

A MARYLAND PARTNERSHIP GUIDE FOR MILITARY FACILITIES



This “how to” manual is a helping hand initiative by Maryland to foster partnering between the State’s military installations and private sector interests, with a dual goal of cost savings and job creation.

Use of this document is intended to benefit organizations interested in partnering with Maryland-based military organizations. The State of Maryland has received a license to reproduce this Guide for its use and may distribute the same for its purposes. Any other use of the Partnership Guide is restricted by U.S. copyright law.

The Maryland Department of Business and Economic Development, The Army Alliance and The Technology Management Group of GEO-CENTERS, INC. prepared and copyrighted this document in 2002 and 2003. The work relied heavily on the support and assistance of Bill Richardson, Ph.D., President of the Army Alliance, BGen J. Michael "Mike" Hayes, United States Marine Corps (Ret.), Director of Military Affairs, and Deputy Secretary Vernon J. Thompson, both of the Maryland Department of Business and Economic Development.

This Partnership Guide was written by M.L. Clark Tyler and Raymond S. Wittig of GEO-CENTERS, INC. with significant editing assistance of Gregory P. Harrod, Sr. of the Maryland Department of Business and Economic Development.

David D. Ryer, Warren C. Martin and Bryan M. Davis were critical to the layout and design of the material, working long hours to produce this document.

This project prospered from its inception under the direction of BGen J. Michael "Mike" Hayes, USMC (Ret.)

Prepared Under An Agreement With
The Army Alliance
And
The Technology Management Group of GEO-CENTERS, INC.

CONTENTS

Forward

4

Introduction And Purpose

5

Guide Steps

Step 1 - Assembling the Planning Team	7
Step 2 - Listing the Shareable Assets	9
Step 3 - Calculating the Cost and the Value	16
Step 4 - Defining the Needs of Your Organization	23
Step 5 - Identifying and Targeting a Potential Partner	26
Partnership Tools - Summary	27

Exhibits

Report of Availability Checklist	11
Examples of Land Use Maps	14, 15
Cost Comparison Chart	18
Memo on BRAC from the Secretary of Defense, 2002	34
Major Base Closure Summary (BRAC 1988-1995)	38
CD-ROM Table of Contents	40
Glossary of Acronyms	43

FOREWORD

This Maryland Partnership Guide for Military Facilities is intended to provide military base commanders, organizational leaders, and their staffs a way to approach partnerships with other organizations to strengthen their mission capability and reduce costs.

The guide is useful for establishing partnerships with federal, state, and local government organizations, as well as not-for-profits and for-profit organizations. Frankly, no one partnering tool or approach will be sufficient to provide all of the authority and flexibility needed to meet the challenging partnering opportunities available to military organizations today and tomorrow. The authors urge users to think very broadly and consider all opportunities. Further, a weather eye cast toward the future will assist all organizations in the quality of partnerships made today.

There is an extensive quantity of information provided in digital form on a compact disc because it was simply too large to reproduce on paper. There is a “Table of Contents” document, with hyperlinks to the reference material, located in the root directory of the CD-ROM. This material is provided for reference, for education and for the generation of new combinations of partnerships. The authors urge review of the contents and request that anything not found but considered useful by the readers be sent to the Office of Military Affairs for inclusion in a future version of this guide. Your suggestions will be greatly appreciated and will be forwarded to all recipients as received.

Introduction & Purpose

There are a number of recent economic, political, budgetary and organizational crosscurrents that present a considerable challenge for those commanding large military installations. The pressure to increase mission capability and reduce costs in the face of significant increases in operational tempo require considerable planning and assessment of viable options and transformation initiatives utilizing partnerships with both public and private entities.

With the BRAC/EFI process dating back to 1988, military installations have learned several lessons. Nearly 100 bases have been closed. But many more have taken significant action to better utilize facilities and to cut operating costs. As a result of these collective experiences, we have an excellent set of “How To” blueprints and there are definitive examples of what works and what does not. For Maryland installations facing this prospect, a considerable advantage exists in the proactive attitude of State government and in its willingness to assist with the process of transition. This “How To” manual has been developed to guide those who have an interest in positioning these installations to be an attractive partner for future economic development efforts. No longer is the “save-the-jobs-stress-the-economic-impact” argument going to gain significant political traction, and there are a number of reasons for this.

First, the transition from the “Cold War” budget to the global economy of the twenty-first century was

severely interrupted by 9/11 and the war on terrorism. Next, the examination of technology and weapons systems needs by the Department of Defense (DoD), beginning in 2001, dictated a fresh look at force and base requirements. The effects of an economic downturn have exacerbated budget constraints caused by these realities, forcing a new concentration on operational efficiencies as well as downsizing of both facilities and functions. Added to this is a special emphasis on physical security. Last, every participant in the BRAC/EFI process, from congressional staffers to community leaders, is much more sophisticated about the components and the political levers available.

Certainly, every community will develop economic arguments highlighting the potential hardships of base closure. However, what will be most effective is a demonstrable record of multi-service, public/private partnering to reduce costs and expand capabilities.

Base commanders and managers, as well as outside interests (both public and private), need to be acutely aware of how all these cross-currents will translate into a coherent position in a highly competitive market environment. While there may be significant opportunities for all concerned, they will result from a very different kind of planning and preparation. In other words, making the right choices and having the right people involved, is going to be critical to the repositioning

This “How To” manual has been developed to guide those who have an interest in positioning these installations to be an attractive partner for future economic development efforts.

of each military installation. The key is a process called partnering.

While each installation will clearly have a different set of dynamics and prospects, how they package their facilities, organization, personnel and other assets, will determine how potential partners can be identified, utilized and secured. In addition, each installation must begin to see itself in the role of a potential partner.

Clearly, some Maryland installations are farther along in the planning process than others. However, the ins and outs of all of these new tools and opportunities should be investigated to benefit from the experience of others and to gain insight about recent changes in the pertinent laws and regulations. It should also be recognized that potential partners have analyzed these new

possibilities and have educated themselves on how best to make them work. While the market is smarter and more receptive, it also knows what possible stumbling blocks to look for and what questions to ask.

This Guide offers a step-by-step process for planning and organizing the effort to secure an appropriate partner and to position an installation for a very different future. The bottom line is clearly this: success in avoiding designation as a closure candidate is a factor of generating entrepreneurial activity on the installation. This is no longer a public relations or political exercise; it is a results oriented effort of partnering. To give an indication of how the administration is approaching the scheduled BRAC/EFI process, we have included a recent departmental letter from the Secretary of Defense.



STEP 1 – Assembling the Planning Team

Each installation should create a small, smart, motivated team that will build a process to develop a specific plan with appropriate time lines. The elements of that plan will be discussed later. This team should work with two different groups. The first group should consist of individuals representing:

- Public Works - The person with operational authority over real property, environmental considerations, transportation and maintenance.
- Security
- Safety, Fire and Police
- Financial and Resource Management
- Legal
- Contracts
- Technology Transfer
- Public Affairs

The task of this group is to review the ways in which the installation will enter into partnership agreements (the process) so that all issues involving the various regulatory constituencies are resolved in advance. This group will provide the pre-approved partnership process. Do not presume that this is an easy task. It will be difficult but will allow all parties, once agreement has been reached to move to a partnership, avoiding deal-killing delays.

The second group, representing the mission-oriented organizations at the installation must identify mission-related needs in a priority form that represents the needs of the entire installation.

The starting point for this group should be a clear indication from the command echelon on what the present and future mission-specific needs of the installations are (See STEP 4). Such needs traditionally include the major commands on the

bases as well as the requirements of tenant organizations. Current and future facility and equipment needs should be assessed, especially as they may relate to the specified criteria for BRAC/EFI selection and military value:

- Efficiencies that result from combining operations of one department or agency with those of another at another installation;
- Savings from consolidation of activities;
- Savings from privatization of under-utilized facilities;
- Savings that might result from collocating activities with those of another federal agency;
- Savings from elimination or reduction in leased space and relocation to property owned and operated by the federal government;
- Reduced remediation costs for re-use of property;
- Possible future accommodation of increased military usage; and
- Expanded mission capability through partnering.

While there are many variables and “what ifs” in making such assessments, the planning team should be able to quantify, from each individual perspective, the various options in terms of services needs, conditions of facilities (repair and expansion), value to different users and infrastructure operating costs. Certainly efficiencies can be dictated from higher headquarters, or by external policy decisions. However, there are always cost cutting and cost saving measures that can evolve from restructuring overhead and operational costs. Many military installations have found such efficiencies by merely taking a zero-based look at various provisions and services for which there is a lesser need, or which may be duplicative. Outside interests, potential

partners and private (or contract) users will, more than likely, spot such opportunities in examining budgets and costs.

As the work of the planning team progresses, it is critical to include substantive contact with the many departments and managers who have the ability and authority to say “no.” Their fears must be allayed, their concerns addressed, and their ideas incorporated. When this is done, what will be achieved is a wide menu of choices –

acceptable choices from among what were once competing interests.

Consider these choices as “pre-partnering” planning. While the overall goal for the installation should be to reduce base operating costs, it must be done with an eye towards attracting and providing for a possible partner and/or outside user. This will position the team to approach the next step.

When this is complete, what will be achieved is a wide menu of choices – acceptable choices from among what were once competing interests.



STEP 2—Listing the Shareable Assets

The goal of this part of the effort is to identify those installation assets that might be of interest to a partner. Partnerships are all about sharing capabilities that make both partners stronger. As the search for partners goes forward, it is essential to firmly grasp what is available for use by a partner and the relative value of shareable assets

Experience with past BRAC/EFI efforts and cost-reducing initiatives has shown that when an installation's assets are critically analyzed, there are some that are clearly under-utilized. There are also some assets which are not utilized or needed on a full time basis, and thus can be shared in some sort of dual use fashion. This would apply to personnel (and expertise), equipment, land, buildings and other facilities or capabilities, but availability for use by others is not enough. Dual use will probably be most likely, and this will involve critical scheduling provisions. There are all kinds of software that have been developed that will provide options for handling such scheduling issues. These should be investigated, adapted and instituted as part of any presentation package.

When examining any assets that might conceivably be shared, it is very important to clearly consider any disadvantages, or "warts," that may become apparent to anyone interested in the sharing (as a user). If not addressed up front, such disadvantages may become a stumbling block to a potential partnership, and thus could result in a lot of wasted time and missed opportunities. The types of hurdles that may be endemic in such assets relate to their status, time of availability, need for repair or modification, specialized requirements, access and other logistical or cost structure problems.

As the asset list is prepared and disadvantages noted, be sure to cover the following categories:

- Knowledge - Such as intellectual property, existing or pending patents (or other protection), data and databases, plus unprotected software and inventions.

- People - Know-how and expertise; skill level; training, status (retirement schedule). Do not forget your retired workforce that might be delighted to work several days per week.
- Equipment - General and specialized; useful as is or with adaptation; tied to specific processes, or coupled with particular expertise; maintenance and use requirements; relocation possibilities:
- Facilities - Buildings, installed equipment, defined capabilities (such as docks, landing strips, test tracks), parking, past and present plans for use and/or modification.
- Land - Near road or rail, utilities provided or available, services available, constraints on use (such as environmental, historic, zoning).
- Specialized combinations of people, equipment and buildings.

Note that access is a very important issue for most of these items. Relocation of "the fence" could easily provide ease of access to a building by private sector personnel that may be foreign nationals.

If the assets in question are land or buildings, non-governmental organizations may use DoD assets for private sector purposes through a lease (10 U.S.C. 2667) or license (CRADA 115 U.S.C. 3710a). Also, consider Facilities Use Agreements, Educational Partnerships, Partnership Intermediaries, and Out-Grants. When a lease is to be used, a report must be created that describes the land and buildings in sufficient detail to allow others to determine the value of the facility reduced by any restrictions on its use and/or costs of modification and restoration.

A good instruction on how to position an installation for these kinds of decisions and choices is the Army's Report of Availability process (see AR 405-80). Other services have a similar process. This process represents a virtual checklist of applicable laws, regulations and areas that need to be

addressed as land and facilities are prepared for utilization by others. Included in digital form are: the applicable sections of AR 405-80; the March 2002 Installation Guide for the Sale and Outlease of Army Assets; and an actual outlease form from Fort Sam Houston, Texas. While this is a lot of

material to review, it can be easily skimmed and an appropriate checklist prepared. What follows here is the checklist for a Report of Availability. The “form” is unique to the Army but the issues must be considered by any military organization wishing to outlease.



CHECKLIST

1st—Preliminary Approval Information

- General description of property
- Map of property showing improvements
- List of buildings, type, sq. ft.
- Reason property is underutilized/not excess
- Available utilities from public and private sources
- Need for changes to the buildings, costs, source of funds
- Safety issues
- Airfields and Air Space issues
- Impact on mission
- Estimated costs to further the process of out-grant
- Availability of funds

2nd—Other Preliminary Information Required

- McKinney Homeless Act
- Inventory and condition of buildings
- Expected consideration
- COE Fair Market Valuation
- Waiver of Competition
- Special provisions

3rd—Environmental and Cultural Considerations

- Impact upon Costal Zone Management
- Impact upon Clean Water Act
- Impact upon wetlands
- Impact upon floodplains
- Impact upon Endangered Species Act
- Impact upon Fish and Wildlife Coordination Act
- Impact upon the cultural environment

- Impact upon SHPO program
- Impact upon Native American Graves Protection and Repatriation Act
- Impact upon Archaeological Resources Protection Act
- Impact upon FIFRA
- Impact upon Scenic Rivers Act
- Impact upon TSCA
- Impact upon NEPA
 - ✓ Record of environmental consideration
 - ✓ Categorical exclusion
 - ✓ EA with FONSI— no significant impact
 - ✓ Environmental Impact Statement
- Impact upon CERCLA
 - ✓ Environmental Base Line study attached
 - ✓ HTRW substances released, stored, disposed of in threshold quantities
 - ✓ Remedial action underway, complete, not been taken
- Ammunition/explosives contamination
- Impact upon Resource Conservation and Recovery Act
- Impact of LUSTs
- Impact of asbestos
- Impact of lead based paints
- Impact upon Clean Air Act
- Environmental information falls within Federal guidelines

The ROA process is an excellent way of identifying real property problems that might represent a stumbling block to potential users. As you can see from the questions that are answered on the form from Fort Sam Houston, a “tell-it-all” approach clearly flags those things that must be addressed. From such considerations as the practicality of using individual buildings or parcels of land, you can see how some long tolerated conditions may impact the planned utilization of assets. Buildings that use steam heat, the lack of separate utility metering, deferred repair or maintenance problems, constrained clearances inside of buildings, asbestos, lead paint or radon environmental problems, land use restrictions, and safety arcs could all be considerations for future development.

It should be understood that before the federal government may use land in a way different from the way it is presently being used, a review of the environmental consequences of that use and a consideration of all the ways to lessen any identified adverse environmental impact must be considered. If the land use is identical to or close to prior use, an Environmental Assessment (EA) may be all that

is necessary. If significantly divergent and environmentally harmful use is intended, an Environmental Impact Statement must be undertaken. The information taken from the ROA can be used as the basis for making a decision about the kind of evaluation undertaken. It is very important that environmental baseline investigations begin as soon as possible. They are the most time consuming and cannot be avoided. Your team members can provide guidance on these issues.

The information gathered during the ROA process, together with other information, will be the basis for the environmental baseline that any future user of the land will require to identify the state of the land and buildings when possession is granted. Any “pollution” or hazard not identified in this baseline that is later found on or in the leased premises becomes the responsibility of the lessee and is therefore critical information. The removal or treatment of all “pollution” identified in the baseline is the responsibility of the federal government. The documents included on the enclosed CD-ROM, from an ROA activity, specify exactly how this baseline is determined.



As all these things are taken into account, the best presentation tool is a land use planning map on which all those buildings, facilities and land available for partnership opportunities are shown. The map should specifically delineate all land use restrictions, which include safety arcs, security zones, wetlands, contaminated soils (show specifically by symbols), wildlife refuge or other existing uses. An overlay should be added which would show roads, utility lines, sewer, rail, and power. The end result will be an easy-to-grasp picture of available property that will guide the installation to a quick decision on the zoning of partnership areas. Included here is a sample land use map showing potential and present activities as well as constraints (such as environmental) at a Maryland installation.
















Once the general map is completed, individual building or land parcel plats may be prepared.

In those cases where the assets are equipment and/or technology, the process is a little different. The technical descriptions of such assets do not lend themselves to presentation to lay people who may be brokers or representatives for outside interests. Some installations have approached this problem by preparing one page brochures grouping assets by function or use. These should be written in non-technical language so an initial decision can be made as to their applicability to the intended target. Such presentations should include:

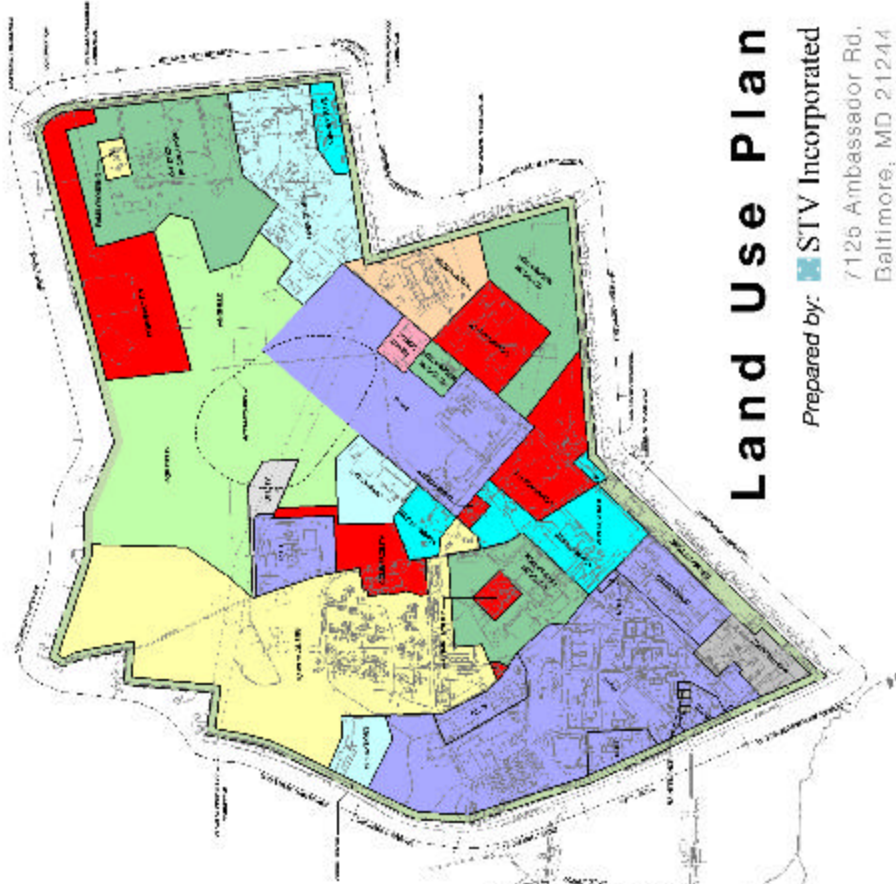
- The specific equipment and a list of its possible uses
- Condition and date of acquisition
- Any modifications instituted or possible
- The schedule of availability
- The cost of use and maintenance




Land Use Map

LEGEND	
	LAND USE DIVIDING LINE
ADM	LAND USE TEXT DESCRIPTOR
LAND USE ABBREVIATIONS:	
	ADMINISTRATE - ADMINISTRATION
	AGRIFIELD - AGRICULTURAL FIELD
	COMM/FACILITY - COMMUNITY FACILITY
	FAMILY HOUSING - FAMILY HOUSING
	LANDFILL - LANDFILL
	MAINTENANCE - MAINTENANCE
	MED/DENTAL - MEDICAL/DENTAL
	OPEN/BUZZONE - OPEN BUFFER ZONE
	OPERATIONS - OPERATIONS
	ROUTE - RESEARCH, DEVELOPMENTAL, TESTING, AND EVALUATION
	RECREATIONAL - RECREATIONAL
	TRAINING - TRAINING
	TROOP HOUSE - TROOP HOUSING
	UTILITY - UTILITY

* NOTE: THE TRAINING AREA IS USED INTERMITTENTLY AND HAS NO PERMANENT STRUCTURES

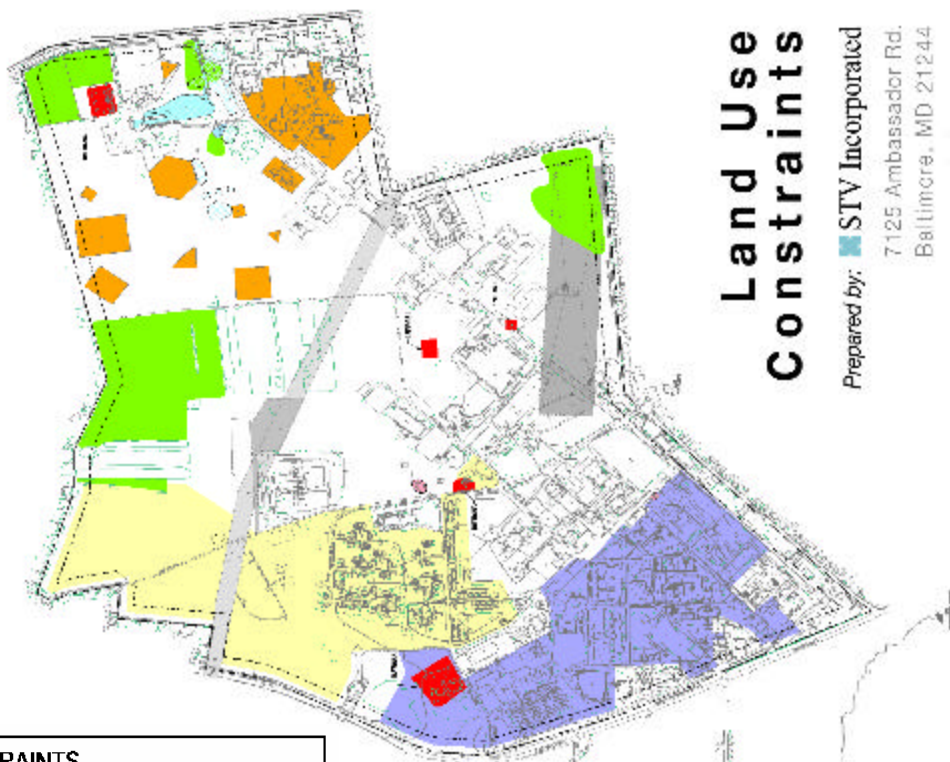


Land Use Plan

Prepared by:  STV Incorporated

7126 Ambassador Rd.
Baltimore, MD 21244
www.stvinc.com

Land Use Map



Land Use Constraints

Prepared by:  STV Incorporated
 7125 Ambassador Rd.
 Baltimore, MD 21244
 WWW.STVINC.COM

CONSTRAINTS	
<u>LEGAL</u>	
	INSTALLATION BOUNDARIES
	OUTLEASES - NCI
	OUTLEASES - RCI
	POWER LINE RIGHTS-OF-WAY *
	EASEMENTS - ALLEGHENY POWER & LIGHT
<u>OPERATIONAL</u>	
	HELIPAD/LANDING ZONE
	EXPLOSIVE SAFETY ZONES
	PERIMETER SECURITY STANDOFF ZONE - 45 METERS
	RESTRICTED ACCESS AREA - COMMUNICATION TOWERS *
<u>PHYSICAL/ENVIRONMENTAL</u>	
	WATER BODIES
	WETLANDS
	FORESTATION - EXISTING TREES
	FORESTATION - PROPOSED TREES
	HAZMAT REMEDIAL INVESTIGATIVE AREAS
<u>HISTORIC & CULTURAL</u>	
	HISTORIC AND ARCHEOLOGICAL SITES
	MEMORIALS AND MONUMENTS
* POSSIBLE SOURCES OF ELECTROMAGNETIC RADIATION	



STEP 3 - Calculating the Cost and the Value

Using the system of internal accounting of installation operating costs to show cost of use of specific buildings, equipment, people, and facilities, is an important part of providing to a partner an understanding of the value use of organizational assets can be to the partner. This information also indicates areas where the value represented by a partner's use of assets can be utilized to reduce operating costs. These are the first steps in determining value for an outside use. Of equal importance is the way that value will be received, accounted for and expended. This section will deal with both parts of this equation.

When a private sector party utilizes a military facility for private sector purposes, how will the income be accounted for and how will it be spent? This two-part question implies that an installation can receive several kinds of income, that it can retain that income, and that it can decide how to spend that income.

Understand that under a 10 U.S.C. 2667 lease (See the "Partnering Tools" section attached which describes partnering tools, page 27), an installation may receive funds that offset certain avoidable costs generated by private sector use of the property and/or services. Other funds go directly to the appropriations account for which the avoidable cost payment was made. Funds that offset costs for maintaining and operating the leased facility are received and retained by the installation and is credited to the installation's appropriation account. Cash received for use of the property is to be sent to the national treasury, credited to the appropriations account, and divided equally between the use of the appropriate service secretary and the installation. In both events, however, funds become available to the service Secretary and the installation only after Congress specifically appropriates the funds paid to the national treasury.



Note however, that in-kind services received by the installation remain with the installation. Such services can take the following forms:

- Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities;
- Construction of new facilities;
- Provision of facilities;
- Facilities operations; and
- Provision of such other services relating to activities that will occur on the leased property as the Secretary concerned considers appropriate.

Thus, it is clear that decisions by the installation about what kind of return it will receive for allowing others to use its facilities becomes very important. Cash received for utilities and the like will be immediately available for use, but cash received as "rent" must be sent to the national treasury, divided with the service Secretary, and not be available for at least one appropriations cycle. Consequently, each installation must decide how it wishes to use funds it might receive, determine the form of those funds it wishes to receive, and prepare for accounting for those funds or their equivalent.

Then there is the question of funds conversion. Because the value of in-kind services need not be split with the service Secretary, an installation may often prefer to receive these as compensation for use of its facilities. However, determining the amount of such services in return for a more easily determined dollar amount of rent, represents a conversion formula that could easily cost a great deal if the algorithm is not properly configured.

For instance, consider that the installation may rather easily determine that for use of a certain building, \$7 per square foot in rent and \$5 per square foot for utilities and services is a reasonable fair market rent. The \$5 per square foot in utility costs can be received by the installation, placed in its own accounts and expended for utility expense. The \$7 per square foot, if received as rent, must be sent to the national treasury, divided with the service Secretary, and expended for maintenance or environmental restoration only after being

appropriated by Congress.

If the installation does not want to split its rental income with the service Secretary, it can receive that \$7 per square foot in services. But what kind of services does it want? Further, if provided by a private sector company not controlled by the procurement code, what would be the equivalent quantity of a particular service equal to \$7 per square foot? In order to answer these questions, you need to know your own costs for specific services, as well as the cost for the same services for a large business immediately outside the gate. You would need to put together a cost comparison chart of accounts like that on the attached page. An installation can look for help with the collection of this kind of information by working with a group of property maintenance professionals drawn from the local county and the state. With this information in hand, you can reasonably bargain for services.



COST COMPARISON CHART

INSTALLATION

PRIVATE SECTOR

UTILITIES

Potable water per gallon
Sewage, per gallon
Service water (if available)
Electric power
Gas
Telephone cabling & cable repair service
Hook up costs, timing, and deposits

MUNICIPAL SERVICES

Police
Fire
Fire prevention
Safety (internal OSHA)
Safety training
Other types of training
Ambulance service
Health screening
Plowing of roads (per mile)
Maintenance of roads (per mile)
Trash removal & schedule
Pest control
Child care facility use
Use of health clinic
Use of fitness center/gym
Use of library
Disaster preparedness & support
Environmental services
Roof repair (per sq. ft.)
Building demolition & removal (per sq. ft.)
Miscellaneous

SITE SPECIFIC SERVICES

Installation & maintenance of signage
Custodial services & schedules
Facilities planning
Provision of maintenance & repair
Pest control
Building construction

The next part of this accounting exercise involves establishing the value of what your installation has to offer. As you prepare to enter into negotiation with outside organizations for use of facilities and property, you need to understand the value of what you have to offer, as well as the costs associated with the maintenance of these assets.

When you are about to receive and review a proposal for use of a building by a specific company, you need to be able to turn to an information source that will provide a reasonably good description of the value of that property in the private sector. You will also need to know the cost of operating and maintaining that building, as well as any restrictions on its use (See Report of Availability) and problems that would require expenditure by any private sector user. Without all this information you are unable to fairly represent the taxpayers' interest in the use of the property for private sector use. Using the procurement code as an example, independent government estimates of the services to be contracted are usually required before negotiations begin.

The cost of an appraisal of all of the property on an installation would be very expensive. However, there are several ways in which the installation can collect information on the private sector value of its property and prepare for negotiations. First, it would be advantageous to create a database describing existing buildings, by number, and, for some, the current use. This database needs to be expanded to include land parcels also available for use. Together, this information should be combined with the information on environmental problems now known, and the information to be collected during the Report of Availability process. Consider forming an advisory organization of regional property managers, perhaps through the local chamber of commerce or economic development office. This advisory group can provide valuable information on local cost of

operation, rental cost and other localized expenses.

You should see if the local economic development office and/or chamber of commerce could create a committee of professional commercial leasing agents to advise you on comparable prices. This group could be supplemented by volunteers from the state board of realtors, and from real property managers who manage the billions of dollars of real property owned or controlled by any large multinational firms in the local area. This group can, and will, suggest methodologies for negotiating for real property use by others that can help you drive a fair deal each time.

The effort of identifying land and property values is a continual one. Maintaining good relations with private sector organizations that can assist in this effort should be an installation's goal throughout the partnering process. Understanding the value of land and buildings by itself is not sufficient information to begin bargaining with private sector organizations for use of your land and buildings. You must also know what you want and how much that will cost (See STEP 4, below).

The best way to present the value and cost data to any potential user or partner is in a clear, allocated, reproducible, and easily manipulated cost model. This is what most potential lessees, lenders and insurance underwriters are accustomed to and expect. There are several significant aspects to the construction of such a model:

1. Cost categorization should not be limited to standard military cost models currently used by DPW and BRAC/EFI activities. Rather, a widely accepted private sector cost model should be considered, such as that used by the Real Estate Managers Association. This model is available in pre-built, Excel-type spreadsheets ranging from simple to very

complex. These models are well known to those who negotiate lease arrangements.

2. The local county may be home to a number of corporate headquarters or major facilities where real property managers with large property portfolios can be found. The local chamber of commerce could agree to assemble a group of property managers to advise and suggest appropriate cost models.
3. Allocation of costs may be a problem as the operation costs of particular buildings (or infrastructure components) are determined. Historic cost data have generally been collected and aggregated on a yearly basis, then divided among all users to determine allocable costs. This approach masks variations and makes difficult the identification of cost differences between and among different buildings and different uses of the same building. For example, a much older administrative-use-only building with little insulation and an aging air conditioning system might utilize much less electricity, water, heating and cooling, than a newer, smaller, intensely utilized lab building. The costs of operation are the same for these buildings, but the realities of their cost consumption are very different. The variable cost differences may not be important from a central funding perspective that relies on operation and maintenance authorizations and appropriations, but the identification of cost by building and use becomes important when reimbursement of costs by private sector users is possible.
4. The solution to this issue lies in the identification of costs in a particular building perhaps through movable metering that collects costs for a set period of time, and then can be used to monitor another building for a period. (This might be an excellent service to request from a county or state governmental

entity.) Extrapolation will, unfortunately, be necessary, but this is a much better predictor of costs than the aggregation of all costs divided by total square footage under roof. If this is not a possibility, consider adjustments based on known usage differences. The cost model selected should be one that can be easily manipulated to do forecasting and “what if” forms of projection. Not only will you need to identify and calculate service and maintenance costs that might be provided in lieu of cash rent, but potential lessees need to be able to predict current and future costs of operation, maintenance and capital improvement.

5. Cost groupings, based upon the suggested property management categories, should include the allocable cost of everyday maintenance for the installation’s infrastructure – including roads, sewers and treatment facilities, power, water and heat generation and distribution. Also, consider and include the costs of deferred and planned maintenance into the future, perhaps as much as 20 years. The costs of deferred and planned capital improvements should also be quantified and related to any planned operational cost reductions. For instance, building use should contain an infrastructure component for road maintenance, fire and safety. Beyond infrastructure, the cost of day-to-day maintenance of all significant buildings (including deferred and planned maintenance) should be calculated and included in the model. The cost of planned and deferred capital improvements, as well as the cost of janitorial and other operating costs and consumables, must also be identified and included.

The last element of establishing a current and potential value for your installation concerns planning for the impact of laws and regulations of the local jurisdictions, specifically any that would apply to the non-federal use of land and buildings.

Principal among these categories is property taxation and building/zoning codes.

Recall that land and buildings being used by the federal government for governmental purposes are exempt from state and local property taxation. However, once land is used for non-federal purposes that are otherwise not exempt from taxation, that portion of the land and buildings not used for federal purpose is taxable by state or local governmental bodies. This position was established by the U.S. Supreme Court. While it is unlikely that any taxing authority, whether state or local, would impose a property tax less than that currently charged by the local jurisdictions (county and municipal), it is important to seek to benefit your installation as much as possible in the imposition and use of tax revenue derived from private sector use of installation property.

Note that the statute that allows for the leasing of DoD land and buildings for private sector purposes provides for taxation of land by state or local governments to be in the alternative:

“e) The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by state or local governments under an Act of Congress, the lease shall be renegotiated.” (10 U.S.C. 2667, section (e))

This distinction is important. It is unlikely that any taxing authority, state or local, would charge a property tax less than that currently charged by local jurisdictions (county and municipal) since this would make installation land more competitive in the marketplace than privately owned land outside the gate. If you are surrounded by local governments, each has the authority to tax private property within its physical jurisdiction to raise the funds necessary to support the functions of that governmental unit. While local governments have

the authority to tax real property used for private sector purposes, they can also exempt from taxation real property used for charitable and other tax-exempt purposes, as well as land used for local, state or federal purposes.

When federally owned land is no longer used for governmental purposes, generally that portion of the land and buildings used for private sector purposes become taxable by state or local taxing authorities. Where the land is provided to a private sector organization through the use of a 10 U.S.C. 2667 lease, taxation by either the state or the local government becomes the rule. Note that the entire value of the land and buildings being used for private sector purposes will not be taxed unless all of the title to the land and building leaves the United States government and is passed to a non-governmental and non-exempt organization. Where another uses federal property for private sector use under a lease, only the use value of the land and building is taxed.

In most areas, the state has a preemptive role as far as the taxing of property. If a state decided to tax the value of the land and buildings being used for private purposes, then neither the municipal nor the county jurisdictions could tax the value of the private sector use.

The state would decide the rate of taxation, what buildings and land would be taxable, and what value to assign to the use of different parcels of land and/or buildings. The state could also decide what portion of such a tax is to be spent improving the property, road access into and exiting, and/or environmental clean-up, and what portion would be shared with the local jurisdictions to make up for any local revenue loss created by providing services to installation land and buildings that were previously provided by federal funds.

If, however, the local jurisdictions become the taxing authorities, several significant issues arise. First, note that different jurisdictions may have the right to tax property on different parts of an installation. Thus it may be that each local jurisdiction treats different classes and uses of buildings and land differently for taxation purposes making differing tax rates on similar property on different parts of the installation. Such differences may include different times of tax payment, different rates of tax, different places of payment, and different tax abatement rules. Second, there will be significant pressure for sharing tax revenue with other close, but not necessarily abutting, jurisdictions. One jurisdiction may want a portion of the tax levied by another. Third, other jurisdictions within a local county could view the installation property as competition for land and buildings within their own jurisdiction, and could try and impose a more stringent taxation on installation land and buildings to be leased. You should consider teaming with your county officials to work out the options well in advance, to avoid arguments that can stop a partnership in its tracks.

The same reasoning that subjects land and buildings in private sector use to taxation might also cause local jurisdictions to attempt to subject private sector uses of a building local land use, fire, occupancy, and building codes. Noting that there is no alternative language in the leasing statute (10 U.S.C. 2667) concerning building, fire, occupancy and land use codes, local influence on these issues is to be expected but should not prevail. Nonetheless, the impact of different codes of different jurisdictions can be a significant problem. Overlapping land use and building codes can significantly affect what might be done or planned by private sector organizations.

Early and definitive discussions need to be held with heads of local jurisdictions to identify the intent and statutory authorities so that problems can be anticipated and solved.

The pervasive impact of these codes and regulations on day to day activities can be significant. It may be that major differences might be created between the buildings that are used partly for private sector purposes and partly for federal purposes. Such differences might involve occupancy certificates that require sprinklers, access ramps and emergency lighting. Fire code exit route requirements and fire lane clearance rules might conflict with other planned improvements. Building code mandated improvements might be required whenever improvements of a certain dollar value are undertaken.

Land use requirements (zoning) must also be considered. Such land use requirements were most likely created at a time when private sector use of installation property was never considered. Master plans involving sewer and water, transportation, utilities, recreational land use and the like must also be reviewed to insure that local rules do not unduly hinder private sector use, nor prevent use of land in ways that will benefit the installation. This issue is especially important to insure that local plans and codes do not inhibit any use of installation land and/or facilities.

All these components and categories must be assessed and quantified when establishing the value (and thus the marketability) of installation land and buildings.

STEP 4 - Defining the Needs of Your Organization

Before any attempt at partnering or searching for an appropriate user can be properly organized, each installation must be clear as to what it needs today and into the future. There must be a clear vision as to what core components will make up the installation as it faces the future. To facilitate this kind of review, an organization-wide review, an Integrated Project Team-Project Action Team (IPT-PAT), is suggested. Representatives of installation organizations, tenants and administrative units that can prevent action must be present with a meaningful voice. The IPT must review the needs of each organization to develop a unified plan and priority list of needs. Certain basic questions must be answered as your planning group goes about its preparations. These questions will include the following:

1. What are the organization priorities, institutional priorities and unit priorities (These may be different, conflicting or overlapping)?
2. What are the operational cost goals and how will they affect any partnership?
3. Which services are needed, required, or are dispensable?
4. What are the costs of the things and services that I want or need?
5. What are the unfunded needs that I presently have?
6. What can I live with; what can I live without?
7. What is the personnel impact? Consider training needs.
8. Are there security or mission requirements that can't be overcome?
9. What are the liabilities that must be faced?

Each identified need will have an extended impact

on facilities, equipment, expertise, and personnel, and all will have a cost impact. The IPT may very well end up with a collection of trade-offs, what-ifs, or a matrix of options. In any event, this will provide the basis for the choices that the planning group will have to deal with.

Any potential user or partner will ask what the installation wants in return for the use of its land and/or buildings. Unless you are prepared with a rational, reasonable and well-priced presentation and description of your vision, an opportunity to meet those needs will be lost. Many private sector interests have a built-in wariness about depending on the government. A comprehensive description of how a business arrangement will be structured to give a clear signal of how fruitful negotiations might be.

Certainly it is fair for any installation to look to a public-private partnership as a way to improve mission capability and the workplace while attempting to reduce operating costs. But it is essential that the IPT specifically identify what physical manifestations of mission capability and workplace improvements are desired, as well as what operational costs are to be reduced and how. The list of benefits that are expected from such a partnership, whether they be buildings, capabilities, equipment, or cost reduction, must be clearly identified, defined and priced.

A Comprehensive Approach

This activity should be divided into several parts: the first requires a number of small groups of fact gathering facilitators visiting each major subdivision and working with the business unit managers (or other appropriate title) to identify and define installation needs. This needs assessment should include both short and long-term needs measured in five year increments. The real property, equipment and support levels that these business unit managers envision must be defined with reasonable precision and then

discussed with related business unit managers to avoid duplication. The other essential part involves needed improvements - both to the infrastructure and to the working life of installation personnel.

Combining the needs of all parties, discussions must proceed up the chain to the central leadership where a single vision must be produced. That single vision should be defined in terms of installation needs for: federal and support contractor personnel, skill levels, equipment, facilities and expected operating costs. These items should be shown in priority order by major category.

If this is done right, then what will be achieved is an ordered approach to considering both needs and possible issues involved with those needs. Without this, duplication of desired capabilities is likely. More importantly, requirements needed by all will be overlooked and opportunities lost.

Now, let's look at the need for improvements. The first part of this effort involves the gathering and analysis of information to identify, in priority order, significant deferred maintenance issues, unfunded ongoing costs, plus those expenditures that would have a real impact on the reduction of operating costs. These will enable the determination of priorities in the acquisition of things, people and facilities necessary to improve the infrastructure in ways that will maintain needed services, reduce operating costs and improve the quality of services.

When this is done, both teams should be prepared to brief the leadership on current garrison infrastructure spending plans and priorities, deferred maintenance issues, and recommendations to reduce operating costs while, at a minimum, maintaining existing services. This will include current garrison costs of operation along with identification of targets that provide the best opportunities to reduce costs. Along with this information should be a matrix of categories

showing the current state, improvement plans, and privatization potential. Such categories might include:

- Facilities
- Water & sewer
- Power
- Regulations
- Environment
- Security
- Safety

The other part of the list of improvements should cover those components that affect the working life of installation personnel over the next five years. This should consist of recommendations with priorities for acquiring the capabilities needed to significantly improve the working life of federal employees, military service members and new partners. This should cover, among other things, the following:

- Higher building standards throughout
- On-post gas station and auto repair available to all
- Several levels of restaurants
- On-post conference center with guest house
- Better parking
- Small convenience store complex
- Dry cleaner, pharmacy, barbershop and florist

Both teams should consider the capabilities of others, both public and private, and their plans, plus the income potential and cost requirements of these lifestyle improvements. Note that most of these additions to the quality of working life will be self-funding and produce an income stream.

At the end of the day, what will be produced is a menu, in priority order, of wants and needs that will allow the potential public/private partners to pick those parts of the vision they might wish to provide. The key is that the production of this plan, or list of needs and wants, must be relentless and yet sensitive to changing political and economic circumstances. The managers and leaders involved must dedicate personal resources and official time to this effort.

The Need For Relentless Communications

There should be a designated spokesperson who will be responsible for developing a communication plan. This plan will present appropriate details to base personnel, contractors, political neighbors, as well as state, local and federal officials.

As the whole planning process goes forward, internal and external communications of progress, problems and intent, will become more and more important to the long-term success of the plan. Different stakeholders (military and DoD leaders, federal and state officials, federal and state legislators, federal and state administrative leaders, local planners and service providers, mayors, taxation authorities and citizens) will have varying interests, constituencies and concerns over time. Each must be addressed, considered, recognized and incorporated. Likewise, without the understanding and support of such stakeholders, the plan will founder.

A communications plan must be constructed early on which both informs others and collects opposition to the plan internally and externally. Remember that there are many more people who can say “no” than there are who can approve. Adjusting to meet and solve such opposition is the key to success. Once drafted, the communications plan must be rigorously followed, reviewed and updated to insure that a simple “failure to communicate” will not doom the plan.

An IPT, aimed at the immediate development of an internal and external communications plan, should describe and evaluate all elements of communications capabilities (print, video and personal contacts). It should list the principal communicators, such as the commander, technical director, public affairs representative, plan spokesperson, as well as the installation communications facilitators (press officers, PowerPoint and web page writers), and include the target audiences. With all this information in hand, an outreach plan describing the communicator, audience, message, time lines and feedback loops, will be created and presented to the IPT. Once approved, its operation will begin immediately and be the subject of monthly information briefings.

The bottom line is to develop a uniform message that can be delivered by knowledgeable and persuasive people chosen with the perspective of the target (and their organization) in mind. A straightforward, short PowerPoint leave-behind should be crafted and given to spokespersons— sized to the listener’s interest and need for information.



STEP 5 - Identifying and Targeting a Potential Partner

Partners - Where to find them

As you approach the point of positioning yourself for “partnering,” it is important to put yourself in a partner’s position. It has already been mentioned that a private sector partner may have some bias and hesitancy about dealing with, or even depending upon, a relationship with the government. Some may have experience with this and others may not. You will have to be sensitive to such anxieties, and your presentation should be crafted in such a way so as not to magnify or confirm such fears.

Ask yourself what type of partner might be interested in what your installation has available. A government agency? An educational institution? A non-profit organization? A research activity? A small business or large corporation? A government contractor?

An excellent place to start is with defense contractors. Obviously, these entities know all about dealing with the government and have a comfort level upon which you can build. Your own procurement network will help, but there are also many web sources that can target companies that may be compatible with your installation’s capabilities. Included on the CD-ROM are two lists: the first is the top 50 companies by value of award, and the second is the top 100 companies and their subsidiaries. Other, more detailed lists are also available. You can target which defense agency best applies to your particular situation.

The nearly 750 Federal laboratories, which are members of the Federal Laboratory Consortium, are also excellent sources. These are very familiar with the many tools of partnering (CRADA, TSA, PLA and other agreements). Attached is a list of these labs and information about how to locate and target their capabilities. You should look to identify those opportunities where you might augment the facilities of another lab or combine forces to provide more capability to both.

Another angle of approach is to search for companies by industry category. One can first search by what used to be called SIC Codes, and is now a more detailed NAICS Code. These are vast databases of industrial categories that can then be targeted through the Harris Directories of firms in various categories by geographical area. All of these databases and lists are accessible through web sites, and the attached pages will give a rough idea of how to do this. A Harris Directory lists the same information for Maryland only (see the Harris Directory home page for the same material in other states).

From a research and development perspective, there are other sources beyond the Federal Laboratory Consortium. For instance, LexisNexis has a number of divisions and links that can match technology to specific companies or products.

Another good source is the National Technology Transfer Center in Wheeling, West Virginia. This is a network linking U.S. companies with federal technologies. This organization operates an active partnership with a number of non-defense Federal agencies, and has various database services relating to research initiatives.

Last, the Small Business Administration (SBA) provides a nationwide database of manufacturing companies, sorted by SIC and NAICS codes.

Please note that you should look to the State to be of assistance in your effort to find partners. Your list of assets available for use by private sector organizations can be used by the State to assist you by bringing to you companies that need what you have. Do not overlook the resource or be hesitant to request help.

Partnership Tools - Summary

Partnership Tools

Partnerships will take many forms, driven by the corporate form of the partner, the things to be shared, and the business terms involved. What follows are most of the possible partnering authorities and examples of how they might be utilized. The CD-ROM contains the applicable statutes and one or more examples of each kind of agreement. Do not expect any one agreement to meet the needs of any one partnership. Always consider multiple agreements.

Memoranda of Understanding (MOU) Memoranda of Agreement (MOA)

This non-binding form of agreement is used to memorialize the intentions of Federal and non-federal parties. The usual MOU – MOA describes the goals of an intended relationship, the skills of the parties, the contribution of the parties, and what each party hopes to achieve. Generally signed by a senior official, this is a generally informal agreement that is often used as a precursor to the formal agreements. While the time of individuals and information is often exchanged within the framework of the activity intended under MOU, this is not the vehicle to exchange things of value. Several forms of this agreement are attached.

Bailment

10 U.S.C. 2539

A Bailment is an agreement between the owner and another that governs the use of personal property such as equipment no matter where the equipment is located. The agreement sets the rules about how the property will be used, cared for, and returned. Locally approved, a bailment is not a vehicle under which money may be exchanged. Often bailment language will be included in a CRADA to provide usage rules for the equipment where the authority for use of equipment is provided by the CRADA legislation.

Contracts

31 U.S.C. 6303

FAR Contract Clauses Covering IP and Data

Contracts describe large and sometimes dissimilar group formal agreements from credit card transactions through five year or more multi-million dollar contracts, “cooperative agreements and other transactions”. The contract form of agreement requires competition unless an exemption is approved. Usually a contract does not involve joint activity, and usually provides money to the contractor in return for goods and/or services described in a scope of work. In furtherance of a contract, the government may provide the use of federal equipment and facilities (usually under a facilities use agreement described later). Intellectual property created under a contract usually is the property of the contractor but the government always receives the right to use invention, data, software, copyright, and the like produced under a contract for government purposes. Graduating in complexity (complexity based upon dollar volume), contracts are usually locally approved by a contracting officer with a warrant equal to or greater than the value of the contract after a review by the local legal department. The Federal Acquisition Regulations (FAR) and the Defense Supplement to the FAR, controls, in detail, the activities leading up to contract formation.

Cooperative Agreement

15 U.S.C. 3706

31 U.S.C. 6305

Cooperative Agreements are a variant of a contract where both the government and the contractor both contribute to a defined goal and both have enforceable duties. All information provided about contracts (approval authority, legal review, facilities use opportunities and intellectual property) also applies to Cooperative Agreements. These contracts are used when the parties wish to work together on the same project, sharing each

party's expertise, and perhaps facilities and equipment. While funds may be passed from the Government to the contractor, the contractor must also provide contribution to the joint effort, generally at least half of the cost of the total cooperative agreement effort. The government may provide the use of government personnel; equipment, materials and facilities (please see facilities use agreements). The benefit provided by the contractor can include research performed, facilities and materials utilized, or other in-kind services. The contractor may not provide money to the federal partner. While locally reviewed and approved, it is generally more complex than the normal contract and therefore requires more time to completion.

Other Transactions

Other Transactions for Research

10 U.S.C. 2371

10 U.S.C. 2358

Other Transaction for Prototypes

Section 845 of The 1997 Defense Authorization Act

"Other Transactions," very much like Cooperative Agreements described above, are federal contracts but are generally exempt from many of the provisions of the Federal Acquisition Regulations and the DFAR with the intent that more flexibility is needed to meet unique situations where the parties work jointly toward a common goal. Like the cooperative agreement, the non-federal party must contribute to the joint effort but may provide less than 50% of the cost of the effort by making in-kind contributions to the effort including the use of researchers and other contractor employees, intellectual property, material, equipment, and facilities (cash may not be transferred to the government using an 'other transaction'). Most other Federal contracting rules do not apply to this contract vehicle but are often used as guides. While locally reviewed and approved, these agreements must be individually negotiated so time

for this must be planned. This contract form may also be used with a facilities use agreement. Please note that this form of agreement is currently favored.

Cooperative Research and Development Agreement (CRADA)

31 U.S.C. 6305,

10 U.S.C. 2371

15 U.S.C. 3710a

Example:

CRADA

A CRADA is an agreement exempt from FAR and DFAR. Although locally reviewed and approved, Agency level oversight is possible. Under a CRADA, the Government may, for the purpose of joint research, development, engineering, and testing but not manufacture, give to a non-federal government organization (public and private) the use of federal personnel, materials, intellectual property, facilities and equipment, but not money. The Non-Federal government party(s) may give to the Federal party(s) the use of personnel, material, intellectual property, facilities, and equipment, and money. The money, which is retained locally, may only be used for additional research and development, training, and activities that foster technology transfer. These agreements are rapidly made, usually for five years but have sometimes been approved for 20 years and are terminable at will. They can be used as a precursor to other agreements. These agreements cannot be used to circumvent the procurement code or to allow competition with private sector organizations.

Patent License Agreements

10 U.S.C. 200 Et seq.

Example:

Navy Patent License Application

Federal laboratory directors are empowered to license exclusively or non-exclusively to private organizations the right to prevent others from the

manufacture, use or sale of products and services that contain or utilize patented federal technology. The terms of the license follow commercial practice and can include initial payments, progress payments, running royalties, minimum royalties, and pass-through royalties on sublicense income. Performance milestones are often required. Federal patent licenses are often limited to specific fields of use for a portion or the full term of U.S. patent protection. Occasionally federal laboratories will protect the federal patent in foreign jurisdictions but this is most often accomplished by the licensee. Locally reviewed and approved, the funds received from a patent license agreement are shared with the inventor and the laboratory where the invention was made.

Educational Partnership Agreement

10 U.S.C. 2194

Example:

Army Research Laboratory

Educational Partnership Agreements allow the transfer of material and equipment (and the use of equipment) by DoD organizations to educational institutions (defined as a local educational agency, elementary and secondary schools and administrative units up to the state level [20 U.S.C. 8801], colleges, universities, and any other nonprofit institutions that are dedicated to improving science, mathematics, and engineering education (only US locations)

This agreement, locally reviewed and approved by the lab director, allows the loan of lab equipment, the transfer of surplus equipment, students and faculty access to defense labs for research purposes, and the use of lab personnel to teach and/or develop science courses and material. Note carefully the combination of CRADA, IPA, and EA and a private sector partner as a way for use of federal facilities and equipment might be used for private commercial purpose.

Partnership Intermediary Agreement (PIA)

15 U.S.C. 3715

Examples:

Wright Patterson Agreement

AF Blank

Partnership Intermediary agreements can take the form of an MOU or contract and are authorized under a different title and section of the federal statutes. FAR and DFAR are often utilized as guides to these transactions. Because these are contracts, use of federal facilities may be provided to the contractor if used in furtherance of the effort (see facilities use agreements). The federal party may enter into an agreements with an agency of state or local governments, other entities chartered and/or funded by state or local government, and educational institutions (educational agency, college, university or other non-profit institution dedicated to improving science, mathematics, and engineering education). The intent of the partnership is any activities that are “likely to increase the likelihood of success in the conduct of cooperative or joint activities for the lab with small business firms. The use of real property under a PIA would be controlled by the service owning the property. This is an unusual agreement for the Army but is very familiar to the Air Force. The Navy is in the middle. The agreement is easy to draft because it is not subject to the FAR/DFAR but because is it is not regular; the legal office will carefully review it. Note that while the Intermediary cannot provide money to the Government under this agreement, it can, for the Federal Government, provide activities that are likely to increase the likelihood of success in the conduct of cooperative or joint activities for the lab with small business firms.

Test Services Agreement (TSA)
Also called Work for Others
Also called Commercial Services Agreements

Examples:

- 10 U.S.C. 2359b - General
- 10 U.S.C. 2553 – Working Capital Funded Organizations
- 10 U.S.C. 2681 - Major Range and Test Facilities Model TSA

Available only to DoD organizations, these locally reviewed and approved agreements are very quickly established agreements under an authority different than the FAR/DFAR. While identified by different names by different DoD agencies, each example of this kind of agreement is different from the others in scope of allowable activity but share many attributes. Not available where competition with the private sector is created, the income received from these efforts will remain with the organization that performed the work. Generally, all intellectual property created (including data) will belong to the private party with no right to use any of it remaining in the federal government. It is important to review service specific rules for these agreements because there are some critically different interpretations of the statutes by the different services. What follows is a brief description of each.

10 U.S.C. 2539b

This authority, available to any DoD organization, can be used to:

1. sell, rent, lend, or give samples, drawings, and manufacturing or other information (subject to the rights of third parties) to any person or entity;
2. sell, rent, or lend government equipment or materials to any person or entity –
 - a. for use in independent research and development programs, subject to the condition that the equipment or material be used exclusively for such research and development; or
 - b. for use in demonstrations to a friendly foreign government; and
3. make available to any person or entity, at an appropriate fee, the services of any Government

laboratory, center, range, or other testing facility for the testing of materials, equipment, models, computer software, and other items.

10 U.S.C. 2553

Available to industrially funded (working capital funded) DoD organizations only, this authority can be used to sell non-commercially available items except cannon, ammunition, and their major parts at a cost at least equal to the avoidable cost plus depreciation.

10 U.S.C. 2681

This authority can be used to conduct commercial test and evaluation activities at a Major Range and Test Facility Installation only. The amount charged for the services must include at least all direct costs of rendering test or evaluation.

Interagency Support Agreement

DoD Instruction 4000.19

The Interagency Support Agreement is the agreement between the federal organization controlling real property and the organization using that property covering the payment to the former of operational cost of the former caused by the use of the property by the latter. It is an agreement that allows the controlling party to receive money from the using party to pay for utilities, guard services, fire protection, and support services. It would be used in any of the above agreements where a party other than the one controlling the property uses property. The rates to be paid for facilities use will be determined by the local installation and are subject to some negotiations. Note that this is a locally approved agreement that is rapidly established.

Enhanced Use Lease

(Also called Non-Excess Property Lease)

10 U.S.C. 2667

GAO Report

Examples:

Report of Availability Topics

Request for approval to lease (Army)

Lease (Fort Sam Houston, Army)

Lease (Portsmouth Naval Station, Navy)

Fort Leonard Wood - University of Missouri

Tech Park

Army Sale and Outlease Guide, 2002

This statute allows DoD organizations to lease non-excess property for five years (longer term with service Secretary approval) for non-defense uses in return for cash or in-kind payment equal to the FMV or less if in the public interest. Cash received in return for services will remain with the organization providing the same. Cash income will be divided between the service Secretary and the organization leasing the property. In-kind income may remain at the installation leasing the property.

In-kind services include the construction, provision and operation of facilities as well as the maintenance, protection, alteration, repair, improvement or restoration (including environmental restoration) of property or facilities (including those leased) under the control of the military branch. Last, in-kind payment may also include other services relating to activities that will occur on the leased property, as the service Secretary considers appropriate. Agricultural lease income is treated differently

Before entering into any lease that has a value exceeding \$500,000, the Armed Services Committees of Congress must receive 30 days notice. Please note that 10 U.S.C. 2667 leases are used for Moral, Welfare and Recreation (MWR) activities.

The Fort Leonard Wood Project involves a 33-year lease of 62 acres to the University of Missouri for

construction of up to 17 buildings, operation of a branch of the University, and lease of space to private companies. The cost, about \$4M, of the Tech Park layout and first buildings is being split between the State government and the University. The Missouri University System and State Department of Economic Development will be the master lessee with the property being developed by a developer hired by the University. Fair market value rent will be paid in either services or cash.

Fort Sam Houston, after a competition to select the development partner, negotiated for about 18 months with a local developer and a national remediation company to lease out the former Brooke Army Hospital and two other large single story structures, totaling over 500,000 sq. ft. A copy of the lease in its current state and the request for approval is found in the 10 U.S.C. 2667 area.

Facilities Use Agreement

Federal Acquisition regulation 45.3

Examples:

Watervliet Lease to the Arsenal
Partnership, Example 1

Watervliet Lease to the Arsenal
Partnership, Example 2

Oak Ridge National Lab Facilities Use
Agreement

Joliet AAP Development Act (IL)

A contracting officer may provide government production and research property on an "as is" basis for performing fixed-price, time and material, and labor-hour contracts. It may also be furnished under a facilities contract, in which case the contract shall state that the contractor will not be reimbursed for modifying, repairing, or otherwise making the property ready for use. Use of the property will not provide a competitive advantage from the use of the property.

Evaluations will be made in accordance with Subpart 45.2 to eliminate any competitive advantage resulting from using the property.

Historic Property Lease

16 U.S.C. 470h
36 CFR 800, 805

A federal agency may lease a historic property to any person or organization or exchange any property owned if the action will adequately ensure the preservation of the historic property. The proceeds of the lease may, notwithstanding any other provision of law, be retained by the agency and used to defray the costs of administration, maintenance, repair, and related expenses incurred with respect to such property or other National Register property belonging to that agency. Surplus funds will go back to the national treasury. The agency may also enter into contracts for the management of the historic property.

Facility License

AR 405-80

Commander may grant short-term revocable licenses for the use of property:

- To document facility use agreement FAR, but not construction contracts, for the same term as the contract.
- For short term revocable licenses of land and facilities for regular, occasional or nonrecurring use of federal property to state or local governments, youth, civic, community or non-profit organizations.

Personnel Exchanges

Intergovernmental Personnel Act Program (IPA)
5 U.S.C. 3371

The Intergovernmental Personnel Act Mobility Program allows employees (full time for the last 90 days) of the federal government, a state or local government, educational institution, or a nonprofit organization which has as one of its principal functions the offering of professional advisory, research, educational, or development services, or related services, to governments or universities

concerned with public management; or a federally-funded research and development center to be located in the others organization. Funding is based upon an agreement of the parties. This transfer for a fixed term (up to four years for federal employees but unlimited for non-federal employees) will achieve objectives such as:

- Strengthening the management capabilities of federal, state, local or tribal governments
- Assisting in the transfer and use of new technologies and approaches to solving governmental problems
- Providing the means of involving state and local officials in developing and implementing federal policies and programs, or
- Providing program and developmental experience for the employee

Legislative Outgrant

Pine Bluff Arsenal
Los Angeles Airport
Brooks Air Force Base, Example 1

Special legislation is a discrete legislative action aimed at directing the Executive Branch to transfer specific real property to a specific party on directed terms. Attached are three different directed transfers, each with larger authority and complexity.

The Pine Bluff Arsenal. Transfer involving a legislative direction to the Secretary of the Army to transfer 1,500 acres of Pine Bluff Arsenal with a reversion to the Secretary of the Army after 25 years if certain events did not occur is the most straightforward example. Note that all of the terms of the transfer are to be set by the Army Secretary. While not required, the language giving the Secretary authority over the terms is recently more common and gives the Secretary great discretion on

approving the sale or not, by controlling the terms.

The Los Angeles Airport transfer involves as consideration the construction and operation of a building in a form agreeable to the Air Force Secretary for a long span of years in return for title to land at the Los Angeles Airport. This bargain avoids complete discretion in the service Secretary while providing a very valuable long-term benefit to the Air Force.

The Brooks Air Force Base transfer, directed in two statutes, intends to pass title to the Brooks Air Force Base to the city of San Antonio. The city will then be responsible for the operation of the base, shifting operations and maintenance costs from the Air Force. The Air Force is empowered to lease from the city all the buildings it wants as well as utility and municipal services, at an agreed upon market value less negotiated concessions.

This agreement is very far reaching in that only the property needed by the Air Force will be leased back. (Note that the statute directs that this long-term lease will be scored by Office of Management and Budget as an operating lease, thus removing the scoring problem from the table.)

Additional Information

CD-ROM Table of Contents



THE SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

November 15, 2002

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF
DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF
DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTORS OF THE DEFENSE AGENCIES

Subject: Transformation Through Base Realignment and Closure

As a result of the Quadrennial Defense Review, we embarked on a comprehensive review of our defense and security needs toward transforming the force. New force structures must be accompanied by a new base structure. The first step was my request to the Chairman to direct the geographic combatant commanders to prepare, in coordination with their Service component commands, draft overseas basing plans for their respective areas of responsibility.

Congress authorized a base realignment and closure (BRAC) round in 2005. At a minimum, BRAC 2005 must eliminate excess physical capacity; the operation, sustainment and recapitalization of which diverts scarce resources from defense capability. However, BRAC 2005 can make an even more profound contribution to transforming the Department by rationalizing our infrastructure with defense strategy. BRAC 2005 should be the means by which we reconfigure our current infrastructure into one in which operational capacity maximizes *both* warfighting capability and efficiency. I am directing this process begin immediately, under the structure set out herein.

Two senior groups, as reflected in the attachment, will oversee and operate the BRAC 2005 process. The Infrastructure Executive Council (IEC), chaired by the Deputy Secretary, and composed of the Secretaries of the Military Departments and their Chiefs of Services, the Chairman of the Joint Chiefs of Staff and Under Secretary of Defense (Acquisition, Technology and Logistics) (USD(AT&L)), will be the policy making and oversight body for the entire BRAC 2005 process.



U18364-02

The subordinate Infrastructure Steering Group (ISG), chaired by the USD(AT&L) and composed of the Vice Chairman of the Joint Chiefs of Staff, the Military Department Assistant Secretaries for installations and environment, the Service Vice Chiefs, and the Deputy Under Secretary of Defense (Installations & Environment) (DUSD(I&E)), will oversee joint cross-service analyses of common business oriented functions and ensure the integration of that process with the Military Department and Defense Agency specific analyses of all other functions. The USD(AT&L) will have the authority and responsibility for issuing the operating policies and detailed direction necessary to conduct the BRAC 2005 analyses.

A primary objective of BRAC 2005, in addition to realigning our base structure to meet our post-Cold War force structure, is to examine and implement opportunities for greater joint activity. Prior BRAC analyses considered all functions on a service-by-service basis and, therefore, did not result in the joint examination of functions that cross services. While some unique functions may exist, those functions that are common across the Services must be analyzed on a joint basis.

Accordingly, the BRAC 05 analysis will be divided into two categories of functions.

- Joint cross-service teams will analyze the common business-oriented support functions and report their results through the ISG to the IEC.
- The Military Departments will analyze all service unique functions and report their results directly to the IEC.

Within 150 days of this memorandum, the ISG will recommend to the IEC the specific functions to receive joint analysis and the metrics for that analysis for my approval. The Military Departments through their representatives on the ISG, as well as the Defense Agencies, should communicate regularly with the ISG to ensure that their recommendations are fully consistent with the joint cross-service teams' recommendations.

A comprehensive infrastructure rationalization requires an analysis that examines a wide range of options for stationing and supporting forces and functions, rather than simply reducing capacity in a status-quo configuration. To that end, in accordance with the force structure plan and selection criteria, the ISG will recommend to the IEC for my approval a broad series of options for stationing and supporting forces and functions to increase efficiency and effectiveness. The Military Department and the joint cross-service analytical teams must consider all options endorsed by the IEC in the course of their analysis. The analytical teams may consider additional options, but they may not modify or dismiss those endorsed by the IEC without my approval.

In accordance with section 2909 of BRAC 90, as amended, BRAC 2005, as directed by this memorandum, will be the exclusive means for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation located in the United States until April 15, 2006. This exclusivity clause does not apply to closures and realignments to which section 2687 of title 10, United States Code, is not applicable. Closures or realignments to which section 2687 is not applicable will require approval on the basis of guidance issued by the USD(AT&L). Competitive sourcing conducted under the provisions of OMB Circular A-76 may proceed independently.

In accordance with the direction of Congress expressed in the BRAC legislation, the Department will not make any binding closure or realignment decisions prior to the submission of final recommendations to the Commission no later than May 15, 2005. The process and structure outlined in this memorandum are designed to ensure the Department's ability to provide recommendations by this date and to meet several interim statutory requirements, including publishing draft selection criteria by December 31, 2003, and final criteria by February 16, 2004. In addition, the Department must provide Congress a force structure plan, inventory, capacity analysis, and certification of the need for BRAC with the FY 2005 budget documentation.

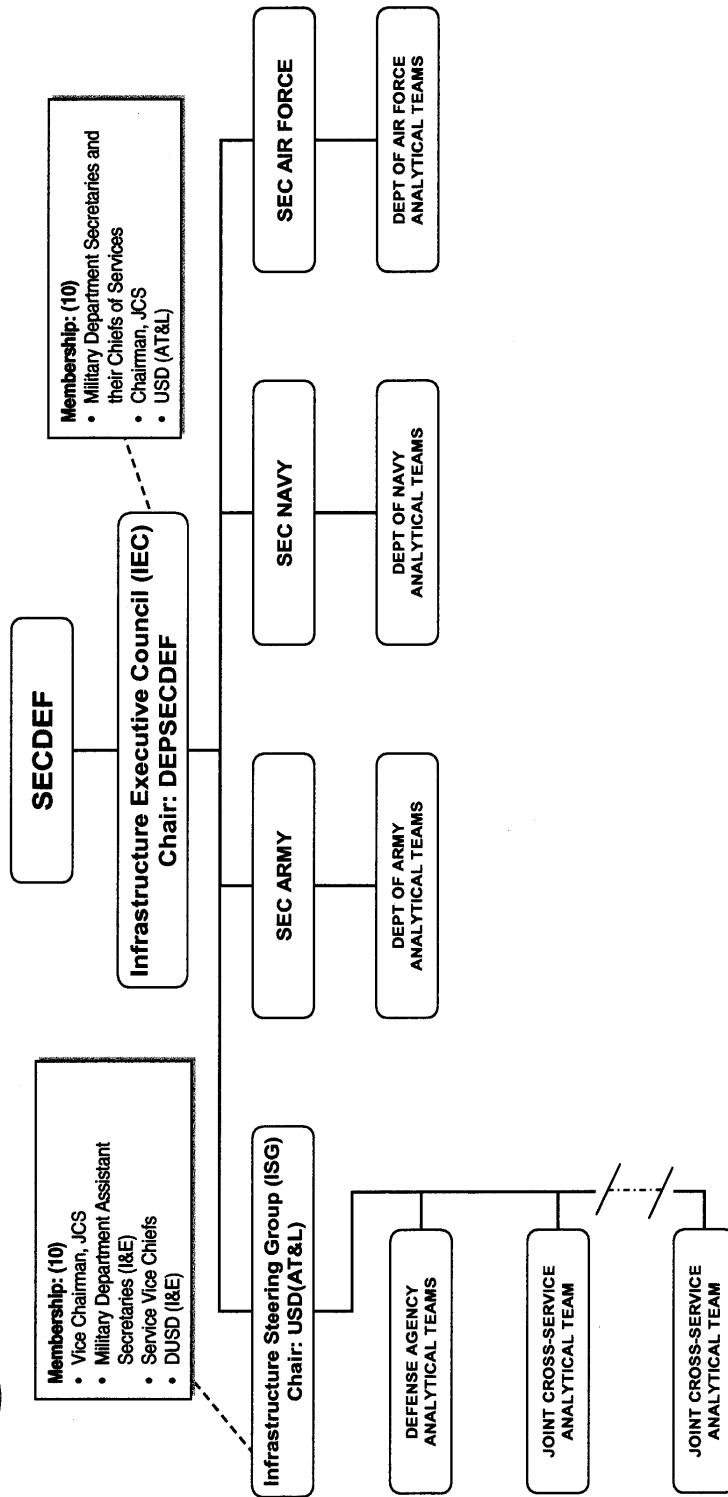
I cannot overemphasize the importance of BRAC 2005. This effort requires the focus and prioritization only senior leadership can bring. I am confident we can produce BRAC recommendations that will advance transformation, combat effectiveness, and the efficient use of the taxpayer's money.



Attachment
BRAC 2005 Organization



BRAC 2005 Leadership



Major Base Closure Summary

This is a listing of the bases recommended and approved for closure as a result of decisions by the various Base Realignment and Closure Commissions. Please note that an asterisk(*) after the installation's name indicates it was closed as of March 31, 1996.

Note: There is other information about installations at the end of this listing.

1988 Commission

16 Major Closures

George AFB, CA*
 Mather AFB, CA*
 Norton AFB, CA*
 Presidio of San Francisco, CA*
 Chanute AFB, IL*
 Fort Sheridan, IL
 Jefferson Proving Ground, IN*
 Lexington Army Depot, KY*
 Naval Station Lake Charles, LA*
 Army Material Tech Lab, MA
 Pease AFB, NH*
 Naval Station Brooklyn, NY*
 Philadelphia Naval Hospital, PA*
 Naval Station Galveston, TX*
 Fort Douglas, UT*
 Cameron Station, VA

1991 Commission

26 Major Closures

Eaker AFB, AR*
 Williams AFB, AZ*
 Castle AFB, CA*
 Fort Ord, CA*
 Hunters Point Annex, CA*
 Moffett NAS, CA*
 Naval Station Long Beach, CA*
 NAV ElecSysEngrCtr, San Diego, CA*
 Sacramento Army Depot, CA*
 Tustin MCAS, CA
 Lowry AFB, CO*

Fort Benjamin Harrison, IN*
 Fort Grissom AFB, IN*
 England AFB, LA*
 Fort Devens, MA*
 Loring AFB, ME*
 Wurtsmith AFB, MI*
 Richards-Gebaur ARS, MO*
 Rickenbacker AGB, OH*
 Naval Station Philadelphia, PA*
 Philadelphia Naval Shipyard, PA
 Myrtle Beach AFB, SC*
 Bergstrom AFB, TX (Active Component Only)*
 Carswell AFB, TX*
 Chase Field NAS, TX*
 Naval Station Puget Sound, WA

1993 Commission

28 Major Closures

Naval Station Mobile, AL*
 Mare Island Naval Shipyard, CA
 El Toro MCAS, CA
 Naval Air Station Alameda, CA
 Naval Aviation Depot Alameda, CA
 Naval Hospital Oakland, CA
 Naval Station Treasure Island, CA
 Naval Training Center San Diego, CA
 Naval Air Station Cecil Field, FL
 Naval Aviation Depot Pensacola, FL
 Homestead AFB, FL*
 Naval Training Center Orlando, FL
 Naval Air Station Agana, Guam*
 Naval Air Station Barbers Point, HI
 Naval Air Station Glenview, IL*

O'Hare IAP ARS, IL
NESEC, St. Inigoes, MD
K. I. Sawyer AFB, MI*
Naval Station Staten Island, NY*
Plattsburgh AFB, NY
Gentile Air Force Station, OH
Newark AFB, OH
Defense Personnel Support Center, PA
Charleston Naval Shipyard, SC
Naval Station Charleston, SC
Naval Air Station Dallas, TX
Naval Aviation Depot Norfolk, VA
Vint Hill Farms, VA

Resse AFB, TX
Defense Distribution Depot Ogden, UT
Fort Pickett, VA

The information on this fact sheet is drawn from the
Defense Almanac Magazine of the

American Forces Information Service
Base Closure and Transition Office
Office of Economic Adjustment
Installation Home Pages
1995 Base Realignment and Closure Report

1995 Commission

27 Major Closures

Naval Air Facility, AK
Fort McClellan, AL
Fort Chaffee, AR
Fleet Industrial Support Center, Oakland, CA
Naval Shipyard, Long Beach, CA
McClellan AFB, CA
Oakland Army Base, CA
Ontario IAP Air Guard Station, CA
Fitzsimons Army Medical Center, CO
Ship Repair Facility, Guam
Savanna Army Depot Activity, IL
Naval Air Warfare Center, Aircraft Division, Indianapolis, IN
NA WC, Crane Division Detachment, Louisville, KY
Naval Air Station, South Weymouth, MA
Fort Holabird, MD
Fort Ritchie, MD
NSWC, Dahlgren Division Detachment, White Oak, MD
Bayonne Military Ocean Terminal, NJ
Roslyn Air Guard Station, NY
Seneca Army Depot, NY
Fort Indiantown Gap, PA
NAWC, Aircraft Division, Wanninster, PA
Defense Distribution Depot Memphis, TN
Bergstrom Air Reserve Base, TX

CD-ROM TABLE OF CONTENTS

Partnership Guide

Apgar Testimony

Apgar Testimony

Importance of Privatization

Rand Study Introduction

Rand Study Detail

Rand Study Executive Summary

Rand Study – Chapter 4

MD Assistance Programs

Business Tax Credits

Financing Incentives

Partnership Tools

Bailment

10 U.S.C. 2539

Contracts

31 U.S.C. 6303

FAR Contract Clauses Covering IP and Data

Conveyance Forms

Conveyance Forms

Cooperative Agreement

15 U.S.C. 3706

31 U.S.C. 6305

31 U.S.C. 6305 Example

Cooperative Research and Development Agreement (CRADA)

10 U.S.C. 2371

15 U.S.C. 3710a

31 U.S.C. 6305

CRADA

Educational Partnership Agreement

10 U.S.C. 2194

Army Research Laboratory

Enhanced Use Lease

10 U.S.C. 2667

General Accounting Office (GAO) Report

Examples

Army Sale and Outlease Guide 2002

Fort Leonard Wood Technology Park

Lease (Fort. Sam Houston Army)

Lease (Portsmouth Naval Station Navy)

Report of Availability Topics

Request for Approval to Lease (Army)

Facility License

AR 405 80

Facility Use Agreement
 Federal Acquisition Regulation 45.3

Examples
 Joliet AAP Development Act (IL)
 Oak Ridge National Lab Facilities Use Agreement (DOE)
 Watervliet Arsenal Partnership – Example 1
 Watervliet Arsenal Partnership – Example 2

Historic Property Lease
 16 U.S.C. 470h 2 and 3
 36 CFR 800 805

Interagency Support Agreement
 DoD Instruction 4000 19

Legislative Outgrant
 Brooks AFB – Example 1
 Brooks AFB – Example 2
 Brooks AFB – Example 3
 Brooks AFB – Example 4
 Los Angeles Airport
 Pine Bluff Arsenal

Memoranda of Agreement
 Memorandum of Agreement

Memoranda of Understanding
 Memoranda Of Understanding – 2 Versions

Other Transactions

Other Transactions for Prototypes
 Section 845 of 1997 Defense Authorization Act (DAA)

Other Transactions for Research
 10 U.S.C. 2358
 10 U.S.C. 2371

Partnership Intermediaries
 15 U.S.C. 3715

Examples
 Air Force Blank
 Wright Patterson Agreement

Patent License Agreement
 10 U.S.C. 200 Et seq

Examples
 Navy Patent License Application

Personnel Exchanges
 5 U.S.C. 3371
 Intergovernmental Personnel Act Program

Test Services Agreement

Examples

- 10 U.S.C. 2359b General
- 10 U.S.C. 2553 Working Capital Funded Organizations
- 10 U.S.C. 2681 Major Range and Test Facilities Model TSA

Statutes and Regulations

- Contents of Statutes and Regulations
- TAB 1, Defense Authorization and Base Closure and Realignment Act (1988)
- TAB 2, Defense Base Closure and Realignment Act (1990)
- TAB 3, 10 U.S.C. 2687
- TAB 4, Base Closure Community Redevelopment and Homeless Assistance Act (1994)
- TAB 5, 42 U.S.C. 11411 McKinney-Vento Homeless Assistance Act: Public Health and Welfare
- TAB 6, TITLE XXIX, National Defense Authorization Act (FY 94)
- TAB 7, 40 U.S.C. 484 Federal Property and Administrative Services Act (1949)
- TAB 7, 40 U.S.C. 485 Federal Property and Administrative Services Act (1949)
- TAB 8, TITLE 50 Surplus Property Act (1944)
- TAB 9, 49 U.S.C. 47125 Federal Airport Act
- TAB 11, TITLE 10 U.S.C. 2391 Military Base Reuse Studies and Community Planning Assistance
- TAB 12, Defense Economic Adjustment
- TAB 13, 23 U.S.C. 317 Highways
- TAB 13, TITLE 40, Section 345c Conveyance or Transfer of Property to States or Political Subdivisions
- TAB 13, 23 U.S.C. 107 Acquisition of Rights of Way-Interstate System
- TAB 14, 10 U.S.C. Sec 2556 Shelter For Homeless
- TAB 22, 16 U.S.C. 407-1
- TAB 23, TITLE 16
- TAB 24, 10 U.S.C. 2688
- TAB 25, 10 U.S.C. 18233
- TAB 26, National Defense Authorization Act 2002
- TAB 37, Real Property to Assist Homeless
- TAB 38, Community Redevelopment and Homeless Assistance
- TAB 39, Property for Education
- TAB 40, Property for Public Health
- TAB 41, Federal Aid to Airports
- TAB 42, Utilization and Disposal of Surplus Federal Property
- TAB 43 , Protect Historic Prop
- TAB 44, Shelter for Homeless

Step 3 References

- Army Tenant Approval Process
- Leasing Military Property

Step 5 References

- Federal Laboratory Consortium Members
- Google Search 50 Companies
- National Technology Transfer Center
- SIC To NAIC Conversion
- Technology Partner Search LexisNexis

Glossary of Terms

AAP	Army Ammunition Plant
AR	Army Regulation
BOD	Board of Directors
BRAC	Base Realignment and Closure
CERCLA	Comprehensive Environmental Restoration, Compensation and Liability Act
COE	Corps of Engineers
CRADA	Cooperative Research and Development Agreement
DFAR	Defense Federal Acquisition Regulation
DoD	Department of Defense
DPW	Department of Public Works
EA	Environmental Assessment
EFI	Efficient Facilities Initiative (Updated name for BRAC-They are used interchangeably)
FAR	Federal Acquisition Regulation
FIFRA	Federal Insecticide, Fungicide and Rodenticide Act
FMVR	Fair Market Value Rent
FONSI	Finding of No Significant Impact
HTRW	Hazardous, Toxic and Radioactive Waste
IP	Intellectual Property
IPA	Intergovernmental Personnel Transfer Act
IPT	Integrated Project Team
LUST	Leaking Underground Storage Tank
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MWR	Morale, Welfare and Recreation
NAICS	North American Industrial Classification System
NEPA	National Environmental Policy Act
O & M	Operations and Maintenance
OMB	Office of Management and Budget
PAT	Project Action Team
PIA	Partnership Intermediary Agreement
PLA	Patent License Application
R & D	Research and Development
ROA	Report of Availability
SBA	Small Business Administration
SHPO	State Historic Preservation Office
SIC	Standard Industrial Code
TSA	Test Services Agreement
TSCA	Toxic Substance Control Act
U.S.C.	United States Code



MARYLAND

Department of Business &
Economic Development

Robert L. Ehrlich, Jr., Governor / Michael S. Steele, Lt. Governor
Aris Melissaratos, Secretary / Vernon J. Thompson, Deputy Secretary

217 East Redwood Street, 10th Floor / Baltimore, MD 21202
410.767.0095 / 410.333.1836/Fax