

as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone web page at http://dsbs.sba.gov/dsbs/dsp_searchhubzone.cfm;

(ii) In writing to the AA/HUB at U.S. Small Business Administration, 409 3rd Street, S.W., Washington DC 20416; or

(iii) E-mail at hubzone@sba.gov.

(2) Protests challenging HUBZone small business concern size status must be filed in accordance with 13 CFR 121.411.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 3. Amend section 52.212–5 by—
- a. Revising the date of the clause; and
- b. Removing from paragraph (b)(8)(i) “(JAN 2002)” and adding “(JUL 2005)”.

The revised and added text reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (JUL 2005)

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- 4. Amend section 52.219–9 by—
- a. Revising the date of the clause;
- b. Redesignating paragraph (e)(4) as paragraph (e)(5); and
- c. Adding a new paragraph (e)(4).

The revised and added text reads as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

SMALL BUSINESS SUBCONTRACTING PLAN (JUL 2005)

* * * * *

(e) * * *

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

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[FR Doc. 05–14669 Filed 7–26–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 45 and 52

[FAC 2005–05; FAR Case 2002–015; Item V]

RIN 9000–AJ99

Federal Acquisition Regulation; Government Property Rental and Special Tooling

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to incorporate a class deviation regarding use and charges, which has been applicable to the Department of Defense since 1998. This deviation is appropriate for application across the Federal Government. The change clarifies the basis for determining the rental charges for the use of Government property and is intended to promote the dual use of such property. The final rule specifically impacts contracting officers, property administrators, and contractors responsible for the management of Government property.

DATES: *Effective Date:* August 26, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAC 2005–05, FAR case 2002–015.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the *Federal Register* at 69 FR 42544, July 15, 2004, to incorporate two Department of Defense class deviations, 98–O0010, Use and Charges, and 98–O0011, Special Tooling, into FAR Part 45 and make appropriate revisions to FAR 52.245–9, Use and Charges, and FAR 52.245–17, Special Tooling. The final rule establishes, as the basis for rental charges, the time property is actually used for commercial purposes, rather

than the time available for use; permits contractors to obtain property appraisals from independent appraisers; permits appraisal-based rentals for all property; and allows contracting officers to consider alternate bases for determining rentals. The final rule does not change the requirements for special tooling as originally proposed by the Councils because the Councils are now considering deleting the clause in its entirety rather than revising it based on comments received on the proposed rule. The Councils plan to solicit comments on the proposed deletion of the FAR clause at 52.245–17, Special Tooling, under another proposed rule.

Four respondents provided public comments. Consideration of these comments resulted in only minor administrative changes to the proposed rule. The resolution of the comments follows:

Summary of Comments Received/Disposition

1. *Proposed Rule (PR): 52.245–9.* Deviation to the clause at 52.245–9 sets a fair and equitable method for applying a rent usage when Government property is used for commercial purposes or existing Government property is used for future contracts and equitable adjustment is needed to eliminate unfair competitive advantage.

Concur.

2. *PR: 52.245–17.* All respondents proposed the elimination of the special tooling clause. The Councils plan to solicit comments on the proposed deletion of the FAR clause at 52.245–17, Special Tooling, under another proposed rule.

3. *PR: 52.245–9(h).* Amend paragraph (h) to strike “person” and replace it with “contractor.” Rationale is that a company would control their personnel through their administrative procedures when wrong is discovered and the Government may control the contractor in a like manner.

Nonconcur. The legal basis for this citation, 18 U.S.C. 641, applies to an individual, as well as a corporate entity.

4. *PR: 52.245–9.* It may make sense to provide a time frame where an immediate need for usage of property from another contract becomes imminent and use of the property would not interfere with the owning contract, and the ACO is not available for authorization, a period of 48 hours, documented by the losing contract, would be allowed for transfer of tooling and use of such tooling be paid for at a higher rate than the proposed schedule. Tooling would be returned immediately if authorization were not received.

Nonconcur. While there may be some instances where it would appear to be beneficial to allow contractors to make such a decision, other business and regulatory factors, including those associated with competition and appropriations law, must be considered before alternative use is allowed. This decision should be reserved to the Administrative Contracting Officer.

5. *PR: 45.106*. Add at 45.106(h)(3), "Contractors shall be encouraged to submit plans and enter into advance agreements to minimize unnecessary delays, administrative costs and possible legal exposure." Approved plans for use and charges of a contract, program, site, or entity would be beneficial to both the Government and the contractor in that the clause, as now written, will cause unnecessary delays, administrative cost and legal exposure. This type of plan would be similar to a site scrap plan as now provided for in FAR Part 45.

Nonconcur. Approval of commercial use, as part of a general plan or agreement, limits the Government's ability to regulate that said use serves the best interests of the Government. It may also restrict the Government's right to recall that property when needed to satisfy what the Government determines to be a greater need, *e.g.*, war fighting, civil defense, disaster assistance.

6. *PR: 45.306-5*. Eliminate the policy at 45.306-5 for special tooling.

The Councils plan to solicit comments on the proposed deletion of FAR 52.245-17, Special Tooling, and the related coverage at 45.306-5 under another proposed rule.

7. *PR: 52.245-9(a)*. Change the definition of Government property to mean all "real and personal" property.

Nonconcur. This change is unnecessary.

8. *PR: 52.245-9(c)*. Revise the exception of the use of Government property in this paragraph to be described as "production" material. Non-production material (expendable items) may be suitable for rental in some circumstances.

Nonconcur. There is no FAR classification differentiating between production material and non-production expendables. Rather, when an item does not lose its identity or is not consumed during the production process, it should not be classified as material. The property is more appropriately classified as equipment, agency peculiar property, or another class of property dependent upon its nature and use.

9. *PR: 52.245-9(d)(2)*. Change estimated rental charge for "other" property to "personal" property.

Nonconcur. This change is unnecessary.

10. *PR: 52.245-9(g)*. Request an additional requirement that the Government shall disclose any intent to revoke use authorization prior to agreeing to contractor use. A practice of full disclosure is necessary as part of good relations and business practices, otherwise contractors may acquire resources unnecessarily.

Nonconcur. There are many reasons why the Government may choose to revoke a use agreement. Not all of these are known at the time of approval. Some may involve emergency conditions that could not be anticipated at the initiation of an agreement. Therefore, it is not in the Government's best interest to limit its options by tacitly agreeing that there is no intention to revoke use.

11. *PR: 52.245-9(h)*. Delete the section that states that unauthorized use of Government property can subject a person to consequences under 18 U.S.C. 641. There is no need to restate this law, or any other law, in a regulation. The contractor has an obligation to establish internal controls to prevent unauthorized use, and including a reference to the United States Code is unnecessary.

Nonconcur. We believe that it is beneficial to advise those who use Government property of the ramifications of unauthorized use. The repetition of the legal authority has precedent in other parts of the FAR, particularly when criminal liability is the result of inappropriate action. See also Comment No. 3, above.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only clarifies FAR coverage to clarify the basis for determining rental charges for the use of Government property and is intended to promote the dual use of such property. Therefore, this rule will allow small businesses more flexibility in the use of Government property.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000-0075.

List of Subjects in 48 CFR Parts 45 and 52

Government procurement.

Dated: July 20, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 45 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 45 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 45—GOVERNMENT PROPERTY

■ 2. Amend section 45.106 by adding paragraph (h) to read as follows:

45.106 Government property clauses.

* * * * *

(h)(1) Insert the clause at 52.245-9, Use and Charges—

(i) In fixed-price or labor-hour solicitations and contracts under which the Government will furnish property for performance of the contract;

(ii) In all cost-reimbursement and time-and-materials solicitations and contracts; and

(iii) In solicitations and contracts when a consolidated facilities contract or a facilities use contract is contemplated.

(2) The contracting officer may modify the clause if an alternative rental methodology is used in accordance with 45.403.

45.302-6 [Amended]

■ 3. Amend section 45.302-6 by removing paragraph (c); and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

■ 4. Revise section 45.403 to read as follows:

45.403 Rental—Use and Charges clause.

(a) The contracting officer shall charge contractors rent for using Government production and research property, except as prescribed in 45.404 and 45.405. Rent shall be computed in accordance with the clause at 52.245-9, Use and Charges. If the agency head determines it to be in the Government's interest, an alternative method for computing rent may be used.

(b) The contracting officer shall ensure the collection of any rent due the Government from the contractor.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Revise section 52.245–9 to read as follows:

52.245–9 Use and Charges.

As prescribed in 45.106(h), insert the following clause:

USE AND CHARGES (AUG 2005)

(a) *Definitions.* As used in this clause:

Acquisition cost means the acquisition cost recorded in the Contractor's property control system or, in the absence of such record, the value attributed by the Government to a Government property item for purposes of determining a reasonable rental charge.

Government property means all property owned by or leased to the Government or acquired by the Government under the terms of the contract. It includes both Government-furnished property and contractor-acquired property as defined in FAR 45.101.

Real property means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or equipment.

Rental period means the calendar period during which Government property is made available for nongovernmental purposes.

Rental time means the number of hours, to the nearest whole hour, rented property is actually used for nongovernmental purposes. It includes time to set up the property for such purposes, perform required maintenance, and restore the property to its condition prior to rental (less normal wear and tear).

(b) *Use of Government property.* The Contractor may use the Government property without charge in the performance of—

(1) Contracts with the Government that specifically authorize such use without charge;

(2) Subcontracts of any tier under Government prime contracts if the Contracting Officer having cognizance of the prime contract—

(i) Approves a subcontract specifically authorizing such use; or

(ii) Otherwise authorizes such use in writing; and

(3) Other work, if the Contracting Officer specifically authorizes in writing use without charge for such work.

(c) *Rental.* If granted written permission by the Contracting Officer, or if it is specifically provided for in the Schedule, the Contractor may use the Government property (except material) for a rental fee for work other than that provided in paragraph (b) of this clause. Authorizing such use of the Government property does not waive any rights of the Government to terminate the Contractor's right to use the Government property. The rental fee shall be determined in accordance with the following paragraphs.

(d) *General.* (1) Rental requests shall be submitted to the Administrative Contracting Officer (ACO), identify the property for which rental is requested, propose a rental period, and compute an estimated rental charge by using the Contractor's best estimate of rental time in the formulae described in paragraph (e) of this clause.

(2) The Contractor shall not use Government property for nongovernmental purposes, including Independent Research and Development, until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property shall be used only on a non-interference basis.

(e) *Rental charge.*—(1) *Real property and associated fixtures.* (i) The Contractor shall obtain, at its expense, a property appraisal from an independent licensed, accredited, or certified appraiser that computes a monthly, daily, or hourly rental rate for comparable commercial property. The appraisal may be used to compute rentals under this clause throughout its effective period or, if an effective period is not stated in the appraisal, for one year following the date the appraisal was performed. The Contractor shall submit the appraisal to the ACO at least 30 days prior to the date the property is needed for nongovernmental use. Except as provided in paragraph (e)(1)(iii) of this clause, the ACO shall use the appraisal rental rate to determine a reasonable rental charge.

(ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily appraisal rental rates shall be divided by 720 or 24, respectively, to determine an hourly rental rate.

(iii) When the ACO believes the appraisal rental rate is unreasonable, the ACO shall promptly notify the Contractor. The parties may agree on an alternative means for computing a reasonable rental charge.

(iv) The Contractor shall obtain, at its expense, additional property appraisals in the same manner as provided in

paragraph (e)(1)(i) if the effective period has expired and the Contractor desires the continued use of property for nongovernmental use. The Contractor may obtain additional appraisals within the effective period of the current appraisal if the market prices decrease substantially.

(2) *Other Government property.* The Contractor may elect to compute the rental charge using the appraisal method described in paragraph (e)(1) of this clause subject to the constraints therein or the following formula in which rental time shall be expressed in increments of not less than one hour with portions of hours rounded to the next higher hour: The rental charge is calculated by multiplying 2 percent of the acquisition cost by the hours of rental time, and dividing by 720.

(3) *Alternative methodology.* The Contractor may request consideration of an alternative basis for computing the rental charge if it considers the monthly rental rate or a time-based rental unreasonable or impractical.

(f) *Rental payments.* (1) Rent is due 60 days following completion of the rental period or as otherwise specified in the contract. The Contractor shall compute the rental due, and furnish records or other supporting data in sufficient detail to permit the ACO to verify the rental time and computation. Payment shall be made by check payable to the Treasurer of the United States and sent to the contract administration office identified in this contract, unless otherwise specified by the Contracting Officer.

(2) Interest will be charged if payment is not made by the date specified in paragraph (f)(1) of this clause. Interest will accrue at the "Renegotiation Board Interest Rate" (published in the **Federal Register** semiannually on or about January 1st and July 1st) for the period in which the rent is due.

(3) The Government's acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor's unauthorized use of Government property or any other failure to perform this contract according to its terms.

(g) *Use revocation.* At any time during the rental period, the Government may revoke nongovernmental use authorization and require the Contractor, at the Contractor's expense, to return the property to the Government, restore the property to its pre-rental condition (less normal wear and tear), or both.

(h) *Unauthorized use.* The unauthorized use of Government property can subject a person to fines,

imprisonment, or both, under 18 U.S.C. 641.

(End of clause)

52.245-10 [Amended]

■ 6. Amend section 52.245-10 in the introductory paragraph by removing “45.302-6(d)” and adding “45.302-6(c)” in its place.

52.245-11 [Amended]

■ 7. Amend section 52.245-11 in the introductory paragraph by removing “45.302-6(e)(1)” and adding “45.302-6(d)(1)” in its place.

[FR Doc. 05-14670 Filed 7-26-05; 8:45 am]
BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 2005-05; Item VI]

Federal Acquisition Regulation; Technical Amendment

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes an amendment to the Federal Acquisition Regulation (FAR) in order to make an editorial correction.

DATES: *Effective Date:* July 27, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS

Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. Please cite FAC 2005-05, Technical Amendment.

List of Subjects in 48 CFR Part 4

Government procurement.

Dated: July 20, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as set forth below:

PART 4—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 4 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

4.1102 [Amended]

■ 2. Amend section 4.1102 by removing from paragraph (c)(1)(ii) “52.204-7(g)(1)(i)(3)” and adding “52.204-7(g)(1)(i)(C)” in its place.

[FR Doc. 05-14671 Filed 7-26-05; 8:45 am]

BILLING CODE 6820-EP-S

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005-05 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005-05 which precedes this document. These documents are also available via the Internet at <http://www.acqnet.gov/far>.

FOR FURTHER INFORMATION CONTACT Laurieann Duarte, FAR Secretariat, (202) 501-4755. For clarification of content, contact the analyst whose name appears in the table below.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

LIST OF RULES IN FAC 2005-05

Item	Subject	FAR case	Analyst
I	Definition of Information Technology (Interim)	2004-030	Davis.
II	Documentation Requirement for Limited Sources under Federal Supply Schedules	2005-004	Nelson.
III	Payment Withholding	2004-003	Olson.
*IV	Confirmation of HUBZone Certification (Interim)	2005-009	Cundiff.
V	Government Property Rental and Special Tooling	2002-015	Parnell.
VI	Technical Amendment.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005-05 amends the FAR as specified below:

Item I—Definition of Information Technology(FAR Case 2004-030)

This interim rule amends FAR 2.101(b) to revise the definition of “information technology” to reflect the recent changes to the definition resulting from the enactment of Public Law 108-199.

The new language at Section 535(b) of Division F of Public law 108-199

permanently revises the term “information technology,” which is defined at 40 U.S.C. 11101, to add “analysis” and “evaluation” and to clarify the term “ancillary equipment.” This permanent change to the terminology necessitated this interim rule to amend the FAR.