

Depot Maintenance PPP Facilities Use Agreements —Examples of Terms and Conditions—

Introduction

One of the goals of Depot Maintenance Public-Private Partnerships (PPP) is to increase facility utilization. One third of the 206 partnerships created through the end of fiscal year 2004 reported that increased facility utilization had occurred. However, only 31 of the ongoing partnerships in fiscal year 2004 involved the use of government facilities by private sector personnel. Less than half of all depot maintenance activities had partnerships involving use of their facilities by their partner's employees.

The purpose of this section of the **toolbox** is threefold:

- outline the characteristics of facilities use within depot maintenance partnerships
- summarize the key aspects of facilities use agreements
- provide examples of documents that have been successfully used to provide government facilities to private sector partners.

Overview of Facilities Use by Private Sector Partners

Private sector partners are using government facilities for:

- Manufacturing military equipment and components
- Repairing, overhauling, and modifying weapons systems and equipment
- Kit assembly, and parts stockage and distribution
 - Can be in support of depot operations or the private sector partner's activities
- Providing technical and engineering support for depot maintenance and/or materiel management processes

Private sector firms are using facilities at government depots in the following ways:

- Continually Occupy a Dedicated Building
- Continually Occupy Shared Space
- Intermittent Occupancy of Shared Space
 - Can Include Use of Government-Owned Special Equipment During Occupancy
- As-Required Access to Special Capabilities
 - e.g., Coating Facility, Test Track, Dry Dock, etc.

Occasionally, more than one type of use is occurring. For example, a company may be occupying a dedicated building and using a portion of other buildings; or occupying a dedicated building and using a special capability, as needed. Whether continually occupying dedicated or shared space, the company typically provides its own equipment, furniture, etc.; but government-furnished equipment is sometimes provided.

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Key Aspects of Facilities Use Agreements

Facilities use agreement is a generic term. The most appropriate document format to use depends on the specific circumstances. Some partnerships involve only the use of a facility. For others, use of a facility is an integral part of a broader partnership such as a work share or direct sales agreement. Examples of the following document types are included in section two of the **toolbox**:

- Memorandum of Agreement
- Facilities Use Agreement
- Inter-Service Support Agreement
- Extract from Teaming Agreement
- Attachment to Direct Sales Agreement
- Attachment to Repair Services Contract
- Section 2474 Lease
- Section 2667 Lease

The number of topics, and the order in which they occur, varies markedly among the various types of facilities use agreements. Nevertheless, the most common topics are shown in Table 1. The ordering of the topics in Table 1 is illustrative only.

Table 1. Most Commonly Addressed Topics
Description of Property Provided
Approved Uses of the Property
Term of the Agreement
Consideration
Provision of Utilities and Services
Real Property Modifications and Alterations (including Equipment Installation)
Real Property Maintenance and Repair
Indemnification Against Injury, Property Damage, etc.
Insurance Required (Workmen's Compensation and Liability)
Government Right to Access and Inspections
Environmental Protection
Occupational Safety and Health
Installation Security
Return of Property Upon Termination of Agreement

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There also is no *standard* set of terms and conditions for a particular topic. Thus, the practitioner should review the treatment of specific topics in more than one document type, and select those that best fit the circumstances at hand.

Lastly, although all facilities use agreements contain a CONSIDERATION section, many innovative form of compensation have been employed, including:

- Fixed-Price Rent
- Fixed-Price Rent plus Reimbursable Costs
- Fixed-Price Rent Net of Approved Facility Improvements at Contractor's Expense
- No Cost to the Contractor in Exchange for Guaranteed Metrics Performance
- Percentage Reduction to the Cost of Items Sold to the Depot by the Partner
- Equitable Adjustment to the Contract Price for Goods/Services Provided by the Partner