

MS 733 Leases Procedures

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1.0 Purpose

This section of the Overseas Contracting Handbook establishes procedures for the award and administration of leasing residences, office space, training facilities, or any other properties adequate to the needs of the Peace Corps overseas.

Please see Overseas Contracting Handbook for forms referenced.

2.0 Applicability

The provisions of these procedures apply to all residence, office and training facilities leases and staff authorized to negotiate and execute leases.

3.0 Authorities

Section 15 (d)(9), of the Peace Corps Act provides authority for the Peace Corps to lease property. Peace Corps does not rely on or award leases under the authority of other agencies, such as the Department of State and USAID, which have their own similar, but distinctly different authorities.

4.0 Lease Award

4.1 General

Contracting Officers (CO) are responsible for leasing quarters because Peace Corps standards for quarters differ from those of the Embassy. A standard Peace Corps lease (see template available in the Overseas Contracting Handbook) should be used. Leases other than a Peace Corps standard lease, or one previously approved, must be reviewed by OACM for approval. If questions concerning local law remain after OACM review, leases must be reviewed by local counsel.

Negotiation and execution of leases by the Embassy is not an authorized sub-function for International Cooperative Administrative Support Services (ICASS) services (see MS 708 *International Cooperative Administrative Support Services*). Country Directors must not include leasing in their respective country's ICASS agreement unless a Waiver of Limitations is obtained from the Director, Office of Budget and Analysis, as required in MS 708.

COs may enter into subleases for specific properties with the Embassy if warranted by special circumstances. Such circumstances might include an offer of rent-free or reduced rent use of a property, limited property availability, or properties uniquely suited to Peace Corps' mission. In these circumstances the CO must still determine that the lease is in the best interest of the government.

Note: COs must only sign leases under their current warranted level of procurement authority. All leases over their warranted level of procurement authority must be submitted to OACM for review and a delegation of additional procurement authority. For CO warrant levels see OCO Warrant Procedure.

4.2 Market Survey/ & (Competition)

Upon identifying property/space needs, a market survey must be conducted by the CO to determine availability and price of property meeting those needs. Methods of conducting a market survey may include advertising in the local media or contacting rental agents. The CO may also request advice from the Embassy Management Officer regarding local rental conditions and from OACM regarding components and adequacy of market surveys.

To the maximum extent practicable, leases should be awarded on a competitive basis. COs must use the property selection memo and competition matrix to ensure all properties are evaluated on the basis.

4.3 Procedures

Each lease shall be prepared, signed and kept in the lease file maintained by the post CO.

One copy of all (real property) leases and subleases (including a copy of the primary lease) must be submitted to the Office of Administrative Services (M/AS), Peace Corps/Washington, within 30 days after the execution of the lease, together with the following information needed to fulfill General Services Administration (GSA) and Office of Management and Budget (OMB) reporting requirements:

- (a) Lease number (LOC + FY + 2001-2999);
- (b) Primary use of property (including, but not limited to: training center, office, residence, or storage);
- (c) Lease Dates (Start and expiration);
- (d) Renewal Option (Yes or No);
- (e) Option Start Date;
- (f) Renewal Period (in years and months);
- (g) Annual Rental Amount; and
- (h) An estimate of the square footage and/or acreage. If lease is for a building, indicate total square footage of the building (all floors). If the lease is for building(s) and ground, indicate total square footage and primary use of each building as well as size of ground.

A “Real Property Data Form” is available in the Overseas Contracting Handbook for this purpose.

NOTE: Where applicable, convert foreign currency to U.S. dollars using the fixed exchange rate within FORPost and convert metric measurements to square feet or acres.

If the lease amount is in excess of the CO’s warrant authority for new leases, a request for a delegation of additional procurement authority must be forwarded to OACM, with a copy of the proposed lease, the selection memo, the required security documents and any additional authorities required.

In the event a lease is terminated before its expiration date, notice must be sent to OACM and M/AS prior to the termination, including the lease number, termination date and reason for the early termination.

4.4 Option Clause

Peace Corps leases may contain an option clause making a rent increase effective at the time of renewal, provided the option rental rate is set forth in the basic lease at the time of execution.

(See sample Option Notice available in the Overseas Contracting Handbook when exercising a renewal option in accordance with Clause IV of attached Standard Peace Corps Lease.)

4.5 Termination Clause

The Peace Corps standard lease template states that the Peace Corps may unilaterally terminate the lease at the discretion of the Peace Corps upon 30 days notification and that no further payment is required after this notice period. Further, a refund of any payments already made beyond this period must be returned to the Peace Corps. If this language is not acceptable to the lessor, the CO must request approval from OACM for any changes required.

4.6 Funding

Current fiscal year funds must be obligated for the lease at the time of signing. Advance rental payments may be specified on a monthly, quarterly, or other basis. A multi-year lease may present a different specified rental amount for each year.

All leases must meet the "bona fide needs" rule when they are signed. The "bona fide needs" rule requires that funds for the current fiscal year be used for a valid need during the current fiscal year. Although current fiscal year funds may be used to fund leases extending beyond the current fiscal year, there must be a valid need for the lease beginning in the current fiscal year. For example, current fiscal year funds shall not be used for a lease which begins in the next fiscal year.

4.7 Anti-Deficiency Act

In its current form, the Anti-Deficiency Act prohibits:

- (a) Making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law. 31 U.S.C. § 1341(a)(1)(A).
- (b) Involving the government in any contract or other obligation for the payment of money for any purpose in advance of appropriations made for such purpose, unless the contract or obligation is authorized by law. 31 U.S.C. § 1341(a)(1)(B).

This means that a lease shall not be signed nor an option exercised in a new fiscal year until funds for that fiscal year have been allotted to posts, either under a continuing resolution, or after an actual appropriation has been passed. After the written lease agreement is executed with the landlord, creating the obligation, it must be recorded in FORPost.

Leases or options that must be signed during a period in which the Peace Corps is without an appropriation must contain language that states that no funds are presently available and that the lease is contingent upon the availability of funds to avoid violations of the Anti-Deficiency Act. During these times, COs must coordinate with the Office of the Chief Financial Officer (OCFO) to fund the lease as appropriated funds become available. If not already fully funded for the fiscal year, modifications to the lease must be done as additional funding is added. When the agency is operating under a continuing resolution, OCFO's Office of Budget and Analysis

(CFO/BA) typically funds regions, posts, and offices, proportional to the length of the Continuing Resolution (CR) (relative to the length of the entire fiscal year). However, the OCFO often provides posts with budget authority to fully fund leases, to avoid having to incrementally fund them.

4.8 Payments

It is in the U.S. Government's best interest to keep advance rental payments and deposits to a minimum. Whenever possible, rental payments should not be made for more than one quarter in advance, and deposits should not exceed one month's rent.

Payment of leases should normally be made in local currency, not in U.S. dollars (USD). However, USD or other hard currency payments may be made if such payments are standard practices or if there are other circumstances which support that USD payments are in the best interest of the Peace Corps, as determined by the post CO. If making USD payments, COs shall include a justification in the post lease files, in case of audit.

Posts must budget in USD, obligate in USD and then request payment in USD. Regardless of the currency in which the lease is paid, **only one currency should be listed on the lease**. Listing both currency types (local and USD) may result in Peace Corps having to pay the higher value of the two in the case of extreme exchange rate fluctuations. Exceptions to this must be approved by OACM.

5.0 Residences

COs are responsible for ensuring that residences are secure and reflect a modest lifestyle.

COs must obtain the concurrence of the Regional Security Officer (RSO), or Post Security Officer (PSO) if there is no RSO assigned, prior to executing a residential lease for U.S. Direct Hire staff. In locations where there is no U.S. Mission, the CO must coordinate with the Office of Safety and Security on residential security issues prior to executing the lease.

Residences for Peace Corps employees should be in neighborhoods predominantly occupied by local citizens. These procedures are consistent with the mission of the Peace Corps overseas, and help to promote closer contact and identification with local citizens and Volunteers. Exceptions to these procedures may be made taking into account CO or Embassy recommendations, for compelling reasons such as safety and security.

Peace Corps employees in Peace Corps leased property may not live in residences with swimming pools or tennis courts. Exceptions to this rule must be based on recommendations and documentation from the CO regarding market conditions and may take into account the lack of adequate and secure housing in-country and submitted for approval by the Regional Director or his/her designee.

U.S. citizens and Third Country Nationals who are recruited from outside the country of assignment, and are working under Personal Service Contracts (PSCs), may be provided housing and U.S. government furniture in lieu of per diem with approval of the Country Director. When

housing is provided, appropriate adjustment to any per diem received must be made (see MS 812, Paragraph 11.2.1.). Host Country Nationals and Third Country Nationals residing in the country of assignment prior to entering into a PSC arrangement with the Peace Corps are not eligible for housing provided or reimbursed by the Peace Corps.

All leases must be signed by a warranted Peace Corps CO, or someone delegated that authority by OACM. COs must not sign their own residential leases. These leases must be signed by another CO at post. The CO must make an independent award decision based on the determination of the best value to the Government.

Any lease for a residence for the Country Director or a CO at post, and [a]ny lease the value of which exceeds \$30,000 per annum, must be approved by the appropriate Regional Director or his/her designee prior to entering into the lease.

5.1 Physical Security

Residences occupied by U.S. direct hire staff must have the approval of the RSO (or PSO) and must meet the security standards established by the Overseas Security Policy Board, as well as any local standards that have been properly adopted through the Emergency Action Committee. Peace Corps U.S. citizen direct-hire employees must receive the same level of protection as all other U.S. Government U.S. citizen direct-hire employees at Post.

Residences leased for U.S. citizen or Third Country National Personal Services Contractors are not required to have RSO/PSO approval or meet the security standards in 12 FAH-6. However, for the well-being of the resident it would be prudent to use 12 FAH-6 as a guide to provide the same residential security standards as for U.S. direct hire staff.

5.2 Residential Leasing by Employees

A CO may determine in writing that leasing by individual employees, rather than the Peace Corps, is to the advantage of the U. S. Government. Temporary duty requirements, or the expected completion of a program within the year, are examples of when individual leasing might be advantageous to the U.S. Government. In such cases, the Peace Corps will provide a housing allowance for overseas employees not in excess of the Department of State housing limitations contained in Standardized Regulations (Government Civilians, Foreign Areas) where they exist, or in accordance with local practice where no Department of State limitations exist. Allowances in excess of \$30,000 per annum, allowances paid in USD, and allowances paid in other hard currencies must be approved by the appropriate Regional Director or his/her designee prior to entering into the lease agreement as noted in 5.0. Employees will be personally responsible for any costs above the authorized rate. Employees will also be personally responsible to the landlord for all damages to the residence and to any furnishings provided as part of the lease.

5.3 Utilities and Telephones

The Peace Corps will pay all reasonable utility costs in leased quarters or quarters owned by the U.S. Government, including payment for the installation of one telephone, all official toll calls, and service charges not related to actual telephone usage (i.e., service fees as distinct from

metered or periodic usage charges). Employees must keep a log of all official toll calls for reimbursement purposes (see MS 834, "Telephone and Fax Use"). Routine charges for telephones located in employee quarters, after the initial installation, are the responsibility of the occupant, unless the telephone is required by the Peace Corps. Under no circumstances will the Peace Corps pay for the installation of telephone service in privately owned or privately leased quarters.

5.4 Guard Service

Peace Corps U.S. citizen direct-hire employees must receive the same level of fixed guards and/or mobile patrols for residential security as all other employees under Chief of Mission authority.

NOTE: Resident hires and Foreign Service Nationals are not eligible for guard services at the Peace Corps' expense. Personal Service Contractors and Third Country Nationals recruited from outside the country of assignment are eligible for guard service at the discretion of the Country Director.

5.5 Size Guidelines

To the extent possible, single employees should be assigned housing with an additional bedroom and employees with authorized dependents should be provided housing that assures that:

- (a) No child must share his/her parents' bedroom;
- (b) No child over six years of age must share a bedroom with another child of the opposite sex; and
- (c) Each dependent over ten years of age has a separate bedroom.

Dependents and other family members at post for one month or less are normally required to share a bedroom with another dependent of the same sex.

5.6 Cooperation with the Office of the Inspector General (OIG)

The CO will report information concerning possible criminal violations, waste, fraud, abuse and corruption relating to Peace Corps leases and the contracting process surrounding it to the OIG. In accordance with the requirements outlined in Peace Corp Manual MS 861, the CO will cooperate fully and promptly with requests by the OIG for information and data relating to any Peace Corps leases, including by providing or making available all requested records, reports, memoranda and other information which are in their possession and by cooperating fully and truthfully with the OIG during the course of an audit, investigation, or evaluation. Knowingly furnishing false or misleading information to an OIG representative during the course of an authorized OIG function or unreasonable refusal to answer questions or provide information or documentation reasonably related to any authorized OIG function may result in termination of the CO or other appropriate action. See PC MS 861 for further guidance.

6.0 Lease Renewal

An effort to renew existing leases will often be clearly in the interest of the Peace Corps, and, if so, should be attempted because the Peace Corps often invests substantial funds in employee housing by making modifications (such as the installation of security systems and other necessary renovations). Where such improvements have been made, renewing the lease is usually advantageous to the Peace Corps.

When renewing, notice of intent to recover any rents or deposits paid in advance shall be given and/or new deposits shall be made if required. COs must coordinate with OCFO to ensure prior fiscal year money is dealt with properly.

7.0 Termination

The CO must notify OACM of post's intent to terminate a lease and give the justification for the decision. It is a best practice that written acknowledgment of termination should be obtained from utility companies, and the landlord should be required to sign a standard termination and acquittance document (see model available in the Overseas Contracting Handbook). All offices holding lease copies must be notified of terminations.

In terminating a lease, special care must be taken to furnish the required advance notice of intent to recover any rents or deposits paid in advance, to terminate all utilities, and to clarify any Peace Corps obligation to restore premises to prior condition.

8.0 Quarterly Report to the Federal Procurement Data System (FPDS)

Where two or more offers of property are received and evaluated before execution of a lease, the lease should be reported as competitive for the Quarterly Report to the Federal Procurement Data System (FPDS). If option year provisions are included in a lease when the option is exercised the procurement should be reported as competitive if the original lease was competitive.