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32 CFR Ch. V (7-1-09 Edition)

APPENDIX D TO PART 552—UNAUTHORIZED ACTIVITIES IN FORT LEWIS MANEUVER AREAS

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 3012, 15 U.S.C. 1601; 18 U.S.C. 1382; 31 U.S.C. 71; 40 U.S.C. 258a; 41 U.S.C. 14; 50 U.S.C. 797.

Subpart A—Use of Department of the Army Real Estate Claims Founded Upon Contract

§ 552.16 Real estate claims founded upon contract.

(a) *Purpose.* This regulation provides guidance in investigating and processing contractual claims involving real estate which are to be settled and adjusted by the General Accounting Office (GAO) according to the authority in paragraph (c) of this section. It is applicable to the active Army, Army National Guard, and the US Army Reserve.

(b) *Applicability.* This regulation applies to the following classes of contractual claims.

(1) Rent and payments for janitor, custodial, utility, and other similar contractual services.

(2) Damages founded upon express or implied contract.

(3) Permanent or recurring damages to real property situated in the United States or its territories, resulting in the Government taking of an interest in real estate for which compensation must be made according to the Fifth Amendment to the Constitution.

(c) *Statutory provision (except as otherwise provided by law).* All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the GAO (31 U.S. Code 71). The GAO discharges its settlement and adjusting responsibilities—

(1) Through the audit of transactions after payment.

(2) By adjudication before payment is made or denied.

(d) *Claims not payable.* The classes of claims that are not payable according to the authority in paragraph (c) of this section are—

(1) Damages to real property sounding in tort and not constituting a taking.

(2) Damages arising in foreign countries which could not be settled under chapter 10, AR 27-20, if otherwise applicable, because they—

(i) Result from combat activities.

(ii) Are waived or assumed by a foreign government.

(iii) Are brought by a foreign national excluded in paragraph 10-8b(1), AR 27-20.

(3) Claims which must be settled by some other procedure according to statute, determination of GAO, or provision in the contract on which the claim is founded.

(e) *Claims payable under contract.* When claims are founded on express or legally implied provisions of an existing written contract, and if liability and the amount thereof are certain and agreed between the parties, they should be paid according to the contract or supplemental agreement thereto. Rental claims based on still-continuing Government use and occupancy not under lease may be avoided by negotiation of a lease effective from the date Government occupancy begins.

(f) *Claims cognizable under other regulations.* (1) The procedure believed to be in the best interest of the Government should be followed if a claim under this regulation is also cognizable under—

(i) Chapter 3, AR 27-20 as a claim for damages incident to noncombat activities of the Army.

(ii) Chapter 10, AR 27-20 as a foreign claim.

(2) If a real estate claim under this regulation includes an incidental claim for damages to personal property not founded on contract, the entire claim may be—

(i) Processed under this regulation.

(ii) Processed separately under other regulations, believed to be in the best interest of the Government.

(g) *Claims to be submitted.* Section 5 of title 4, GAO Manual for Guidance of Federal Agencies (cited as 4 GAO 5.1) lists the following categories of claims of a contractual nature to be submitted for settlement (letters of transmittal will indicate the applicable category):

(1) Claims involving doubtful questions of law or fact. This will include any claims based upon a taking and

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contractual claims which could be settled administratively except for the doubt.

(2) Claims required by statute, regulation, or decision of the Comptroller General to be submitted.

(3) Reclaims of items for which payment under contract has been administratively denied, unless it is determined administratively that the action taken was clearly in error and properly can be corrected by the agency which denied the claim.

(4) Claims barred by statute of limitation. These claims may be forwarded without investigation, except when needed to establish time of accrual.

(h) *Time for filing claims.* Claims cognizable by GAO are barred if not received in that office within 6 years after the date of accrual. A claim which may be barred in the near future should be transmitted directly, preferably within 4 years of the date of accrual, to GAO for filing, with a request that it be returned for further processing.

(i) *Procedures.* (1) Claims for investigation and report will be forwarded to the office of the Division of District Engineer having real estate responsibility over the area in which the involved real property is located. In the absence of such an office, the claims will be forwarded to the command responsible for the lease or other contract on which the claim is founded.

(2) The responsible office—

(i) Will appoint a claims officer to conduct the investigation and prepare the report as outlined in AR 27-20.

(ii) When appropriate, may request a command more conveniently located to appoint the claims officer.

(iii) Will have a staff attorney or staff judge advocate review the completed report.

(iv) Will approve or disapprove the report.

(v) Will forward the report (in three copies) through channels to the Chief of Engineers (HQDA DAEN-REM) WASH DC 20314).

(3) The report will include—

(i) The original signed claim, preferably but not necessarily on Standard Form 95 (Claim for Damage or Injury). It will be itemized when applicable, and for a sum certain.

(ii) Any supporting evidence the claimant desires to submit.

(iii) A certified voucher, stating the citation of funds to be charged if the responsible office submitting the claim recommends payment in whole or in part.

(4) The letter of transmittal will include—

(i) A brief statement of the essential facts giving rise to the claim.

(ii) The category in paragraph (g) under which the claim is forwarded for settlement by GAO under 31 U.S. Code 71.

(iii) A recommendation for allowance or disallowance with justification.

(iv) Fiscal information required by paragraph 11-51, AR 37-103, including a citation of funds to be charged if payment is made.

(v) A statement that the claim has not been and will not be paid except according to certification in the name of the Comptroller General.

(31 U.S.C. 71)

[44 FR 37911, June 29, 1979]

Subpart B—Post Commander

§ 552.18 Administration.

(a) *Purpose.* This section outlines the duties and prescribes the general authority and general responsibilities of an installation commander.

(b) *Applicability.* The regulations in this section are applicable to installations in the United States, and where appropriate, to oversea installations. Oversea commanders should consult with the appropriate judge advocate to determine to what extent the provisions of treaties or agreements, or the provisions of local law may make inapplicable, in whole, or in part, the provisions of these regulations.

(c) *General.* The installation commander is responsible for the efficient and economical operation, administration, service, and supply of all individuals, units, and activities assigned to or under the jurisdiction of the installation unless specifically exempted by higher authority. Activities will be designated as "attached activities" only when specifically designated by higher authority. The installation commander will furnish base operation