

(28 Comp. Gen 206). As a corollary, restoration, or payment in lieu thereof, is not authorized where Government improvements enhance the value of the property. Representatives of the General Accounting Office have advised informally that it is not the intention to have appraisals made of the before and after value in each instance and that the lack of such appraisals will not be the cause for questioning a restoration settlement. It is considered, however, that where the estimated cost of restoration is a substantial amount in comparison with the value of the property covered by the lease, such appraisals should be made. Obviously, however, it would not be to the Government's advantage to make appraisals where the estimated restoration cost is small.

§644.449 Requirement for notice by lessor.

Ordinarily, notification by the lessor of his intention to require restoration of the premises is, when required by the terms of the lease, a condition precedent to any obligation on the part of the Government to restore and is a vested contract right which no part of the Government has authority to give away or surrender (16 Comp. Gen 92; *Simpson vs. United States*, 172 U.S. 372; *United States vs. American Sales Corp.*, 27 F. 2d 389, affirmed in 32 F. 2d 141, certiorari denied, 280 U.S. 574; *Pac. Hardware Co. vs. United States*, 49 Ct. CL 327, 335). However, it has been held in the case of *Smith vs. United States*, 96 Ct. CL 326, that a formal written notice of demand for restoration might be waived, provided knowledge of the lessor's intention to require restoration was conveyed to the Government orally or by implication at, or prior to, the time required under the terms of the lease. In opinion B-48678, 10 April 1945, the Comptroller General expressed the following views along this line:

(a) In leases pertaining to provisions for termination by the Government prior to the end of the term, and which require 60 days written notice of demand for restoration, a supplemental agreement relinquishing space prior to the end of the term, which contains a stipulation excepting restoration from the provisions of the release may be re-

garded as notice to the Government of the lessor's intention to require restoration and an otherwise proper claim for restoration may be considered where the entire transaction is in the interest of the United States.

(b) In leases which require 30 days written notice of termination and 30 days notice of demand for restoration, waiver of termination notice by the lessor would constitute sufficient consideration to support a waiver of restoration notice by the Government where the effect of waiving the notices would be to protect more adequately the Government's interest through immediate termination of the lease.

(c) Generally, in leases which require 90 days written notice of demand for restoration and 30 days written notice of termination, if it is determined administratively under the particular facts, that the failure to give restoration notice until receipt of termination notice does not affect the merits of the claim for restoration, or operate to the prejudice of the United States, an otherwise proper claim for restoration may be considered.

(d) As a general rule, in leases which require 30 days written notice of termination and 30 days written notice of demand for restoration, notice of demand for restoration given within a reasonable time after receipt of termination notice would be sufficient and, in this connection, a few days delay would not be regarded as unreasonable. Where restoration is predicated on other than strict compliance by the lessor with requirements of the lease relative to notice requiring restoration, the facts will be clearly stated in the restoration assembly.

§644.450 Items excluded from usual restoration obligation.

Damage to the following items will not ordinarily be restored as under the standard provisions of the lease it will be attributable to reasonable and ordinary wear and tear, damage by the elements, or damages by circumstances over which the Government has no control. (However, where the lease requires the Government to maintain the interior or exterior, or both, such of the items as the Government is obligated to repair during the term of the

lease should be included in the restoration if they have not been maintained adequately by the Government and are not in the required condition upon the termination of the lease.)

- (a) Foundation work.
- (b) Waterproofing or membranizing.
- (c) Exterior tuck pointing.
- (d) Cleaning or repair of catch basins, cesspools, or manholes.
- (e) Repair of: (1) Interior unfinished walls.
- (2) Unfinished hollow tile, concrete block, or gypsum block walls.
- (3) Floor joints, roof trusses (including roof boards and roofing), and framing timbers (including studs, sheathings, and exterior surface).
- (4) Insulating materials in walls necessitated by leakage in walls or roofs.
- (5) Damage to plaster caused by leakage in wall or roof.
- (6) Windows and floors, where the damage is caused by elements or inadequate hinging, counterweighting, caulking or sealing.
- (7) Sheet metal such as eaves, gutters, downspouts, flashings, hips, valleys, skylights, ventilators, and metal ceilings.
- (8) Structural steel or iron.
- (9) Fire escapes.
- (10) Heating systems.
- (11) Plumbing systems.
- (12) Ventilating systems and air conditioning systems.
- (13) Power plants.
- (14) Electric wiring.
- (15) Lighting fixtures (or replacement).
- (16) Sprinkler systems.
- (f) Settling or subsidence.
- (g) Other structural repairs to buildings or equipment.

§ 644.451 Nature of required restoration.

Restoration by the Government will ordinarily include the following:

- (a) Wear and tear beyond that which is reasonable and ordinary.
- (b) Damage due to negligence by Government personnel.
- (c) Restoration or reinstallations necessitated by alterations or removals by the Government.
- (d) Neutralization of unexploded bombs or artillery projectiles, disposition of military scrap, and decon-

tamination of chemically contaminated lands or improvements. (See §§ 644.516 through 644.539).

§ 644.452 Minor restoration cases—determining extent of restoration required.

(a) In minor restoration cases, ENG Form 1440A-R, Joint Terminal Condition Survey, will be used. The Government representative, in these cases, will also make a detailed investigation as to the extent of damages, cost of repairs, and other factors sufficient to properly complete and sign ENG Form 1440B-R, Cost of Restoration. In order to effect economies, the DE may arrange for the utilization of the services of the Facilities Engineer or the using service to perform joint terminal condition surveys. Such use, however, should be coupled with issuance of proper instructions for guidance of the respective personnel. A restoration case is considered to be minor under the following conditions:

- (1) The initial cost of Government improvements or alterations did not exceed \$5,000; and
- (2) The net salvage value of Government improvements remaining does not exceed \$1,000; and
- (3) The cash payment to the lessor in lieu of restoration does not exceed \$1,000; and
- (4) The lessor has agreed to accept a cash settlement in lieu of physical restoration.

(b) *Preparation of ENG Form 1440-R.* Use of ENG Form 1440B-R is premised upon the ability of the field investigator to adequately analyze conditions and develop sufficient supporting data as to the cost of the items of restoration involved. While this form is considered self-explanatory, the following is to be noted:

- (1) The procedure hereunder envisions the use of both ENG Form 1440A-R and ENG Form 1440B-R, which complement each other.
- (2) The use of ENG Form 1440B-R for estimating restoration costs does not waive the requirements for a proper evaluation of the Government's restoration obligations either as to the legal principles or as to the proper measure of damages.