

## AMS CHANGE REQUEST (CR) COVERSHEET

**Change Request Number:** 14-49

**Date Received:** Jun 20, 2014

**Title:** Updates to Real Estate Guidance

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**Guidance and Policy must be submitted with separate CR coversheets**

Policy

**Or**

Procurement Guidance

Real Estate Guidance

Other Guidance

**Summary of Change:**

Guidance updates are required as a result of updated information from customers, Real Estate Contracting Officers, and Legal Counsel.

**Reason for Change:**

ALO-200 is revising the Real Estate guidance to address concerns expressed by the Legal Counsel and Real Estate Contracting Officers over the past fiscal year.

**Development, Review, and Concurrence:**

ALO-200, ALO-300, AGC-520, WLSA, ELSA & CLSA

**Target Audience:**

Real Estate Contracting Officers

**Briefing Planned:** No.

**ASAG Responsibilities:** None.

**Section / Text Location:**

1.1.15

2.2.6

2.2.9

2.4.8

2.4.11

7.4

FAST Version 07/2014

CR 14-49

p. 1

**The redline version must be a comparison with the current published FAST version.**

X I confirm I used the latest published version to create this change / redline

Or

\_\_\_ This is new content

**Links:**

<http://fast.faa.gov/docs/realEstateGuidance/RealEstate1.1.pdf>

<http://fast.faa.gov/docs/realEstateGuidance/RealEstate2.2.pdf>

<http://fast.faa.gov/docs/realEstateGuidance/RealEstate2.4.pdf>

<http://fast.faa.gov/docs/realEstateGuidance/RealEstate7.4.pdf>

**Attachments:**

Redline and final documents.

**Other Files:**

None.

**Redlines**

**Section Revised: 1.1.15 Documentation for Land Contracts and Files**

**1.1.15 Documentation ~~to Lease for~~ Land Contracts and Files Revised 7/4/2014**

~~Sufficient documentation should~~must be developed ~~that to~~ explains and justifies the real estate acquisition procurement action taken. RECO's are to use the appropriate checklists (file and/or contract) to ensure the adequacy of contract clauses and to ensure required documentation is in the file to support the acquisition. These documents should be retained in the applicable real estate acquisition file as appropriate. RECOs must use a 6 part folder ~~system~~ for all ~~their~~ acquisition files.

**Lease Contract Review Process (Land)**

~~RECOs must use~~fill out the appropriate Contract Clause Review Checklist and determine if the contract requires secondary review in accordance with ISO 9001 Real Estate Contract Review Work Instructions. If secondary review is required, the RECO must submit the contract to the designated reviewer prior to sending it out for signature. Any changes made to the contract after the initial review must also be reviewed. A copy of the secondary review, signed by the reviewer, must be placed in the file.

~~ISO 9001 Land Lease Review Checklist (1.3.6) for Off Airport, all privately owned land leases, regardless of cost or size.\* (This includes vacant land, roadways, right of ways, etc.). These include all new, renewal, or succeeding leases at a new or existing location. Below are the procedure for the checklist:~~

- ~~1. Prior to sending the lease out for signature by the Lessor/owner, the RECO must~~

- submit the lease record for review to the designated senior RECO or Real Estate Group Manager, hereinafter referred to as reviewer.
2. The reviewer reviews the lease for conformance with the AMS 1.2 Land Clause Matrix. The review is to ensure all mandatory/required clauses are incorporated into the lease, along with any recommended/optional clauses that are appropriate and in the best interest of the FAA. The reviewer must use the appropriate attached lease review checklist form (1.3.6) Land Lease Review Checklist when reviewing the lease and note on the checklist form any nonconformities found.
  3. If the RECO is entering into a succeeding lease at an existing location, the RECO and reviewer must ensure all clauses are updated and any new mandatory clauses are added into the renewal lease.
  4. The RECO will correct the nonconformities noted on the lease review checklist, and resubmit the corrected lease and the original review checklist to the reviewer.
  5. Once all corrections are acceptable and/or legal approval is obtained, the reviewer will annotate the review checklist and sign off on the final review line at the bottom of the checklist review form.
  6. If after final review the lease is further changed (e.g. the Lessor requests additional changes), the RECO will re-submit the lease to the reviewer for another review using a new checklist form before the lease is fully executed. The reviewer will clearly annotate on the top of the checklist, "Review #2" and so on.
  7. The RECO is to place the original hard copy of the completed lease review checklist(s) in the real estate lease file.

### **Lease File Review Process (Land)**

In accordance with the ISO 9001 SOP for Lease Document and File review, a document and file review for conformance to FAA Policy Standards is required for all privately owned land leases. The File Review needs to be dated and signed by a person who has reviewed the file, which is intended to provide a quality control check of the file for completeness. The review is not intended to replace the judgment exercised by the contracting officer. A second realty specialist, team coordinator/lead performs the review.

RECOs must fill out and sign the appropriate File Review Checklist and determine if the file requires secondary review in accordance with ISO 9001 Real Estate File Review Work Instruction. If secondary review is required, the RECO must submit the file to the designated reviewer. A copy of the secondary review, signed by the reviewer, must be placed in the file.

Further, RECOs must use the following file checklists: Off/On Airport Land Lease and MOA Checklist with matrix and Outgrant and Condemnation checklists. The checklist is to be used to ensure consistency of documentation and for consistency of how documentation within the lease file is arranged. This checklist is to be implemented for use by all Service Areas beginning September 30, 2006, for all new and renewal off/on airport leases or MOA and for all extensions of leases with a Supplemental Lease Agreement. The checklist(s) must be filled in completely, i.e. check if it is required or not required or in the file. Note that if an item in the

~~checklist is listed as required under the narrative however it is not applicable for this particular acquisition, the RECO must place a N/A and a note in the file stating why it is not applicable for this acquisition.~~

~~Copies of each expired lease should be filed sequentially at the bottom of the section 1 of the Land Checklist. “Boiler plate” clauses and attachments, though possibly large should be included because what is considered “standard” at one time may differ from present policy/guidance.~~

~~It should also be noted that the RECO must follow the requirements for scanning leases into REMS 3.1.7.1.~~

#### **Section Revised: 2.2.6 Request for Offers/Solicitation for Offers**

##### **2.2.6 Request for Offers/Solicitation for Offers** Revised 7/2014<sup>0</sup>

After the market survey is completed, the RECO will ~~decide if they need to~~ send out the Solicitation for Offerors (SFO) ~~including or~~ the proposed lease contract and other attachments ~~outlined in the SFO instructions~~ to those offerors whose space meets ~~the~~ FAA requirements and whose prices have been determined initially to be fair and reasonable. ~~The~~ If the RECO is using the SFO, they must use 2.6.10 the Solicitation for Offer form. The SFO will set forth a detailed statement of FAA’s space requirements, including any tenant improvement requirements; will set forth pertinent evaluation criteria and the basis for award; will include a schedule for space delivery; will set forth all statutory and regulatory requirements, such as accessibility, life safety, how disputes will be addressed, and labor wage requirements; and will include such additional provisions as are necessary to ensure that the space is acquired in the best interest of FAA. The SFO should be clear and unambiguous. An SFO is not required for a small lease (under 3,000 square feet). However, a modified version of an SFO for small lease is acceptable for the RECO to use.

#### **Section Revised: 2.2.9 Documentation for Land Contracts and Files**

##### **2.2.9 Documentation ~~to the Lease for Space Contracts and~~ Files** Revised 7/2014<sup>09</sup>

Sufficient documentation must be developed to explain and justify the ~~real estate lease acquisition actions~~ taken. ~~RECO’s are to use the appropriate checklists (file and/or contract) to ensure the adequacy of contract clauses and to ensure required documentation is in the file to support the acquisition. These documents should be retained in the applicable real estate acquisition file as appropriate.~~ RECOs must use a 6 part folder system for all ~~their~~ acquisition files.

##### **Lease-Contract Review Process (Space)**

~~RECOs must fill out and sign use the appropriate Contract ISO 9001 Space Lease Review Checklist and determine if the contract requires secondary review in accordance with ISO 9001 Real Estate Contract Review Work Instructions. If secondary review is required, the RECO must submit the contract to the designated reviewer prior to sending it out for signature. Any changes made to the contract after the initial review must also be reviewed. A copy of the secondary review, signed by the reviewer, must be placed in the file. (2.6.19) for standard and small space leases. These include all new, renewal, or succeeding leases at a new or existing location. Below is the procedure for the checklist:~~

- ~~1. Prior to sending the lease out for signature by the Lessor/owner, the RECO must submit the lease record for review to the designated senior RECO or Real Estate Group Manager, hereinafter referred to as reviewer.~~
- ~~2. The reviewer reviews the lease for conformance with the AMS 2.5 Space Clause Matrix. The review is to ensure all mandatory/required clauses are incorporated into the lease, along with any recommended/optional clauses that are appropriate and in the best interest of the FAA. The reviewer must use the appropriate attached lease review checklist form (2.6.19) Space Lease Review Checklist when reviewing the lease and note on the checklist form any nonconformities found.~~
- ~~3. If the RECO is entering into a succeeding lease at an existing location, the RECO and reviewer must ensure all clauses are updated and any new mandatory clauses are added into the renewal lease.~~
- ~~4. The RECO will correct the nonconformities noted on the lease review checklist, and resubmit the corrected lease and the original review checklist to the reviewer.~~
- ~~5. Once all corrections are acceptable and/or legal approval is obtained, the reviewer will annotate the review checklist and sign off on the final review line at the bottom of the checklist review form.~~
- ~~6. If after final review the lease is further changed (e.g. the Lessor requests additional changes), the RECO will re-submit the lease to the reviewer for another review using a new checklist form before the lease is fully executed. The reviewer will clearly annotate on the top of the checklist, "Review #2" and so on.~~
- ~~7. The RECO is to place the original hard copy of the completed lease review checklist(s) in the real estate lease file.~~

#### ~~Lease File Review Process (Space)~~

~~In accordance with the ISO SOP for Lease Document and File review, a document and file review for conformance to FAA Policy Standards is required for all Standard and Small Leases. The File Review needs to be dated and signed by a person who has reviewed the file,~~

~~which is intended to provide a quality control check of the file for completeness. The review is not intended to replace the judgment exercised by the contracting officer. A second realty specialist, team coordinator/lead performs the review.~~

~~RECOs must fill out and sign the appropriate File Review Checklist and determine if the~~

**file requires secondary review in accordance with ISO 9001 Real Estate File Review Work Instruction. If secondary review is required, the RECO must submit the file to the designated reviewer. A copy of the secondary review, signed by the reviewer, must be placed in the file.**

**~~Further the RECOs must use the following file checklist: Space Lease Checklist with matrix and Outgrant and Condemnation checklists. The checklist is to be used to ensure consistency of documentation and for consistency of how documentation within the lease file is arranged. This checklist is to be implemented for use by all regions beginning September 30, 2006, for all new and renewal leases and for all extensions of leases with a Supplemental Lease Agreement. The checklist must be filled in completely, i.e. check if it is required or not required or in the file. Note that if an item in the checklist is listed as required under the narrative however it is not applicable for this particular acquisition, the RECO must place a N/A and a note in the file stating why it is not applicable for this acquisition.~~**

**~~Copies of each expired lease should be filed sequentially at the bottom of section 1 in the lease acquisition file. "Boiler plate" clauses and attachments, though possibly large should be included because what is considered "standard" at one time may differ from present policy/guidance. It should also be noted that the RECO should follow the requirements for scanning leases into REMS 3.1.7.1.~~**

## **Section Revised: 2.4.8 Appendix H: Seismic**

### **1.3 – Exceptions**

The following are common exemptions from the RP-8 standard:

- The remaining useful life of the building or the agency's requirement for the building has been identified as being less than five years.
- Any buildings in some areas designated as low seismic risk\*
- Temporary short-term leases
- Total federal leased area in a non-federally owned building is less than 10,000 square feet, and meets certain shaking intensity criteria\*
- One story buildings of steel light frame or wood construction under 3,000 sq. ft.\*
- Building structures intended only for incidental human occupancy of less than 2 hours per day \*
- Additional exemptions are available if applicable to the space being considered for lease, but see caveat below\*

**~~\* Must consult with engineering services or equivalent seismic subject matter experts for assistance when considering application of an exemption, since most come with technical caveats and criteria contained in RP-8.~~**

## **Section Revised: 2.4.11 Appendix K: Supplemental Lease Agreement(SLA)**

## 2.4.11 Appendix K: Supplemental Lease Agreement (SLA) Revised 4/2012

### **Supplemental Lease Agreements (SLA)**

~~—The RECO must use an SLA for adding modifications; to existing lease requirements to (1) document changes in lease ownership, (2) exercise a lease renewal option, (3) extend a lease prior to expiration, and (4) change or modify a performance requirement. The RECO must use Form 2.6.13 to execute an SLA. updates, extensions to existing lease terms. The SLA must include all updated clauses to the base lease. It is recommended not to use the SLA to extend the lease beyond a couple of years. However, if a longer extension is needed, the SLA must be reviewed and approved by the RECO's regional legal counsel.~~

~~An SLA must include all updated clauses to the base lease, except when exercising a lease renewal option, where the price and all other terms of the option have been previously negotiated and agreed upon in the lease.~~

~~All modifications to the existing requirements must be within the scope of the lease (e.g., the requirements the lessor has to perform on the lease).~~

~~No SLA may extend the term of an existing cost lease beyond twenty (20) years unless approved by Legal.<sup>1</sup> This restriction does not apply to no-cost leases.~~

### **Unilateral SLAs**

~~A unilateral SLA is one that is executed only by the RECO, and no consent of the Lessor is required. A unilateral SLA is appropriate under the following circumstances:~~

- ~~• Exercising a lease renewal option where the price and all other terms of the option have been previously negotiated and agreed upon in the lease.~~
- ~~• Exercising a termination right in accordance with the cancellation clause in the lease.~~

### **Bilateral SLAs**

~~A bilateral SLA is one that must be signed by the RECO and the Lessor. A bilateral SLA is appropriate under the following circumstances:~~

- ~~• Rental commencement and/or escalation payments (e.g., tax, operating costs)~~
- ~~• Any changes that require the consent of the Lessor~~

~~Criteria for using an SLA are as follows:~~

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<sup>1</sup> <sup>1</sup> See Legal Coordination 7.0 for additional information.

~~—— Not to exceed 20-year authority~~

~~—— Use of the competitive method, i.e. the RECO conducted a limited market survey~~

~~—— Not creating a capital lease~~

*Question and Answer*

~~1Q: What if you are only adding 50 square feet, do we need to update the clauses?~~

~~A: When adding an SLA, the RECO is opening the terms of the lease agreement for negotiation, thus the RECO should update clauses when adding square feet. Any exceptions need to be discussed with Regional General Counsel.~~

~~2Q: If the FAA has a no-cost land lease for a term of twenty (20) years for a navigational and communication aid, can the RECO extend the lease adding new current clauses if the lessor is willing to remain at no-cost?~~

~~A: Yes, no-cost land lease(s) is not under the twenty (20) year authority and thus the term of the lease may be extended.~~

~~3Q: What if the FAA has a 20-year cost lease for a navigation and communication aids? Can the RECO extend the lease for a year, while the RECO is negotiating a new replacement lease?~~

~~A: No, the SLA would extend the lease beyond the FAA authority to lease only up to twenty (20) years.~~

~~4Q: We have a ten (10) year space lease for a District Office (SMO), which expires this year. The customer is still determining their final requirements. The RECO is considering a two (2) year extension with a one (1) year option. The Lessor has agreed verbally to an extension. Can an SLA be added to the existing lease?~~

~~A: Yes, as long as all the updated and new space clauses have been included and the lease versus operating form has been completed.~~

~~5Q: Should the RECO use an SLA for a change of ownership?~~

~~A: A RECO must complete a Vendor Novation to change the vendor association in Prism/Delphi to the new owner/lessor. The RECO must modify the lease with a SLA to~~

~~change the ownership on the lease document. This can be a unilateral SLA which does not require the lessor's signature.~~

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

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

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

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