

LEGAL ISSUES REGARDING PRIVATE SECTOR FINANCING MILITARY FAMILY HOUSING

A. Base Leases Property

- Is housing limited to military personnel?
- How do we select contractor to build/manage property?
 - Regular contracting procedures? RFP?
 - Does FAR apply?
 - How will CE/EM oversee demolition/renovation to ensure all required permits are obtained? How will CE/EM oversee demolition/renovation to ensure all environmental and safety (OSHA) regulations/statutes are complied with?
- An Environmental Baseline Survey (EBS) will be required prior to leasing property (see AFI 32-7066).
 - How much time must be allotted?
 - How soon can it be started?
 - Will the base contract for this service?
 - Who will do contracting?
 - What procedures?
 - Property must be "clean" prior to lease
- National Environmental Policy Act (NEPA) compliance must be met (see AFI 32-7061).
 - Must be accomplished prior to the lease
 - Will Base prepare, or contract out?
 - If contract out, who will prepare contract?
 - If less than \$50,000, will be able to follow small purchase procedures (simplified acquisition)
 - How much time must be allotted?

- Will an Environmental Assessment (EA) be sufficient?
- Who can sign the NEPA document?
 - An EA?
 - An Environmental Impact Statement?
- Can non-military personnel lease housing in the event 100%, or guaranteed % occupancy (or sufficient high grade mix not obtained) is not reached?
 - Does the statute permit this (contemplate it)?
 - If non-military occupy housing, what kind of authority, if any, will base have over personnel (for example, can we make them vacate if they have an "incident" that authorizes Base Commander to order military to leave housing?)
 - What kind of control or "say" will Base Commander over these non-military people?
 - Criminal offenses would have to be prosecuted in magistrate court, US Attorney would have to prosecute felonies, which they typically won't do unless they are extremely serious (> \$10,000 in drug/property offenses, murder, etc)
 - Potential for serious security problems
- Will CE have the same kind of in/out inspections as with base housing?
 - What if the military member leaves the house in shambles, what is the "landlord's" recourse, i e , does he have the same authority to go after pay that CE/housing would?
 - What if lease to non-military? Do we care?
- Who prepares lease?
 - Legal issues/concerns it needs to address
 - How exhaustive in detail does it need to be?
 - Required coordinations/approvals?
 - Similar to W-P Hope Hotel in content?
- What will be the mechanisms for paying housing contractor with respect to rent, etc.?

- Will contract/lease stipulate maintenance requirements/standards?
 - What will our enforcement mechanism be?
- Who pays property taxes?
- Can AF/contractor charge > BAQ/VHA?
- Can AF make this housing mandatory if we don't obtain adequate rent?
- How will utilities work?
 - Who contracts with PNM?
- How can we control how much (max) contractor charges for rent?
- What if contractor breaches contract/lease?

B. Base Conveys Property

- All the same issues as leasing **PLUS** the following.
 - Who prepares documents
 - Required approvals/coordinations?
 - Air Force can no longer provide the security?
 - How will that work? Who?
 - What kind of control, if any, will AF be allowed over property (should be NONE in a conveyance)
 - What about fire protection?
 - Who pays taxes?
 - EIS instead of EA would probably be required
- Why would we want to convey:
 - The issues/problems are exacerbated from leasing to conveyance

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POSSIBLE CONTRACTING ISSUES

- Who will have responsibility for the inspection and acceptance of the construction work?
- Will there be a required construction performance period for the contractor?
 - Is it necessary or do we care?
- Who will monitor/control the use of hazardous materials?
- Will performance and payment bonds be required?
- Will contractor require minimum kinds and amounts of insurance to work on a Government installation?
- Will contractor be required to comply with Davis-Bacon and related acts?
 - If so, who will monitor apprentices and trainee requirements?
 - Who will collect/review certified payrolls?
- Will KAFB be subject to NOVs and fines due to violations in the storage and/or disposal of toxic and hazardous materials by the contractor?
- Will KAFB retain responsibility of lead based paint and asbestos containing materials disposed off base by the contractor?
- If prime contractor is a large business, will the contractor be required to submit and/or comply with a small business subcontracting plan?
- Will contractor be required to refrain from subcontracting with debarred or suspended firms? If so, who will monitor?
- Will contractor be required to produce specifications and drawings for the new housing units? If so, who will review/approve?
- Will KAFB have say in style, color, etc., of new housing units?
- Who will review and approve materials and workmanship?

Our military members will not pay separately for normal consumption of utilities, cost for utilities will be included in the rent.

New facilities should be designed and constructed according to the E-CONS in building design as identified in Technical Letter 94-4 which will indicate a normal use of utilities. This can be calculated into a monthly consumption. Any utilities in excess of this amount should be reimbursed to the government by the occupant.