

245.405

is sold by foreign military sales or direct commercial sales to foreign governments or international organizations. Major defense equipment is defined in DODD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Items, as any item of significant military equipment on the United States Munitions List having a nonrecurring RDT&E cost of more than \$50 million or a total production cost of more than \$200 million.

(2) When these cost thresholds are not met, the contracting officer shall assess rental charges for use of special tooling and special test equipment pursuant to the Use and Charges clause when administratively practicable.

[56 FR 36448, July 31, 1991, as amended at 67 FR 61517, Oct. 1, 2002]

245.405 Contracts with foreign governments or international organizations.

(1) *Approval.* A contractor may use Government production and research property on work for foreign governments and international organizations only when approved in writing by the contracting officer having cognizance of the property. The contracting officer shall grant approval only if—

(i) The use will not interfere with foreseeable requirements of the United States;

(ii) The work is undertaken as a DoD foreign military sale; or

(iii) For a direct commercial sale, the foreign country or international organization would be authorized to contract with the department concerned under the Arms Export Control Act.

(2) *Use charges.* (i) The Use and Charges clause is applicable on direct commercial sales to foreign governments or international organizations.

(ii) When a particular foreign government or international organization has funded the acquisition of specific production and research property, do not assess the foreign government or international organization rental charges or nonrecurring recoupments for the use of such property.

(3) *Waivers.* (i) Rental charges for use of U.S. production and research property on commercial sales transactions to the Government of Canada are waived for all commercial contracts.

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This waiver is based on an understanding wherein the Government of Canada has agreed to waive its rental charges.

(ii) Requests for waivers or reduction of charges for the use of Government facilities on work for foreign governments or international organizations shall be submitted to the contracting officer who shall refer the matter through contracting channels. In response to these requests, approvals may be granted only by the Director, Defense Security Cooperation Agency for particular sales that are consistent with paragraph (1)(iii) of this section.

[56 FR 36448, July 31, 1991, as amended at 64 FR 51077, Sept. 21, 1999]

245.407 Non-Government use of plant equipment.

(a)(i) Non-Government use of industrial plant equipment (IPE) exceeding 25 percent requires prior approval of the—

(A) Assistant Secretary of the Army (RD&A);

(B) Assistant Secretary of the Navy (RD&A);

(C) Assistant Secretary of the Air Force (Acquisition); or

(D) Director, Defense Logistics Agency.

(ii) The authority in paragraph (a)(i) of this section may be delegated to the head of a contracting activity. Any re-delegation requires the approval of the Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

(iii) To determine percentage—

(A) Compute the percentage of non-Government use on time available for use. Use contractor's normal work schedule as represented by the scheduled production shift hours.

(B) Use a base time period which is neither less than three months nor more than one year.

(C) Use may be averaged at a single plant for all items costing less than \$25,000.

(iv) Contractors should submit requests for non-Government use of IPE to the contract administration office at least six weeks before the projected use. The requests shall include:

(A) Total number and acquisition cost of IPE items; and