

land contains any of the above contaminants, to determine the extent of the contamination, and to decontaminate, if necessary before such property is reported for disposal.

§644.519 Responsibilities.

(a) *Category One.* The DE, as designee of the Chief of Engineers, will satisfy himself that the clearance work, as certified in the Statement of Clearance, has been performed and that such clearance complies with the requirements of this section. If the DE determines that the completed clearance work is not sufficient, he will request the using command to perform the necessary additional clearance. The Department of Defense Explosives Safety Board (DDESB), has responsibility for reviewing and approving, from an explosive safety viewpoint, clearance reports for real property declared excess and offered for disposal. DDESB should be consulted for review and analysis of accomplished clearance work for Category One property when determinations of adequacy are not within the capacities of the DE. Requests, fully documented, for review and/or analysis by the Board may be forwarded to DAEN-REM for submission to the Board. Department of Defense procedures include staff study of all proposed excess reports by the Board before grant of "Prior Approval" for those disposals requiring reports to the Armed Services Committees (10 U.S.C. 2662). When the clearance work has been satisfactorily performed, disposal action will be continued as set forth in this subpart F. If the DE determines that further clearance work is necessary to render the land safe for use but that such further clearance work is not economically justified, he will make a report to DAEN-REM with his recommendations and pertinent supporting data. The report will include a statement of the current status of the excess action.

(b) *Category Two.* The U.S. Army Toxic and Hazardous Materials Agency (USATHAMA) is responsible for the identification and containment and elimination of all toxic and hazardous materials, and related contamination on all and/or buildings where an excessing action is planned.

USATHAMA will conduct the survey and assessments of all proposed excess property to establish the type and quantities of contaminants and then plan, direct and control the program to decontaminate and clean up the property. Following the completion of the decontamination clean up program, USATHAMA will prepare a clearance statement stating the property has been cleared of all toxic and hazardous materials reasonably possible to detect using present state-of-the-art methodology, and it will provide any exceptions or restriction for utilization of the property. Clearance statements which identify contaminations of ammunition and explosives will be submitted to the DDESB for review. Category Two items may include chemical munitions or agents, liquid propellants and pyrotechnics. The clearance statement will be forwarded through the Major Army Command (MACOM) to DAEN-REM.

(1) Decontamination of Category Two real property will comply with the requirements of TB 700-4 (Decontamination of Facilities and Equipment). The Bulletin provides general policies, responsibilities and procedures applicable whenever potentially contaminated facilities are disposed of to other Government agencies, qualified users in industry, or to the general public.

(2) The degrees of decontamination are designated in TB 700-4. Contaminated real and personal property excessed for disposal shall be decontaminated to XXXXX before it can be removed from the Government premises, or transferred to nonqualified Government or industry users.

§644.520 Contaminated industrial property.

(a) GSA may arrange to sell contaminated chemical or other industrial plants to a purchaser whose operations will result in the same type of contamination, or who agrees to perform the necessary decontamination. Any decontamination work required will be monitored by USATHAMA who will also review the completed program for adequacy of decontamination. If these arrangements cannot be worked out, USATHAMA will decontaminate the property at the request of the Office,

Chief of Engineers (OCE), or the property may be withdrawn from excess and returned to the using command for care and custody.

(b) A Statement of Clearance is required for industrial property to be declared excess in order to establish a qualitative and quantitative base line for the contaminants present. In the Statement, USATHAMA will provide an adequate description of the nature and extent of the contamination. The description furnished to the DE should include the following information:

- (1) Name and location of installation.
- (2) Date of final clearance.
- (3) Reference to attached real estate map showing locations of contaminated, cleared and restricted areas. The map(s) will be attached to the description of contamination.
- (4) Statement that the area has been cleared of toxic and hazardous materials reasonably possible to detect either by present state-of-the-art methodology or by a visual inspection.
- (5) Recommendation as to whether the land or structures may be used for any purpose for which it is suited, clearly identifying any areas recommended for restricted use and listing restricted tract and building numbers.

§ 644.521 Limitations on clearance cost.

The following principles are established for determination of the financial limit of clearance operations at excess installations:

(a) *Government-owned land.* Clearance work will not be undertaken where the estimated cost thereof exceeds the value of the land after decontamination plus the estimated cost of keeping it security-fenced and posted for a period of 25 years.

(b) *Leased land.* Clearance will not be undertaken where the estimated cost, plus the cost of any other required land restoration work, exceeds the value of the land after clearance and restoration plus the estimated cost of keeping it security-fenced and posted for a period of 25 years.

§ 644.522 Clearance of military scrap.

Military scrap can contain or be contaminated with explosives, chemicals,

and other hazardous materials. The primary consideration in determining whether scrap metal will be removed should be the safety of persons coming on the land in question and, secondarily, the prevention of accidents resulting from the sale and/or use of the scrap metal subsequent to the land passing from the jurisdiction of the Department. The DE will insure the removal or destruction, by using command, of all military scrap and scrap metal from lands suitable for cultivation or other subsurface operations. In the case of land unsuitable for cultivation or other subsurface operations, all military scrap will be removed or destroyed and scrap metal removed, if it is reasonably possible to do so. Cases where it is considered impracticable to remove the scrap metal, will be reported to DAEN-REM for final decision. In such instances, pertinent data and the recommendation of the DE will be furnished. Disposition of military scrap or scrap metal by dumping into inland waters or by land burial in other than an approved landfill is prohibited.

§ 644.523 Restricting future of artillery and other ranges.

Experience indicates that, on ranges where high explosive projectiles have been fired or dropped, such as artillery, bombs, mortars, rockets, grenades, and the like, it is impossible to make certain that land in impact areas is absolutely safe for unrestricted use. Such impact areas receive a high concentration of fire, and the properties of these projectiles are such that many duds are deeply buried. Depth of burial, as well as the concentration of fragments or components, will affect the dependability of mine detectors. Since there is no known definite period within which such projectiles will become inert through weathering and corrosion, such contaminated areas can be safely released for restricted use only, even after decontamination work has been carried to its practicable limit. Such restrictions will usually be in the form of a recommendation that the land be restricted to surface use only. Restrictions will be based solely on the type and/or extent of contamination. If land is contaminated to such a degree that it is considered it cannot be rendered

safe for any use, disposal action will be suspended and the facts will be reported to DAEN-REM-C with the DE recommendations.

§ 644.524 Reporting contaminated land to the General Services Administration.

Contaminated areas, except industrial properties as covered by § 644.520 will not be included in a Report of Excess to GSA until such time as the affected areas have been cleared by the using command to the satisfaction of the DE and a Statement of Clearance has been received. If an exception is granted and the Department of the Army, with the concurrence of GSA, reports contaminated nonindustrial property excess, the report of excess will include statements concerning:

- (a) The extent and type of such contamination;
- (b) Plans for decontamination, if any; and
- (c) The extent to which the property may be excessed without future decontamination.

§ 644.525 Statement of clearance in reporting excess property to GSA.

The Report of Excess will include the Statement of Clearance furnished by the using command (§ 644.517). The record of the clearance work performed by the using command will not be included in the Report of Excess but will be preserved in the permanent records of the DE. It is anticipated in these cases that the disposal agency (GSA) will, at the time the land is offered for sale of lease, give public notice of the circumstances surrounding its past and future restricted use. Included in such notice will be the statement that the Department of the Army is willing to remove or destroy any potentially dangerous materials discovered at any time in the future, subject to the availability of funds for this purpose.

§ 644.526 Reporting target ranges.

All Reports of Excess to GSA covering lands which have been used as target ranges of any kind will contain an affirmative or negative statement in regard to contamination. This will be by appropriate schedule and reference thereto in the following manner:

(a) If the statement is negative, it will declare that no explosive or other contaminating materials were used or stored on any portion of the installation.

(b) If the statement is affirmative, reference will be made to appropriate schedules of the Report of Excess containing statements of clearance on the installation, or portions thereof.

§ 644.527 Recording Statements of Clearance.

On property disposals for which the Corps of Engineers is the disposal agency, the DE will have the Statement of Clearance recorded, if possible, as part of the permanent history of the property involved, with the proper county land record office. A copy of the report of clearance work performed will be furnished DAEN-REM and DAEN-REP.

§ 644.528 Return of contaminated leased land to owners.

Where leased land has been contaminated, whether excess to military requirements or being used, it may often prove advisable and economical to acquire the fee to such properties. Prior to considering the return of contaminated leased land to owners, District Engineers will assist installation commanders in preparing an analysis as a basis for recommendation to acquire or not acquire such areas. In the case of recommended restriction of use, notice should be given the lessor as described in § 644.525.

(a) Where such a restriction reduces the value of the land, the Department will, if consistent with the terms of the lease, pay damages equal to the reduction in value as of the effective date of termination.

(b) As stated in § 644.525, the owner should be advised that the Department is willing to remove or destroy any potentially dangerous materials that may be discovered in the future, subject to the availability of funds.

§ 644.529 Supplemental agreement with owner of contaminated leased land.

In the event that it becomes necessary to pay damages to a lessor in

lieu of restoration i.e., decontamination, the following clause, appropriately modified to fit the circumstances, will be made a part of the supplemental agreement terminating the lease and effecting monetary settlement in lieu of restoration. Additionally, in order to protect the Government from possible claims for damages from future purchasers, the executed supplemental agreement will, in those jurisdictions permitting recordation, be recorded by the DE thus providing legal notice to subsequent purchasers of the condition of the premises.

SUGGESTED CLAUSES FOR USE IN
SUPPLEMENTAL AGREEMENT

Whereas, by reason of the use made of the premises by the Government it is impossible to ascertain after completion of decontamination operations by the Government that the following described portion of land is safe for unrestricted use by the lessor (or state because of use made by Government that use of land must be restricted to grazing, etc.):

(Legal Description; utilize hachured/annotated map(s) as attachment plus legal description.)

Now, therefore, in consideration of the payment by the Government of the United States to the lessor, (Name of Lessor), of dollars (\$), representing the estimated compensation to which the lessor is entitled by reason of the loss of the unrestricted use of the above described property, the lessor hereby releases the Government from all claims for damages to property and/or injury to persons which may arise out of the existence on the premises of unexploded ammunition or chemical/biological agents. It is mutually understood, however, that for a period of 25 years from the date hereof, the Government shall, upon request of the lessor, remove or destroy any potentially dangerous materials that may be discovered on the land, provided that adequate appropriations are available to cover the cost of such service. (If use of the land is restricted to surface use, the lessor should agree and covenant, in consideration of the payment, to use the land for such purposes only.)

§ 644.530 Conditions in conveying land suspected of contamination.

The following conditions, appropriately modified to conform to local law, will be included in deeds conveying land which is, or is suspected of being, contaminated with explosive or

toxic materials and is restricted to surface use: (GSA should be requested to include these conditions in deeds that they prepare.)

Whereas, said property was a part of (Name of Installation), a military installation used for , and portions of this property were subject to contamination by the introduction into the said installation of bombs, shells and other charges (insert reference to toxic chemical/biological agents, if applicable) either below or upon the surface thereof; and

Whereas, the grantor has caused the property to be inspected and has decontaminated the said property to the extent deemed reasonably necessary, and, to the extent deemed consistent with sound economic limitations, has cleared the property of all dangerous and explosive materials and/or chemical/biological agents, reasonably possible to detect, and has made certain recommendations pertaining to the use to which the land may be devoted, and the said recommendations are contained in a statement, a copy of which is attached hereto and made a part hereof; and

Whereas, the grantor, by attaching such statement, does not intend to make, nor shall it be construed to have made, any representations or warranties pertaining to the condition of the land; and

Whereas, the hereinafter-designated grantee has entered into a contract to purchase said property with full knowledge of, and notwithstanding the foregoing recitals which are incorporated for the purpose of disclosing the former use made of the property hereinafter described; and

Whereas, by acceptance of this instrument, the grantee admits and confesses to full knowledge with respect to the facts contained in the foregoing recitals as to possible contaminated condition of the property;

Now, therefore, by acceptance of this instrument, and as a further consideration for this conveyance, the grantee here covenants and agrees for himself, his heirs, successors, or assigns, to assume all risk for all personal injuries and property damages arising out of ownership, maintenance, use, and occupation of the foregoing property; and further covenants and agrees to indemnify and save harmless the United States of America, its servants, agents, officers, and employees, against any and all liability, claims, causes of action, or suits, due to, arising out of, or resulting from, immediately or remotely, the possible contaminated condition, ownership, use, occupation, or presence of the grantee, or any other person, upon the property, lawfully or otherwise.

§ 644.531 Warning to public of danger in handling explosive missiles.

When any land which has been contaminated with explosive objects, or chemical/biological agents, is released for disposal to, or use by, the general public in addition to the clearance statement furnished to the disposal agency, the DE will publicize, to the fullest extent practicable, the possibility of contaminants remaining on the land and the inherent danger of handling explosives or other contaminants. Such publication should be in the form of articles in official news media, or posting of the premises whenever the later is considered most feasible. Such publicity should include instructions that, in the event of the discovery of an explosive missile, or an object resembling an explosive missile, or other contaminant, or in the event of an injury caused by an explosion or exposure to toxic agents, such discovery or injury should be reported immediately to the DE. An effort should be made to obtain the cooperation of local law enforcing agencies to insure the prompt reporting of an accident, or the discovery of an explosive missile. The majority of accidents are the result of the removal of explosive missiles by individuals for sale to scrap dealers. Scrap dealers in the vicinity of contaminated lands should be informed of the inherent dangers and asked to cooperate by refusing to buy military scrap from private parties.

§ 644.532 Reporting accidents.

Immediately upon receipt of information of an accident involving, or appearing to involve, explosive or chemical/biological elements remaining on, or carried from an excess or surplus installation, whether under the jurisdiction of the Corps of Engineers, other Government agency, or sold or returned to public or private owners, the DE will institute an investigation and prepare a report prescribed by AR 385-40 and OCE Supplement thereto. Further, upon determination that an accident has occurred, the former using command should be requested to send qualified explosive, chemical or biological specialists to the scene of the accident immediately, in order that proper corrective measures to elimi-

nate future accidents may be instituted. HQDA (DAEN-REM) will be immediately informed, by teletype, of any accidents due to explosives on lands which have been used by the Department involving injuries to persons and/or animals, or damages to private property.

§ 644.533 Contamination discovered after return of land to owner, or sale.

When land has been previously declared clear of explosives or other dangerous material so as to be safe for all uses and disposed of, but is later found to have been contaminated to such an extent that, in his opinion, it is dangerous to the public, the DE will request the former using command to re-examine the land for the purpose of determining the extent to which the original Statement of Clearance should be revised and to determine the kind and cost of any further clearance work by the using command which would be required to place the property in the condition set forth in the original Statement of Clearance. If further clearance work is necessary and considered economically justified, the DE will request the using command to perform such work and furnish a new Statement of Clearance and record of the further clearance effected. If further clearance work is not considered economically justified, he will make a report thereof to DAEN-REM with his recommendations and pertinent supporting data. Recommendation for reacquisition of contaminated lands will be limited to those which involve full restrictions of both surface and subsurface uses. Where subsurface use of lands only is to be restricted, it is preferable to make compensation to the owners through claim procedure, when and if instituted by the owner on his own initiative.

§ 644.534 Return of public domain land.

(a) *General.* The procedures described elsewhere in §§ 644.516 through 644.539 to carry out the continuing responsibility of the Department of the Army to assist and advise the land holder and protect the public from dangerous substances on or in the land after release

are equally applicable to public domain lands. Air Force policy and procedures are generally comparable.

(b) *Congressional*. A provision has been added to several laws enacted by Congress that upon request of the Secretary of the Interior at the time of final termination of the reservation effected by the Act, the Department of the Army shall make safe for nonmilitary uses the land withdrawn and reserved, or such portions thereof as may be specified by the Secretary of the Interior, by neutralizing unexploded ammunition, bombs, artillery projectiles, or other explosive objects and chemical agents. The intent of the provision is explained by a statement of the Committee on Interior and Insular Affairs, House of Representatives, in Report No. 279, 87th Congress, 1st Session: The committee concluded that it would be appropriate to amend the bill to designate the Secretary of the Interior to act on behalf of the Federal Government in delineating the areas to be made safe for nonmilitary use when the lands are no longer required for defense purposes. "It is expected that the Secretary of the Interior will not require the Department of the Army to proceed with expensive cleanup work in areas where there would be no direct benefit. On the other hand, it is anticipated that when potential resources or use values are such as to make dedudding or decontamination advisable, the Secretary of the Interior will identify those resources and values for the Secretary of the Army. This will permit a full and complete justification in the event that a separate appropriation therefor is required." Report No. 279 also quoted the following policy statement by the then Bureau of the Budget:

... requirement for decontamination should be related to a standard not only of practicability, but also to one of economic feasibility that takes into account the desired future use and value of the land to be decontaminated.

(c) *Army*. The congressional policy outlined above does not change the existing Army policy. Its principal effect is to make it clear that the Secretary of the Interior has an equal interest with the Secretary of the Army in the final decision on whether it is prac-

ticable or feasible to clear lands for return to the public domain, and the extent of clearance. No difficulties in reaching agreement with Interior in these matters are anticipated. Where large expenditures are involved it will usually be necessary to request a special appropriation, leaving the final decision to Congress. In any instance, if difficulty in reaching agreement with officials of the Bureau of Land Management (or the Secretary of the Interior) should occur, it will be reported promptly to DAEN-REM with complete background data for review and instructions.

§644.535 Support in clearance of Air Force lands.

Where Air Force range lands are proposed for disposal, the AFLC, in most cases, will make an economic study to determine the extent of clearance that is justified by the relative values of the property before and after decontamination. For this purpose, AF commands declaring range lands excess will submit a copy of the excess recommendation to the AFLC. Upon request, the DE will prepare and furnish a disposal planning report to the AF Logistics Command for assistance in making the economic study. The disposal planning report will include, but need not be limited to, the following:

(a) A map which depicts and annotates differing areas according to their estimated highest and best use.

(b) An appraisal report reflecting the fair market value of each of the differing areas based on their highest and best use, and based on the assumption that the lands are entirely free of dangerous materials or other contamination. AFLC will compare such evaluation with cost of decontamination work. While needed primarily in connection with the return of AF range lands to the public domain, economic studies may be made and disposal planning reports requested by the AF in other areas.

§§644.536—644.539 [Reserved]

SALE PROCEDURE

§644.540 Advertising.

(a) *Definition and Purposes*. GSA regulations require that disposal agencies

shall widely publicize all surplus real property which becomes available for sale. Sales will be made to the highest responsible bidder after advertising. Advertising consists of the preparation of Invitation for Bids, the posting of copies thereof in public places, their distribution to interested persons or prospective bidders, and publication of notice of sale in newspapers where such publication is deemed advisable or is required by this Subpart F. The purpose of advertising and obtaining competition in selling Government property is:

(1) To give all qualified persons equal opportunity to bid for the property.

(2) To secure for the Government the benefits which flow from competition.

(3) To prevent criticism that favoritism has been shown by officers or employees of the Government in making sales of public property.

(b) *Notice to Department of Commerce.* A condensed statement of proposed sales of surplus real property by advertising for competitive bids, except where the estimated fair market value of all the property included in the advertisement is less than \$5,000, shall be prepared for publication in the U.S. Department of Commerce publications, "Commerce Business Daily." Guideline is contained in the Defense Acquisition Regulation (DAR) 1-1005.1, (formerly the Armed Services Procurement Regulation). Forward statement to: U.S. Department of Commerce, Commerce Business Daily, P.O. Box 5999, Chicago, Illinois 60680.

(c) *Procedure.* Whether newspaper advertising in addition to distribution and posting of Invitation for Bids is desirable will depend upon the value of the property and in some instances the anticipated interest in the property. The ever-changing market requires different methods or efforts to obtain the best price for the Government. The time allowed for submission of bids will depend upon the time available, usually 30 days. If available, a longer period may be desirable based on value and other factors. A shorter period may be necessary and, in an emergency, a period of less than 10 days may be allowed. However, the contracting officer should make a record of written findings to support such a deci-

sion. If the emergency is based on requirements of the using command that appear questionable, a report with recommendations should be forwarded to DAEN-REM by the most expeditious means.

(d) *Bidders Mailing Lists.* Instructions contained in procurement regulations are applicable generally for establishing, maintaining, and controlling bidders mailing lists (DAR 2-205). Generally, all proposed sales should be preceded by an advance notice, to eliminate disinterested bidders and as a measure of economy in printing and distributing voluminous Invitation for Bids. Notice to bidders will provide that their failure to respond to two successive sales offerings will result in the removal of their names from the bidders list. When time does not permit an advance notice, one copy of the Invitation may be sent to the potential bidder, which contains the following notice: "Attention Bidders. If interested in bidding on any or all items, three (3) additional copies will be furnished on request." The advance notice will describe the property offered and ordinarily provide that Invitation for Bids will be mailed on request or may be picked up at the installation or project at the time the property is inspected.

(e) *Inspection of the Property.* Upon request, interested persons should be permitted to make appropriate inspection of the property, including inventory records, plans, specifications, and engineering reports, subject to any restrictions necessary in the interest of national security and to such reasonable rules as may be prescribed by the using command or the DE.

§ 644.541 Award of contract.

(a) *Opening of Bids.* All bids shall be opened and publicly disclosed by a duly authorized representative of the responsible DE at the time and place stated in the Invitation and advertisements.

(b) *Award and Notice to Bidders.* Award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the Invitation for Bids, will be most advantageous to the Government, price and other factors considered, provided that any or all bids may be rejected

when it is in the public interest to do so. When an award is made, unsuccessful bidders should be notified promptly and their earnest money deposits returned.

(c) *Equal Offers.* Equal offers mean two or more offers that are equal in all respects taking into consideration the best interests of the Government. When equal acceptable offers are received, award shall be made by a drawing by lot limited to the equal acceptable offers received (See also §644.542.)

(d) *Public Auction.* When authorized by GSA, sales of surplus property may be made through contract auctioneers. Consideration should be given to auction sales when there is likely to be considerable interest in the property. GSA Regional Offices have had experience with actions, maintain lists of qualified auctioneers, are in a position to give other advice and assistance, and may authorize auction sales on behalf of GSA, pursuant to FPMR 101-47.304-7. Auctioneers retained under contract shall be required to publicly advertise for bids in accordance with applicable provisions of that regulation. The prior approval of DAEN-REM will be obtained before auction sales are undertaken.

§644.542 Application of anti-trust laws.

The Federal Property Act provides that real property and related personal property with an aggregate total cost of \$1,000,000 or more (or personal property with an acquisition cost of \$3,000,000 or more) or patents, processes, techniques, or inventions, regardless of cost, shall not be disposed of to any private interest until the advice of the Attorney General has been received as to whether the proposed disposal would tend to create or maintain a situation inconsistent with the anti-trust laws. Prior to obligating the Government on any such disposal, Division Engineers will furnish DAEN-REM information on the probable terms and conditions of the sale. DAEN-REM will use the information as the basis for a request to the Attorney General for advice. Under the provision cited, the Attorney General is allowed up to 60 days to furnish the advice requested. The Federal Property

Management Regulation, §101-47.301.2 provides guidance on the information to be furnished. Where identical bids in excess of the \$2,500 are received, FPMR 101-47.304-8 provides for a report to the Department of Justice. Section 101-47.304-8 provides guidance for such reports to be addressed to the Attorney General, WASH, DC, 20530.

§644.543 Determination of acceptable offers after advertising.

(a) Generally an acceptable offer is one which:

- (1) Is submitted by a responsible bidder.
- (2) Conforms to the Invitation for Bids.
- (3) Equals or exceeds the appraised fair market value of the property.
- (4) Was independently arrived at in open competition.

(b) A formal appraisal is not required where real property components:

- (1) Are to be offered on a competitive sale basis that will adequately test the market.
- (2) Are at the same location and are to be sold under a single advertisement.
- (3) Have a total estimated fair market value of \$10,000 or less for all property to be sold.

The determination as to necessity for a formal appraisal because of the \$10,000 limitation may be made by an experienced real estate employee who need not be a real estate appraiser. This determination may be in the form of a simple written statement that in the judgment of the signer the property is not considered to exceed \$10,000 in value. In these cases, awards will be supported by a determination by the DE that the market was adequately tested, and the price bid reasonable. For the purpose of records and reports, the sale price will be recorded as the fair market value. If it appears the market was not adequately tested, bids will be rejected and the property re-advertised, or, if time does not permit re-advertising, a sale may be consummated using the procedure provided in paragraphs (d) and (e) of this section.

(c) All land, irrespective of estimated value, and all other real property and components with an estimated value in

excess of \$10,000 will be appraised. Where an acceptable offer, as defined in paragraphs (a) and (b) of this section, is not received for such property as a result of public advertising, it will be re-advertised unless the responsible DE determines, based upon written findings which shall be preserved as part of the permanent file, that further public advertising will serve no useful purpose.

(d) Where no acceptable bid is received as a result of the second advertising, or a determination was made that further advertising would serve no useful purpose or is not feasible, the DE may negotiate a sale at the highest price obtainable, provided:

(1) All bids are first rejected.

(2) The total of the appraised value for all property included in any single sales contract does not exceed \$1,000.

(3) All past bidders, on any of the items, and any other known interested parties are afforded a fair opportunity to participate in the negotiations.

(4) The sale price is in excess of the highest bid received as a result of advertising.

(5) In his opinion the price is reasonable.

(e) Where the appraised or estimated value of all items to be included in a single sales contract exceeds \$1,000, and no acceptable bid is received, the high bidder may at the discretion of the DE be given a reasonable period, not to exceed five working days, to increase his bid. At the same time all other bids shall be rejected and bid deposits returned. If the high bidder increases his offer to an amount equal to the total appraised or estimated value of the items involved, the DE may consummate the sale. All other cases will be forwarded to DAEN-REM together with an opinion as to whether the market was adequately tested and the highest price offered is reasonable, and with recommendations as to the course of action to be followed. If a negotiated sale to other than the highest bidder is recommended, information for preparation of a report to the Government Operations Committees of Congress will be included, as required in paragraph (c)(2) of § 644.544.

§ 644.544 Negotiated sales.

(a) *To Private Parties.* Negotiated sales to private parties are not viewed with favor. Generally, such negotiated sales will be approved only where an emergency exists that will not permit advertising, where advertising would serve no useful purpose, or where a negotiated sale is in the best interest of the Government. Emergencies which justify sales without advertising do not ordinarily justify sales without competition. Instances are rare where the emergency is such that time does not permit the oral solicitation of quotations from more than one source. In any sales which are made without benefit of advertising, competition by informal solicitation and quotation will be obtained to the maximum extent feasible under the circumstances. Such sales should be negotiated at the best terms obtainable and at not less than the appraised fair market value.

(b) *To Eligible Agencies.* (1) Acts of Congress listed in the Federal Property Management Regulation, §101-47.4905 (Illustrations), authorize negotiated sales of surplus real property to states and other eligible public agencies listed therein. The Acts listed, except section 203(c)(3)(H) of the Federal Property Act (40 U.S.C. 484(c)(3)(H)), cover special classifications of property for specialized use, the most important of which is disposal of airport property. The section of the Act cited authorizes negotiated sales of surplus property to states, territories, possessions, political subdivisions thereof, or tax-supported agencies thereof, provided the appraised fair market value of the property and other satisfactory terms of disposal are obtained. (The other Acts listed in §101-47.4905 provide for disposal subject to conditions of use but without consideration, or at reduced consideration, except power transmission lines which are sold without conditions but at the appraised fair market value.) Notification that surplus property is available for disposal will be given to eligible public agencies for all airport property and for any other property where there is reason to believe that an eligible public agency may be interested in the property or that the property may be adaptable to

the agency's use (§§ 644.400 through 644.443).

(2) Title 10, United States Code, Section 4682, authorizes the Secretary of the Army to sell obsolete or excess material at fair value to the National Council of the Boy Scouts of America. The Judge Advocate General has held that buildings and other improvements no longer required by the Department be sold to that organization at the appraised fair market value.

(c) *Authority to Negotiate.* (1) The DE is authorized to dispose of land, improvements, related personal property and real property components (including standing timber and embedded sand, gravel, and stone-quarried products in their unmined or natural state) with an estimated fair market value of \$1,000 or less by negotiated sale without advertising, provided that such action is within the purview of paragraphs (a) and (b) of this section, and satisfactory terms of disposal can be obtained. Except as provided in § 644.543 and paragraph (b) of § 644.544 all sales are not less than the appraised fair market value. See paragraph (d) of this section for requirement for appraisal by contract.

(2) All other proposals to negotiate sales without advertising will be submitted to DAEN-REM for advance approval. In submitting such proposals, the nature of the emergency or other situation justifying the waiver of advertising will be clearly stated. The property involved will be adequately defined, and the appraised fair market value and proposed price will be set forth. Negotiated sales of surplus property with an appraised value in excess of \$1,000 under provisions of the Federal Property Act cited in paragraph (b)(1) of this section, require submission of an explanatory statement to the Government Operations Committees of Congress. Under the FPMR, a statement must be submitted at least 35 days in advance of each such negotiated disposal. When required, the DE will forward a draft of statement to HQDA (DAEN-REM) for transmittal to GSA for submission to the Committees.

(d) *Appraisal by Contract.* Pursuant to Federal Property Management Regulation, § 101-47.304-9(b), where sales are to be negotiated under the authority pro-

vided by paragraphs (a) and (b) of this section, a contract appraisal should be obtained provided that the cost of such a contract would not be out of proportion to the recoverable value of the property and is in the best interest of the Government. If such is not the case, the head of the disposal agency, or his designee, may authorize any other appropriate method to obtain an estimate of fair market value. Requests for waiver will be forwarded to DAEN-REM.

(e) *Record to Justify Waiver of Advertising.* (1) A written justification for negotiated sales made under the authority of these instructions will be prepared and filed by the DE with the record of disposal in each case. A copy of Standard Form 1036 may be used for this purpose.

(2) Except for those cases covered by paragraph (b) of this section, the nature of the emergency compelling waiver of advertising, the reason why it was considered that advertising would serve no useful purpose, or why the negotiated sale was considered to be in the best interest of the Government, will be clearly stated. In cases where an explanatory statement is transmitted to the Committees on Government Operations, a copy of that statement will be furnished the appropriate GSA Regional Office and filed with the record of the case as the required documentation of justification for waiver of advertising. DAEN-REM will make available to the DE necessary copies of such statements for filing or distribution.

§ 644.545 Form of invitation for bids and contract of sale.

Sale contract forms will be prepared by the DE conducting the sale. ENG Form 571-R, Invitation for Bids, Bid and Acceptance, Sale of Surplus Real Property will be used as a guide in sales of bare land or improved land and related personal property. ENG Form 1038-R, Invitation for Bids, Bid and Acceptance, Sale and Removal of Buildings (or other Real Estate Improvements), will be used as a guide in sales of buildings and other improvements for removal from the site. These forms are designed for use in normal sales of

land and real estate improvements pursuant to existing delegations of authority. The DE is authorized to change the formats, to rearrange the sequence of paragraphs, and to add or to delete paragraphs in whole or part, as local circumstances require, but no substantive departure from the forms is authorized without prior specific approval of DAEN-REM. Whenever a sale is to be conducted pursuant to a special delegation of authority, and whenever the circumstances of a sale are such as to render use of these forms inappropriate, a form will be devised by the DE to meet the requirements of the particular sale involved, and forwarded to DAEN-REM for approval. Suggested additional provisions and conditions for use in the sale of standing timber are contained in ENG Form 2140-R, Supplement to Standard Form 114 for use in Timber Sales Contract. In preparing sale contract forms, the following instructions will be followed:

(a) A definite date and time will be set for the opening of bids.

(b) Bids will be prepared in quadruplicate, all copies to be signed by the bidder.

(c) The Invitation for Bids will require each bidder to submit with his bid a certified check, cashier's check, traveler's check, or United States postal money order drawn to the order of the "Treasurer of the United States" for at least 20 percent of the bid. When the cash bid may be a small part of the total consideration (where such dismantling and restoration is involved), the DE should set a definite higher amount as a bid deposit. Also, in such cases a performance bond, adequate to discourage breach of contract after only partial performance, may be required.

(d) For real property components the Invitation for Bids will require payment in full within seven days after the successful bidder is notified that his bid is accepted and, in any event, prior to removal of the property. The time specified for completion of payment for land will depend upon the sum of money involved.

(e) Bids may be submitted for one or any number of items. Items or lots of real property will be offered in such reasonable quantities as to permit all

bidders, small as well as large, to compete on equal terms. Land, however, will not be subdivided solely for this purpose, and in the case of timber sales or sales of embedded sand, gravel and stone, it may not be feasible to have more than one purchaser operating in the same area. Further, it may not be to the Government's interest. Buildings will be offered for sale as single items whenever practicable but submission of bids covering specified groups as an item or all of the buildings may be permitted if the DE considers such a procedure is in the best interest of the Government. It may sometimes be advantageous to divide the buildings into appropriate groups and to permit bidding on individual buildings or on specified groups of buildings or on the entire lot. When such bids are permitted, the Invitation for Bids, ENG Form 1038-R, will be flagged to inform bidders that lump sum bids on the entire lot (and specified groupings, if this procedure is appropriate) may be made but will not be accepted unless the lump sum bid exceeds the total of the highest bids received on each item (or on the groupings).

§644.546 Credit.

Payment of the purchase price over an extended period of time should be considered only when the price is a considerable amount, and it may be to the Government's interest to extend credit. Prior to offering property for sale on an extended payment plan basis, approval from DAEN-REM will be obtained. Extension of credit will be within the limitations of FPMR 101-47.304-4. Credit cannot be extended, except to state or local governments, nor can any other special condition be applied, unless provision was made for it in the Invitation for Bids.

§644.547 Extensions of time.

Granting an extension of time, where unusual or unforeseeable circumstances are not present, is contrary to the form of the Invitation for Bids, and amounts to the application of special conditions not provided for therein. This violates GSA regulations and the principles of fair competition. Adoption of the following guides in the

development and administration of sales programs will help to avoid unjustified requests for extensions of time:

- (a) Establishment of realistic periods for completion of the sales contract.
- (b) Necessary and justified extensions to be authorized subject to posting additional bond to insure performance and payment of adequate consideration where use of Government land is involved.
- (c) Reasonable restrictions on resale of improvements at the site.
- (d) Prohibition against posting advertising signs and storage of salvaged material on the installation pending sale to other customers.

§ 644.548 Abstract of bids.

At the opening of bids, DD Form 1501 or 1501-1 (Abstract of Bids) will be prepared showing all bids received, the amount for each item, and the total. The successful bid will be encircled in red or typed in red.

§ 644.549 Payments.

All payments should be in the form of cash, cashier's check, money order, traveler's check, draft, or any other form of payment not subject to stoppage or revocation. All such checks, money orders, or drafts should be drawn to the order of the "Treasurer of the United States."

§ 644.550 Sale to employees or military personnel.

The sale of Government real property will not be made to civilian employees or military members of the Department of Defense (including an agent, employee or member of the immediate family of such personnel) whose duties include any functional or supervisory responsibility for the disposal of real property under Army control.

§ 644.551 Equal opportunity—sales of timber, embedded sand, gravel, stone, and surplus structures.

Consistent with Executive Order 11246 as amended by Executive Order No. 11375, every Government contract involving employment shall include provisions for equal opportunity in employment, in connection with the performance of work under the contract.

The equal employment opportunity clause in DAR 7-103.18 will be included in all contracts and first-tier sub-contracts over \$10,000 pertaining to the following real estate actions in the United States and its possessions, unless exempted under the provisions of DAR 12-805:

- (a) Sale of standing timber.
- (b) Sale of embedded sand, gravel, and stone in their natural state.
- (c) Sale of surplus structures where an appreciable amount of dismantling and site restoration is involved.

§ 644.552 Statement of contingent or other fees.

The instructions and procedures contained in section I, part 5, DAR, are applicable to the sale of Government-owned real property and will be followed. Where applicable the statement set forth in DAR 1-506 will be included in Invitation for Bids and Contracts of Sale and an identical signed statement will be secured from the prospective purchaser where the property is to be sold without advertising for competitive bids. In addition to the statement, Standard Form 119 (Contractor's Statement of Contingent or Other Fees for Soliciting or Securing, or Resulting From Award of Contract) will be completed where either part of the statement is answered in the affirmative. The exceptions to the use of the statement and Standard Form 119 are set forth in DAR 1-506-3 and may apply generally to real property sales of the Army, Air Force and non-defense agencies except that the monetary limitation prescribed by DAR 1-506.3 is \$1,000 insofar as sales or property of the Department of Energy are concerned.

§ 644.553 Preparation and distribution of sales documents and reports of sales.

- (a) *Report of Funds Received.* As funds are collected from sales, reports will be prepared promptly. Sales may be allowed to accumulate to permit the making of fewer reports, but in no case will they go unreported longer than 48 hours. DD Form 1131 and supporting papers will be signed by the DE conducting the sale.

(b) *Numbering of Contracts.* The numbering of contracts involving the receipt or expenditure of funds will be in accordance with ER 1180-1-1 (ECI 30-203).

(c) *Documentation and Reports of Sale.* The DE responsible for the sale will prepare and retain copies of documents pertaining to the sale, and will make required distribution of the following (see paragraph (d) of this section).

(1) Contract—one signed and two authenticated copies.

(2) DD Form 1501 or 1501C (Abstract of Bids)—one copy (not required for negotiated sales).

(3) DD Form 1131—four copies. All sales will be listed on DD Form 1131, extended if necessary. Separate forms are not required for each contract. When receipts from more than one contract are reported on one DD Form 1131, all related contracts will be attached to and transmitted with the form.

(4) Standard Form 1036, Statement and Certificate of Award, attached to the original signed contract and the DE's copy of each contract, or separate statement justifying negotiation (paragraph (e) of § 644.544).

(5) Advertisement, if any—two copies.

(6) Bond, if any—two signed copies.

(d) *Distribution of Reports of Sale—(1) Military Property.* The finance officer will be furnished one authenticated copy of the contract and four executed copies of DD Form 1131, together with funds collected. The finance officer will retain the contract, funds, and one copy of DD Form 1131, and will receipt and return to the responsible DE three copies of DD Form 1131.

(2) *Civil Works Property.* The finance officer will be furnished four executed copies of DD Form 1131, together with funds collected, an authenticated copy of each contract, Standard Form 1036 or a statement justifying negotiation, copy of advertisement, if any, and original signed bond, if any. Three copies of DD Form 1131 (Cash Collection Voucher) will be receipted and returned to the DE.

§ 644.554 Insurance against loss or damages to buildings and improvements by fire or acts of God.

The Department does not carry property insurance of any nature. Vendees, however, may be advised as to their liability for certain losses and that insurance protection against such risks is optional. Under the FPMR, the vendee must provide insurance to protect the United States when credit is extended (§ 101-47.304-4(f)).

§§ 644.555—644.557 [Reserved]

INSPECTIONS TO INSURE COMPLIANCE WITH DISPOSAL CONDITIONS

§ 644.558 Properties requiring compliance inspections.

The principal properties conveyed which require inspections are for the training of civilian components of the Armed Forces. However, other properties are sometimes conveyed under special acts of Congress subject to conditions required by the authorizing act. These properties will also be inspected for compliance with such conditions.

§ 644.559 Civilian component training facilities.

(a) *Authority.* Under the provisions of the Surplus Property Act of 1944, as amended, a number of surplus real properties of the United States certified by the Governor of the state in which located and by the Secretary of the Army, Navy or Air Force as the case was, as being suitable and needed for use in training and maintaining civilian components of the Armed Forces under their respective jurisdictions, were conveyed by the Administrator of the War Assets Administration or by the General Services Administration to states, their political subdivisions or tax-supported instrumentalities for such purposes. These conveyances contained a number of covenants, conditions, restrictions and reservations, designed to insure the use and maintenance of the property and appurtenances for the purpose for which conveyed and otherwise to protect the interest of the United States. The Secretary of Defense is authorized by (40 U.S.C. 484(k)(4)(d)) to:

(1) Determine and enforce compliance with the terms, conditions, reservations and restrictions contained in any instrument by which such transfer was made;

(2) Reform, correct, or amend any such instrument by the execution of a corrective, reformatory, or amendatory instrument where necessary to correct such instrument or to conform such transfer to the requirements of applicable law; and

(3) Grant releases from any of the terms, conditions, reservations and restrictions contained in, and convey, quitclaim, or release to the transferee or other eligible user any right or interest reserved to the United States by any instrument by which such transfer was made, if he determines that the property so transferred no longer serves the purpose for which it was transferred, or that such release, conveyance, or quitclaim deed will not prevent accomplishment of the purpose for which such property was transferred: Provided, that any such release, conveyance, or quitclaim deed may be granted on, or made subject to, such terms and conditions as he shall deem necessary to protect or advance the interest of the United States.

(b) *Authority Delegated.* The authority vested in the Secretary of Defense under the Act cited in paragraph (a) of this section has been redelegated to the Secretary of the Army and the Secretary of the Air Force, respectively (Department of Defense Directive 5100.10, dated 16 March 1972).

§ 644.560 Inspections of civilian component training facilities and other properties conveyed subject to conditions.

The DE, within whose areas of military real estate operations are located the facilities conveyed under the authority mentioned in § 644.559, will

make physical inspections thereof for the purpose of determining compliance with the terms of the conveyance. Any evidence of noncompliance should be reported to DAEN-REM in order that appropriate recommendations may be made to the respective Secretary for corrective action. A detailed statement of the facts and recommendations of the DE should be included in the report. Inspections should be scheduled and integrated with outlease compliance inspection itineraries in the interest of economy. This requirement for inspections extends to properties conveyed by the Secretary of the Army or Air Force under special legislation, where the deed of conveyance imposes conditions on future use of the land. These inspections need not be made annually but frequently enough so that the DE is assured that the conditions are being observed, and at least every three years. Compliance with conditions in deeds for property conveyed for airport purposes under 49 U.S.C. 1723 and 50 App. U.S.C. 1622g is the responsibility of the Secretary of Transportation; for property conveyed for purposes of health and education, the Secretary of Health, Education, and Welfare or its successor agencies (40 U.S.C. 484(k)(4)). The Commander, U.S. Army Materiel Development and Readiness Command, is responsible for compliance with the National Security Clause, and similar conditions, in deeds conveying industrial properties.

§ 644.561 Inspections of civil works properties.

Disposal of real estate interests which impose restrictions on the use of the land, or reserve an estate in the land, will be inspected for compliance on an annual or other reasonable basis to assure compliance.

PARTS 645—649 [RESERVED]

SUBCHAPTER K—ENVIRONMENTAL QUALITY

PART 650—ENVIRONMENTAL PROTECTION AND ENHANCEMENT (AR 200-1)

Subpart A—General

- Sec.
- 650.1 Purpose.
- 650.2 Applicability.
- 650.3 Explanation of terms.
- 650.4 Goal.
- 650.5 Policy.
- 650.6 Implementing guidance.
- 650.7 Responsibilities.
- 650.8 Installation, State and Environmental Protection Agency (EPA) relationships.
- 650.9 Annual Status Report on Environmental Programs and Activities (RCS DD-I&L (A) 1269).
- 650.10 Environmental Quality Award.
- 650.11 Reporting requirements.
- 650.12 Executive Order 11752.
- 650.13 Endangered species.

Subpart B—Environmental Considerations in DA Actions [Reserved]

Subpart C—Water Resources Management

GENERAL

- 650.51 Purpose.
- 650.52 Goals and objectives.
- 650.53 Explanation of terms.
- 650.54 Policy.
- 650.55 Responsibilities.
- 650.56 Related publications.

STANDARDS AND PROCEDURES

- 650.57 Water supply standards.
- 650.58 Water quality standards.
- 650.59 Effluent limitations.
- 650.60 Ocean dumping standards.
- 650.61 Activities in navigable waters.
- 650.62 Storage of hazardous materials.
- 650.63 Water supply treatment procedures.
- 650.64 Water conservation.
- 650.65 Minor industrial and municipal operations.
- 650.66 NPDES permits.
- 650.67 Ocean dumping permits.
- 650.68 Corps of Engineers permits.
- 650.69 State permits.
- 650.70 Operator training and certification.
- 650.71 Waivers.
- 650.72 Investigation of complaints.
- 650.73 Water Pollution Control Report—(RCS DD-I&L (SA) 1383).

Subpart D—Air Pollution Abatement

GENERAL

- 650.81 Purpose.

- 650.82 Goal and objectives.
- 650.83 Explanation of terms.
- 650.84 Policies.
- 650.85 Responsibilities.
- 650.86 Reports.
- 650.87 References.

STANDARDS AND PROCEDURES

- 650.88 Standards.
- 650.89 Assessment of air quality.
- 650.90 Air pollution sources.
- 650.91 Air pollution abatement and control.
- 650.92 Air emission monitoring and reporting.
- 650.93 EPA Air Pollution Project review.
- 650.94 Consent agreements.
- 650.95 Exemptions.
- 650.96 Transportation Control Plans.
- 650.97 Air pollution emergency episode plans.

Subpart E—Solid Waste Management

GENERAL

- 650.105 Purpose.
- 650.106 Goal.
- 650.107 Objective.
- 650.108 Policy.
- 650.109 Responsibilities.

STANDARDS AND PROCEDURES

- 650.110 Standards.
- 650.111 Procedures.
- 650.112 Reports.
- 650.113 References.

Subpart F—Hazardous and Toxic Materials Management

GENERAL

- 650.121 Purpose.
- 650.122 Goal and objectives.
- 650.123 Explanation of terms.
- 650.124 Policies.
- 650.125 Responsibilities.

PESTICIDE MANAGEMENT PROGRAM

- 650.126 Implementing guidelines.
- 650.127 Procedures.
- 650.128 Monitoring.
- 650.129 Reports (RCS DD-I&L (AR) 1080) and (RCS DD-I&L (SA) 1383).

HAZARDOUS CHEMICAL STOCKS (EXCLUDING CHEMICAL WARFARE AGENTS)

- 650.130 Implementing guidelines.
- 650.131 Procedures.
- 650.132 Special authorizations.
- 650.133 Monitoring.
- 650.134 Reports.