



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20350

SECNAVINST 11011.43A
MAT 04H2

11 JAN 1985

SECNAV INSTRUCTION 11011.43A

From: Secretary of the Navy

Subj: LEASING OF DEPARTMENT OF THE NAVY NON-EXCESS INDUSTRIAL
RESERVE REAL PROPERTY

Ref: (a) SECNAVINST 11011.47 (NOTAL) (R)
(b) SECNAVINST 4802.4B (NOTAL) (A)
(c) SECNAVINST 5430.25D (NOTAL)

1. Purpose. To provide policy, delegate authority, and assign responsibility of leasing non-excess Department of the Navy industrial reserve real property for industrial purposes. (R)

2. Cancellation. SECNAVINST 11011.43.

3. Scope. This instruction applies to the granting, administration, and termination of leases of non-excess industrial reserve real property for industrial purposes authorized by Title 10, U.S. Code, Section 2667. Leases of industrial reserve real property for nonindustrial purposes shall be accomplished in accordance with reference (a). (R)

4. Definition. Industrial reserve real property is defined as government-owned contractor-operated and government-owned government-operated industrial plants or portions thereof, including those located on naval installations, together with related personal property to be used for industrial purposes.

5. Policy. Industrial reserve real property (located in the United States, Puerto Rico, Guam, the Virgin Islands, American Samoa and the Trust Territory of the Pacific Islands) under the control of the Department of the Navy which is not excess property as defined in Title 40, U. S. Code, Section 472, but which for the time being is not needed for public use, may be leased to a lessee who may be:

a. A planned producer of military items under the DOD Industrial Preparedness Production Planning Program in accordance with reference (b). (R)

b. An operator who proposes to use industrial reserve real property to produce military items in support of peacetime and mobilization defense requirements. (R)

c. The present producer occupying industrial reserve real property at the time the lessee is being considered.

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- d. An operator who will contract to maintain industrial reserve real property in such condition that it can be placed in use for the manufacture of military items when required without undue cost or delay to the Government.
- R) e. Any other lessee whose occupancy under an appropriate lease agreement is determined to be advantageous to the United States.

6. Authority

- a. Title 10, U. S. Code, Section 2667, permits the Secretary of the Navy to lease non-excess property whenever he considers that such action would be advantageous to the Government, upon such terms and conditions as he considers will promote the national defense or be in the public interest.
- D) b. Such leases of industrial reserve real and related personal property under the jurisdiction of the Department of the Navy shall be made pursuant to the provisions of this instruction.
- A) c. This authority does not apply to oil, mineral or phosphate lands.

7. Procedures

- a. Notification
 - (1) The cognizant command shall notify the Commander, Naval Facilities Engineering Command (COMNAVFACENGCOM) whenever Navy non-excess industrial reserve real property becomes available for lease.
 - (2) COMNAVFACENGCOM shall be responsible for notifying federal agencies of the availability of the property, as appropriate.
 - (3) Any proposed use of this property by any other federal agency shall be subject to the approval of the cognizant command.
 - (4) The cognizant command shall obtain the approval of the Chief of Naval Material (CNM), Chief of Naval Operations (CNO) and Assistant Secretary of the Navy (Shipbuilding & Logistics) (ASSTSECNAV (S&L)) prior to offering such property for lease. Commandant of the Marine Corps (CMC), in lieu of CNM and
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CNO, approval is required if the facility is located at a CMC commanded activity.

b. Procedures for Leasing

(1) COMNAVFACENGCOM shall furnish to the cognizant command all necessary information as to appraisals, rental value, estimated costs of maintenance, etc.

(2) Unless COMNAVFACENGCOM is advised to the contrary, the cognizant command will be responsible for publicizing the availability of such property for lease and for conducting negotiations with interested parties. COMNAVFACENGCOM shall, upon request of the cognizant command, furnish a representative to advise and consult with representatives, as appropriate, of the cognizant command in such negotiations.

(3) Unless the cognizant command decides that there is only one available lessee for the property or that a lease of the property to a selected lessee can be fully justified, a lease shall be made only after the property has been publicized for lease and proposals received from prospective lessees have been considered, as prescribed.

(a) Publicity concerning the availability of the property for lease may be in the form of advertising, requests for proposals (RFPs), notices in trade journals, communication to possible interested parties, or by any other means which in the opinion of the cognizant command will afford maximum practicable publicity of the availability of the property for lease.

(b) Because of the diverse character and varied command requirements for lease of industrial reserve real property as well as the singular business situation of each offeror, it is generally not practicable to establish standard lease terms or to issue sufficiently detailed specifications in advance and to call for sealed bids. Therefore, competitive initial proposals will usually require further elaboration upon such matters as the extent of maintenance assumed, removal and storage of Navy machinery and equipment, amount of insurance, rental and other details. As such, these issues should be the subject of negotiations before a lease can be awarded. In addition, negotiations with interested parties frequently will result in bettering the terms contained in proposals. In all cases, extreme care must be taken that the terms of any proposals received are held in strictest confidence.

(4) Proposals received shall be evaluated by the command (R) conducting the negotiations and that proposal which is satisfactory

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to the cognizant command and which, under the circumstances, is determined to be in the best interest of the Government, shall be recommended to ASSTSECNAV (S&L) with a request for authority to enter into the lease. Prior to forwarding such recommendation, the proposed lease shall be submitted to the Office of General Counsel for legal review in accordance with reference (c). The recommendation shall then be forwarded for approval to ASSTSECNAV (S&L) by the command conducting the negotiation via other interested commands, CNM, and CNO (CMC, in lieu of CNO and CNM, approval is required if the activity is located at a CMC commanded activity) and shall contain:

R) (a) A brief description of the property which must include all related class 1 and 2 real property as well as a listing of all class 3 and 4 property that may either be "built-in" or included in the transaction.

(b) Cost of acquisition to the Government.

(c) Reason for retention.

(d) Name, address and occupation of the proposed lessee.

(e) A summary of the principal terms and conditions of the proposed lease, including term, rental and maintenance obligations assumed, insurance coverage proposed, etc.

(f) Contemplated use of the property by the lessee.

D) (g) Such other facts and circumstances deemed pertinent.

D) (h) If the proposed lease is for a term in excess of five years, including right of the lessee to renew the term unilaterally, or omits a provision allowing the Government to revoke the lease at any time, a written determination for secretarial signature that such action will promote national defense or is in the public interest shall be included in the package.

(5) If ASSTSECNAV (S&L) approves the proposal as recommended, the cognizant command will be notified of the terms and conditions to be included in the proposed lease, and that command shall be responsible for preparing, executing and delivering the instrument of lease or letter of intent evidencing the terms of the tenancy agreed upon. Each such instrument of lease or letter of intent shall be approved as to form and legality by the Office of General Counsel.

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(6) COMNAVFACENGCOM will be responsible for the submission to the Armed Services Committees of Congress pursuant to Title 10, U. S. Code, Section 2662, and for the maintenance of a records system from which management information may be compiled. Copies of leases, amendments, and renewals executed by cognizant commands shall be provided to COMNAVFACENGCOM.

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(7) In the event no acceptable proposals are received, and it is desired to lease the property for other than industrial purposes or on a multiple tenancy or space lease basis rather than retain it in a standby condition, the property shall be referred to COMNAVFACENGCOM for lease pursuant to reference (a).

8. Terms and Conditions of Lease

a. Each lease entered into under the authority of this instruction shall contain the following provisions:

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(1) The Government may terminate a lease:

(a) At anytime without prior notice to the lessee. (This provision may be omitted if it is determined by the ASSTSECNAV (S&L) that the omission of such a provision will promote the national defense or be in the public interest. If omitted, the following provisions (b) through (e) will be included.)

(b) Upon not less than sixty days written notice to the lessee whenever ASSTSECNAV (S&L) shall determine that the interests of national defense so require.

(c) Upon reasonable notice when the property has been determined to be excess to the needs of the Department of the Navy.

(d) Upon ten days written notice to the lessee if the lessee shall have defaulted in the performance of any of its obligations under the lease.

(e) In the event of instituting proceedings by lessee or others in any federal or state court for adjudication of the lessee as a bankrupt, for corporate reorganization of the lessee, for an arrangement within the meaning of the Bankruptcy Act and any amendments thereto, for other similar debtor or creditor relief available under state or local law, or upon the appointment of a receiver or trustee for the property of the lessee.

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(2) The lessee is required to use, maintain, protect and preserve the property in accordance with sound industrial practices.

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(3) The term shall not exceed five years unless ASSTSECNAV (S&L) determines that a lease in excess of five years will promote the national defense or be in the public interest.

D) (4) The lessee shall reimburse the Department of the Navy for any utilities and services furnished.

(5) The lessee shall bear all risk or loss of, or damage to, the lease property; provided, however, that where the lessee is required to maintain insurance in accordance with paragraph 8.a.(6), the lessee's liability for such loss or damage may be limited to the amount of insurance as required and maintained unless the loss or damage results from willful misconduct, lack of good faith or failure to exercise due diligence on the part of any of the lessee's officers, directors or representatives having supervision or direction of all, or substantially all, of the operation of the property leased by the lessee.

R) (6) The lessee shall procure and maintain, at the lessee's expense, such insurance to cover loss or damage to the leased property and to cover third party bodily injury and property damage as may be required by government regulations.

(7) The lessee shall indemnify, save, and hold harmless, the Government from liability for death or injury to third parties and for loss of or damage to property of third persons arising out of use of the property by the lessee.

(8) The lessee shall provide sufficient security to insure compliance with all the terms and conditions of the lease, unless the lessee shall have demonstrated sufficient financial responsibility to assume performance of the lessee's obligation.

(9) If, and to the extent that, the leased property is later made taxable by state or local governments under an act of Congress, the lease shall be renegotiated. This provision shall not apply to state or local taxation levied on the interest of the lessee in the leased property.

A) (10) The lessee shall not transfer or assign the lease or any interest therein or sublet any portion of the leased property or rights therein without the prior written consent of the Government.

A) (11) The lessee will make no major alterations, additions or betterments to or installations upon the leased property without the prior written approval of the Government, and then only subject to the terms and conditions of such approval which may include an obligation of removal and restoration upon the expiration or termination of the lease.

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(12) Before the expiration or prior to termination of the lease, the lessee shall restore the leased property to the condition in which it was received or to such improved condition as may have resulted from any improvement made therein by the Government or the lessee during the lease terms subject, however, to ordinary wear and tear and loss or damage for which the lessee is not liable and which has not been replaced or repaired. In the event the Government shall terminate the lease upon less than 30 days notice, the lessee shall have 30 days from receipt of notice of termination to accomplish such restoration. (A)

(13) Each lease shall include a provision for disposition of any disagreement arising from the lease which cannot be settled by mutual agreement. Such disagreements shall be settled by written decision of the Chief of Naval Material which shall be final and conclusive unless, within 30 days of the date of receipt of such written decision, the lessee mails or otherwise furnishes to the Chief of Naval Material a written appeal addressed to the Secretary of the Navy. The decision of the Secretary of the Navy or his duly authorized representative for the determination of such appeals shall be final and conclusive. (A)

b. Each lease shall contain such other provisions as may be required by applicable law, executive orders, and other regulations including DODINST 7230.7 of 12 June 1979 (user charges), and may include such additional terms and conditions not inconsistent with the foregoing, as may be determined to be desirable in the interest of the Government. (R)

c. In the case of a lease entered into after competitive bidding, the rental to be paid shall be the amount of the highest acceptable bid; in the case of property not advertised for leasing, the rental shall not be less than the appraised fair market rental of the premises and will prevent any unfair competitive advantage from being derived by a lessee over competitors who may own their premises or lease from private concerns.

d. The lease may provide for the maintenance (other than normal), protection, repair or restoration, by the lessee, of the property leased, or of the entire unit or installation where a substantial part of it is leased, as part or all of the consideration for the lease.

e. The lease may give the lessee the first right to buy the property if the lease is revoked to allow the property to be sold under any other provision of law. (A)

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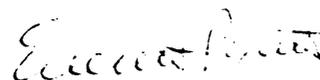
9. Administration of Leases

a. The command executing the lease shall be primarily responsible for the administration of leases made under the authority of this instruction. COMNAVFACENGCOM shall furnish technical assistance, including the standard and degree of maintenance of buildings, structures, and equipment, as may be appropriate.

b. Money rentals received by the Department of the Navy directly from a lease under this authority shall be paid to the Treasury of the United States as miscellaneous receipts, Navy. Payment for utilities or services furnished to the lessee under such a lease may be paid into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid.

10. Renewals and Amendments of Leases. In the absence of a previously granted Secretarial authority, prior approval of CNM, CNO and ASSTSECNAV (S&L) shall be obtained for any proposal to renew an outstanding lease, whether or not such lease grants either party an option to renew. CMC, in lieu of CNM and CNO, in the case of facilities at USMC activities. The prior approval of ASSTSECNAV (S&L) shall be obtained for any substantial amendment of an outstanding lease which is not fairly within the scope. However, if the lease as originally approved provided for renegotiation of the rental, and the rental and other consideration as renegotiated is more favorable to the Government than the rental originally approved, the approval by ASSTSECNAV (S&L) of such renegotiated rental shall not be required.

11. Report. The requirement contained in paragraph 7.b.(4) has been assigned symbol NAVMAT 11011-1 and is approved for three years only from the date of this instruction.



EVERETT PYATT
ASSISTANT SECRETARY OF THE NAVY
(SHIPBUILDING AND LOGISTICS)

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