

Coast Guard Leased Housing Contracting Officer Training



Student Workbook

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Overview

I. Course Outline

a. Objectives.

The objective of the Coast Guard Leased Housing Contracting Training is to provide you, the contracting officer, with an overview of the Coast Guard Leased Housing Program, to include management and administration of the leased housing program, the basics of government contract law, contracting ethics, and how they relate to the leased housing program.

b. References.

- Coast Guard Housing Manual (COMDTINST M11101.13 series)
- Coast Guard Leased Housing Procedural Guide (COMDTPUB 11101.6)
- Federal Acquisition Regulations (FAR)

c. Major Topics and Activities.

At the conclusion of this course you will have the basic foundation to effectively manage the leased housing program in your area of responsibility. The following topics will be covered:

- Review of the Coast Guard Leased Housing Program
- Contracting Requirements
- Program Management
- Damage Claims

d. Final Exam

All students are required to complete an end of course test to meet requirements and receive contracting authorization from Commandant (G-WPM-4).

C. Policy

D. Appropriate Use of Owned Quarters

1. Availability:

2. Assignment:

E. Definitions



Refer to Handout #2.

Chapter 2 - Leased Housing Contracting

A. Contract Regulations

1. Power to Contract.

Contracts of Government agencies are not legal obligations of the United States unless they comply with certain legal requirements applicable to all Federal Government contracts.

Under our Constitutional System, the Governmental powers from which contracting powers derive are vested in either the legislative or executive branch.

Although the executive branch performs a vast majority of the Government contracting functions, the legislative branch is granted the majority of powers.

This separation of powers is, of course, part of the system of checks and balances, which is inherent in our Constitutional principles. Thus, when analyzing the validity of a Government contract, we must consider the contracting power and authority of the Government and of the individuals who represent it in its dealings with contractors.

As a general rule, an unauthorized contract, or one entered into by an unauthorized official, will not be binding upon the United States, and may result in the contractor's not being able to recover its expenditures.

2. Constitutional Authority.

The initial concern in examining Federal Government contracts is whether the Constitution authorizes the Federal Government to engage in the activity, which is to be the subject of the contract. One of the most important clauses of the entire Constitution is **Article 1, Section Clause 18**, which gives Congress the power:

“to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

2. Constitutional Authority. (cont'd)

This so called "**necessary and proper**" clause supplies by implication the necessary power of the Government to enter into contracts or engage in other acts, which promote the discharge of responsibilities delegated to it by express provisions of the Constitution.

3. Statutory Authority

Before the Federal Government can enter into a contract, there must be statutory authorization for the work being performed. Most agencies have a continuing grant of general authority, contained in the legislation, which created the agency.

Such statutes spell out an agency's mission, describe the general scope of its activity, and contain any limitations on its authority. This grant of authority was once considered sufficient to support the issuance of contracts.

However, payment could not be made under such contracts unless money was appropriated by Congress because **Article 1, Section 9, Clause 7**, of the Constitution states:

"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."

Using this Constitutional authority, Congress passed the **Anti-Deficiency Act**, 31 U.S.C. 1341, which requires:

Specific statutory authority, either appropriating funds or permitting contracts without appropriating funds or permitting contracts without appropriations in order for executive agencies to enter into obligations binding the Government. This specific statutory authority is called "**budget authority.**"

4. Budget Authority

Budget authority is provided either in the form of an appropriation act or by a grant of "**contract authority.**" "**Contract authority**" is permitted in the last phrase of the **Anti-Deficiency Act**, and is usually found in the language of statutes authorizing programs and permitting contracts prior to the passage of an appropriation act. However, most contracting actions of the Federal Government are based on appropriation legislation, not contract authority. In such cases, if there is no appropriation legislation, the contract will not be enforceable against the Government. Thus, contracts made for amounts greater than appropriated are not binding on the United States.

5. Authorization of Appropriation

At one time, appropriation acts were the only statutory authority required in addition to the statute that created the agency. However, Congress has mandated by both rules and statute that statutes authorizing the agencies' specific activities precede appropriation acts.

Prior to the passage of an appropriation act, congressional committees usually pass special "**authorization acts**" which authorize annual agency programs with dollar limitations. Authorization may also be in the form of provisions in the general legislation creating the agency, authorizing expenditures up to specified limits for designated programs.

6. Method of Contracting

In the absence of specific statutory requirements, Government agencies generally have wide latitude in selecting methods for awarding contracts, as well as the terms and conditions to be included. While this broad authority will be applicable to some procurement situations, the contracting parties must be aware of the numerous statutes and regulations giving specific guidance on the procedures to be followed when entering into most Government contracts.

7. Instrument Used

When a Federal agency has decided to obtain goods or services from a private source, it must determine what type of legal instrument it is authorized to use. If the transaction is an acquisition (procurement), the contract is to be used. An acquisition is found where the performance is "**for the direct benefit or use**" of the Government. If the transaction is a support "assistance" arrangement, a grant or cooperative agreement may be used. A support arrangement may exist in any situation where the Government provides funds without seeking a direct benefit.

Selection of a particular instrument will determine many of the procedures to be followed because of the regulations applicable to the different instruments. If a contract is used, the contracting officer must follow the applicable procurement regulations. If a grant is used, there may be much less regulatory guidance with commensurate latitude in the agency. If cooperative agreements are used, there may be less regulatory guidance.

8. General Procurement Status

The principal statutes establishing the procedures for awarding Government contracts are the Armed Services Procurement Act (ASPA) of 1947, 10 U.S.C. 2301-2314 and the Federal Property and Administrative Services Act of 1949, 41 U.S.C. 251-260 (FPASA). The ASPA applies to purchases of the Army, Navy, Marine Corps, Air Force, Coast Guard, and the National Aeronautics and Space Administration. The Federal Property and Administrative Services Act applies to purchases of the GSA and other executive agencies (except those covered by the ASPA). These statutes encourage sealed bidding as the preferred form of procurement, but they permit the award of contracts by negotiation in certain specified circumstances. In addition, these statutes provide some minimal procedures, which must be complied with (e.g., requirements for the advertisement of bids). Previously, they left the selection of terms and conditions largely to the contracting agency. However, with the introduction of the FAR, a certain measure of uniformity has been reached. The Federal Acquisition Regulations (FAR) has been amended to reflect the requirements of the Competition in Contracting Act, the Defense Procurement Reform Act, and the Small Business and Federal Procurement Competition Enhancement Act and has streamlined the procurement process and promoted the use of commercial products, whenever practicable.

9. Procurement Regulations

Various Federal agencies issued regulations containing detailed guidance for procedures for award of a contract as well as its terms and conditions. Until April 1984, the two major regulations were the **Federal Procurement Regulation (FPR)**, governing procurement activity of civilian agencies, and the **Defense Acquisition Regulation (DAR)**, governing military departments in the Department of Defense.

The **FPR**, promulgated by the **General Services Administration**, applied to all "**executive agencies**" (defined in **40 U.S.C. 472(a)**) as "**any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation**"). However, the **Defense Department, NASA, and the U.S. Postal Service** were exempt from the FPR. Supplemental regulations implementing the FPR were issued by various agencies. Although NASA's procurement procedures came under the **ASPA**, **NASA** was not an agency of the **Defense Department** and thus was not subject to the DAR. NASA issued a separate NASAPR, **41 CFR Chapter 18**.

10. FAR

On 1 April 1984, the **Federal Acquisition Regulation (FAR)** system was established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The **FAR** system consists of the **FAR**, which is the primary document, and agency acquisitions regulations, which implement or supplement the **FAR**. The development of the **FAR** system is in accordance with the requirements of the **Office of Federal Procurement Policy Act of 1974 (Public Law 93-400)**, as amended by Public Law 96-83. The **FAR** was prepared, issued, and maintained, and the **FAR** system is prescribed jointly by the **Secretary of Defense, the Administrator of GSA, and the Administrator of the National Aeronautics and Space Administration** under the several statutory authorities discussed previously.

11. OMB

The executive agencies are primarily responsible for formulating and implementing the policy concerning Government contracts entered into by each respective agency, subject to the FAR's guidance and regulatory policies. However, the pronouncements issued by the **President, Office of Management and Budget (OMB), and the Office of Federal Procurement Policy (OFPP)**, also directly affect such activities. The President issues **Executive Orders**, which authorize and require the use of regulatory clauses implementing various economic and social programs. The **Office of Management and Budget** issues **OMB Circulars** defining executive policy, which may be directed at regulation of agency contract activities. The **OMB Circulars**, as regulations originating from the **Office of the President**, take precedence over the regulations issued by the individual agencies.

12. OFPP

Congress created OFPP in 1974 as a separate office within the OMB by enacting the **Office of Federal Procurement Policy Act, 41 U.S.C. 401, et seq**, for the purpose of providing overall direction to procurement policy. The Act charges the OFPP with the responsibility for formulating and implementing a uniform Federal procurement system. The OFPP prepared and submitted to Congress the **Uniform Procurement System Proposal** on October 27, 1980.

12. OFPP (cont'd)

The proposal sought to achieve uniformity in five key areas of procurement:

- (1) procurement legislation through the issuance of a single procurement statute,
- (2) procurement regulation through the issuance of a single FAR,
- (3) procurement management and support systems,
- (4) data, and
- (5) personnel recruitment, training, and career development programs.

OFPP Policy Letter 80-5, 45 F.Reg. 48075, establishes a FAR system which consists of a single Federal Acquisition Regulation jointly issued by DOD, GSA, and NASA.

13. FAR Limitations.

The FAR system limits agency regulations to those necessary to implement or supplement the FAR. Changes to the FAR will be coordinated between two councils set up to administer changes--the **Defense Acquisition Regulatory (DAR) Council and the Civilian Agency Acquisition (CAA) Council**. The FAR Secretariat is responsible for printing, publishing, and distributing the FAR through the Code of Federal Regulations System and, in addition, for performing the coordinating activities between the two primary councils identified above.

14. Impacts of Statutes and Limitations.

There is usually little question concerning the impact of a statute on the procurement process, since all statutes are a matter of public record. As stated earlier, a contract, which is specifically prohibited by statute, or at variance with required statutory provisions or procedures, will not be binding on the Government. However, Federal agencies issue regulations in different ways for many purposes. Consequently, there is often a question as to their legal effect. When a court or board rules that a regulation is legally binding on either the Government or the contractor, that regulation has the "force and effect of law," in the same manner as a statute.

Generally, in the absence of statutory authorization, Governmental officials do not have the authority to waive statutory requirements.

14. Impacts of Statutes and Limitations (cont'd).

However, Congress has provided such authority in a number of statutes. For example;

- 41 U.S.C. 270(b) authorizes heads of agencies to waive the requirements of the **Buy American Act** if the cost of compliance is unreasonable, or application is inconsistent with the public interest.
- Similarly, 40 U.S.C. 270b authorizes contracting officers to waive the **Miller Act** bond requirements for work to be performed in a foreign country when it is impractical for the contractor to furnish such bonds. There are numerous other statutes (and case laws) authorizing the waiver of statutory requirements.

Regulations will have the force and effect of law if they are issued pursuant to statutory authority or where they implement a fundamental procurement policy and the agency appropriately publishes them.

While a properly issued regulation may have the "**force and effect of law**," the FAR provides authority and procedures for deviation from the regulations when their applications would not be in the best interests of the Government (see **FAR subpart 1.4**).

Aside from FAR 1.4, authority to deviate from regulations, which have the force and effect of law, probably does not exist, absent language in a controlling statute clearly authorizing such deviation.

In **United States v. New Orleans Public Service, Inc.**, 553 F.2d 459 (5th Cir. 1977), a public utility supplied gas and electricity to certain Federal agencies under an oral agreement because it refused to sign contracts with an affirmative action clause required by **Executive Order No. 11246**. The order gives the **Secretary of Labor** the power to grant exemptions to specific contracts in special cases.

The contractor did not seek an exemption, and there was no authority for the agencies themselves to deviate from the order. The court held that the utility was a Government contractor and, lacking an exemption, required the affirmative action clause to be read into the oral contracts and enforced.

If the procedures used to enter into a contract or its terms and conditions do not comply with a statute or regulation with the force and effect of law, a variety of consequences may follow. In some cases, the courts may permit the Government to void the contract. In other cases, the courts may rewrite the contract to add a mandatory clause or exclude a prohibited clause. Finally, the contractor may be able to require the Government to abide by mandatory procedures to the contractors benefit.

B. Contract Authority.

1. Agents.

The Federal Government, like private corporations, must exercise its power to contract through employees with varying degrees of authority and responsibility.

These employees are legally called "**agents.**" An agent can be defined as one who represents another person, a principal, in contractual matters. The relationship created by the association of a principal and agent is called "agency." This agency relationship is created when the principal authorizes the agent to act for him or her for a business or contractual negotiation with a third person, and the agent consents to so act.

2. Contracting Authority.

The concept of "authority" is the link that binds third parties to the principal. If an agent can affect the legal relationships of his or her principal, then the agent has "**authority.**" Ultimately, the authority of persons who act on behalf of the Government stems from the Constitution or a Federal statute.

Contracting authority (including authority to negotiate contracts to issue change orders and negotiate equitable adjustments, etc.) is usually vested in the head of each Government agency. These officials then delegate the authority to contract on behalf of the Government to designated contracting officers on the basis of implied authority or expressed legislative enactment (see **10 U.S.C. 2311**).

However, the increasing size and complexity of Federal procurement activities have required increasingly large personnel staff to perform the numerous tasks involved in contract negotiation and administration. As a result, there are a number of Government personnel who are officially involved during negotiation and contract performance.

Included are: project managers, auditors, engineers, technical representatives, inspectors, and others. While these officials are not formally authorized to bind the Government, their conduct within the scope of assigned duties may contractually bind the Government. For example, inspectors are not authorized to order work changes. However, overzealous inspection practices that interfere with the contractor's performance or require the contractor to exceed specifications may obligate the Government to compensate the contractor for a "constructive change".

3. Contracting Officers.

The term "**contracting officer**" is used to describe official representatives of the Government who are authorized to enter into and modify contracts, which bind the Government. This authority may also encompass the signing of the determinations and findings and other internal documents, which are necessary in the contracting process. For example, the contractor's right to seek relief before the Board of Contract Appeals under the standard Disputes clause requires a contracting officer's final decision, and the standard Changes clause provides for changes to be made by contracting officers.

Contractors cannot assume that all contracting officers have equal authority. Some agencies have developed specialized contracting officers. FAR 2.1 contains the following definition:

"Contracting officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer."

4. ACO.

Administrative Contracting Officer (ACO) refers to a contracting officer who is administering contracts.

5. TCO.

Termination Contracting Officer (TCO) refers to a contracting officer who is settling terminated contracts.

6. Duties.

A single contracting officer may be responsible for duties in any or all of these areas. Reference in this regulation to administrative contracting officer or termination contracting officer does not:

- (1) require that a duty be performed at a particular office or activity, or
- (2) restrict in any way a contracting officer in the performance of any duty properly assigned.

7. Authorized Representative.

Under the FAR definition cited above, the definition of a contracting officer includes "the authorized representatives of the contracting officer acting within the limits of their authority."

There is no generally recognized understanding of the process necessary to create an "**authorized representative.**" However, these authorized representatives who are "**defined**" as contracting officers are usually referred to as contracting officer's representatives (CORs) and may be formally designated as such by their respective agencies. Acting within the scope of authorized duties, the COR could bind the Government to the same extent as a designated contracting officer.

It should be noted that there are many other Government employees who deal directly with contractors as part of their duties but are not designated as having any formal status.

8. Designating Contracting Officers.

- a. **General Rule:** As a general rule, the designation of a Government official as a contracting officer invests that person with authority to make contracts for the United States within the limits of the law and the authority expressly delegated to the individual in the designating document, i.e., his or her "**warrant.**"
- b. **Certificate of Appointment:** FAR 1.603-3 states that contracting officers shall be appointed in writing on a "Certificate of Appointment," SF 1402, which shall state any limitations on the scope of authority to be exercised, other than limitations contained in applicable laws or regulations. This FAR provision replaces a number of varying provisions that existed under **DAR, FPR, NASPR, and GSPR.** It is the goal of the **Office of Federal Procurement Policy (OFPP)** that all contracting officers be appointed by name with a specific "**warrant**" governing the scope of their authority. Under this proposed system, the Government will grant contracting officer "**warrants**" only to individuals who have the requisite training and job experience, and only persons with such "**warrants**" will conduct formal contracting officer functions.
- c. **Additional Limitations:** In addition to the limitations of authority stated in the "designating document" or certificate of appointment, agencies may impose additional limitations on the contracting officers' authority by prescribing methods or procedures by which they are to exercise their authority.

9. Contracting Officers' Representative.

As noted above, the term "**contracting officer**" includes "**the authorized representative**" of the contracting officer (see FAR 2.1). These "**contracting officer representatives**" (CORS) traditionally have a much narrower scope of authority than the persons "designated" as contracting officer. Procurement regulations often contain express limitations on the delegation of authority to CORs. One major limitation is that CORs are not authorized to sign formal contract documents on behalf of the designated contracting officer.

10. Other Authorized Officials.

There is little guidance in agency regulations and the FAR on the status of employees who are not designated CORs but whose jobs are connected with the formation or administration of contract performance inspection. The courts and boards also tend to be vague on the status of various Government employees--looking more at the actual function they perform than at their status within the agency. When the agency gives them contract-related responsibilities as part of their official duties, they might be treated as authorized representatives even though they are not so designated.

12. Actual Authority Required.

Under the traditional law of agency, private persons are liable as principals to the extent of the power that they "**apparently**" have given to their agents. In contrast, the Government generally is liable only to the extent of the authority it has actually given to its representatives. The courts and boards have frequently stated the rule that the Government is not bound by the unauthorized acts of its agents even though they are acting with "**apparent authority**". The reason for the above rule is that courts recognize the importance of effective Government control over the conduct of its agents.

Because of the inapplicability of the apparent authority doctrine to the Government, it is important that a person contracting with the United States ascertain the precise extent of the contracting officer's authority, or the authority of any other person purporting to act on behalf of the Government. The courts have consistently held that persons dealing with a Government contracting officer are presumed to have notice of the limitations on the officer's authority, even though the contracting officer may personally have been unaware of them. The risk of lack of authority falls upon the contractor.

12. Actual Authority Required (cont'd).

The fact that an employee's title or position sounds important is immaterial to the court's analysis of authority. Similarly, contract specialists, negotiators, and administrators who handle the day-to-day Government contracting activity generally do not have the authority to order additional work by virtue of their position

It is important to note that courts have applied the doctrine of apparent authority **against** contractors. In **American Anchor and Chain Corporation v. United States**, 166 Ct.Cl. 1, 331 F.2d 860 (1964), the court held that despite the Federal Government's stricter requirement of actual authority for its own agents, the agents of Government contractors are governed by the usual agency rules. In **Western Box-0-Matic Corporation**, 73-1 BCA 9968 (1973), the Board held that the Government was entitled to rely on the apparent authority of the contractor's plant manager to interpret contract language. Standard principles of agency apply in each case, and if the contractor's employees have no real, implied, or apparent authority, the contractor will not be bound.

13. Implied Authority.

- a. **Authorized Representative:** Although acts by its agents will not bind the Government under the doctrine of apparent authority, the courts and boards have frequently granted contractors relief on the basis of "**implied authority.**" Such authority is generally implied when it is considered to be an integral part of the duties assigned to a Government employee.
 - For example, the Government will be bound by the actions of inspectors, engineers, or other technical personnel acting within the scope of their authority. Although such persons lack authority to issue change orders, if they give instructions or issue interpretations which induce the contractor to perform work beyond actual contract requirements, the courts and boards will frequently hold the Government to a constructive change.
 - In **Switlick Parachute Company**, 74-2 BCA 10970 (1974), an inspector received delegated authority to accept the contractor's product. The Board held that the inspector had acted within the scope of that authority in ordering additional testing, since he was actually prescribing the conditions under which he would accept the product. The Government was bound by his actions and was required to reimburse the contractor for a constructive change since the extra tests were in fact beyond the contractual requirements. The Board noted that while the inspector was not authorized to alter the specifications, place of delivery or other contract terms, the authority to prescribe the testing procedure was implicit in the inspection and acceptance authority.

13. Implied Authority (cont'd).

- b. **Designated Contracting Officers:** The courts and boards are less willing to find "implied authority" to bind the Government in cases involving designated contracting officers. The rationale of the rulings is that the contractor can verify the limits of the contracting officer's authority by examining the Certificate of Appointment and applicable regulations.
- c. **Notifications of Limits Upon authority:** The Government sometimes informs the contractor of limitations on the authority of particular Government personnel. The method of notification is frequently a contract clause (see **FAR 52.243-7 and 52.202-1**). By expressly informing the contractor, the Government hopes to preclude any implied authority for the unauthorized acts of its personnel.
- d. **Imputed Knowledge:** Generally, the relationship between a principal and agent is a fiduciary one, requiring the utmost good faith and loyalty on the part of the agent in the performance of duties for the principal. A primary characteristic of the relationship as it affects third parties is the imputation of knowledge acquired by the agent within the scope of its agency to the principal. A principal will be bound by knowledge of its agent concerning information that the agent had a duty to deliver to the principal. The rationale is that, in reality, the agent is the principal for purposes falling within the scope of the agent's duties. There are several exceptions to the rule that will relieve the principal of liability for knowledge not disclosed to the principal by the agent.

The courts will not impute the agent's knowledge to the principal in the following situations:

- (1) where an agent acquires knowledge from a source which requires it be kept confidential,
- (2) where the agent and the third party conspire to cheat or injure the principal, and
- (3) where the agent acquires knowledge in some capacity other than his or her agency.

d. Imputed Knowledge (cont'd):

The basic rule of "**imputed knowledge**" is applicable in Government contracts. In some situations, a court may charge a contracting officer with knowledge of information delivered to other Government officials. The Government will be bound by that knowledge even though the contracting officer lacked actual notice and the Government official who received the information lacked authority, to make formal contract changes. The knowledge is "**imputed**" to the contracting officer through the basic principle of agency discussed above.

When a contractor is required to give notice of its intention to make a claim within a limited time, such as for a suspension of work or for a constructive change, the courts have bound the Government by knowledge delivered to employees other than contracting officers. In **United States Federal Engineering and Manufacturing, Inc.**, 75-1 BCA 11578, the Government's project engineer approved certain additional work, due to defective specifications, but neither the engineer nor the contractor informed the contracting officer that the extra work was required and scheduled for performance. The Board held that the contracting officer's lack of actual knowledge of the additional work did not insulate the Government from the consequences that actual knowledge would impose. The project engineer was the contracting officer's "representative," and the court imputed his knowledge to the contracting officer.

In **Davis Decorating Service**, 73-2 BCA 10107, the Government engineer and his representatives had knowledge of the extra work required to be performed. The Board imputed this knowledge to the contracting officer and held that this would satisfy the notice requirements of the changes clause, since "**they are the people with whom the Appellant deals in the performance of his work.**" Similarly, in **Piland Corporation**, 78-2 BCA 13503, the contract included a standard Suspension of Work clause. The chief of construction knew that the contractor intended to stop work until the Government issued a change order to avoid wasted efforts. The Board imputed the knowledge to the contracting officer, satisfying the notice requirement of the Suspension of Work clause. Thus, the Government was liable for delay in issuing the change order.

C. Ratification

An agent's act that is not binding on the principal solely because the agent lacked authority, may become binding upon the principal's adoption of the act. In such cases, the principal is said to have "**ratified**" the actions of the authorized agent. The principal must have been able to authorize the act at the time it was performed and still have the power to do so at the time of ratification. Generally, ratification occurs only with acts, which the principal could have authorized at the time the contract was entered into with a third party.

The principle of ratification is applicable in Government contracts. Government officials who have the authority to bind the Government may adopt actions of unauthorized personnel. However, the courts and boards will find ratification only if the Government official has actual or constructive notice and expressly or impliedly adopts the acts of the unauthorized agent.

1. Ratification Authority.

The authority to ratify contractual actions is vested in the executive agencies of the Government, and not the courts. FPR 1-1.405 expressly recognized the authority of the agencies to ratify unauthorized acts of Government officials; however, there is no corresponding provision in the FAR.

The courts and boards have recommended that ratification authority be exercised liberally in cases where an injustice would result if the Government did not become bound.

2. Knowledge of Unauthorized Acts.

In both private and Government contracts, the contractor must show the ratifying official had knowledge of the facts upon which the unauthorized actions were taken [see **United States v. Beebe**, 180 U.S. 343 (1901)]. The ratifying official may have "**actual notice**" from notification by either side of the dispute.

For example, a contracting officer may receive notice of the prior unauthorized actions of a Government representative through the contractor's formal claim for additional compensation [see **Globe Construction Company**, GSBGA 2197, 67-2 BCA 6478 (1967)].

2. Knowledge of Unauthorized Acts (cont'd).

In some situations, the courts have found that the contracting officer received "**constructive notice**" of the prior unauthorized acts, the rationale being that the contracting officer's familiarity with the situation was such that he or she "**should have known**" of the unauthorized act [see **Williams v. United States**, 130 Ct.Cl. 435, 127 F.Supp. 617 (1955)]. Courts and Boards may also impute constructive notice to the ratifying authority.

In **Southwestern Sheet Metal Work, Inc.**, 79-1 BCA 13744 (1979), the Board charged the contracting officer with knowledge of an inspector's work change order. The basis of the decision was the fact that the contracting officer normally relied on the inspector, and they communicated frequently.

3. Adoption of Unauthorized Acts

The contractor must also show that an authorized Government official acquiesced and "adopted" the unauthorized action. The easiest way of demonstrating acquiescence is when the unauthorized official makes an expressed ratification. For example, in **Globe Construction Company**, 67-2 BCA 6478, the contracting officer stated that the prior action of his subordinate had been done "**within his authority.**" Ratification also occurs when a contracting officer issues a contract modification incorporating the prior change made by an unauthorized Government employee. Similarly, the contracting officer's repetition of a subordinate's prior erroneous interpretation will act as a ratification.

Acquiescence may also be implied from the actions of authorized officials, even though they have not expressly ratified the unauthorized acts. In **Acme, Inc.**, Comp. Gen. B-182584, 74-2 CPD, 310 (1974), the Comptroller found an implied ratification even though the contracting officer declined to authenticate the procurement. The basis of the decision was the fact that the contracting officer had determined that the work was in the best interest of the Government, and the agency's Director of Fiscal Management had recommended that the claim be paid.

Ratification may also be inferred from the contracting officer's silence or inaction if he or she has actual knowledge of the subordinate's actions. In **Lox Equipment Company**, 1964 BCA 4463, the contractor sought compensation for additional work ordered by Government inspectors. The Board held that even though the resident inspector had no authority to issue directives, the Chief of the **Contract Administration Branch** in effect ratified them when he knew of the directives and failed to take corrective action.

4. Binding Agreements.

When Government officers, agents, and employees carry out their duties properly, the Government will be bound. However, in performing their duties, Government personnel cannot be expected to act only in ways favorable to the United States. Because of mistakes, negligence, or poor judgment, their statements, acts, or omissions are sometimes prejudicial to the Government. In such cases, the Government may attempt to avoid the consequences by repudiating or countermanding the agent's acts. There are two major concepts which the courts will invoke to prevent the Government from disowning agents' acts or agreements, thereby making them binding on the Government. These concepts are "**finality**" and "**estoppel.**"

5. Finality - Actions That are Final.

Since the Government can act only through its agents and employees, their actions within the scope of employment are the actions of the Government itself. Once an authorized agent has performed its contractual act on behalf of the Government, the Government is bound, like any contractual party.

“Contractual acts may be final and binding as a result of either the application of a provision in the contract, which defines when finality attaches, or the operation of a legal rule. Examples of the former situation include disputes over the finality of the Government's acceptance of the contractor's work. A Contract Inspection clause may state that the Government's acceptance of work will be final, with certain exceptions.”

- In **McQuagge v. United States**, 197 F.Supp 460, the contracting officer had issued a Certificate of Final Acceptance, despite the Government's knowledge that the concrete used in airport taxiways did not measure up to specifications. The court found the acceptance final and conclusive because it was in the discretion of the contracting officer to determine whether the work was acceptable to the Government. The contracting officer's final acceptance would be questioned only upon evidence of collusion, fraud, or obvious error.

The best example of a legal rule creating finality is the binding effect on the Government created by an authorized official's acceptance of an offer. In **United States v. Purcell Envelope Company**, 249 U.S. 313 (1919), the court held that the Government was bound when the Postmaster General accepted the offer of a company in a procurement by sealed bidding. Similarly, the Government will be bound if an authorized official entered into a contract price modification after a change has been ordered

5. Finality (cont'd).

A variety of other actions by Government officials may also be final and binding on the Government. For example, in **Bell Helicopter Co.**, 74-1 BCA 10411 (1973), the court determined that the contracting officer's determination was final and binding on the Government and could not be revoked or overruled by a successor. In **Southern Waldrip and Harvic Co. v. United States**, 167 Ct.Cl. 488, 334 F.2d 245 (1964), the court held that the Chief of Engineers could not overrule the contracting officer's finding that a telegraphic bid modification had been timely received, since the instructions to bidders stated that a determination of the timeliness of the modification would rest with the contracting officer. The Board noted that these instructions constituted a binding agreement between the Government and the contractor.

- a. **Required Authority.** The Government employee must be acting within his or her authority for actions to be final and binding on the Government.
- b. **Erroneous Agreements Are Binding.** Erroneous Decisions Bind the Government: The acts of authorized officials bind the Government, even if the decisions are erroneous.
 - In **Liberty Coat Co.**, 57-2 BCA 1576, the contracting officer issued determinations and findings that certain contract changes would save the contractor money and adjusted the contract price accordingly. A successor contracting officer issued new findings on the same changes and reduced the contract price even further.

b. **Erroneous Agreements Are Binding** (cont'd)

The Board held that the original contracting officer's decision was binding since he acted within the scope of his authority. Although the original contracting officer had made a bad bargain, the Government was bound by his determination, absent proof of fraud or collusion [see **Chrysler Corp.**, 75-1 BCA 11236, affirmed, 76-1 BCA 11665]. Thus, although the Government does not "**authorize**" its agents to make mistakes, it is liable for an agent's actions taken within the scope of his or her authority. The Government is not bound until an officer specially charged with a duty, if there be one, has acted or ought to have acted.

6. Estoppel.

The second concept invoked to prevent the Government from escaping liability for an agent's acts or statements is the doctrine of estoppel.

Estoppel is a concept which prohibits a party from escaping liability for statements, actions, or inactions if the other party has relied on them. The doctrine is applicable in private as well as Government contracts. It accomplishes the same result as "finality," and because of this, the two concepts are often confused.

However, there are two important differences between estoppel and finality.

- Estoppel requires a detrimental reliance by the party invoking it, while reliance is not an element of finality.
- The other difference is that a "final" action is by its very nature contractually binding upon the Government through the operation of legal principles, such as offer and acceptance, acceptance of goods, etc. In contrast, the Government is held bound by estoppel simply because it would be "unfair" not to do so, even though the statement, action, or inaction would not be contractually binding on the Government.

-
- a. **Actions Which Preclude Estoppel.** As a general rule, the doctrine of estoppel may not be invoked against the Government in cases where the agents have entered into Government contracts without authority. The rule is based on the theory that persons dealing with the Government are chargeable with notice of the extent of the Government agent's authority. In **Singer Co., Librascope Div.**, 75-2 BCA 11401, the contractor submitted cost and pricing data which the Government representative knew were not current. Since the Government official had no authority to waive the requirements of the **Truth in Negotiation Act**, 10 U.S.C. 2306(f), the Government was not estopped from obtaining a price reduction. Similarly, in **Fansteel Metallurgical Corp. v. United States**, 145 Ct.Cl. 496, 172 F.Supp. 268 (1959), the court held that an unauthorized overpayment to the contractor did not bind the Government. It has also been stated that the Government will not be estopped from performing "sovereign" acts
- b. **Estoppel by Conduct.** In addition to a verbal representation, a Government agent's course of conduct may estop the Government from denying a contractor's claim. In **PeninsularChemresearch, Inc.**, 71-2 BCA 9066, the Board held that the Government was required to accept the results of an accounting method it had previously approved by implication. In **Litton Systems, Inc. v. United States**, 296 Ct.Cl. 133, 449 F.2d 392 (1971), the court held that the Government's knowledge, acquiescence and approval of the Contractor's accounting system precluded retroactive disallowance of costs.
- c. **Reliance and Injury Required.** In order to invoke the doctrine of estoppel against the Government, the contractor must have relied, to its detriment, on the Government's representation. In **Mountain Plains and Economic Development Program, Inc.**, 78-1 BCA 13083, the Government was not estopped from denying the reasonableness of payments under employment contracts where the contractor never relied upon the contracting officer's concurrence in the validity of the proposed payments. Similarly, in **Rockwell International Corp.**, 76-2 BCA 12131 (1976), the Board held that there was no contractor reliance, since the contractor had changed its accounting system before the Government acted.
- Contractor injury is also essential to invoke estoppel against the Government. In **Okaw Industries, Inc.**, 75-1 BCA 11321, motion for reconsideration denied, 75-2 BCA 11571, the Board held that there was no injury to the contractor from disallowance of a settlement. Similarly, **General Dynamics Corp.**, 69-2 BCA 8044, the Board held that the contractor was not deprived of recovery of allowable costs by a retroactive change of the accounting system.

D. Procurement Integrity

1. Contract Formation Principles.

- a. **Acquisition.** Acquisition means the acquiring by contract with appropriated funds
- of supplies or services (including construction)
 - by and for the use of the Federal Government
 - through purchase or lease,
 - whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated.
- b. **Start of Acquisition.** Acquisition begins at the point an agency's needs are established and includes
- the description of requirements to satisfy agency needs
 - solicitation and selection of sources
 - award of contracts
 - contract financing, contract performance, contract administration and those technical and management functions directly related to the process of fulfilling agency needs by contract.
- c. **Contracting.** Contracting means purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes:
- Description (but not determination) of supplies and services required
 - Solicitation and selection of sources
 - Preparation and award of contracts and
 - All phases of contract administration.

d. Contract Defined. A contract is a mutually binding legal relationship. To be binding, the contract must include the following:

- An offer
- An acceptance
- Consideration
- Competent Parties

This legal relationship obligates:

- The seller to furnish the supplies or services (including construction)
- The buyer to pay for them.

It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to):

- Awards and notices of awards
- Job orders or task letters issued under basic ordering agreements
- Letter contracts
- Orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance and
- Bilateral contract modifications.

E. Contract Elements

1. An offer.

- An offer is a legally binding promise, made by one party to another, to enter into a contractual agreement. An offer becomes a contract only if accepted by the vendor.
- An offer must demonstrate a present intent to be bound. The offeror must intend that the offer create a contract upon its acceptance by the offeree, without further negotiation or communication.
- An offer must be sufficiently complete and certain in its terms so that the promises and performances to be rendered by each party to the contract are reasonably certain. This does not mean that every term must be absolutely certain. It is enough if the essential terms are certain. Generally, an offer will be definite and contain the essential terms of the proposed contract when it identifies the subject matter of the bargain, the quantity involved, the time of performance, and the price.
- In most situations, the power of acceptance is limited to a specific offeree, and no other may accept the offer. The offeror must communicate the notice of the offer to the offeree before the offer can be accepted.
- The general rule is that an offer may be accepted until the offer terminates. Circumstances which will terminate an offer include:
 - lapse of time
 - revocation by the offeror
 - rejection by the offeree
 - counteroffer by the offeree
 - death or insanity of either party
 - death of a person or destruction of a thing essential to performance
 - supervening illegality of the proposed contract.

2. An acceptance.

Acceptance is the act of accepting an offer. To be binding, acceptance must be:

- Accepted by the person to whom the offer is addressed, or that person's designated agent.
- Definite
- Timely
- Communicated (or an action that indicates acceptance).
- Unconditional - acceptance that is conditional upon a change in the offer is actually a counter-offer, in which case acceptance to the original offer is not binding. If the Government accepts the bid or proposal, a contract results
- An acceptance is generally effective and forms a contract when it is communicated to the offeror. Where the use of mail or a telegram is permitted, acceptance will be effective when dispatched. This is known as the "mailbox rule," and requires only that the offeree properly dispatch the notice of acceptance.

3. Consideration.

For a contract to be binding, the offeror must receive consideration for the goods or services being offered. Consideration refers to anything of value that changes hands between the parties to a contract. Generally, consideration takes the form of money, although it can take other forms.

4. In Writing.

FAR 2.1 defines the term "**contract**" in part as a mutually binding legal relationship which-- includes all types of commitments that obligate the Government to an expenditure of appropriate funds and that, except as otherwise authorized, are in writing.

An **Implied-in-Fact** contract arises when the parties have actually manifested their mutual assent but an express offer or acceptance may be absent. Under the common law of contracts, promises may be inferred and mutual assent may be determined from words or acts. Implied-in-Fact contracts are also recognized in Government contracts.

5. Execution by competent parties.

The two (or more) parties to a contract must be legally competent to enter into contractual relationships. Generally, this means that the parties must, at the time of agreement, have been:

- Of sound mind,
- Free of influence of drugs or alcohol, and
- Legal entities

Every contract must have two or more parties, all of whom are legally competent to enter into contractual relationships. These parties may be either natural persons or entities created by law and authorized to enter into contracts. (A corporation would be considered an entity.) Such authorizations are almost never unlimited, and even with natural persons, there are restrictions as to the competency to contract. For example: (1) contracts made by minors are voidable; (2) persons of unsound mind lack the legal capacity to make a binding contract; (3) persons who are under the influence of alcohol or drugs likewise are incompetent to contract. In Government contracts, competency of parties becomes a serious matter in the award of any contract. One of the first things a contracting officer must determine is how reliable a proposed contractor is. In other words, the contracting officer must determine before award that a proposed contractor is financially stable, has the facilities to do the job, and can complete the job.

6. Legality of purpose.

The purpose or subject matter of the contract must be legal. This means, that a contract to perform an illegal act is unlawful, void, and will not be enforced. Contracts deemed to be against the public interest or in violation of any statute are void.

7. Condition.

The parties in many contracts either expressly or impliedly qualify their promises to perform upon the happening or non-happening of an event or a fact which is called "condition." This condition can be almost anything other than the mere passage of time. Conditions may be either conditions precedent or conditions subsequent. The condition which must happen before a duty to perform arises is called a condition precedent. For example, a provision in a contract that says the agreement will not ripen into a contract until such contract has been approved by higher authority is called a condition precedent.

Chapter 3 – Leased Housing Program Management

A. Responsibilities

1. Area Housing Officer (AHO).

AHOs are responsible for all family and unaccompanied housing within their geographic boundaries, including HQ, Area and MLC Commands.

The AHO is responsible for the administration and oversight of the housing program within their area of responsibility. Within the lease program the AHO is required to annually plan, request, and obligate leased housing funds.

In addition, an AHO can only approve lease contract request packages that are complete, cost-effective, compliant with adequacy standards, and based on an eligible applicant's genuine need. Additional responsibilities will be discussed throughout this chapter.

2. Local Housing Officer.

3. Housing Representative

B. Budget Management.

1. Funding.

2. Cost Limitations.

a. **Administrative Cost Ceiling:** MLC shall manage lease allocations, average cost limitations, and administrative cost ceilings within the limitations established annually by Commandant (G-WPM-4). Additionally, MLC must obtain advance approval from Commandant (G-WPM-4) to execute a lease if it exceeds the respective BAH-derived housing cost by 120 percent or more; e.g., if the BAH-derived housing cost is \$500, the administrative cost ceiling is \$600: $\$500 \times 120 \text{ percent} = \600 .

b. **BAH-derived Housing Matrix:**

c. **Cost Effectiveness:**

d. **Restricting Leases:**

e. **UPLH:**

3. Availability of Government Owned Quarters.

4. Annual Funding Request.

5. Annual Lease Housing Allocations.

Procedures. Follow the below steps to request annual leased housing funds

Requesting Annual Funds:	
Step	Action
1	Request LHO's submit leased housing need forecast by 15 June.
2	Review and validate LHO leasing area need
3	Submit annual lease housing budget request to MLC by 1 July.

6. C. Eligibility

1. BAH-derived Housing Matrix.

BAH-derived Housing Matrix is the maximum annual cost ceiling which the AHO may expend for a lease (including utilities) within their area of responsibility. Use of the Housing Matrix remains mandatory for both accompanied and unaccompanied members. Costs which may exceed the Housing Matrix must first be approved by MLC.

When leases are retained or renewed, their cost may not exceed the Housing Matrix. Members who are not eligible under the Housing Matrix may continue living in their leases until tour complete, including extensions as defined in the Personnel Manual.

Unaccompanied members no longer lease-eligible may also remain in their leases until tour complete, but these members must be consolidated into remaining leased quarters with other unaccompanied members when vacancies exist.

2. Family Lease Housing (FLH) Requirements



Refer to Handout #4.

3. Unaccompanied Personnel Leased Housing (UPLH).

a. **Members Assigned Ashore.** Except for unaccompanied members living in UPH/Barracks, unaccompanied members assigned ashore should primarily live in community-based housing utilizing their housing allowances provided all owned UPH/Barracks are occupied at 98%. MLC may approve individual waivers to assign unaccompanied members assigned ashore on a case by case basis.

b. **Members Assigned Afloat.** Unaccompanied members in pay grades E-5 and above should live in community-based housing with their housing allowance if not assigned to UPH/Barracks facilities. E-4's assigned afloat shall have the option to elect to receive their housing allowances and live in community-based housing or be assigned to the UPLH/UPH/Barracks, provided the local UPH/Barracks occupancy rate equals or exceeds 98%. Make UPLH assignments for afloat E-4 and below members only if they cannot be berthed in UPH/Barracks facilities in accordance with Sections 9.B.6 and 9.C.3 of the Housing Manual.

4. Members Married to Members.

5. Transfers.

6. Overseas.

7. Restricted Duty.

8. Voluntary Geographic Bachelor.

9. Involuntary Geographic Bachelor.

C. Eligibility (cont'd)

10. Previously Utilized Leased Quarters.

11. Refusal to Occupy Owned Quarters.

12. Change in Eligibility

13. UPLH.

14. Family Leased Housing.

D. Exceptions to Dependent Requirements

1. Exceptions Authorized by AHO/LHO.

2. Exemptions.

The following exceptions require an individual exemption in accordance with section 1-G of the Coast Guard Leased Housing Procedural Guide.

- Individual who resides with the member to care for a family member suffering a confining illness,
- Member's non-dependent child or parent who resides with the member due to chronic illness, and
- Person not qualifying as a dependent who lives as part of the family group and for whom the member has a moral or financial obligation.

3. Requesting Exemptions.

- MLCs.** The MLCs have the authority to grant most leased housing individual exemptions. Commandant (G-WPM-4) must approve exemptions to lease five bedroom units and those that exceed the administrative cost ceiling. Individual exemption requests shall be the exception rather than the rule; consider them in conjunction with relevant input from responsible Work-Life Dependent Resource Coordinators or Family Program Administrators.
- Commandant.** Only Commandant (G-WPM-4) may authorize blanket exemptions. Requests for blanket exemptions shall be submitted in writing thru the MLC.
- Request.** LHO shall request exemptions from the appropriate approving authority via the chain-of-command **fully documenting** need before assigning leased housing. Exemptions allow deviations from established leased housing policy guidance. However, they are the exception rather than the rule.

5. Procedures.

The table below provides types of exemptions and the approving authority:

Type	Definition	Example
Blanket	An exemption from leased housing acquisition, eligibility, or assignment policy that includes ALL leases or a specific type of lease in a specific geographic area.	<ul style="list-style-type: none">• Exceed administrative cost ceiling in geographic area• Exceed minimum bedroom requirement in geographic area.
Individual	An exemption from leased housing acquisition, eligibility, or assignment policy involving only one lease or one member.	<ul style="list-style-type: none">• Exceed number of bedrooms for which qualified• Lease single family homes because of non-availability of apartments, townhouses, and condominiums *• Lease cost will exceed the BAH-derived Housing Matrix• Exceed normal housing unit net square footage standards• Lease five-bedroom units• Exception to eligibility requirements• Lease from Federal employees

E. Determining Eligibility

1. Initial Eligibility.



Refer to Handout #4.

2. Determining THA. Use the following steps to determine a member's THA.

$$\text{BAH} + \text{Current Out of Pocket Expense (OOP)} = \text{THA}$$

Example: A member meets the requirements of the Universal Eligibility Matrix for a three-bedroom apartment. The rental cost is \$980.00. The member's BAH is \$560.00 and the current OOP is \$121.00. The member is eligible using the steps above because the rental cost exceeds their THA.

$$560.00 + 121 = \$681.00$$

3. Utilizing Government Owned Quarters.

4. Utilizing Coast Guard Leased Quarters.

E. Determining Eligibility (cont'd)

4. Divorced or Separated Members.

Category	Eligibility Procedure															
<p>Divorced or legally separated members</p>	<p>Use the below table to determine a divorced or legally separated member's eligibility for leased housing.</p>															
<table border="1"> <thead> <tr> <th data-bbox="581 569 873 705">IF member's dependents will...</th> <th data-bbox="878 569 1117 705">AND member is...</th> <th data-bbox="1122 569 1370 705">THEN member is...</th> </tr> </thead> <tbody> <tr> <td data-bbox="581 711 873 1163" rowspan="2">Reside with the member at least 183 days (non-consecutive) each year</td> <td data-bbox="878 711 1117 953">Eligible according to universal eligibility matrix</td> <td data-bbox="1122 711 1370 953">Eligible for FLH provided no adequate community-based housing can be located.</td> </tr> <tr> <td data-bbox="878 959 1117 1163">Not eligible according to universal eligibility matrix</td> <td data-bbox="1122 959 1370 1163">Not eligible for leased housing program</td> </tr> <tr> <td data-bbox="581 1169 873 1411" rowspan="2">Not reside with the member at least 183 days (non-consecutive) each year</td> <td data-bbox="878 1169 1117 1411">Eligible according to universal eligibility matrix</td> <td data-bbox="1122 1169 1370 1411">Eligible for UPLH provided no adequate community-based housing can be located.</td> </tr> <tr> <td data-bbox="878 1417 1117 1621">Not eligible according to universal eligibility matrix</td> <td data-bbox="1122 1417 1370 1621">Not eligible for UPLH</td> </tr> </tbody> </table>				IF member's dependents will...	AND member is...	THEN member is...	Reside with the member at least 183 days (non-consecutive) each year	Eligible according to universal eligibility matrix	Eligible for FLH provided no adequate community-based housing can be located.	Not eligible according to universal eligibility matrix	Not eligible for leased housing program	Not reside with the member at least 183 days (non-consecutive) each year	Eligible according to universal eligibility matrix	Eligible for UPLH provided no adequate community-based housing can be located.	Not eligible according to universal eligibility matrix	Not eligible for UPLH
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	Not eligible according to universal eligibility matrix	Not eligible for UPLH														

E. Determining Eligibility (cont'd)

5. Member Married to Member.

Category	Eligibility Procedure								
Members married to members	<p>The procedure to determine leased housing eligibility for a member married to another military member (commonly referred to as member married to member) is the same as for a member married to a civilian spouse. However, the LHO or HR must determine eligibility based on their combined THA.</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="background-color: #cccccc;">IF members are...</th> <th style="background-color: #cccccc;">AND their combined THA is...</th> <th style="background-color: #cccccc;">THEN they are...</th> </tr> </thead> <tbody> <tr> <td rowspan="2" style="vertical-align: top;">Assigned to the same geographical area</td> <td style="vertical-align: top;">Less than Total Housing Cost (THC) for housing unit for which qualified</td> <td style="vertical-align: top;">Eligible for FLH provided no adequate community-based housing can be located.</td> </tr> <tr> <td style="vertical-align: top;">More than THC for housing unit for which qualified</td> <td style="vertical-align: top;">Not eligible for FLH</td> </tr> </tbody> </table> <p>NOTE: <i>If members are not assigned to the same geographical area, determine UPLH eligibility for each member separately.</i></p>	IF members are...	AND their combined THA is...	THEN they are...	Assigned to the same geographical area	Less than Total Housing Cost (THC) for housing unit for which qualified	Eligible for FLH provided no adequate community-based housing can be located.	More than THC for housing unit for which qualified	Not eligible for FLH
IF members are...	AND their combined THA is...	THEN they are...							
Assigned to the same geographical area	Less than Total Housing Cost (THC) for housing unit for which qualified	Eligible for FLH provided no adequate community-based housing can be located.							
	More than THC for housing unit for which qualified	Not eligible for FLH							

F. Processing A Lease Request

1. CG Lease.

2. LHCO Responsibility.

3. Lease Contract.

4. Procedures for Processing A Lease

a. **Lease Contracting.** Each LHA or HR negotiates leases using the USCG Residential Lease, CG-5571, generated automatically by HMIS.

- The USCG Residential Lease General Provisions, CG-5571A, and the Pre-lease Condition Inspection Report make up a complete lease contract. No other lease contracts are authorized and pen and ink changes are not allowed.
- Submit all leases negotiated in accordance with procedures in the CG Leased Housing Procedural Guide, to the Area Housing Officer, who exercises final approval authority.

a. **Lease Contracting** (cont'd)

- Once approved, the leased housing contracting officer executes the lease.
- Commandant (G-WPM-4) authorizes leased housing contracting officers (LHCO) to sign leases up to a maximum value of \$30,000 per year (including utilities) after successful completion of the Coast Guard Leased Housing Contracting Officer Course.
- Maintain comparable rental data to support all lease selections. Observe the above guidelines when negotiating and executing leases.

b. **Cost Effectiveness.**

c. **Direct Deposit and Electronic Funds Transfer.**

Web Site: www.uscg.mil/hq/fincen/vendor1.htm.

- d. **Central Contractor Registration (CCR).** When negotiating leases ensure lessors comply with the provisions and registration with the CCR.

Web Site: <http://www.ccr.gov/index.cfm>

- e. **Prompt Payment Final Rule.** Ensure the lessors are made aware of the Prompt Payment Final Rule. This Rule requires the payment to the lessor of interest on an overdue payment and improperly taken discounts.

Web Site: <http://www.fms.treas.gov/prompt/regs.html>

Procedures. The Step/Action Chart provides procedures to be followed when processing a lease package.

Step	Action						
1	Perform HMIS update procedures in accordance with the HMIS User Guide.						
2	<p>Review lease contract request package LHO submits in accordance with Section 4-D of the CG Leased Housing Procedural Guide for completeness. Package must contain:</p> <ul style="list-style-type: none"> • Lease Unit Information Worksheet • Copy of member’s application package • Supporting documents • Exemption request, if applicable and not previously submitted • Condition Inspection Report • EFT/ACH Vendor Payment Enrollment Form • Central Contractor Registration (CCR) <p>Note: The LHCO shall ensure:</p> <ul style="list-style-type: none"> • Lessor information, including name, address, city, state, zip code, SSN, tax ID number, and Direct Deposit information is consistent across multiple leases • A maximum of two Lessor payees may be entered on the lease. • Ensure the <i>EFT/ACH Vendor Payment Enrollment Form</i> and <i>CCR</i> are completely filled out, contains the Lessor’s signature, and has the complete lease contract number annotated on it. <table border="1" data-bbox="511 1268 1399 1535"> <thead> <tr> <th data-bbox="511 1268 810 1331">IF package is...</th> <th data-bbox="810 1268 1399 1331">THEN...</th> </tr> </thead> <tbody> <tr> <td data-bbox="511 1331 810 1394">Complete</td> <td data-bbox="810 1331 1399 1394">Go to Step 3.</td> </tr> <tr> <td data-bbox="511 1394 810 1535">Not complete</td> <td data-bbox="810 1394 1399 1535">Contact the LHO or HR for missing documentation; proceed only when package is complete.</td> </tr> </tbody> </table>	IF package is...	THEN...	Complete	Go to Step 3.	Not complete	Contact the LHO or HR for missing documentation; proceed only when package is complete.
IF package is...	THEN...						
Complete	Go to Step 3.						
Not complete	Contact the LHO or HR for missing documentation; proceed only when package is complete.						
3	Verify owned vacant units are not available.						
4	Verify the member’s bedroom eligibility requirement in HMIS.						
5	Verify the lease does not exceed the BAH-derived Matrix cost ceiling, if the cost exceeds the ceiling, submit a request for an exemption to MLC.						

Procedures (cont'd)

Step	Action						
6	Verify funds availability for acquiring a new lease.						
7	<p>Either approve or disapprove the request.</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="background-color: #cccccc;">IF request is...</th> <th style="background-color: #cccccc;">THEN...</th> </tr> </thead> <tbody> <tr> <td>Approved</td> <td>Send the approved lease to LHO via HMIS and go to Step 8.</td> </tr> <tr> <td>Disapproved</td> <td>Notify LHO of reason(s) why disapproved and stop.</td> </tr> </tbody> </table>	IF request is...	THEN...	Approved	Send the approved lease to LHO via HMIS and go to Step 8.	Disapproved	Notify LHO of reason(s) why disapproved and stop.
IF request is...	THEN...						
Approved	Send the approved lease to LHO via HMIS and go to Step 8.						
Disapproved	Notify LHO of reason(s) why disapproved and stop.						
8	LHO completes HMIS update procedures to receive lease and prints the document.						
9	LHO obtains Lessor's signature on original and three copies of lease contract and sends all signed copies to the LHCO.						
10	<p>After receiving from the LHO the signed original lease contract and three copies, sign them and promptly distribute as follows:</p> <ul style="list-style-type: none"> • File original contract and request package in AHO lease folder (including General Provisions and condition Inspection Report), • Send copies of contract, General Provisions, and Condition Inspection Report to Lessor, and • Send copy of contract to LHO and FINCEN. <p>Note: <i>The LHO should send a copy of contract to HR, if applicable, and maintain a copy of the General Provisions and condition Inspection Report in lease folder.</i></p>						

F. Processing A Lease Request (con't)

5. Utilities.

a. **Contracting and Payment.**

b. **Abuse and Monitoring..**

6. Amenities.

G. Leased Program Management

1. Utility Audits.

G. Leased Program Management (cont'd)

2. Maintenance and Repair.

3. Occupant and Lessor Financial Agreements.

4. Leasing from Military Members and Government Employees.

c. **Exemptions.**

5. More than 4 Bedrooms.

6. Unacceptable Quarters.

7. Priority When Leasing.

8. Cost within THA.

9. Pets.

10. Distributing Leases.

11. Quarters Under Construction.

12. Multiple Quarters.

13. Leased Housing as Public Quarters.

14. Rental Partnership Programs.

15. Emergency Relocation from Leased Housing.

H. Processing Lease Modification Request

1. Modifications.

2. LHCO Responsibility.

3. What Can Be Modified.

4. Requirements.

5. Types of Modifications.

H. Processing Lease Modification Request (cont'd)

6. Procedures.

Follow the following steps to modify a lease contract:

Step	Action						
1	LHCO receives Lessor's modification request and reviews for completeness and accuracy. Note: If an LHO or HR receives a modification request, he or she promptly sends it to the LHCO.						
2	Verify funds availability if modification will result in a rental payment increase.						
3	Either approve or disapprove the request. <table border="1" data-bbox="500 846 1377 1146" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th data-bbox="500 846 935 905">IF request is...</th> <th data-bbox="935 846 1377 905">THEN...</th> </tr> </thead> <tbody> <tr> <td data-bbox="500 905 935 1026">Approved</td> <td data-bbox="935 905 1377 1026">Perform HMIS procedures, sign original and three copies of CG-5571B, and go to Step 4.</td> </tr> <tr> <td data-bbox="500 1026 935 1146">Disapproved</td> <td data-bbox="935 1026 1377 1146">Notify Lessor in writing with copy to LHO or HR of reason(s) for disapproval and stop.</td> </tr> </tbody> </table>	IF request is...	THEN...	Approved	Perform HMIS procedures, sign original and three copies of CG-5571B, and go to Step 4.	Disapproved	Notify Lessor in writing with copy to LHO or HR of reason(s) for disapproval and stop.
IF request is...	THEN...						
Approved	Perform HMIS procedures, sign original and three copies of CG-5571B, and go to Step 4.						
Disapproved	Notify Lessor in writing with copy to LHO or HR of reason(s) for disapproval and stop.						
4	Verify accuracy of modification and ensure: <ul style="list-style-type: none"> • item 6A (lease contract number) is correct • modification numbers are consecutively numbered beginning with "001". • effective dates are complete; effective dates for rent or utility changes are always on the first day of the month. 						
5	Promptly make the following distribution: <ul style="list-style-type: none"> • File original in AHO lease folder with original modification request and Lessor's supporting documents • Copy to Lessor • Copy to LHO or HR • Copy to FINCEN with copy of request and supporting documents Note: Annotate FINCEN copy of supporting documents with the complete lease contract number on each page.						

Chapter 4 – Damage Claims

A. Damages

1. Liability for Loss or Damage

2. Definitions.



Refer to Handout # 5

3. Prevention.

B. The Dispute Process.

1. Contract Disputes Act.



Refer to Handout #6

B. The Dispute Process (cont')

2. LHCO Responsibility.

3. Time Limit.

C. Investigating Damage Claims

1. Members Statement.

C. Investigating Damage Claims (cont'd)

2. Determination of Liability.

- a. **FLH.** The occupant or Coast Guard can be found liable for all, some, or none of the damage.

- b. **UPLH.**

- c. **Legal Services.**

D. Offering a Settlement

1. LHO Notification.

D. Offering a Settlement (cont'd)

2. Final Decision.

3. Paying the Damage Claim.

4. Flow Chart.



Refer to Handout #7: .

E. Recouping Funds for Damages

1. Recovering Funds.

2. LHCO Responsibility.

3. Notifying the member of a debt.

4. Members Options.

a. Voluntary Payment.

4. Members Options. (cont'd)

b. Request.

d. Compromise.

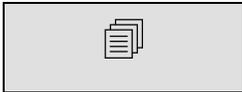
e. Not Respond.

5. Members Options After Collection Begins.

6. HRSIC Debt Collection.

7. FINCEN Credit Procedures.

8. Flow Chart.



Refer to Handout #8:

F. Computing Damage Claims (Group Practice Scenario)

1. LHCO Receives Damage Claim.

Lessor submits a completed claim within the sixty-day time frame required. The lessor is asking for damage recoupment due to damage to the carpet in the living room; torn linoleum in the kitchen, sub-floor damage due to water leak in the bathroom, and repainting the entire interior of the unit due to small nail holes where there were pictures hung throughout the house.

F. Computing Damage Claims (Group Practice Scenario) (cont'd)

2. Background.

The carpet damage is due to red juice stains and cigarette burns, it will require the replacement of the entire carpet. The carpet is four years old. The replacement cost is \$1000. The torn linoleum in the kitchen is as a result the kitchen chairs dragging across the floor. The linoleum is three years old and will have to be replaced. The replacement cost is \$250. The damage to the sub-floor in the bathroom is due to a water leak under the sink that the occupant failed to report to the lessor. The water leak had been going on for three years. The total cost to repair is \$2000. The damage that the lessor states will require the whole unit to be painted is due to nail holes that the occupant used to hang their pictures on. The lessor is requesting \$3500 to repaint the interior of the unit. The interior of the house was last painted three years ago.

3. Identification of type of damage.

Review the above scenario and identify the type of damage (i.e., normal wear and tear, negligence, or abuse).

4. Depreciation.

In order to compute a proper claim, you must apply depreciation principles. For example, when a lessor is requesting replacement cost for a carpet that is four years old, you must depreciate the replacement cost based on the age. In accordance with industry standards (Marshall and Swift Home Repair and Remodel Cost Guide) the typical life expectancy for a carpet is seven years old. In the above claim example, the carpet replacement cost is \$1000, the annual depreciation value is \$142 (over seven years). Therefore the depreciation value for the carpet is \$572 which is deducted from the \$1000 claimed by the lessor. Your settlement offer for this item should be \$428.

5. Computing the Claim.

Once the type of damage is identified, begin computing the claim for the negligence and/or abuse. Keep in mind you must apply depreciation.

