). However, "no cost leases" can be executed for the expected life of the system supported by the land lease. Delete last sentence for On-Airport is a no cost lease.</p> <p>Insert in all MOAs, this clause is labeled "Term and Conditions". The term of MOA is to be for the greatest number of years (life expectancy) of a FAA facility.</p>
Title to Improvements	Oct-05	N/A	N/A	M	Insert in all MOAs to define title to improvements.
FORMS List of Facilities	Oct-05	N/A	N/A	M	Any modifications or additions to this list must be signed by the lessor and the FAA.

**Section 2.4.5 : Appendix E: Rent-Free Guidance**

**Old Content:** Real Estate Guidance :

**Section 2.4.5 : Appendix E: Rent-Free Guidance**

Guidance on Interpretation of the FAA 2002 Appropriation Act Section 335

APP-510, AFZ-400, AGC-500 and ALO-140 met to discuss the recent language in the FAA 2002 Appropriation Act. Below is the interpretation of the language in the 2002 appropriation act. If you have further questions regarding this guidance please contact ALO-140.

**A. Below is the language from the Act:**

*Sec. 335. None of the funds in this Act shall be used to pursue or adopt guidelines or regulations requiring airport sponsors to provide to the Federal Aviation Administration without cost building construction, maintenance, utilities and expenses, or space in airport sponsor-owned buildings for services relating to air traffic control, air navigation or weather reporting. The prohibition of funds in this section does not apply to negotiations between the Agency and airport sponsors to achieve agreement on ``below-market'' rates for these items or to grant assurances that require airport sponsors to provide land without cost to the FAA for ATC facilities.*

1. What does this mean for the FAA?

The language indicates that the FAA is not allowed to expend any funds, i.e. salaries, on implementing the guidance. Basically the FAA has gone back to business prior to the issuance of the May 18, 1999 memo implementing the guidance on October 1, 2000. Further it should be noted that 1) rent-free space should continue under existing leases until those leases expire, and 2) an airport sponsor may provide rent-free space for any new leases or renewal leases if done so voluntarily and not required by the FAA.

2. Advantages to the Language

- a. Senate report requested that the OIG conduct a study on the impact of implementing this guidance. The study report should support the implementation of the rent-free guidance. No date as to when the report will be finished.
- b. The language indicates that the FAA is entitled to negotiate below market rates with the airport sponsors.

**B. Questions and Answers:**

1. What is the FAA allowed to negotiate?

- The language indicates that we should only be paying for the cost of the space, i.e. maintenance, utilities, services and expenses and not the profits. The airport sponsor should provide a breakout of all the cost prior to final agreement on the contract.
- The FAA is not prohibited from negotiating a rent-free agreement with the airport sponsors.
- The FAA should be able to negotiate below market rate as stated in the language. When a lease expires for a covered activity, the FAA should expect to be able to negotiate below market rates with sponsors. For example if a lease expires at a rental rate of \$30 a square foot, then the FAA should try to negotiate below this amount. It may be inferred from the

appropriation language on negotiations to achieve below market rates; however the language does not require the airport sponsor to negotiate below market rates or even market rates.

2. Should the FAA only be negotiating a one year lease at a market rent until we know what's going to happen in 2003 or should we go with a typical 5 year lease market rent assuming this rent free entitlement will go away?

- It should be noted that the FAA will try to appeal for the removal of Section 335 from the appropriation act next year. Yet the FAA was unsuccessful this year in appealing for the removal of Section 335 prior to the passing of the act. Thus most likely the language will not be appealed prior to 2003.
- Depending upon each lease contract, the RECO will ultimately make the decision on which term is in the best interest of the government. If you have leases that would be better to negotiate on a yearly basis then it would be recommended to negotiate those leases for a one-year term. However with the current situation, the FAA will be better off negotiating a lease term of five years or less with the following contingency statement in the lease agreement:

*\* The FAA reserves the right to renegotiate the rental rate to reflect no-cost space if the Appropriation Language Section 335 (FAA FY 2002 Appropriations Act) is repealed during the term of the lease and the FAA rent-free guidance is re-implemented. In that event, the lessor would be required to provide rent-free space for the fiscal year that Section 335 was repealed (or that a rent-free provision was enacted) and the remaining years of the lease, and in subsequent leases.*

3. Does this include all leased space, such as tower cabs, equipment rooms and FSS space?

This language applies to all the covered activities included in the guidance:

ATCT - Airport Traffic Control Tower

CERAP - Combined Center Radar Approach Control

CWOS - Contract Weather Observation Station

FSS - Flight Service Station

RAPCON - Radar Approach Control

TRACON - Terminal Approach Radar Control

Most likely the sponsors will not be providing space rent-free in the above facilities. However this does not prohibit them from agreeing to negotiate a rent-free agreement.

4. Does the language apply to both old lease renewals and new lease negotiations?

- This language applies to all existing lease renewals and new leases after October 1, 2000.

**New Content:** Real Estate Guidance :

**Section 2.4.5 : Appendix E: Rent-Free Guidance**

Since Fiscal Year 2001, Congress has inserted a provision in FAA's Annual Appropriations Acts that limits dramatically FAA's ability to obtain no-cost space on Sponsor-Owned Airports. That provision states as follows:

*FAA Appropriation: None of the funds in this Act shall be used to pursue or adopt guidelines or regulations requiring airport sponsors to provide to the Federal Aviation Administration without cost building construction, maintenance, utilities and expenses, or space in airport sponsor-owned buildings for services relating to air traffic control, air navigation or weather reporting. The prohibition of funds in this section does not apply to negotiations between the Agency and airport sponsors to achieve agreement on "below-market" rates for these items or to grant assurances that require airport sponsors to provide land without cost to the FAA for ATC facilities.*

1. What does this mean for the FAA?

The appropriations provision states that the FAA is not allowed to expend appropriated funds, e.g. salaries, travel expenses; etc., to implement the requirement that Airport Sponsors provide no-cost space in sponsored-owned buildings on airport. However, FAA may expend appropriated funds to negotiate and to secure space at below-market rents from Airport Sponsors. In addition, nothing in the Act prohibits an airport sponsor from providing rent-free space for any new leases or renewal leases if done so voluntarily and as a condition for receiving an Airport Improvement Program (AIP) Grant B. None of the above is needed, and it doesn't read very well.

2. Does the language apply to both old lease renewals and new lease negotiations?

This language applies to all existing lease renewals and new leases after October 1, 2000.

**Red Line Content:** Real Estate Guidance :

**Section 2.4.5 : Appendix E: Rent-Free Guidance**

~~Guidance~~Since ~~on Interpretation of the FAA 2002 Appropriation Act~~Fiscal Section 335 APP-510, ~~Year AFZ-400~~2001, AGC-500 and ALO-140 ~~Congress~~ met to discuss has the recent language inserted a provision in the FAA 2002 Appropriation Act. Below is the interpretation of the language in the 's 2002 appropriation Annual Appropriations act. Acts If you have that limits dramatically further FAA's questions regarding this ability to obtain guidance no-cost please contact ALO space on Sponsor-140. A Owned Airports. - That provision Below is the language from the Act states as follows:

Sec. FAA 335. Appropriation: *None of the funds in this Act shall be used to pursue or adopt guidelines or regulations requiring airport sponsors to provide to the Federal Aviation*

*Administration without cost building construction, maintenance, utilities and expenses, or space in airport sponsor-owned buildings for services relating to air traffic control, air navigation or weather reporting. The prohibition of funds in this section does not apply to negotiations between the Agency and airport sponsors to achieve agreement on "below-market" rates for these items or to grant assurances that require airport sponsors to provide land without cost to the FAA for ATC facilities.*

1. — What does this mean for the FAA?

The ~~language~~appropriations provision ~~indicates~~states that the FAA is not allowed to expend ~~any~~appropriated funds, i.e. ~~g.~~ salaries, ~~on implementing~~travel ~~the~~expenses; ~~guidance~~etc. Basically the FAA has gone back to business prior to the issuance of the May 18, 1999 memo ~~to~~ implement the ~~guidance on~~ October 1, 2000. Further it should be noted requirement that 1) rent-free space should continue under existing leases until those leases expire, and 2) an airport sponsor Airport may Sponsors provide rent ~~no~~-free cost space for any new leases or renewal leases if done so voluntarily and not required by the FAA. 2. Advantages to the Language a. Senate report requested that the OIG conduct a study on the impact of implementing this guidance. The study report should support the implementation of the in rents sponsored-free guidance. No date as to when the report will be finished. b. The language indicates that the FAA is entitled to negotiate below market rates owned with the buildings on airport sponsors. B. Questions and Answers: 1. — What is the FAA allowed to negotiate? The language indicates that we should only be paying for the cost of the space, i.e. maintenance, utilities However, services and expenses and not the profits. The airport sponsor should provide a breakout of all the cost prior to final agreement on the contract. The FAA is not prohibited from negotiating a rent-free agreement with the airport sponsors. The FAA may should be able expend appropriated funds to negotiate below market rate as stated in the language. When a lease expires for a covered activity, the FAA should expect to be able and to negotiate below market rates with sponsors. For example if a lease secure expires space at a rental rate of \$30 a square foot, then the FAA should try to negotiate below this amount. It may be inferred from the appropriation language on negotiations to achieve below market rates; however the language does not require the airport sponsor to negotiate below market rates or even market rates. 2. — Should the FAA only be negotiating a one-year lease at a market rent until we know what's going to happen in 2003 or should we go with a typical 5-year lease - market rent assuming this rent free entitlement will go away? It should be noted that the FAA will try to appeal for the removal rents of Section 335 from the appropriation act next year. Yet the FAA was unsuccessful this year in appealing for the removal of Section 335 prior to the passing of the act. Thus most likely the language will not be appealed prior to 2003. Depending upon each lease contract, the RECO will ultimately make the decision on which term is in the best interest of the government. If you have leases that would be better to negotiate on a yearly basis then it would be recommended to negotiate those leases for a one-year Airport term Sponsors. However with the current In situation addition, the FAA will be better off negotiating a lease term of five years or less with the following contingency nothing statement in the lease agreement: \* — The FAA reserves the right to renegotiate the rental rate to reflect no-cost space if the Appropriation Language Section

~~335 (FAA FY 2002 Appropriations Act) is repealed during the term of the lease and the FAA rent free guidance is re-implemented. In that event, the prohibits lessor would an be required to provide airport sponsor from providing rent-free space for the fiscal year that Section 335 any was repealed new leases (or that a rent free provision was enacted) and the remaining years of the lease, and in subsequent renewal leases. 3.— Does this include all leased space, such as tower if cabs, done equipment rooms so voluntarily and FSS space? This language applies to all the covered activities as included in the a condition for guidance: ATCT receiving -an Airport Traffic Control Tower CERAP— Combined Center Radar Approach Control CWOS— Contract Weather Observation Station FSS— Flight Service Station RAPCON— Radar Approach Control TRACON— Terminal Approach Radar Control Most likely the sponsors will Improvement not Program be (AIP) providing Grant space B. rent free None inof the above facilities. However this does not prohibit them is from needed, agreeing to and it negotiate doesn't aread rent free very agreement well.~~

42. — Does the language apply to both old lease renewals and new lease negotiations?

This language applies to all existing lease renewals and new leases after October 1, 2000.

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### **Section 2.5 : Space Clause Matrix**

**Old Content:** Real Estate Guidance :

#### **Section 2.5 : Space Clause Matrix**

**Section 1 – Space Lease** – All items under this section must be included in the lease.

**Section 2 – General Clauses** – Use the legend below to determine clause requirement.

#### **Legend:**

**Mandatory (M)** – When applicable these clauses shall be included in leases/agreements without any changes unless other party is prohibited legally from executing the document with the provision as written. These clauses are either: 1.) mandated by law; 2.) set by legal precedent; 3.) and/or established by FAA policy.

**Recommended (R)** – In general these clauses provide useful protection to the government. These clauses, or a modified version, should be used in all applicable circumstances. RECO may tailor the clause to meet a specific situation. Changes that have legal impact require region/center legal approval.

**Optional (O)** – RECO decides whether or not these clauses or a modified version should be included in the lease. Deviations from the suggested wording must have the region/center legal approval, if there is a legal impact.

Note - All space leases may be augmented with additional clauses or special provisions with region/center legal approval. If any clauses are changed with applicable concurrence, RECO must take out the parenthetical date in the clause, e.g. (10/96).

**Section 3** – Closing - All items under this section must be included in the lease.

**Attachment A and Attachment B Clauses** - Use the legend above in Section 2 to determine clause requirement.

<b>SECTION 1 – Space Lease</b>					
This Lease					
Description					
Term					
Cancellation					
Rental					
Services and Utilities					
<b>SECTION 2 – GENERAL CLAUSES</b>					
<b>CLAUSE TITLE</b>	<b>DATE OF CLAUSE</b>	<b>STANDARD LEASE</b>	<b>SMALL LEASE</b>	<b>ANTENNA AND RACK SPACE LEASE</b>	<b>PRESCRIPTION</b>
Acceptance of Space	8/02	M	M by reference	N/A	Insert in all new lease actions for the RECO to accept the space for occupancy, except for: all succeeding lease actions this clause is Optional.
Accessibility	10/06	M	M	N/A	Insert in all leases in accordance with Architectural Barriers Act 1968 to follow the Architectural Barriers Act Accessibility Standard (ABAAS) 41 CFR Parts 102-71, 102-72, except for: 1.) ATCT Cabs, mech. rooms, elect. & telephone. closets and 2.) Non-staffed facilities such as RCO.
Affirmative Action for Special Disabled and Vietnam Era Veterans	10/96	M	M by reference	O	Insert in all leases in accordance with Vietnam Era Veteran’s Readjustment Assistance Act of 1972.
Affirmative Action For Disabled Workers	10/96	M	M by reference	O	Insert in all leases in accordance with Rehabilitation Act of 1973, 29 U.S.C. 793.
Alterations	10/96	M	M by reference	O	Insert in all leases to provide the Government the protection to make alterations to the lease space during the term of the lease.
Anti-Kickback	10/96	M	M by reference	M by reference	Insert in all leases in accordance with the Anti-Kickback Act of 1986, 41 U.S.C. 51-58.
Assignment of Claims	10/96	M	M by reference	M by reference	Insert in all leases unless the terms of the lease prohibit assignment of claims.
Certification of Registration in SAM - Real Property	1/13	M	M	M by reference	Required on all cost contracts, unless vendor is exempted from SAM. If RECO is referencing the clause they need to request the DUNS number from the lessor.
Changes	8/02	M	M by reference	N/A	Insert in leases at the RECO’s option when the government requires changes during a new lease buildout

					phase.
Compliance with Applicable Laws	10/96	M	M by reference	M by reference	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Contract Disputes	11/03	M	M	M	Insert in all leases as required by FAA policy on contract and protest dispute resolution system from the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17.
Protest	11/03	M	M	M	
Contractor Identification Number - "Data Universal Numbering System" (DUNS) Number	1/13	M	M	M by reference	Insert in all new "cost" leases or bilateral modifications to existing leases IAW AMS T3.3.1.A-4 : System for Award Management (SAM). Note If vendor is determined to be exempt pursuant T3.3.1.A-4, and then exclude this clause from contract.
Contractor Payment Information - Non SAM	1/13	O	O	O	Use this clause if you have been granted an exception to SAM.
Coordination	10/08	N/A	N/A	M	Mandatory for leases involving antenna and rack space
Covenant Against Contingent Fees	10/96	M	M by reference	M by reference	Insert in all leases in accordance with 41 USC 254.
Damage By Fire or Other Casualty	10/96	M	M	M	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Davis Bacon Act	6/09	M	M	O	In accordance with 40 U.S.C. 276a et seq.), use for leases over \$2,000 for construction, alteration or repair of public buildings or public works to be performed within the United States.
Default By Lessor	10/96	M	M by reference	M by reference	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Delivery and Condition	10/96	M	M by reference	N/A	Insert in all leases to provide the protection to the Government to ensure the space is delivered in a condition to be occupied.
Equal Opportunity	10/96	M	M by reference	O	Insert in all leases in accordance with affirmative action programs, 41 CFR 60-1 and 60-2.
Examination of Records	8/02	M	M by reference	M by reference	Insert in all leases.
Failure In Performance	10/96	M	M	M	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Inspection	10/96	M	M by	M by	Insert in all leases in accordance with

			reference	reference	general policy for Federal Agency to provide protection to the Government and contract management.
Integrated Agreement	10/96	M	M by reference	O	Insert in all leases to assert the lease agreement defines the agreements between the parties.
Interference	10/08	N/A	N/A	M	Mandatory for leases involving antenna and rack space.
Lessor's Successors	10/96	M	M	M by reference	This clause must be used to protect the lease rights of the Government in case of change in ownership of the property.
Maintenance Of The Premises	10/96	M	M	M	Insert in all leases to comply with basic protection of ensuring that the lease space is in good condition.
No Waiver	10/96	M	M	M by reference	Insert in all leases to protect the Government from waiving any rights under this lease.
Officials Not To Benefit	10/96	M	M by reference	M by reference	Insert in all leases in accordance with public contract law, 41 U.S.C. 22.
Payment by Electronic Funds Transfer	1/13	M	M	M by reference	Insert in all new "cost" leases, or bilateral modifications to existing leases IAW AMS "T3.3.1.A-3 - Electronic Funds Transfer" and RE Guidance "3.1.4.2 - Electronic Fund Transfer (EFT)". Note: Clause is to be used in all cases, but lessor may qualify for a waiver (See instructions in T3.3.1.A-3). The clause allows for documentation of waiver, and providing alternate mean to receive payment, but clause is to be retained in document, as waivers are NOT permanent. Clause is not applicable to no-cost leases or no-cost MOAs.
Seismic Safety In Existing Buildings	10/12	M	M*	N/A	<p>*Mandatory for space leases 10,000 SF or greater in existing buildings. Not required for Leases less than 10,000 SF, if in an area of low seismicity per the criteria set RP-8, Section 1.3, or the FAA determines that the acquisition meets one of the additional exceptions:</p> <p>Small lease housed in single story structure of wood or metal frame less than 3,000 SF.</p> <p>Agency requirement is less than 5 Years.</p> <p>If Lessor or FAA proposes an exemption or the "best available space" exception to the certification</p>

					requirement RECO must document file with determination after consulting seismic safety personnel.
Seismic Safety For New Construction	10/12	M	M	N/A	Mandatory for leases involving new construction or major renovation (Project cost exceeds 50% of building replacement value)
Subordination, Nondisturbance and Attornment	9/99	M	M by reference	M by reference	Insert in all leases to protect the rights of the FAA under this lease during a subordination, nondisturbance and/or attornment.
Sublease	10/96	M	M by reference	N/A	Insert in leases where the RECO expects to sublease the FAA space to another tenant. However this clause does not relieve FAA with responsibilities of the terms of the lease.
System for Award Management - Real Property	1/03	M	M	M by reference	Insert in all new "cost" leases or bilateral modifications to existing leases IAW AMS "T3.3.1.A-3 - - System for Award Management (SAM)" and RE Guidance "3.1.4.2 - System for Award Management (SAM)". SAM is the preferred method of contractor maintenance for FAA. CO may exempt some vendors IAW guidance provided in T3.3.1.8 & RE Guidance 3.1.4.2. If vendor is exempted from use of SAM, use clause "Contractor Payment Information - Non SAM - Real Property".

**SECTION 3 – CLOSING**

Notices

Attachments

Name and Title of Owner

Name of Contracting Officer

**Attachment A Clauses**

CLAUSE TITLE	DATE OF CLAUSE	STANDARD LEASE	SMALL LEASE	ANTENNA AND RACK SPACE LEASE	PRESCRIPTION
Adhesives and Sealants	1/12	R	R	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Adjustment For Vacant Premises	10/96	R	O	O	Insert in all leases to provide the Government with protection if use of space changes during lease term.
Ceilings	10/96	R	O	O	Insert in all leases. Any changes should be approved by regional environmental contact.
Condition Report	4/12	O	O	O	Insert in leases where accepting space for occupancy.
Contracting Officer's	10/96	O	O	O	Insert in leases where a COR is

Representative					designated.
Day to Day Extension	8/02	O	O	O	This clause should be used where the requiring activity desires some flexibility for the end date of the lease. If this clause is used in a cost lease, the total term of the lease, including the total day to day extension days, must not exceed the twenty year FAA leasing authority.
Display Advertising	10/96	O	O	O	Insert in leases where Government is sole occupant.
Doors	4/12	R	O	O	Insert in leases for door requirement.
Electrical Safety	4/12	M	M	M	Insert in all leases. Any changes should be approved by service area environmental contact.
EOSH	4/12	M	M	R	Insert in all leases. Any changes should be approved by service area environmental contact.
Erection Of Signs	10/96	O	O	O	Insert in leases where signs are required.
Facility Security	4/12	M	M	O	Insert in all leases in accordance with FAA Order 1600.69.
Fall Protection	4/12	R	R	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Fire and Safety Requirements	4/12	M	M	O	Insert in all leases to provide protection to the Government.
Floor Load	8/02	R	O	O	Insert in all leases. Regional engineer should approve any changes.
General Health and Safety Standards	4/12	R	R	N/A	Insert in all leases to meet the following standards: local health, safety, building codes and FAA standards.
Grounds Maintenance	10/96	R	O	O	Insert in all leases where applicable.
Halon	4/12	R	R	O	Insert in all leases. Any changes should be approved by regional environmental contact.
Hazardous Materials	4/12	M	M	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Hold Harmless	10/96	M	M	R	Insert in leases in accordance with Federal Tort Claims Act of 1948.
HVAC	4/12	R	O	O	Insert in all leases. RECO's should consult a service area engineer for changes to clause.
If Minimum Not Delivered	10/96	O	O	O	Insert in leases.
Indoor Air Quality	4/12	M	M	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Installation Of Antennas, Cables & Other Appurtenances	4/12	O	O	O	Insert in all leases as needed.

Interest For Late Payment	4/12	O	O	O	The AMS exempts the FAA from the Prompt Payment Act. However, the RECO may use this clause as an added benefit to the Lessor when negotiating a lease.
Janitorial Services	4/12	O	O	O	Insert in leases, which provide for janitorial services.
Landscaping	1/12	R	O	O	Insert in all new leases where conditions permit landscaping and upgrade landscaping during lease renewal. Any changes should be approved by service area environmental contact.
Lighting	4/12	R	O	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Measurement For Payment	10/96	R	O	O	Insert in leases to determine the correct amount of space to pay rent on.
Non-Restoration	10/96	M	M	O	Insert in all leases unless specific restorations are negotiated.
Occupancy Permit	8/02	M <sup>‡</sup>	M <sup>‡</sup>	O	<sup>‡</sup> This clause is mandatory for new leases as required by local law to have an occupancy permit to occupy space.
Operating Costs Escalator	10/96	O	O	O	Insert in lease where applicable.
OSHA Requirements	10/96	M	M	O	Insert in all leases in accordance with OSHA standards 29 CFR 1910 and 1926.
Painting	4/12	R	O	O	Insert in all new leases. RECO should insert in all leases with lease terms of five years or longer.
Parking	4/12	O	O	O	Insert in leases where applicable.
Personnel Security - Security Screening of Persons or Individuals Employed or Hired by Lessor/Contractor	4/12	M	M	N/A	Insert in all leases in accordance with FAA Order 1600.72 and 1600.73
Pest Control	4/12	R	O	O	Insert in all leases.
Plans	8/02	R	O	O	Insert in all new lease actions and any alterations/renovations.
Prior Notification	8/02	R	O	N/A	Insert in all leases where construction will be done.
Progressive Occupancy	10/96	O	O	O	Insert in all leases where applicable.
Radon	10/96	M	M	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Recycled Content Products (Comprehensive Procurement Guidelines)	4/12	R	R	O	Insert in all leases. Any changes should be approved by service area environmental contact.

Recycling	1/12	M	M	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Refrigerants	8/02	R	R	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Restrooms and Drinking Fountains	4/12	R	O	O	Insert in all leases.
Seismic Safety for Equipment	4/12	M	M	R	Insert in all leases. Any changes should be approved by service area environmental contact.
Services and Facilities	4/12	R	O	O	Insert in all leases.
Tax Adjustment	4/12	O	O	O	Insert in all leases where applicable.
Time Extension	10/96	O	O	O	Insert in leases.
Unauthorized Negotiating	10/96	O	O	O	Insert in all leases.
Utilities Not Provided By The Lessor	4/12	R	R	O	Insert in all leases.
Warranty Of Space	4/12	M	R	O	Insert in all leases.
Window and Floor Covering	4/12	R	O	O	Insert in all leases.
Wiring For Telephones	10/96	O	O	O	Insert in leases.

**Attachment B Clauses**

<b>CLAUSE TITLE</b>	<b>DATE OF CLAUSE</b>	<b>STANDARD LEASE</b>	<b>SMALL LEASE</b>	<b>ANTENNA AND RACK SPACE LEASE</b>	<b>PRESCRIPTION</b>
Air Balance Report	10/12	R	O	O	Insert in leases where applicable.
Amortization Schedule	10/12	R	O	O	Insert in leases where applicable.
As-Built Floor Plans After Occupancy	10/12	R	O	O	Insert in leases where applicable.
Construction Schedule	10/12	R	O	O	Insert in leases where applicable.
Construction Schedule and Acceptance of Tenant Improvements	10/12	R	O	O	Insert in leases where applicable.
Construction of Tenant Improvements	10/12	R	O	O	Insert in leases where applicable.
Construction Waste Management	10/12	R	O	O	Insert in leases where applicable.
Construction Inspections	10/12	R	O	O	Insert in leases where applicable.
Design Intent Drawings	10/12	R	O	O	Insert in leases where applicable.
High Performance Sustainable Building (HPSB) Requirements	10/12	R	O	O	Insert in leases where applicable.
Lease Commencement	7/10	R	O	O	Insert in leases where applicable.
Lessor's Recovery of Tenant Improvement Allowance in the Event of Cancellation	10/12	R	O	O	Insert in leases where applicable.
Lessor's Recovery of Tenant Improvement	10/12	R	O	O	Insert in leases where applicable.

Costs In Excess of The Allowance					
Liquidated Damages	7/10	R	O	O	Insert in leases where applicable.
Measurement of Space	7/10	R	O	O	Insert in leases where applicable.
Occupancy Permit	10/12	R	O	O	Insert in leases where applicable.
Other Requirements	7/10	R	O	O	Insert in leases where applicable.
Progress Reports	7/10	R	O	O	Insert in leases where applicable.
Rent Commencement	7/10	R	O	O	Insert in leases where applicable.
Required Information Post Award: Green Label Certification for Sustainability Verification	10/12	R	O	O	Insert in leases where applicable.
Responsibility of the Lessor and Lessor's Architect/Engineer	10/12	R	O	O	Insert in leases where applicable.
Review of Working/Construction Documents	10/12	R	O	O	Insert in leases where applicable.
Tenant Improvements	10/12	R	O	O	Insert in leases where applicable.
Tenant Improvements Price Proposal Based on Construction Drawings	10/12	R	O	O	Insert in leases where applicable.
Walk-Through and Acceptance of Space	10/12	R	O	O	Insert in leases where applicable.
Work Performance	7/10	R	O	O	Insert in leases where applicable.
Working/Construction Drawings	7/10	R	O	O	Insert in leases where applicable.

**FORMS**

<b>CLAUSE TITLE</b>	<b>DATE OF CLAUSE</b>	<b>STANDARD LEASE</b>	<b>SMALL LEASE</b>	<b>ANTENNA AND RACK SPACE LEASE</b>	<b>PRESCRIPTION</b>
ABAAS Compliance Report	10/12	M	M	N/A	Required for lessor to fill out to comply with ABAAS standard
Certification for Seismic Safety	10/12	M	M	N/A	Certification required in accordance with space lease paragraphs 8X, 8Y, and 8Z. Seismic Safety in Existing Leases and 8Y. Seismic Safety for New Construction. This attachment becomes part of the file after lease award.
Checklist for Rural Development Act	4/10	M	M	N/A	Check appropriate reason for not considering location in rural area. However if the RECO would like concurrence from the program office, they can get the program office to sign the checklist when site selection is based upon program needs.
Space Safety and Environmental Checklist	4/12	R	O	N/A	Checklist recommended in accordance with space lease paragraph 6b Standards and Requirements. This attachment

					becomes part of the file after lease award.
Vendor/Miscellaneous Payment Information Form	7/10	M	M	M	EFT Form is required in accordance with space lease paragraph 8P. Electronic Funds Transfer. This attachment becomes part of the file after lease award.

**New Content: Real Estate Guidance :**

**Section 2.5 : Space Clause Matrix**

**Section 1 – Space Lease** – All items under this section must be included in the lease.

**Section 2 – General Clauses** – Use the legend below to determine clause requirement.

**Legend:**

**Mandatory (M)** – When applicable these clauses shall be included in leases/agreements without any changes unless other party is prohibited legally from executing the document with the provision as written. These clauses are either: 1.) mandated by law; 2.) set by legal precedent; 3.) and/or established by FAA policy.

**Recommended (R)** – In general these clauses provide useful protection to the government. These clauses, or a modified version, should be used in all applicable circumstances. RECO may tailor the clause to meet a specific situation. Changes that have legal impact require region/center legal approval.

**Optional (O)** – RECO decides whether or not these clauses or a modified version should be included in the lease. Deviations from the suggested wording must have the region/center legal approval, if there is a legal impact.

Note - All space leases may be augmented with additional clauses or special provisions with region/center legal approval. If any clauses are changed with applicable concurrence, RECO must take out the parenthetical date in the clause, e.g. (10/96).

**Section 3** – Closing - All items under this section must be included in the lease.

**Attachment A and Attachment B Clauses** - Use the legend above in Section 2 to determine clause requirement.

<b>SECTION 1 – Space Lease</b>					
This Lease					
Description					
Term					
Cancellation					
Rental					
Services and Utilities					
<b>SECTION 2 – GENERAL CLAUSES</b>					
<b>CLAUSE TITLE</b>	<b>DATE OF CLAUSE</b>	<b>STANDARD LEASE</b>	<b>SMALL LEASE</b>	<b>ANTENNA AND RACK SPACE</b>	<b>PRESCRIPTION</b>

				<b>LEASE</b>	
Acceptance of Space	8/02	M	M by reference	N/A	Insert in all new lease actions for the RECO to accept the space for occupancy, except for: all succeeding lease actions this clause is Optional.
Accessibility	10/06	M	M	N/A	Insert in all leases in accordance with Architectural Barriers Act 1968 to follow the Architectural Barriers Act Accessibility Standard (ABAAS) 41 CFR Parts 102-71, 102-72, except for: 1.) ATCT Cabs, mech. rooms, elect. & telephone. closets and 2.) Non-staffed facilities such as RCO.
Affirmative Action for Special Disabled and Vietnam Era Veterans	10/96	M	M by reference	O	Insert in all leases in accordance with Vietnam Era Veteran's Readjustment Assistance Act of 1972.
Affirmative Action For Disabled Workers	10/96	M	M by reference	O	Insert in all leases in accordance with Rehabilitation Act of 1973, 29 U.S.C. 793.
Alterations	10/96	M	M by reference	O	Insert in all leases to provide the Government the protection to make alterations to the lease space during the term of the lease.
Anti-Kickback	10/96	M	M by reference	M by reference	Insert in all leases in accordance with the Anti-Kickback Act of 1986, 41 U.S.C. 51-58.
Assignment of Claims	10/96	M	M by reference	M by reference	Insert in all leases unless the terms of the lease prohibit assignment of claims.
Certification of Registration in SAM - Real Property	1/13	M	M	M by reference	Required on all cost leases, unless vendor is exempted from SAM. If RECO is referencing the clause they need to request the DUNS number from the lessor.
Changes	8/02	M	M by reference	N/A	Insert in leases at the RECO's option when the government requires changes during a new lease buildout phase.
Compliance with Applicable Laws	10/96	M	M by reference	M by reference	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Contract Disputes	11/03	M	M	M	Insert in all leases as required by FAA policy on contract and protest dispute resolution system from the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17.
Protest	11/03	M	M	M	
Contractor Identification Number - "Data Universal Numbering System" (DUNS) Number	1/13	M	M	M by reference	Insert in all new "cost" leases or bilateral modifications to existing leases IAW AMS T3.3.1.A-4 : System for Award Management (SAM). Note If vendor is determined

					to be exempt pursuant T3.3.1.A-4, and then exclude this clause from contract.
Contractor Payment Information - Non SAM	1/13	O	O	O	Insert in all leases where the CO has documented and granted an exception to use of SAM per provisions of Guidance Section 3.1.4.1 : System for Award Management (SAM). If this clause is used, delete the following clauses: “System for Award Management - Real Property”, “Contractor Identification Number—Data Universal Numbering System (DUNS) Number - Real Property”, and “Certification of Registration in System for Award Management (SAM)”.
Coordination	10/08	N/A	N/A	M	Mandatory for leases involving antenna and rack space
Covenant Against Contingent Fees	10/96	M	M by reference	M by reference	Insert in all leases in accordance with 41 USC 254.
Damage By Fire or Other Casualty	10/96	M	M	M	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Davis Bacon Act	6/09	M	M	O	In accordance with 40 U.S.C. 276a et seq.), use for leases over \$2,000 for construction, alteration or repair of public buildings or public works to be performed within the United States.
Default By Lessor	10/96	M	M by reference	M by reference	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Delivery and Condition	10/96	M	M by reference	N/A	Insert in all leases to provide the protection to the Government to ensure the space is delivered in a condition to be occupied.
Equal Opportunity	10/96	M	M by reference	O	Insert in all leases in accordance with affirmative action programs, 41 CFR 60-1 and 60-2.
Examination of Records	8/02	M	M by reference	M by reference	Insert in all leases.
Failure In Performance	10/96	M	M	M	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Inspection	10/96	M	M by reference	M by reference	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Integrated Agreement	10/96	M	M by	O	Insert in all leases to assert the lease

			reference		agreement defines the agreements between the parties.
Interference	10/08	N/A	N/A	M	Mandatory for leases involving antenna and rack space.
Lessor's Successors	10/96	M	M	M by reference	This clause must be used to protect the lease rights of the Government in case of change in ownership of the property.
Maintenance Of The Premises	10/96	M	M	M	Insert in all leases to comply with basic protection of ensuring that the lease space is in good condition.
No Waiver	10/96	M	M	M by reference	Insert in all leases to protect the Government from waiving any rights under this lease.
Officials Not To Benefit	10/96	M	M by reference	M by reference	Insert in all leases in accordance with public contract law, 41 U.S.C. 22.
Payment by Electronic Funds Transfer	1/13	M	M	M by reference	Insert in all new "cost" leases, or bilateral modifications to existing leases IAW AMS "T3.3.1.A-3 - Electronic Funds Transfer" and RE Guidance "3.1.4.2 - Electronic Fund Transfer (EFT)". Note: Clause is to be used in all cases, but lessor may qualify for a waiver (See instructions in T3.3.1.A-3). The clause allows for documentation of waiver, and providing alternate mean to receive payment, but clause is to be retained in document, as waivers are NOT permanent. Clause is not applicable to no-cost leases or no-cost MOAs.
Seismic Safety In Existing Buildings	10/12	M	M*	N/A	<p>*Mandatory for space leases 10,000 SF or greater in existing buildings. Not required for Leases less than 10,000 SF, if in an area of low seismicity per the criteria set RP-8, Section 1.3, or the FAA determines that the acquisition meets one of the additional exceptions:</p> <p>Small lease housed in single story structure of wood or metal frame less than 3,000 SF.</p> <p>Agency requirement is less than 5 Years.</p> <p>If Lessor or FAA proposes an exemption or the "best available space" exception to the certification requirement RECO must document file with determination after consulting seismic safety personnel.</p>
Seismic Safety For New	10/12	M	M	N/A	Mandatory for leases involving new

Construction					construction or major renovation (Project cost exceeds 50% of building replacement value)
Subordination, Nondisturbance and Attornment	1/14	M	M by reference	M by reference	Insert in all leases to protect the rights of the FAA under this lease during a subordination, nondisturbance and/or attornment.
Sublease	10/96	M	M by reference	N/A	Insert in leases where the RECO expects to sublease the FAA space to another tenant. However this clause does not relieve FAA with responsibilities of the terms of the lease.
System for Award Management - Real Property	1/03	M	M	M by reference	Insert in all new "cost" leases or bilateral modifications to existing leases IAW AMS "T3.3.1.A-3 - System for Award Management (SAM)" and RE Guidance "3.1.4.2 - System for Award Management (SAM)". SAM is the preferred method of contractor maintenance for FAA. CO may exempt some vendors IAW guidance provided in T3.3.1.8 & RE Guidance 3.1.4.2. If vendor is exempted from use of SAM, use clause "Contractor Payment Information - Non SAM - Real Property".

**SECTION 3 – CLOSING**

Notices

Attachments

Name and Title of Owner

Name of Contracting Officer

**Attachment A Clauses**

CLAUSE TITLE	DATE OF CLAUSE	STANDARD LEASE	SMALL LEASE	ANTENNA AND RACK SPACE LEASE	PRESCRIPTION
Adhesives and Sealants	1/12	R	R	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Adjustment For Vacant Premises	10/96	R	O	O	Insert in all leases to provide the Government with protection if use of space changes during lease term.
Ceilings	10/96	R	O	O	Insert in all leases. Any changes should be approved by regional environmental contact.
Condition Report	4/12	O	O	O	Insert in leases where accepting space for occupancy.
Contracting Officer's Representative	10/96	O	O	O	Insert in leases where a COR is designated.
Day to Day Extension	8/02	O	O	O	This clause should be used where the requiring activity desires some flexibility for the end date of the

					lease. If this clause is used in a cost lease, the total term of the lease, including the total day to day extension days, must not exceed the twenty year FAA leasing authority.
Display Advertising	10/96	O	O	O	Insert in leases where Government is sole occupant.
Doors	4/12	R	O	O	Insert in leases for door requirement.
Electrical Safety	4/12	M	M	M	Insert in all leases. Any changes should be approved by service area environmental contact.
EOSH	4/12	M	M	R	Insert in all leases. Any changes should be approved by service area environmental contact.
Erection Of Signs	10/96	O	O	O	Insert in leases where signs are required.
Facility Security	4/12	M	M	O	Insert in all leases in accordance with FAA Order 1600.69.
Fall Protection	4/12	R	R	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Fire and Safety Requirements	4/12	M	M	O	Insert in all leases to provide protection to the Government.
Floor Load	8/02	R	O	O	Insert in all leases. Regional engineer should approve any changes.
General Health and Safety Standards	4/12	R	R	N/A	Insert in all leases to meet the following standards: local health, safety, building codes and FAA standards.
Grounds Maintenance	10/96	R	O	O	Insert in all leases where applicable.
Halon	4/12	R	R	O	Insert in all leases. Any changes should be approved by regional environmental contact.
Hazardous Materials	4/12	M	M	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Hold Harmless	10/96	M	M	R	Insert in leases in accordance with Federal Tort Claims Act of 1948.
HVAC	4/12	R	O	O	Insert in all leases. RECO's should consult a service area engineer for changes to clause.
If Minimum Not Delivered	10/96	O	O	O	Insert in leases.
Indoor Air Quality	4/12	M	M	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Installation Of Antennas, Cables & Other Appurtenances	4/12	O	O	O	Insert in all leases as needed.
Interest For Late Payment	4/12	O	O	O	The AMS exempts the FAA from the Prompt Payment Act. However, the RECO may use this clause as an added benefit to the Lessor when

					negotiating a lease.
Janitorial Services	4/12	O	O	O	Insert in leases, which provide for janitorial services.
Landscaping	1/12	R	O	O	Insert in all new leases where conditions permit landscaping and upgrade landscaping during lease renewal. Any changes should be approved by service area environmental contact.
Lighting	4/12	R	O	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Measurement For Payment	10/96	R	O	O	Insert in leases to determine the correct amount of space to pay rent on.
Non-Restoration	10/96	M	M	O	Insert in all leases unless specific restorations are negotiated.
Occupancy Permit	8/02	M <sup>‡</sup>	M <sup>‡</sup>	O	<sup>‡</sup> This clause is mandatory for new leases as required by local law to have an occupancy permit to occupy space.
Operating Costs Escalator	10/96	O	O	O	Insert in lease where applicable.
OSHA Requirements	10/96	M	M	O	Insert in all leases in accordance with OSHA standards 29 CFR 1910 and 1926.
Painting	4/12	R	O	O	Insert in all new leases. RECO should insert in all leases with lease terms of five years or longer.
Parking	4/12	O	O	O	Insert in leases where applicable.
Personnel Security - Security Screening of Persons or Individuals Employed or Hired by Lessor/Contractor	4/12	M	M	N/A	Insert in all leases in accordance with FAA Order 1600.72 and 1600.73
Pest Control	4/12	R	O	O	Insert in all leases.
Plans	8/02	R	O	O	Insert in all new lease actions and any alterations/renovations.
Prior Notification	8/02	R	O	N/A	Insert in all leases where construction will be done.
Progressive Occupancy	10/96	O	O	O	Insert in all leases where applicable.
Radon	10/96	M	M	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Recycled Content Products (Comprehensive Procurement Guidelines)	4/12	R	R	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Recycling	1/12	M	M	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Refrigerants	8/02	R	R	O	Insert in all leases. Any changes

					should be approved by service area environmental contact.
Restrooms and Drinking Fountains	4/12	R	O	O	Insert in all leases.
Seismic Safety for Equipment	4/12	M	M	R	Insert in all leases. Any changes should be approved by service area environmental contact.
Services and Facilities	4/12	R	O	O	Insert in all leases.
Tax Adjustment	4/12	O	O	O	Insert in all leases where applicable.
Time Extension	10/96	O	O	O	Insert in leases.
Unauthorized Negotiating	10/96	O	O	O	Insert in all leases.
Utilities Not Provided By The Lessor	4/12	R	R	O	Insert in all leases.
Warranty Of Space	4/12	M	R	O	Insert in all leases.
Window and Floor Covering	4/12	R	O	O	Insert in all leases.
Wiring For Telephones	10/96	O	O	O	Insert in leases.

**Attachment B Clauses**

<b>CLAUSE TITLE</b>	<b>DATE OF CLAUSE</b>	<b>STANDARD LEASE</b>	<b>SMALL LEASE</b>	<b>ANTENNA AND RACK SPACE LEASE</b>	<b>PRESCRIPTION</b>
Air Balance Report	10/12	R	O	O	Insert in leases where applicable.
Amortization Schedule	10/12	R	O	O	Insert in leases where applicable.
As-Built Floor Plans After Occupancy	10/12	R	O	O	Insert in leases where applicable.
Construction Schedule	10/12	R	O	O	Insert in leases where applicable.
Construction Schedule and Acceptance of Tenant Improvements	10/12	R	O	O	Insert in leases where applicable.
Construction of Tenant Improvements	10/12	R	O	O	Insert in leases where applicable.
Construction Waste Management	10/12	R	O	O	Insert in leases where applicable.
Construction Inspections	10/12	R	O	O	Insert in leases where applicable.
Design Intent Drawings	10/12	R	O	O	Insert in leases where applicable.
High Performance Sustainable Building (HPSB) Requirements	10/12	R	O	O	Insert in leases where applicable.
Lease Commencement	7/10	R	O	O	Insert in leases where applicable.
Lessor's Recovery of Tenant Improvement Allowance in the Event of Cancellation	10/12	R	O	O	Insert in leases where applicable.
Lessor's Recovery of Tenant Improvement Costs In Excess of The Allowance	10/12	R	O	O	Insert in leases where applicable.
Liquidated Damages	7/10	R	O	O	Insert in leases where applicable.
Measurement of Space	7/10	R	O	O	Insert in leases where applicable.

Occupancy Permit	10/12	R	O	O	Insert in leases where applicable.
Other Requirements	7/10	R	O	O	Insert in leases where applicable.
Progress Reports	7/10	R	O	O	Insert in leases where applicable.
Rent Commencement	7/10	R	O	O	Insert in leases where applicable.
Required Information Post Award: Green Label Certification for Sustainability Verification	10/12	R	O	O	Insert in leases where applicable.
Responsibility of the Lessor and Lessor's Architect/Engineer	10/12	R	O	O	Insert in leases where applicable.
Review of Working/Construction Documents	10/12	R	O	O	Insert in leases where applicable.
Tenant Improvements	10/12	R	O	O	Insert in leases where applicable.
Tenant Improvements Price Proposal Based on Construction Drawings	10/12	R	O	O	Insert in leases where applicable.
Walk-Through and Acceptance of Space	10/12	R	O	O	Insert in leases where applicable.
Work Performance	7/10	R	O	O	Insert in leases where applicable.
Working/Construction Drawings	7/10	R	O	O	Insert in leases where applicable.

#### FORMS

CLAUSE TITLE	DATE OF CLAUSE	STANDARD LEASE	SMALL LEASE	ANTENNA AND RACK SPACE LEASE	PRESCRIPTION
ABAAS Compliance Report	10/12	M	M	N/A	Required for lessor to fill out to comply with ABAAS standard
Certification for Seismic Safety	10/12	M	M	N/A	Certification required in accordance with space lease paragraphs 8X. Seismic Safety in Existing Leases and 8Y. Seismic Safety for New Construction. This attachment becomes part of the file after lease award.
Checklist for Rural Development Act	4/10	M	M	N/A	Check appropriate reason for not considering location in rural area. However if the RECO would like concurrence from the program office, they can get the program office to sign the checklist when site selection is based upon program needs.
Space Safety and Environmental Checklist	4/12	R	O	N/A	Checklist recommended in accordance with space lease paragraph 6b Standards and Requirements. This attachment becomes part of the file after lease award.
Vendor/Miscellaneous Payment Information	7/10	M	M	M	EFT Form is required in accordance with space lease paragraph 8P.

Form					Electronic Funds Transfer. This attachment becomes part of the file after lease award.
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**Red Line Content: Real Estate Guidance :**

**Section 2.5 : Space Clause Matrix**

**Section 1 – Space Lease** – All items under this section must be included in the lease.

**Section 2 – General Clauses** – Use the legend below to determine clause requirement.

**Legend:**

**Mandatory (M)** – When applicable these clauses shall be included in leases/agreements without any changes unless other party is prohibited legally from executing the document with the provision as written. These clauses are either: 1.) mandated by law; 2.) set by legal precedent; 3.) and/or established by FAA policy.

**Recommended (R)** – In general these clauses provide useful protection to the government. These clauses, or a modified version, should be used in all applicable circumstances. RECO may tailor the clause to meet a specific situation. Changes that have legal impact require region/center legal approval.

**Optional (O)** – RECO decides whether or not these clauses or a modified version should be included in the lease. Deviations from the suggested wording must have the region/center legal approval, if there is a legal impact.

Note - All space leases may be augmented with additional clauses or special provisions with region/center legal approval. If any clauses are changed with applicable concurrence, RECO must take out the parenthetical date in the clause, e.g. (10/96).

**Section 3** – Closing - All items under this section must be included in the lease.

**Attachment A and Attachment B Clauses** - Use the legend above in Section 2 to determine clause requirement.

<b>SECTION 1 – Space Lease</b>					
This Lease					
Description					
Term					
Cancellation					
Rental					
Services and Utilities					
<b>SECTION 2 – GENERAL CLAUSES</b>					
<b>CLAUSE TITLE</b>	<b>DATE OF CLAUSE</b>	<b>STANDARD LEASE</b>	<b>SMALL LEASE</b>	<b>ANTENNA AND RACK SPACE LEASE</b>	<b>PRESCRIPTION</b>
Acceptance of Space	8/02	M	M by reference	N/A	Insert in all new lease actions for the RECO to accept the space for occupancy, except for: all succeeding

					lease actions this clause is Optional.
Accessibility	10/06	M	M	N/A	Insert in all leases in accordance with Architectural Barriers Act 1968 to follow the Architectural Barriers Act Accessibility Standard (ABAAS) 41 CFR Parts 102-71, 102-72, except for: 1.) ATCT Cabs, mech. rooms, elect. & telephone. closets and 2.) Non-staffed facilities such as RCO.
Affirmative Action for Special Disabled and Vietnam Era Veterans	10/96	M	M by reference	O	Insert in all leases in accordance with Vietnam Era Veteran's Readjustment Assistance Act of 1972.
Affirmative Action For Disabled Workers	10/96	M	M by reference	O	Insert in all leases in accordance with Rehabilitation Act of 1973, 29 U.S.C. 793.
Alterations	10/96	M	M by reference	O	Insert in all leases to provide the Government the protection to make alterations to the lease space during the term of the lease.
Anti-Kickback	10/96	M	M by reference	M by reference	Insert in all leases in accordance with the Anti-Kickback Act of 1986, 41 U.S.C. 51-58.
Assignment of Claims	10/96	M	M by reference	M by reference	Insert in all leases unless the terms of the lease prohibit assignment of claims.
Certification of Registration in SAM - Real Property	1/13	M	M	M by reference	Required on all cost <del>contracts</del> <u>leases</u> , unless vendor is exempted from SAM. If RECO is referencing the clause they need to request the DUNS number from the lessor.
Changes	8/02	M	M by reference	N/A	Insert in leases at the RECO's option when the government requires changes during a new lease buildout phase.
Compliance with Applicable Laws	10/96	M	M by reference	M by reference	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Contract Disputes	11/03	M	M	M	Insert in all leases as required by FAA policy on contract and protest dispute resolution system from the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17.
Protest	11/03	M	M	M	
Contractor Identification Number - "Data Universal Numbering System" (DUNS) Number	1/13	M	M	M by reference	Insert in all new "cost" leases or bilateral modifications to existing leases IAW AMS T3.3.1.A-4 : System for Award Management (SAM). Note If vendor is determined to be exempt pursuant T3.3.1.A-4, and then exclude this clause from contract.
Contractor Payment	1/13	O	O	O	<u>Use</u> <del>Insert</del> this clause if you <u>in all</u>

Information - Non SAM					<i>leases where <del>have</del> the CO been <del>has</del> documented and granted an exception to <u>use of SAM per provisions of Guidance Section 3.1.4.1 : System for Award Management (SAM)</u>. If this clause is used, delete the following clauses: <u>“System for Award Management - Real Property”, “Contractor Identification Number—Data Universal Numbering System (DUNS) Number - Real Property”, and “Certification of Registration in System for Award Management (SAM)”</u>.</i>
Coordination	10/08	N/A	N/A	M	Mandatory for leases involving antenna and rack space
Covenant Against Contingent Fees	10/96	M	M by reference	M by reference	Insert in all leases in accordance with 41 USC 254.
Damage By Fire or Other Casualty	10/96	M	M	M	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Davis Bacon Act	6/09	M	M	O	In accordance with 40 U.S.C. 276a et seq.), use for leases over \$2,000 for construction, alteration or repair of public buildings or public works to be performed within the United States.
Default By Lessor	10/96	M	M by reference	M by reference	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Delivery and Condition	10/96	M	M by reference	N/A	Insert in all leases to provide the protection to the Government to ensure the space is delivered in a condition to be occupied.
Equal Opportunity	10/96	M	M by reference	O	Insert in all leases in accordance with affirmative action programs, 41 CFR 60-1 and 60-2.
Examination of Records	8/02	M	M by reference	M by reference	Insert in all leases.
Failure In Performance	10/96	M	M	M	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Inspection	10/96	M	M by reference	M by reference	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Integrated Agreement	10/96	M	M by reference	O	Insert in all leases to assert the lease agreement defines the agreements between the parties.
Interference	10/08	N/A	N/A	M	Mandatory for leases

					involving antenna and rack space.
Lessor's Successors	10/96	M	M	M by reference	This clause must be used to protect the lease rights of the Government in case of change in ownership of the property.
Maintenance Of The Premises	10/96	M	M	M	Insert in all leases to comply with basic protection of ensuring that the lease space is in good condition.
No Waiver	10/96	M	M	M by reference	Insert in all leases to protect the Government from waiving any rights under this lease.
Officials Not To Benefit	10/96	M	M by reference	M by reference	Insert in all leases in accordance with public contract law, 41 U.S.C. 22.
Payment by Electronic Funds Transfer	1/13	M	M	M by reference	Insert in all new "cost" leases, or bilateral modifications to existing leases IAW AMS "T3.3.1.A-3 - Electronic Funds Transfer" and RE Guidance "3.1.4.2 - Electronic Fund Transfer (EFT)". Note: Clause is to be used in all cases, but lessor may qualify for a waiver (See instructions in T3.3.1.A-3). The clause allows for documentation of waiver, and providing alternate mean to receive payment, but clause is to be retained in document, as waivers are NOT permanent. Clause is not applicable to no-cost leases or no-cost MOAs.
Seismic Safety In Existing Buildings	10/12	M	M*	N/A	*Mandatory for space leases 10,000 SF or greater in existing buildings. Not required for Leases less than 10,000 SF, if in an area of low seismicity per the criteria set RP-8, Section 1.3, or the FAA determines that the acquisition meets one of the additional exceptions:  Small lease housed in single story structure of wood or metal frame less than 3,000 SF.  Agency requirement is less than 5 Years.  If Lessor or FAA proposes an exemption or the "best available space" exception to the certification requirement RECO must document file with determination after consulting seismic safety personnel.
Seismic Safety For New Construction	10/12	M	M	N/A	Mandatory for leases involving new construction or major renovation (Project cost exceeds 50% of building replacement value)

Subordination, Nondisturbance and Attornment	<del>9/99</del> 14	M	M by reference	M by reference	Insert in all leases to protect the rights of the FAA under this lease during a subordination, nondisturbance and/or attornment.
Sublease	10/96	M	M by reference	N/A	Insert in leases where the RECO expects to sublease the FAA space to another tenant. However this clause does not relieve FAA with responsibilities of the terms of the lease.
System for Award Management - Real Property	1/03	M	M	M by reference	Insert in all new "cost" leases or bilateral modifications to existing leases IAW AMS "T3.3.1.A-3 - System for Award Management (SAM)" and RE Guidance "3.1.4.2 - System for Award Management (SAM)". SAM is the preferred method of contractor maintenance for FAA. CO may exempt some vendors IAW guidance provided in T3.3.1.8 & RE Guidance 3.1.4.2. If vendor is exempted from use of SAM, use clause "Contractor Payment Information - Non SAM - Real Property".

**SECTION 3 – CLOSING**

Notices

Attachments

Name and Title of Owner

Name of Contracting Officer

**Attachment A Clauses**

CLAUSE TITLE	DATE OF CLAUSE	STANDARD LEASE	SMALL LEASE	ANTENNA AND RACK SPACE LEASE	PRESCRIPTION
Adhesives and Sealants	1/12	R	R	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Adjustment For Vacant Premises	10/96	R	O	O	Insert in all leases to provide the Government with protection if use of space changes during lease term.
Ceilings	10/96	R	O	O	Insert in all leases. Any changes should be approved by regional environmental contact.
Condition Report	4/12	O	O	O	Insert in leases where accepting space for occupancy.
Contracting Officer's Representative	10/96	O	O	O	Insert in leases where a COR is designated.
Day to Day Extension	8/02	O	O	O	This clause should be used where the requiring activity desires some flexibility for the end date of the lease. If this clause is used in a cost lease, the total term of the lease, including the total day to day

					extension days, must not exceed the twenty year FAA leasing authority.
Display Advertising	10/96	O	O	O	Insert in leases where Government is sole occupant.
Doors	4/12	R	O	O	Insert in leases for door requirement.
Electrical Safety	4/12	M	M	M	Insert in all leases. Any changes should be approved by service area environmental contact.
EOSH	4/12	M	M	R	Insert in all leases. Any changes should be approved by service area environmental contact.
Erection Of Signs	10/96	O	O	O	Insert in leases where signs are required.
Facility Security	4/12	M	M	O	Insert in all leases in accordance with FAA Order 1600.69.
Fall Protection	4/12	R	R	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Fire and Safety Requirements	4/12	M	M	O	Insert in all leases to provide protection to the Government.
Floor Load	8/02	R	O	O	Insert in all leases. Regional engineer should approve any changes.
General Health and Safety Standards	4/12	R	R	N/A	Insert in all leases to meet the following standards: local health, safety, building codes and FAA standards.
Grounds Maintenance	10/96	R	O	O	Insert in all leases where applicable.
Halon	4/12	R	R	O	Insert in all leases. Any changes should be approved by regional environmental contact.
Hazardous Materials	4/12	M	M	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Hold Harmless	10/96	M	M	R	Insert in leases in accordance with Federal Tort Claims Act of 1948.
HVAC	4/12	R	O	O	Insert in all leases. RECO's should consult a service area engineer for changes to clause.
If Minimum Not Delivered	10/96	O	O	O	Insert in leases.
Indoor Air Quality	4/12	M	M	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Installation Of Antennas, Cables & Other Appurtenances	4/12	O	O	O	Insert in all leases as needed.
Interest For Late Payment	4/12	O	O	O	The AMS exempts the FAA from the Prompt Payment Act. However, the RECO may use this clause as an added benefit to the Lessor when negotiating a lease.
Janitorial Services	4/12	O	O	O	Insert in leases, which provide for janitorial services.

Landscaping	1/12	R	O	O	Insert in all new leases where conditions permit landscaping and upgrade landscaping during lease renewal. Any changes should be approved by service area environmental contact.
Lighting	4/12	R	O	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Measurement For Payment	10/96	R	O	O	Insert in leases to determine the correct amount of space to pay rent on.
Non-Restoration	10/96	M	M	O	Insert in all leases unless specific restorations are negotiated.
Occupancy Permit	8/02	M <sup>‡</sup>	M <sup>‡</sup>	O	<sup>‡</sup> This clause is mandatory for new leases as required by local law to have an occupancy permit to occupy space.
Operating Costs Escalator	10/96	O	O	O	Insert in lease where applicable.
OSHA Requirements	10/96	M	M	O	Insert in all leases in accordance with OSHA standards 29 CFR 1910 and 1926.
Painting	4/12	R	O	O	Insert in all new leases. RECO should insert in all leases with lease terms of five years or longer.
Parking	4/12	O	O	O	Insert in leases where applicable.
Personnel Security - Security Screening of Persons or Individuals Employed or Hired by Lessor/Contractor	4/12	M	M	N/A	Insert in all leases in accordance with FAA Order 1600.72 and 1600.73
Pest Control	4/12	R	O	O	Insert in all leases.
Plans	8/02	R	O	O	Insert in all new lease actions and any alterations/renovations.
Prior Notification	8/02	R	O	N/A	Insert in all leases where construction will be done.
Progressive Occupancy	10/96	O	O	O	Insert in all leases where applicable.
Radon	10/96	M	M	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Recycled Content Products (Comprehensive Procurement Guidelines)	4/12	R	R	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Recycling	1/12	M	M	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Refrigerants	8/02	R	R	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Restrooms and	4/12	R	O	O	Insert in all leases.

Drinking Fountains					
Seismic Safety for Equipment	4/12	M	M	R	Insert in all leases. Any changes should be approved by service area environmental contact.
Services and Facilities	4/12	R	O	O	Insert in all leases.
Tax Adjustment	4/12	O	O	O	Insert in all leases where applicable.
Time Extension	10/96	O	O	O	Insert in leases.
Unauthorized Negotiating	10/96	O	O	O	Insert in all leases.
Utilities Not Provided By The Lessor	4/12	R	R	O	Insert in all leases.
Warranty Of Space	4/12	M	R	O	Insert in all leases.
Window and Floor Covering	4/12	R	O	O	Insert in all leases.
Wiring For Telephones	10/96	O	O	O	Insert in leases.
<b>Attachment B Clauses</b>					
<b>CLAUSE TITLE</b>	<b>DATE OF CLAUSE</b>	<b>STANDARD LEASE</b>	<b>SMALL LEASE</b>	<b>ANTENNA AND RACK SPACE LEASE</b>	<b>PRESCRIPTION</b>
Air Balance Report	10/12	R	O	O	Insert in leases where applicable.
Amortization Schedule	10/12	R	O	O	Insert in leases where applicable.
As-Built Floor Plans After Occupancy	10/12	R	O	O	Insert in leases where applicable.
Construction Schedule	10/12	R	O	O	Insert in leases where applicable.
Construction Schedule and Acceptance of Tenant Improvements	10/12	R	O	O	Insert in leases where applicable.
Construction of Tenant Improvements	10/12	R	O	O	Insert in leases where applicable.
Construction Waste Management	10/12	R	O	O	Insert in leases where applicable.
Construction Inspections	10/12	R	O	O	Insert in leases where applicable.
Design Intent Drawings	10/12	R	O	O	Insert in leases where applicable.
High Performance Sustainable Building (HPSB) Requirements	10/12	R	O	O	Insert in leases where applicable.
Lease Commencement	7/10	R	O	O	Insert in leases where applicable.
Lessor's Recovery of Tenant Improvement Allowance in the Event of Cancellation	10/12	R	O	O	Insert in leases where applicable.
Lessor's Recovery of Tenant Improvement Costs In Excess of The Allowance	10/12	R	O	O	Insert in leases where applicable.
Liquidated Damages	7/10	R	O	O	Insert in leases where applicable.
Measurement of Space	7/10	R	O	O	Insert in leases where applicable.
Occupancy Permit	10/12	R	O	O	Insert in leases where applicable.
Other Requirements	7/10	R	O	O	Insert in leases where applicable.
Progress Reports	7/10	R	O	O	Insert in leases where applicable.

Rent Commencement	7/10	R	O	O	Insert in leases where applicable.
Required Information Post Award: Green Label Certification for Sustainability Verification	10/12	R	O	O	Insert in leases where applicable.
Responsibility of the Lessor and Lessor's Architect/Engineer	10/12	R	O	O	Insert in leases where applicable.
Review of Working/Construction Documents	10/12	R	O	O	Insert in leases where applicable.
Tenant Improvements	10/12	R	O	O	Insert in leases where applicable.
Tenant Improvements Price Proposal Based on Construction Drawings	10/12	R	O	O	Insert in leases where applicable.
Walk-Through and Acceptance of Space	10/12	R	O	O	Insert in leases where applicable.
Work Performance	7/10	R	O	O	Insert in leases where applicable.
Working/Construction Drawings	7/10	R	O	O	Insert in leases where applicable.
<b>FORMS</b>					
<b>CLAUSE TITLE</b>	<b>DATE OF CLAUSE</b>	<b>STANDARD LEASE</b>	<b>SMALL LEASE</b>	<b>ANTENNA AND RACK SPACE LEASE</b>	<b>PRESCRIPTION</b>
ABAAS Compliance Report	10/12	M	M	N/A	Required for lessor to fill out to comply with ABAAS standard
Certification for Seismic Safety	10/12	M	M	N/A	Certification required in accordance with space lease paragraphs 8X. Seismic Safety in Existing Leases and 8Y. Seismic Safety for New Construction. This attachment becomes part of the file after lease award.
Checklist for Rural Development Act	4/10	M	M	N/A	Check appropriate reason for not considering location in rural area. However if the RECO would like concurrence from the program office, they can get the program office to sign the checklist when site selection is based upon program needs.
Space Safety and Environmental Checklist	4/12	R	O	N/A	Checklist recommended in accordance with space lease paragraph 6b Standards and Requirements. This attachment becomes part of the file after lease award.
Vendor/Miscellaneous Payment Information Form	7/10	M	M	M	EFT Form is required in accordance with space lease paragraph 8P. Electronic Funds Transfer. This attachment becomes part of the file after lease award.

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## **Section 2.4.16 : Environmental / Sustainability / Energy**

**Old 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 space 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.

**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.

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The EOs direct the FAA to incorporate the HPSB Guiding Principles into 15% of its existing owned and directly leased 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.

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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.

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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 space 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**

### 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 space 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

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### **Section 6.2 : Real Estate Contracting Officer/Specialist (RECO/S) Certification**

**Old Content:** [Real Estate Guidance](#) :

#### **Section 6.2 : Real Estate Contracting Officer/Specialist (RECO/S) Certification**

RECO/S must meet applicable training and experience requirements to qualify for Level I, II, or III certification.

More information on the competencies, performance indicators, training and certification requirements can be found on the [RECO Acquisition Professions Portal](#) (FAA only).

**New Content:** [Real Estate Guidance](#) :

#### **Section 6.2 : Real Estate Contracting Officer/Specialist (RECO/Realty Specialist) Certification**

RECO/Realty Specialist must meet applicable training and experience requirements to qualify for Level I, II, or III certification.

More information on the competencies, performance indicators, training and certification requirements can be found on the [RECO Acquisition Professions Portal](#) (FAA only).

**Red Line Content:** [Real Estate Guidance](#) :

#### **Section 6.2 : Real Estate Contracting Officer/Specialist (RECO/~~S~~*Realty Specialist*) Certification**

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### **Section 6.1 : Introduction**

**Old Content:** [Real Estate Guidance](#) :

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In order to accomplish agency mission objectives and goals, FAA uses a competency-based model to provide structure and logic for the learning and development of its acquisition professionals. The competencies required to be obtained by the Real Estate Contracting

Officer/Specialist (RECO/S) were originally identified in 2000 and were revised in 2013 to include expanded descriptions of the performance indicators (PIs) required for successful functional performance. For more information on competencies and PIs see the [RECO Acquisitions Professions Portal](#). These PIs have been incorporated into three progressive levels of competencies at the FAA. For more information please see the portal. Curriculum and experience requirements are aligned with the competencies to define each of the three levels of FAA RECO/S certification (i.e. Level I, Level II and Level III) and also in accordance with Section 5 Acquisition Career Program of AMS policy.

The FAA Acquisition Executive (FAE) delegates contracting authority to procurement and real estate Contracting Officers (COs) through a warrant. This warrant authorizes the employee to legally bind the FAA. Certification serves as the foundation for awarding warrants, as it ensures competence, experience and training requirements have been met and validated; therefore warrants for Level II and III are given after the RECO's manager determines the RECO/S has completed the appropriate level of certification. There is no warrant issued for achieving Level I certification.

**New Content:** Real Estate Guidance :

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### **Section 6.3.1 : Real Estate Contracting Officer/Specialist (RECO/S) Warrants**

**Old Content:** Real Estate Guidance :

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As mentioned above in Section 6.1, the FAA Acquisition Executive (FAE) delegates contracting authority to procurement and real estate Contracting Officers (COs) through a written certificate of appointment, also known as a warrant. This warrant authorizes the employee to legally bind the FAA. A warranted RECO cannot further delegate their warrant authority or "sign for" the name of another RECO. Real Estate Contracting Officers/Realty Specialists must prominently display the warrant certificate to all customers and stakeholders.

**New Content:** Real Estate Guidance :

#### **Section 6.3.1 : Real Estate Contracting Officer/Specialist (RECO/Realty Specialist) Warrants**

As mentioned above in Section 6.1, the FAA Acquisition Executive (FAE) delegates contracting authority to procurement and real estate Contracting Officers (COs) through a written certificate of appointment, also known as a warrant. This warrant authorizes the employee to legally bind the FAA. A warranted RECO cannot further delegate their warrant authority or "sign for" the name of another RECO. RECOs/Realty Specialists must prominently display the warrant certificate to all customers and stakeholders.

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### **Section 6.3.2 : Warrant Levels**

**Old Content:** Real Estate Guidance :

#### **Section 6.3.2 : Warrant Levels**

Individuals must be certified and meet the training and experience requirements, as outlined in AMS Policy Section 5, Acquisition Career Program, to qualify for warrants. There are two real estate contracting officer warrant levels (Level II (\$250K to \$1M) and III (greater than \$1M to Unlimited) that apply to contracting authority and are given after the RECO's supervisor and group manager determines they have completed the appropriate level of certification. There is no warrant issued for achieving level I certification. The warrant levels align with the RECO/S certification Levels II and III. These warrant levels do not apply to purchase card delegations. The initial warrant level for Level II is set at \$250,000 and can be adjusted incrementally not to exceed \$1M as recommended by the RECO's supervisor who then follows the process set forth below in Section 6.3.6 Procedures for Obtaining and Increasing Warrants. The Level III warrant level is set greater than \$1,000,000 and can be adjusted incrementally to an unlimited level as recommended by the RECO's supervisor who then follows the process set forth below in Section 6.3.6 Procedures for Obtaining and Increasing Warrants. On October 1, 2013, **all RECOs will be fulfilled for certification at their then-current warrant amount and level. Going forward increases to warrants will be commensurate with certification.**

RECO/S Certification through fulfillment is the process by which a candidate demonstrates the attainment of required competencies for certification through a combination of alternative training, experience, education or attainment and maintenance of an FAA Real Estate Warrant. When using this process, the candidate shall provide evidence of having met the required competencies for a particular certification level. See [RECO Acquisitions Professions](#) (FAA only) portal for more information.

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### **Section 6.3.3 : Maintaining Warrants**

**Old Content:** Real Estate Guidance :

#### **Section 6.3.3 : Maintaining Warrants**

To maintain one's warrant, FAA acquisition professionals must maintain the appropriate RECO/S certification levels by earning 80 continuous learning points (CLP) of skills currency training every two years. The appropriate Real Estate Group Manager shall monitor the continuous learning requirements of employees with delegated contracting authority (i.e., warrants). If an employee does not earn 80 CLPs every two years, the FAE may terminate or modify the warrant to decrease the dollar and/or specific type of transaction authority.

**New Content:** Real Estate Guidance :

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