

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

AIR FORCE INSTRUCTION 64-103

19 AUGUST 2020



Contracting

**LEASING NON-EXCESS UNITED
STATES AIR FORCE (USAF)
AIRCRAFT, AIRCRAFT-RELATED
EQUIPMENT AND OTHER PERSONAL
PROPERTY TO NON-GOVERNMENT
ORGANIZATIONS**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This publication implements Air Force Policy Directive 64-1, *The Contracting System*, and in part, Title 10 United States Code (USC), Section 2667, *Leases: non-excess property of military departments and Defense Agencies*. It also complements: 1) DoD 7000.14-R, *Department of Defense Financial Management Regulation (DoD FMR)*, Volume 11A, *Reimbursable Operations Policy*, **Chapter 4**, *User Fees*; 2) DoD Financial Management Regulation 7000.14-R, Volume 12, *Special Accounts, Funds and Programs*, **Chapter 14**, *Transferring, Disposing, and Leasing of Real Property and Personal Property*; 3) 22 USC § 2796, *Leasing authority*, commonly known as the Arms Export Control Act (AECA) and 4) DoD Instruction 7230.08, *Leases and Demonstrations of DoD Equipment*. This Air Force Instruction (AFI) identifies procedures and responsibilities for leasing non-excess United States Air Force (USAF) aircraft and aircraft-related equipment, and other Department of the Air Force personal property to non-government organizations. This publication applies to all civilian employees and uniformed members of the Department of the Force, Regular Air Force, Air Force Reserve, Air National Guard, and government contractors. This publication may be supplemented at any level, but all supplements must be routed to the OPR of this publication for coordination prior to certification and approval. Send suggestions on AF Form 847, *Recommendation for Change of Publication*, to make comments and suggested improvements in this instruction. The authorities to waive wing/unit level requirements in this publication are identified with a Tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See AFI 33-360, *Publications and Forms*

Management, for a description of the authorities associated with the Tier numbers. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority, or alternately, to the requestor's commander for non-tiered compliance items. Ensure all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Instruction 33-322, *Records Management and Information Governance Program*, and disposed of in accordance with the Air Force Records Disposition Schedule located in the Air Force Records Information Management System. Compliance with [Attachments 2, 3, 4, and 5](#) in this publication is mandatory.

SUMMARY OF CHANGES

This document has been substantially revised and needs to be completely reviewed. Major changes for the rewrite include updated referenced publications, current statutes, and streamlined content.

1 . Overview .

1.1. **Purpose.** In accordance with 10 USC § 2667, the Air Force is authorized to lease certain non-excess property – including aircraft, aircraft-related equipment, and other forms of personal property – to non-governmental entities (e.g. defense contractors, industry associations). The Secretary of the Air Force has delegated authority for these leases to the Assistant Secretary of the Air Force (Acquisition, Technology and Logistics) (SAF/AQ). The delegation of authority is specified in Headquarters Air Force Mission Directive (HAFMD) 1-10 *Assistant Secretary of the Air Force (Acquisition)*. SAF/AQ will determine when these leases are appropriate, including whether the terms promote the national defense or are in the public interest.

1.2. Applicability and Limitations.

1.2.1. The Air National Guard. The Air National Guard will follow the procedures in this instruction for lease requests of aircraft and related equipment. For other (non-aircraft or related equipment) non-excess property under their control, the Air National Guard may process corresponding lease requests in accordance with National Guard Bureau procedures and need not be processed through SAF/AQ. Any such procedures shall address risk of loss and liability for damage to the leased property. **(T-0)**

1.2.2. Foreign Governments. This instruction does not apply to military leases of defense articles to foreign governments or international organizations under the AECA. Pursuant to AECA, defense articles in DoD stocks will not be leased to a foreign government or international organization under the authority of 10 USC § 2667. **(T-0)**.

1.2.3. Leasing to United States Government Organizations and Contractors. Leasing under this instruction will not be used to provide Air Force personal property to other United States government organizations for any purpose (except on a non-cash basis for National Guard Community Relations programs, see [paragraph 3.3.6](#)), or to provide Air Force personal property to contractors for the primary purpose of supporting U.S. government contract requirements. **(T-0)**.

1.2.4. Commercial Assets. Air Force property that is otherwise available from commercial sources will not be leased out.

1.2.5. Excess Property. The property leased under 10 USC § 2667 must not be excess property, as defined by Title 40 USC., Section 102, *Definitions*, unless 10 USC § 2667 (g) permits it. **(T-0)**

1.3. **Relevance of Other Authorities** . The policies and procedures in this instruction are in addition to but not intended to supplant other authorities that may be comparable to 10 USC § 2667, including:

1.3.1. Title 10 USC, Section 2681, *Use of Test and Evaluation Installations by Commercial Entities*. Directs the use of Test and Evaluation Installations by commercial entities and is implemented by Department of Defense Instruction (DoDI) 3200.18, *Management and Operation of the Major Range and Test Facility Base (MRTFB)*.

1.3.2. Title 10 USC, Section 2539b, *Availability of Samples, Drawings, Information, Equipment, Materials, and Certain Services*. Directs the Secretaries of the military departments to make available equipment, among other things, to other persons and entities and implemented by DoDI 5535.11, *Availability of Samples, Drawings, Information, Equipment, Materials, and Certain Services to Non-DoD Persons and Entities*.

1.3.3. AFI 23-119, *Exchange, Sale, or Temporary Custody of Nonexcess Personal Property*. Provides item managers procedures on making nonexcess personal property available to programs.

1.4. **Lease Agreements**. Contractor requirements found in this instruction must be contained in the Lease Agreement to be enforceable. **(T-0)**.

2. Roles and Responsibilities.

2.1. The Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics), (SAF/AQ) approves lease requests and waivers of cash rental fees.

2.1.1. Contracting office/contracting officer oversees the lease request through completion of the lease process.

2.1.2. AFMC/PK provides review of the lease request and coordinates with SAF/AQCK.

2.1.3. SAF/AQCK provides review and staffing for final approval by SAF/AQ.

2.2. Defense Finance and Accounting Service (DFAS) handles lessee monetary payments.

2.3. Director of Current Operations, Headquarters U.S. Air Force (AF/A3O) approves prospective lessee's air show participation plan, including demonstration flight profiles.

2.4. Deputy Under Secretary of the Air Force (International Affairs) Action Group (SAF/IAG) provides to Defense Security Cooperation Agency (DSCA) a list of Air Force equipment leased for an event or other requirements of a non-government organization and receives total cost charge to training budgets for transportation of equipment to and from the event or other requirement from the appropriate command.

2.5. Deputy Assistant Secretary for Cost & Economics (SAF/FM).

2.5.1. Sets flying-hour fees and rental fees for aircraft.

2.5.2. Sets rental fees for other leased property covered by this instruction.

2.6. General Counsel of the Department of the Air Force (SAF/GC) provides legal review of lease requests and approvals.

3. Processing and Evaluating the Lease Request. Procedures for processing and evaluating lease requests for non-excess aircraft and aircraft-related equipment can be found in [Attachment 2](#). For non-excess personal property other than aircraft and aircraft-related equipment, each major command establishes its own procedures and management controls for evaluating lease requests. At a minimum, each major command will evaluate lease requests for non-excess property as described below. **(T-0)**

3.1. Responsibilities for Review and Coordination.

3.1.1. Contracting office and contracting officer are responsible for overseeing the lease from request to finish as described in [Attachments 2, 3, 4, and 5](#) of this instruction.

3.1.2. The corresponding command will provide the total cost charged to training budgets for transportation of equipment to and from the event to DSCA. **(T-0)**

3.1.3. Air Force Materiel Command, Contracting (AFMC/PK) will provide review and coordination of the lease request and agreement then forward to Office of the Deputy Assistant Secretary (Contracting), Assistant Secretary (Acquisition), Contracting Operations Division (SAF/AQCK) for staffing and SAF/AQ approval. **(T-0)**

3.1.4. SAF/AQCK will coordinate on the contracting officer's competition determination prior to publishing and ensure SAF-level coordination is obtained. **(T-0)**

3.2. Review Criteria. Upon receipt of a request to lease non-excess personal property, including aircraft and related equipment, the activity responsible for the property (i.e AFMC Program Office, Program Executive Officer, and/or item manager) will evaluate the request to):

3.2.1. Determine if the proposed lease terms promote the national defense or are in the public interest. **(T-0)**.

3.2.2. Determine whether the property is under the control of the USAF. **(T-0)**.

3.2.3. Determine that the item requested for lease is not excess to USAF requirements. **(T-0)**.

3.2.4. Determine if the aircraft is assigned to a Reserve Component. **(T-1)**.

3.2.5. Confirm compliance with AFI 16-402, *Aerospace Vehicle Programming, Assignment, Distribution, Accounting, and Termination*, and AFI 21-103, *Equipment Inventory, Status and Utilization Reporting*, particularly the content of these references that address change of possession. **(T-1)**.

3.2.6. Determine whether the property will be available during the proposed lease period for use on a non-interference basis. **(T-0)**. The property availability includes any parts support considered in AFI 23-119.

3.2.7. Determine whether or not to impose any necessary limitations or reservations on its use. **(T-1)**.

3.2.8. Determine whether or not the proposed consideration (lease fees) is adequate. **(T-1)**.

3.2.9. Determine whether the proposed lease would pose any technology disclosure issues, and whether there are security assistance considerations or any guidance from DoD relevant to the lease. **(T-1)**.

3.2.10. Determine if competitive procedures are required. **(T-1)** Competitive procedures to select the lessee must be used if a proposed lease involves only personal property, the lease term will exceed one year, or the fair market value of the lease interest is expected to exceed \$100,000. **(T-1)** The competitive process is not required in these circumstances if a public interest will be served as a result of the lease and competitive procedures are not obtainable or not compatible with the public benefit served. (refer 10 USC Section 2667(h)) **(T-0)**. **Note:** leasing of aircraft and aircraft-related items back to the original equipment manufacturer for purposes of Foreign Military Sales and other sales related activities generally would be in the public interest without competition.

3.2.11. Confirm the contracting officer consulted with Contracting Operations, Deputy Assistant Secretary (Contracting), Assistant Secretary of the Air Force, (Acquisition, Technology & Logistics) (SAF/AQCK) on the use of appropriate competition procedures prior to publishing a notice affording potential lessees the opportunity to propose alternative lease projects. **(T-1)**. Determine if the lessee's consideration payment (in cash or in kind) is an amount that is not below fair market value of the lease interest. **(T-1)**.

3.3. **Assessing Lease Fees.** The lessee normally pays the full costs agreed to under the terms of the lease. Fees include rent, reimbursement for any expense incurred by the U.S. government in support of the lease and other costs agreed to under the terms of the lease. 10 USC § 2667 requires payment (in cash or in kind) by the lessee of consideration in an amount that is not less than the fair market value of the lease interest. **(T-0)**. The only applicable exception to this requirement is limited to real and personal property located at military installations to be closed or realigned under a base closure law, as provided in subsection 2667(g). **(T-0)**.

3.3.1. Rent, including fees for depreciation and interest on investment, is payment in cash or in kind by the lessee in an amount not less than the fair market value of the lease interest. The contracting officer determines whether to assess rental fees on a daily, monthly, or yearly basis. **(T-2)**

3.3.2. Assess flying-hour fees for a leased aircraft to include, among other things, fuel, maintenance, and base support, depending on the leasing situation. Do not assess these fees to the extent they are otherwise provided by the lessee. **(T-2)** A lessee who is authorized under the lease to obtain spare parts from the supply system pays the appropriate flying-hour fees or the cost of the parts.

3.3.3. Rental fees are set in accordance with DoD FMR 7000.14-R, Volume 11A, Chapter. 4. The Deputy Assistant Secretary for Cost & Economics (SAF/FMC) sets flying-hour fees and rental fees for aircraft, as well as rental fees for other leased property covered by this instruction. **(T-1)**. When actual costs are not known, SAF/FMC may utilize a reasonable estimate. When the specific item to be leased is identified, fees may be based on supplemental information obtained from the program office. The supplemental information includes the property's acquisition cost, replacement cost, age, cost of major modifications, and salvage value. SAF/FMC may address or assign any

accounting functions necessary to ensure the United States Air Force accounts are proper with respect to the lease.

3.3.4. Rents are assessed for direct support by aircrew and maintenance personnel during the lease, costs of equipment leases, and items of equipment the lessee needs to support the major items of leased property (T-0). For equipment items, the contracting officer may use the clause in the Federal Acquisition Regulation (FAR) 52.245-9, *Use & Charges*.

3.3.5. In accordance with Department of Defense Instruction (DoDI) 7230.08, SAF/AQ may waive cash rental fees for leased equipment in support of air shows or trades exhibitions held outside the US; or sales demonstrations to representatives of foreign governments; if doing these things promotes the national defense or serves the public interest. (T-0)

3.3.5.1. Regardless of whether or not a cash rental fee is charged, fees for any and all expenses related to the support provided a lessee by the U.S. government are not waived and are to be reimbursed by the lessee. (T-1).

3.3.5.2. Lessees shall agree to reimburse the US Treasury for leases of equipment to contractors or associations for display or demonstration at international air shows or trade exhibitions. Reimbursements for these costs are set forth in DoDI 7230.08, paragraph 4.d. (T-0). Two factors generally can support a finding that the lease fees are not less than fair market value of the lease interest: 1) consideration consisting of reimbursement of all US government costs (whether or not a cash rental fee is charged); and 2) the national defense or public interest to be served in these cases. (T-0).

3.3.6. Property leases supporting the USAF and National Guard Community Relations programs may be approved and executed on a no-cash rental basis when one of the following applies:

3.3.6.1. The recipient of the benefits as listed in DoDI 5410.19, *Public Affairs Community Relations Policy Implementation*, or in the case of the National Guard those recipients authorized by law (Title 32 USC, Section 508, *Assistance for Certain Youth and Charitable Organizations*), are engaged in nonprofit activity designed for the public safety, health, or welfare.

3.3.6.2. Payment of the full fee by a state, local government, or nonprofit group would not be in the interest of the programs. A local USAF official or National Guard United States property & fiscal official makes a written determination.

3.3.6.3. A local USAF official or National Guard United States property & fiscal official makes a written determination that the training value, goodwill and/or other national defense or public interest associated with support of the community relations program constitutes in-kind consideration that is not less than the fair market value of the lease interest.

3.4. **Liability, Exportability, and Unauthorized Use.** The lessee shall release the Air Force from any loss and liability, including a release from damages caused as a consequence or in any connection with the lease. (T-0). The lessee shall also defend, indemnify and hold

harmless the US government, its agents, officers and employees from all loss and liability (either tort or contract liability) in connection with the lease because of two things: 1) injury or death of US government personnel, the lessee or any third parties; and 2) damage to or destruction of property of the lessee or third parties and US government leased property, support equipment or other property. **(T-0)**. The lessee shall obtain insurance or provide for self- insurance adequate to cover all such liabilities. **(T-0)**.

4. Approval and Review.

4.1. Approval Process .

4.1.1. Assistant Secretary of the Air Force (Acquisition, Technology and Logistics) (SAF/AQ) may authorize lease of non-excess USAF aircraft, aircraft-related equipment and other personal property, when determined to be in the best interest of the United States, under such terms and conditions considered to benefit the national defense or be in the public interest. **(T-0)**.

4.1.1.1. SAF/AQ will provide approval to lease non-excess personal property by signing a written determination and findings prepared for each lease request as described by this instruction. **(T-0)**.

4.1.1.2. The Determination and Findings documents will follow the requirements of FAR 1.7, Determinations and Findings, DoD Instruction 7230.08, *Leases and Demonstrations of DoD Equipment*, and this instruction. **(T-0)**. Authority to waive or differ from the requirements of this instruction or to delegate leasing authority rests with SAF/AQ; however, other officials use related approval authority as described in this instruction (e.g. approval to send equipment to foreign countries, approval for direct DoD participation at international airshows). **(T-0)**.

4.1.2. The contracting officer for, and with the assistance of, the requirement activity will prepare a determination and findings to lease aircraft and related equipment and forward it with supporting information to AFMC/PK for review **(T-0)**. AFMC/PK will then forward to SAF/AQCK for staffing and Assistant Secretary of the Air Force (Acquisition, Technology and Logistics) approval. **(T-0)**. SAF/AQCK will ensure SAF/AQ, General Counsel, Acquisition Division (SAF/GCQ) coordination is obtained and other SAF offices as needed (e.g. General Counsel, International Affairs (SAF/GCI), SAF/IA, AF/JAQ, et cetera). **(T-0)**. Supporting information includes, but is not limited to:

4.1.2.1. Lease request.

4.1.2.2. Fee analysis.

4.1.2.3. Lease agreement.

4.1.2.4. Proof of insurance.

4.1.2.5. Results of synopsis (if applicable).

4.1.2.6. Major command legal review. The Major command legal office will also provide an informational copy of the legal review to AF/JAQ. **(T-0)**

4.1.3. When applicable, the contracting officer concurrently forwards the prospective lessee's air show participation plan, including demonstration flight profiles, to AF/A3O for staffing and approval. **(T-0)**. SAF/AQCK can assist in securing this approval.

4.1.4. If leasing information technology equipment, the contracting officer will ensure that the equipment has been sanitized by the local communications support provider prior to release.

4.2. Execution, Distribution, and Reporting. After attaining Assistant Secretary of the Air Force (Acquisition, Technology and Logistics) approval, the contracting officer will:

4.2.1. Execute the lease and forward a signed copy to SAF/AQCK and the applicable major command for their records. **(T-0)**.

4.2.2. Forward all international leases for aircraft and related equipment to the Deputy Under Secretary of the Air Force (International Affairs) Action Group (SAF/IA). **(T-0)**.

4.2.3. Notify congressional defense committees in accordance with the requirements of 10 USC § 2667 for each waiver under Section 2667(d)(2). **(T-0)**.

4.3. SAF/IA and DSCA Responsibilities. Within 90 days after the end of an international trade show or exhibitions, SAF/IA provides to DSCA, a list of Air Force equipment leased for the event. **(T-0)**. The appropriate command will provide to DSCA the total cost charged to training budgets for transportation of equipment to and from the event. **(T-0)**.

5. Administering the Lease.

5.1. Procedures.

5.1.1. The contracting officer shall instruct the lessee and appropriate Defense Finance and Accounting Service (DFAS) Office on handling lessee monetary payments. **(T-0)**. For more detailed payment information see SAF/FMFC Air Force Accounting and Finance Office – Reimbursement Accounting Guidance & Standard Operating Procedures, **Chapter 6 – Orders From Public**, located at <https://org2.eis.af.mil/sites/13465/SitePages/Home.aspx>. The payment office will deposit lease payments to an account designated by DFAS in accordance with 10 U.S.C 2667(e). **(T-0)**.

5.1.2. The payment office credits payments for flying-hour fees and reimbursements received for support or services provided by the U.S. government to the appropriations of the activities to which the leased property is assigned or which provided the support or service. **(T-0)**. The payment office will reimburse the supply system with lessee payments for items obtained from the supply system. **(T-0)**.

5.1.3. The lessee shall make in-kind rental payments in accordance with the terms of the lease and instructions from the contracting officer. **(T-0)**.

5.2. Inspection Responsibilities. The contracting officer shall ensure that:

5.2.1. Contract administration personnel or others are adequately instructed to conduct appropriate oversight during lease performance, as required. **(T-2)**

5.2.2. The activity receiving the property after completion of the lease adequately inspects it to see that the lessee maintained the leased property according to AFI 23-119,

Exchange, Sale, or Temporary Custody of Nonexcess Personal Property. (T-2) If AF standards stated in AFI 23-119, *Exchange, Sale, or Temporary Custody of Nonexcess Personal Property*, were not met the contracting officer will consult with AF/A4 before seeking consideration from the lessee. (T-2)

5.3. Contract Administration Office.

5.3.1. After negotiation, the contracting officer delegates the lease to the appropriate contract administration office for administration. (T-2) The contract administration office ensures that the lessee complies with all the terms and conditions of the lease, including reimbursement to the U.S. government for cost of any support the lessee receives. (T-2) It ensures that all lessee flight crewmembers are qualified and maintain currency and proficiency according to AFI 10-220_IP, *Contractor's Flight and Ground Operations*.

5.3.2. In addition, the contract administration officer ensures the lessee:

5.3.2.1. Obtains necessary approvals. (T-1).

5.3.2.2. Follows maintenance requirements. (T-1).

5.3.2.3. Keeps records of property use as a basis for rental fees. (T-1).

5.3.2.4. Pays rental and other fees according to the lease agreement. (T-1).

5.3.2.5. Returns the leased property as directed by the contracting officer. (T-1).

William B. Roper, Jr.
Assistant Secretary of the Air Force
(Acquisition, Technology & Logistics)

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

AFPD 64-1, *The Contracting System*, 6 November 2018

10 USC § 2667, *Leases: non-excess property of military departments and Defense Agencies*.

DoD 7000.14-R, Department of Defense Financial Management Regulation (FMR), Volume 11A, *Reimbursable Operations Policy*, July 2016

DoD 7000.14-R, Department of Defense Financial Management Regulation (FMR), Volume 12, *Special Accounts, Funds and Programs*, June 2019

DoDI 7230.08, *Leases and Demonstrations of DoD Equipment*, 2 January 2009

Title 22 USC, Section 2796, Leasing Authority

AFI 33-360, *Publications and Forms Management*, 1 December 2015

AFI 33-322, *Management of Records*, 23 March 2020

HAFMD 1-10, *Assistant Secretary of the Air Force (Acquisition)*, 2 September 2016

Title 40 USC, Section 102, Definitions

Title 10 USC, Section 2681, *Use of Test and Evaluation Installations by Commercial Entities*

DoDI 3200.18, *Management and Operation of the Major Range and Test Facility Base*, 15 October 2018

Title 10 USC, Section 2539b, *Availability of Samples, Drawings, Information, Equipment, Materials, and Certain Services*

Federal Acquisition Regulation, Part 52.245-8, *Use and Charges*

DoDI 5535.11, *Availability of Samples, Drawings, Information, Equipment, Materials, and Certain Services to Non-DoD Persons and Entities*, 15 October 2018

AFI 23-119, *Exchange, Sale, or Temporary Custody of Nonexcess Personal Property*, 5 June 2001

AFI 16-402, *Aerospace Vehicle Programming, Assignment, Distribution, Accounting, and Termination*, 27 September 2019

AFI 21-103, *Equipment Inventory, Status and Utilization Reporting*, 30 April 2020

DoDI 5410.19, *Public Affairs Community Relations Policy Implementation*, 13 November 2001

Title 32 USC, Section 508, *Assistance for Certain Youth and Charitable Organizations*

SAF/FMFC AFAFO, *Reimbursement Accounting Guidance & Standard Operating Procedures Version 3.1*, July 1, 2015

AFI 10-220_IP, *Contractor Flight and Ground Operations*, 21 August 2013

Prescribed Forms

None

Adopted Forms

AF Form 847, *Recommendation for Change of Publication*

Abbreviations and Acronyms

AFI—Air Force Instruction

AFMC—Air Force Materiel Command

DoD—Department of Defense

DoDI—Department of Defense Instruction

FAR—Federal Acquisition Regulation

FMR—Financial Management Regulation

HAFMD—Headquarters Air Force Mission Directive

OPR—Office of Primary Responsibility

USC—United States Code

USAF—United States Air Force

Terms

Non-excess personal property—personal property under the control of a federal agency, which is required to meet the agency's needs or responsibilities, as determined by the head of the agency.

Excess personal property—personal property under the control of a federal agency that the head of the agency determines is not required to meet the agency's needs or responsibilities.

Lease—(in the context of this instruction) an agreement by the owner (the lessor) to provide non-excess personal property to another party (the lessee) who will use the property for compensation or hire purposes. A lease gives exclusive possession of the property for a specified term in return for rent or other consideration paid to the owner. A lease is not an agreement for sale of the property. The lease shall provide for payment (in cash or in kind) by the lease in accordance with 10 USC 2667(b). **(T-0)**.

Personal property—any property not considered real property.

Real property—land, buildings, structures, utility systems, improvements, and appurtenances. Includes equipment attached to and part of buildings and structures, such as heating systems, but not movable equipment, such as plant equipment.

Attachment 2**ELEMENTS OF A LEASE REQUEST**

- A2.1.** The prospective lessee initiates the lease request and submits it in writing to the contracting Air Force activity. At a minimum, the lease request shall contain:
- A2.2.** Identification of the property to be leased (including tail numbers, national stock numbers, part numbers, or applicable serial numbers, if known). **(T-0)**
- A2.3.** Purpose of the lease; **(T-0)**
- A2.4.** Proposed start date and duration of the lease (no more than five years, unless a longer period will promote the national defense or serve the public interest in accordance with Title 10 U.S.C., Section 2667(b)(1)) **(T-0)**;
- A2.5.** Consideration for the lease; **(T-0)**
- A2.6.** Proposed locations of the lease activity; **(T-0)**
- A2.7.** Expected benefits to the lessee; **(T-0)**
- A2.8.** Expected benefits to the Government; **(T-0)**
- A2.9.** Statement supporting non-availability of suitable commercial items; **(T-0)**
- A2.10.** Information on contacts (if any) with operational units or item managers to ascertain a preliminary assessment of asset availability; **(T-0)** and
- A2.11.** Information or other pertinent facts (e.g., need for valid export licenses, support equipment requirements, intent to modify or otherwise alter the leased equipment). **(T-0)**

Attachment 3

ELEMENTS OF LEASE AGREEMENTS

A3.1. This Instruction establishes procedures and management controls for creating lease agreements for non-excess aircraft and aircraft-related equipment. For non-excess personal property other than aircraft and aircraft-related equipment, each MAJCOM establishes their own procedures and management controls for creating lease agreements.

A3.2. Elements of a Lease Agreement. Leases will be tailored to the specific requirement; however, the following elements will be captured in the lease agreement:

A3.2.1. Transfer, Maintenance, and Return of the Property. **(T-1)**

A3.2.2. The leased property shall not be transferred, encumbered, or used for other purposes without the written consent of the Assistant Secretary of the Air Force (Acquisition). **(T-1)**

A3.2.3. The lease shall also specify whether it will begin and end with the transfer of possession of the leased equipment, or whether it will begin at another specified time. **(T-1)**

A3.2.4. The leased property will be released to the lessee only after the contracting officer or authorized representative determines that the lessee has implemented procedures to ensure safe and proper storage, maintenance, and operation of the leased property. **(T-1)**

A3.2.5. The lease will specify the location where the equipment will be used by the lessee. **(T-1)**

A3.2.6. The lease will identify any unusual lease provisions, such as permitting the lessee to make modifications to the leased equipment. **(T-1)**

A3.2.7. The lessee shall maintain the leased property during the term of the lease in a safe and serviceable condition according to prescribed AFI 23-119, *Exchange, Sale, or Temporary Custody of Nonexcess Personal Property* or pay the full cost of any such maintenance if the U.S. Government agrees to accomplish the maintenance. **(T-1)**

A3.2.8. The leased property will be furnished "as is" without any warranty, express or implied, as to serviceability, fitness for use, or other matters. **(T-1)**

A3.2.9. The lessee shall return all leased property to the Air Force, at such place as is designated by the contracting officer, in the same condition and configuration as when accepted, except for normal wear and tear. **(T-1)** If the Air Force determines that any of the leased property was not returned in such condition, or has not been maintained according to prescribed AFI 23-119, the lessee shall reimburse the Air Force for the cost of returning such property to its proper condition, except for normal wear and tear. **(T-1)**

A3.3. Treatment and Responsibility of Costs. The lessee shall pay the U.S. Government all rent, costs, and fees associated with the use of the leased property while it is under lease according to applicable DoD FMR 7000.14-R, Volume 11A, Chapter. 4 and the applicable Determination and Finding. **(T-0)** No daily rental charge will be assessed for lease projects executed for the purposes of participating in international air shows held outside the contiguous U.S. or conducting sales demonstrations for representatives of foreign governments. **(T-0)** However, the lease shall specify that the lessee shall pay for associated costs. **(T-0)**

A3.3.1. The lessee shall be responsible for all costs relating to the leased property during the term of the lease, including but not limited to expenses of operation, maintenance, display, demonstration, ferrying, transportation, support, and protection. **(T-0)**

A3.3.2. The lessee shall not, directly or indirectly, include in any U.S. Government contract any fees or costs paid by the lessee under the lease authorized hereby, except to the extent authorized under the FAR Part 31 and DFARS Part 231. **(T-0)** Costs charged to the U.S. Government for the leased property under such contracts will not exceed the lessee's costs under the lease. **(T-0)** The U.S. Government reserves the right to audit the lessee's books and records used to support any fees or costs that are charged directly or indirectly to the U.S. Government based on this lease. **(T-0)**

A3.3.3. The lessee shall assume any responsibility imposed by other U.S. Government agencies, state and local agencies, foreign governments, and the taxing authorities thereof, for certification and registration of the leased property and for payment of any taxes or other fees thereon. **(T-0)**

A3.4. Non-interference Basis and Termination. The leased property is available only on a noninterference basis with U.S. Government requirements.

A3.4.1. Support provided by the U.S. Government, if any, will be on a noninterference, reimbursable basis, including use of aircrews, support aircraft, equipment, and facilities. **(T-0)** Providing and charging for support will be according to applicable DoD FMR 7000.14-R, Volume 11A, Chapter. 4. **(T-0)**

A3.4.2. During the term of the lease, the lease status of the leased property may be interrupted from time to time by the Air Force to make the property available for other U.S. Government activities under U.S. Government contracts with the lessee. During such periods, the property reverts to Government-Furnished Property status under the applicable U.S. Government contract. Any doubt as to the status of the leased property at any particular time will be resolved in favor of lease status, unless otherwise determined by the Air Force. **(T-0)**

A3.4.3. The Air Force may revoke this lease at any time. **(T-0)** The lessee may terminate the lease at any time upon 15 days prior written notice to the contracting officer. **(T-0)** If the lease is revoked by the Air Force or terminated by the lessee, the lessee shall be responsible for its residual responsibilities under the lease (to return leased property, to pay all fees or costs resulting from the lease, to release, defend, indemnify, and hold harmless the U.S. Government, et cetera). **(T-0)** Upon termination of the lease, the property is returned to the U.S. Government. **(T-0)** If the property is not returned to the U.S. Government as agreed upon by the terms of the lease, the contracting officer shall request, in writing, return of the property. **(T-0)** A notice of interest shall be included in the demand letter. **(T-0)** Charging of interest is mandatory under Title 31 USC, and Title 4, Code of Federal Regulations. **(T-0)** The interest on the property is calculated on a "daily rate" basis from the date of the first unsuccessful request for the return of the property. **(T-0)** The contracting officer shall consult with local finance office for the actual rate of interest. **(T-0)** In long- term leases, the contracting officer may include a provision in the lease allowing for return of the property whenever the U.S. Government has a requirement for said property.

A3.5. Liability, Exportability, and Unauthorized Use. The lessee shall release the Air Force, including a release from all consequential damages, and defend, indemnify, and hold the U.S. Government, its agents, officers, and employees harmless from any and all loss and liability (whether in tort or contract) that might arise in connection with the lease because of: (a) injury or death of personnel of the U.S. Government, the lessee, or third parties; and (b) damage to or destruction of property of the lessee or third parties, and leased property, support equipment, or other property of the U.S. Government. **(T-0)** The lessee shall obtain insurance or provide for self-insurance adequate to cover all such liabilities. **(T-0)**

A3.5.1. The lessee shall assume the risk of loss, damage, or destruction of the leased property. **(T-0)** The lessee's risk will be covered by insurance or, with the contracting officer's prior written approval, a plan for self-insurance on the depreciated value of the property. **(T-0)** This paragraph is applicable unless the undersigned determines that the U.S. Government agrees to assume this risk (e.g. when a U.S. Air Force pilot is the pilot-in-command of the leased aircraft).

A3.5.2. The lessee shall provide to the contracting officer written evidence of the insurance or plan for self-insurance. **(T-0)**

A3.5.3. The lessee shall secure from the Department of State or other responsible U.S. Government agency any export licenses or other approvals required under the *Arms Export Control Act* (22 U.S.C. Section 2751 et seq.), DFARS 225.79 —Export Control, and DFARS PGI 225.79 — Export Control, before using the leased property in connection with the provision of articles or services to a foreign government or other foreign person. **(T-0)** The lessee shall provide a copy of said licenses to the contracting officer. **(T-0)**

A3.5.4. The lessee shall not use any government equipment contrary to international law including the law of war, DoDI 7230.08, Leases and Demonstrations of DoD Equipment, and AFI 23-119, Exchange, Sale, or Temporary Custody of Nonexcess Personal Property. **(T-0)** Furthermore, the lessee shall not use any government equipment in inherently military activities such as combat or combat support. **(T-0)** This clause does not prohibit the inherent right of self-defense. **(T-0)**

A3.5.5. The lessee shall be liable for any late returns of leased equipment. **(T-0)** The daily amount of the late fee will be established by the contracting officer in the lease agreement to ensure return of all leased property in the event of default or upon completion or termination of the lease. **(T-0)** NOTE: the late fees shall normally be higher than the rental rate due to mission impact. **(T-0)**

A3.6. Aircraft-specific (as applicable). The lease will identify whether or not U.S. Government personnel will be pilots or aircrew members in command and/or provide maintenance or support during flights or operators of the leased equipment. **(T-0)**

A3.6.1. The lessee shall limit operation and maintenance of the leased property to qualified employees of lessee and shall ensure, if applicable, all lessee flight crewmembers are qualified and maintain currency and proficiency according to AFI 10-220(I), *Contractor Flight and Ground Operations*. **(T-1)** In addition, the lessee shall ensure that no civilian visitor is at the controls of the aircraft during any orientation flight, unless specifically approved by the Air Force. **(T-1)**

A3.6.2. The lessee shall obtain approval in accordance with DoDI 7230.08, *Leases and Demonstrations of DoD Equipment* and AFI 11- 401, *Aviation Management Table 1.1* when similar Air Force Vice Chief of Staff (Air Force/CV) approved terms are not included in the lease agreement before any demonstration, orientation, or evaluation flights for representatives of foreign governments. **(T-0)**

A3.6.3. For orientation flights, FMS demonstrations, and flights other than airshow participation, the lessee shall submit all planned flight profiles to the MAJCOM A3 that provides the leased aircraft to obtain the required approval. **(T-0)** Planned flight profiles shall, to the maximum extent practicable, follow the requirements contained in **Attachment 5**. **(T-0)** The lease shall include the approved flight profiles and the statement: The contractor shall not deviate from the approved plan(s) except for flight safety purposes. **(T-0)**

A3.6.4. A lessee who proposes to fly leased aircraft at an air show shall prepare an air show participation plan for approval by the Air Force. **(T-0)** The plan shall cover all information listed in the sample Air Show Participation Plan (**Attachment 5**) and be incorporated into the lease (e.g. – attachment thereto). **(T-0)** Air Force approval of, or involvement in, such a plan shall not diminish the lessee's assumption of risk of loss and liability in connection with the lease. **(T-0)**

A3.6.5. Leases that authorize aerial demonstrations at an air show require the lessee to obtain prior Director of Current Operations, Headquarters US Air Force (Air Force/A3O) approval of air show participation plans, including demonstration flight profiles in accordance with AFI 11-209, *Aerial Event Policy and Procedures* (see **Attachment 5** of this AFI, Air Show Participation Plan, for required items). **(T-1)** The leasing office shall identify the U.S. Government Contracting Officer's Representative (COR), brief the monitor on approvals granted the lessee and any limitations that may have been imposed for a particular air show, and provide copies of pertinent documents. **(T-1)** **A3.6.6** In accordance with DoDI 7230.08, direct DoD participation in international airshows and trade exhibitions is only authorized if a determination is made by the Undersecretary of Defense for Policy (USD(P)) that such participation is in the national security interests of the United States. **(T-0)**

A3.6.6. The lessee shall obtain prior approval for all orientation flights, to include but not limited to, flights involving foreign nationals or for dignitaries, including members of the Congress and representatives of the U.S. news media according to AFI 11- 401, *Aviation Management*, **paragraph 1.9.4.7** and **Table 1.1** **(T-1)** This requirement applies regardless of which MAJCOM provides the leased aircraft or the location of the flights. In such cases, the lessee shall submit its request to the contracting officer and the contracting officer will coordinate with the MAJCOM A3 which is providing the aircraft to obtain the required approval. **(T-1)**

A3.6.7. The lease will require the lessee to obtain Air Force approval for each project utilizing the leased aircraft even if the individual projects are within the scope of intended use as described in the lease. **(T-1)**

Attachment 4

**DETERMINATION AND FINDINGS AUTHORITY TO LEASE NON-EXCESS AIR
FORCE PROPERTY SAMPLE TEMPLATE**

A4.1. Pursuant to Section 2667 of Title 10, United States Code (U.S.C.) and the authority delegated to me by the Secretary of the Air Force, in accordance with Headquarters U.S. Air Force (HAF) Mission Directive 1-10, A1.10, I have reviewed the request to have the Department of the Air Force lease

_____ [
specify property] to _____

_____ [
insert name of non-Government entity] from the period _____

to

_____ [
insert term of lease]. **(T-0)** Upon the basis of the following findings and determination, I hereby authorize the Department of the Air Force to enter into a leasing agreement under the terms consistent with the findings below.

A4.2. FINDINGS: The Department of the Air Force will issue the lease in accordance with the requirements of 10 U.S.C. § 2667, Department of Defense Instruction 7230.08, Air Force Instruction 64-103. **(T-0)** The property to be leased is [*insert detailed description of the property to be leased*]. The property to be leased is under the control of the Department of the Air Force and is not, for the term under this lease, needed for public use. **(T-0)** Additionally, the leased property is not excess property as defined by Title 40, U.S.C., Section 102 [*Provide a brief statement explaining why the leased property is not excess property as defined by 40 U.S.C. §102*]. **(T-0)**

The purpose of the lease shall be [*insert detailed description of the lessee's intended use of the leased property*].

The lease period will be for a term of _____ [*Insert term of lease.*] Accordingly, the term of the lease will not be for a term of more than five years. **(T-0)** [*Pursuant to 10 U.S.C. § 2667(b)(1), the term of the lease may not be for more than five years unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest. (T-0) Thus, if the term of the lease is for a period longer than five years, delete the second sentence of the above paragraph and provide an explanation why the longer period is necessary to promote the national defense or is in public interest*].

A4.3. The [*cash rent and other consideration*] is not less than the fair market value of the lease interest. **(T-0)** [*Describe the type of payment (in cash or in kind) that will be provided by the lessee and provide sufficient details/analysis why the consideration is not less than fair market value. Include supporting documentation if applicable*].

[If the proposed lease entails consideration in an amount less than fair market value, replace the main sentence of this paragraph with the following: "The consideration for this lease has been determined to be less than the fair market value of the lease interest; however, it has been

determined that (insert the basis for the exception to the statutory requirement for receipt of consideration in an amount not less than the fair market value of the lease interest and provide enough detail to support the use of such exception)].

A4.4. Competitive procedures as set forth in 10 U.S.C. § 2667(h)(1) [*will/will not*] be utilized. **(T-0)** [Provide a brief description of the competition procedures that will be used and ensure they are documented in the contract file].

A4.5. [If competitive procedures will not be utilized, state whether the conditions for the exception to competition as set forth in 10 U.S.C. § 2667(h)(2) have been met. (T-0) If the conditions set forth in 10 U.S.C. § 2667(h)(2) have been met, explain how each condition has been met (i.e., (1) how will the public interest be served as a result of the lease and (2) how is the use of competitive procedures unobtainable or not compatible with the public benefit served). If competitive procedures are used, ensure competitive procedures are appropriately documented in the contract file.] NOTE: leasing of aircraft and aircraft related items back to the Original Equipment Manufacturer for purposes of Foreign Military Sales and other sales related activities generally would be in the public interest without competition. The U.S. public usually benefits by increased sales of the aircraft or aircraft related equipment, which result in additional U.S. jobs and potential decrease in unit costs for U.S. purchases due to increased quantities.

A4.6. The lease is advantageous to the Department of the Air Force because [include a description of the benefits and advantages of this lease agreement pursuant to 10 U.S.C. § 2667(a)]. **(T-0)**

A4.7. DETERMINATION. Based on the findings above and in accordance with 10 U.S.C. § 2667, I hereby determine **(T-0)**: The property to be leased is under the control of the Department of the Air Force; that the leased property is not, for the term of the lease, needed for public use; and that the leased property is not excess property as defined by Title 40, U.S.C., Section 102 **(T-0)**;

A4.7.1. The use of competition procedures [*is/is not*] applicable in accordance with [if competitive procedures are used, insert the following: 10 U.S.C. § 2667(h)(1). If competitive procedures are not used, insert the following: 10 U.S.C. § 2667(h)(2)];

A4.7.2. The cash rent and/or other consideration has been determined to be not less than the fair market value of the lease interest. **(T-0)** [If the proposed lease entails consideration in an amount less than fair market value, replace the aforementioned sentence with the following: *The consideration for this lease has been determined to be less than the fair market value of the lease interest; however, it has been determined that (insert the basis for the exception to the statutory requirement for receipt of consideration in an amount not less than the fair market value of the lease interest)]*;

A4.7.2.1. The lease will not exceed a period of time believed to be necessary to prepare for and accomplish the purposes for which the property is being leased, and to return the leased property; **(T-0)** and

A4.7.2.2. The above-described lease of such property is advantageous to the United States and includes such terms that will promote the national defense or to be in the public interest. **(T-0)** Therefore, I hereby authorize the Director for Contracting, [*name of the organization*], or designated contracting officer to execute this lease according to this Determination which shall conform to the findings specified above. **(T-0)**

Date

Signature of Assistant Secretary of the Air Force (Acquisition)

Attachment 5**AIR SHOW PARTICIPATION PLAN**

A5.1. Prior to any flight performed for demonstration, exhibition, practice, or evaluation purposes at a scheduled air show as authorized elsewhere in this lease, the lessee shall obtain, through the Contracting Officer, the approval of the Director of Current Operations (Air Force/A3O) for an Air Show Participation Plan covering the following **(T-1)**:

A5.2. Detailed schedule of planned use of the leased aircraft **(T-1)**;

A5.3. The names and qualifications of the pilots, who are scheduled to fly the aircraft in practice, deployment or redeployment, and air show flights. This includes any civilian visitor anticipated to be at the controls of the aircraft during orientation flights **(T-1)**;

A5.4. Specific information on the qualifications of other crewmembers who may be needed **(T-1)**;

A5.5. The names, qualifications, and exact duties of contractor supervisors who may in any way manage and control the Air Force while it is leased **(T-1)**;

A5.6. The intended flight profiles planned for **(T-1)**:

A5.7. Favorable weather conditions (*specify favorable weather conditions for subject aircraft*) **(T-1)**;

A5.8. Weather conditions less than favorable but above the air show minimums, Air Force flight rules, and the aircraft handbook (technical order) limitations; include request for waiver of aircraft weather minimums, if applicable **(T-1)**; and

A5.9. Alternate modified profiles for both weather conditions that would be flown if air show authorities limit flight time due to scheduling problems. **(T-1)**.

A5.10. Provisions for ensuring adequate preflight rest for the pilot (or pilots) and other crewmembers. **(T-1)**

A5.11. This discussion includes how the flight crews (pilots) will be isolated from potential marketing or other possible pressures that may be expected **(T-1)**;

A5.12. Specific schedule and attendees at preflight planning, preflight briefings, and post flight debriefings **(T-1)**;

A5.13. Means of providing a visual record of all practice flights and air show demonstrations **(T-1)**;

A5.14. Means of providing maximum flight data recorder coverage (if subject aircraft is normally equipped with a flight data recorder) of all practice flights and air show flight demonstrations **(T-1)**;

A5.15. Provisions for ensuring the pilot who flies the aircraft wears suitable flight clothing for maneuvers (such as anti-G suit) **(T-1)**;

A5.16. Specifics on each nonstandard configuration of the leased aircraft **(T-1)**; and

A5.17. A list of each item of equipment or stores the Lessee intends to incorporate in or use to support the leased aircraft, other than U.S. Air Force standard equipment or approved stores list. **(T-1)**

A5.18. Lessee's initial proposal and any revised proposals for inclusion in the Air Show Participation Plan shall be submitted to the Contracting Officer. **(T-1)**

A5.19. The Lessee shall comply with the provisions of the approved Air Show Participation Plan for all air show demonstrations, exhibition, and evaluation flights performed with the leased property during the term of this lease at, or in the general vicinity of, the air show and for all practice and pilot qualification flights performed during the term of this lease in preparation for such demonstration, exhibition, or evaluation. **(T-1)**

A5.20. The Lessee shall permit the COR or a delegate, as appointed by the U.S. Government for this lease, to monitor air show participation under this lease. **(T-1)**. The COR shall have access to the leased aircraft and maintenance and staging areas during the entire period of air show participation and during all periods of practice or qualification for air show participation as authorized under this lease. **(T-1)**

A5.21. The COR shall be considered an element of Air Force support, whose costs are charged to the Lessee as lease support costs. **(T-1)**

A5.22. The Lessee shall submit to the Contracting Officer, within 30 days after the completion of the air show, a lease completion report explaining any problems encountered in aircraft practice and participation flights and recommending changes in procedures to improve the safety of Air Force aircraft leased for air show participation in the future. **(T-1)** The Lessee shall also, at the written request of the Contracting Officer and at no cost to the U.S. Government under the lease, provide to the U.S. Government two copies of all visual records and flight recorder data of all practice flights and air show demonstrations as called for above. **(T-1)**

A5.23. The Lessee shall advise the Contracting Officer if it plans to participate in static displays or flights demonstrations at the air show. **(T-1)** The COR will designate a time and place for Lessee personnel to receive a cautionary briefing on the military security requirements and other sensitive areas related to the leased aircraft and equipment. **(T-1)**

A5.24. The following language shall be included in the plan: "It is mutually understood and agreed that the sole purpose of this plan is to give the U.S. Government full knowledge of the intended use of the leased property and an opportunity to observe the Lessee's compliance with its proposed plan. **(T-1)** The Lessee acknowledges and agrees that the U.S. Government makes no warranty that the approved plan is safe and that the U.S. Government assumes no risk of loss or liability to third parties that may arise even if the Lessee adheres to the approved plan. **(T-1)** This plan creates no exceptions to the Lessee's obligations to assume risk of loss and third party liability, including obtaining insurance, as set out fully elsewhere in this lease." **(T-1)**