

DRAFT – FOR DISCUSSION PURPOSES ONLY

Business Case Rationale
FAR CASE January 2004 -- Government Property

Introduction

In May 2003, Deputy Secretary of Defense Paul Wolfowitz signed out new acquisition policies consistent with Secretary of Defense Donald Rumsfeld's goal of transforming the Department of Defense's (DoD) business practices and war-fighting capabilities. The DoD is also working on a major transformation of the Defense Federal Acquisition Regulation Supplement (DFARS) to identify dramatic improvements to its procurement policies, procedures and processes. The following proposed rule is consistent with these efforts, and builds on earlier direction to create an acquisition policy environment that fosters efficiency, flexibility, innovation, and creativity.

Background

The General Accounting Office and other audit organizations have repeatedly cited agencies for poor accountability, visibility, and financial reporting of federal property; indeed, a lack of reliable information impairs the government's ability to (1) know the quantity, location, condition, and value of its assets; (2) safeguard its assets from physical deterioration, theft, loss, or mismanagement; (3) prevent unnecessary storage and maintenance costs or purchase of assets already on hand; and (4) determine the full cost of government programs. Consequently, the Congress, managers of Federal agencies, and other decision makers may not be receiving meaningful and accurate information necessary for making informed decisions about future funding, oversight of federal programs, and operational readiness.¹

As a result, through enabling legislation, the Congress has demanded greater fiscal accountability from managers of federal government property.² Such congressional mandates make this proposed rule all the more crucial, for the current Federal Acquisition Regulation (FAR) has been interpreted as prohibiting the type of record-keeping

¹ GAO-02-447G, Executive Guide, Best Practices in Achieving Consistent, Accurate Physical Counts of Inventory and Related Property, March 2002, page 6.

² Ibid, page 5: The GAO observes that "In the 1990s, the Congress passed the Chief Financial Officers Act of 1990 and subsequent related legislation, the Government Management Reform Act of 1994, the Government Performance and Results Act of 1993, and the Federal Financial Management Improvement Act of 1996. The intent of these acts is to (1) improve financial management, (2) promote accountability and reduce costs, and (3) emphasize results-oriented management. For the government's major departments and agencies, these laws (1) established chief financial officer positions, (2) required annual audited financial statements, and (3) set expectations for agencies to develop and deploy modern financial management systems, produce sound cost and operating performance information, and design results-oriented reports on the government's financial position by integrating budget, accounting, and program information. Federal departments and agencies work hard to address the requirements of these laws but are challenged to provide useful, reliable, and timely inventory data, which is still not available for daily management needs."

requirements necessary for accomplishing these objectives—requirements that are an essential and integral part of the government’s fundamental fiduciary responsibilities.

This misinterpretation is widespread, hampering the ability of policy makers to make the process and procedural changes necessary for compliance with the Federal Property and Administrative Services Act of 1949, as amended (Act of 30 June 1949, 63 Stat. 372, Title 40); the Federal Managers’ Financial Integrity Act of 1982; the Chief, Financial Officers Act of 1990; the Government Performance and Results Act of 1993; the Government Management Reform Act of 1994; and the Federal Financial Management Improvement Act of 1996, and other legislation.

The challenge (to DoD) is further compounded by the Federal Accounting Standards Advisory Board issuance of a new accounting and reporting standard (Statement of Federal Financial Accounting Standard Number 23) for military equipment (e.g., ships, aircraft, combat vehicles, weapons). The new accounting standard requires the capitalization and depreciation of the cost of military equipment (includes the cost of modifications and upgrades),³ including property in the possession of contractors.

In response to these and other challenges, the Congress included in the National Defense Authorization Act for fiscal year 2003, a requirement for the DoD develop a business enterprise architecture and transition plan for its implementation. The architecture will enable the DoD to comply with all federal accounting, financial management and reporting requirements; integrating accounting, budgeting, and information systems; and routinely providing timely, accurate, and reliable management data to decision makers. This “business transformation” is well underway, and will require the modification and/or replacement of numerous policies, business processes, and financial and non-financial “feeder” systems.

While some federal agencies have made great strides in ameliorating their financial and property accountability and performance problems, many continue to view property management as a management challenge. This is especially true for property in the possession of contractors, which the DoD considers a material weakness. In the late 1990s, several proposed re-writes of the FAR, Sub part 45 (Government Property), were initiated. Aside from attempting to address long-standing property management issues, the proposals reflected DoD senior leadership consensus that adoption of commercial business practices would attract more commercial firms to the marketplace.

For many reasons, the proposed rules were not implemented; however, such efforts were not without benefit—the department has clearly developed a greater awareness and understanding of the complexities involved in property management.

Much of the current FAR language related to property management is well over fifty years old, and has been likened to a “patchwork quilt” of inconsistent, often conflicting, guidance. Moreover, its “industrial age” requirements are at odds with the

³ The new accounting standard was implemented in Fiscal Year 2003.

phenomenal technological advances contemporary managerial techniques, and cannot be easily applied to modern materials management technology such as Enterprise Resource Planning, relational databases, and radio frequency bar-coding. As a result, outdated regulations continue to hamper current strategies and methods of contractor oversight, including collaborative methods such as the Defense Contract Management Agency's Single-Process Initiative. This holds true, not only for the DoD, but for other Federal agencies.

Highlights/Benefits.

The proposed rule simplifies contractor compliance by combining the requirements of 52.245-1, Property Records; 52.245-2, Government Property (Fixed-Price Contracts); 52.245-4, Government-Furnished Property (Short Form); 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts). The proposed rule also deletes in their entirety the following clauses: 52.245-1 (Property Clauses); 52.245-3 Identification of Government Property); 52.245-4 (Government-Furnished Property [Short Form]); 52.245-17 (Special Tooling); and 52.245-18 (Special Test Equipment). It also sanctions the use of industry leading practices by contractors, and eliminates the DD Form 1662—the latter resulting in a cost savings of \$975,707.⁴

The Goals of this Proposed Rule are to:

Ensure consistency with the mission-oriented goals of the acquisition community, specifically, to enable a cultural shift--from a system based on regulations, to one where empowered professionals use guiding principles and their judgment, commensurate with the level of risk.

Leverage the government's existing resources for property management (e.g., policies, processes, systems);

Limit, to the extent practicable, the amount of government property furnished to contractors performing under government contracts;

Update and clarify terminology; ensure a modern, performance-based policy;

Eliminate and/or clarify existing language, enable a meaningful regulatory framework for further process improvement;

⁴ In May, 1988, the estimated public burden was \$608,000 (this was based on 9000 contractors with 8.4 responses per contractor, or 76,000 annual responses-- ½ hour per response (38,000 hours) at \$16.00/hour. The estimated burden on the government was 97,718 hours, based on 5 minutes for each of the 76,000 responses (6,333 hours) at \$15.43/hour. Adjusted for inflation, the public burden would be \$975,707.

Integrate commercial and commercial-like best practices into acquisition to the maximum extent possible to achieve efficiency and effectiveness for both government and contractor;

Allow, encourage, and support the use of a process-oriented, life-cycle approach to property management; cease the long-standing requirement for contractors to develop separate “government approved” property management systems;

Maximize continuous improvement and joint problem solving, with a focus on performance outcomes; foster greater efficiency and economy;

Eliminate superfluous, obsolete, and conflicting requirements; clarify the policy context, thus easing the administrative burden and helping to ensure compliance.

DRAFT

Revised DRAFT
2003-xxx, Government Property Rewrite

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

ACTION: Proposed Rule

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to simplify procedures, clarify language, and eliminate obsolete requirements related to the management and disposition of government property in the possession of contractors. The Councils are publishing this as a proposed rule to afford the public with an opportunity to comment.

DATES: Interested parties should submit comments in writing on or before 90 days after publication to be considered in the formulation of a final rule.

FOR FURTHER INFORMATION CONTACT: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 435, Washington, DC 20405. Address e-mail comments submitted via the Internet to: farcase.2003-XXX@gsa.gov. Please cite FAR case 2003-xxx

SUPPLEMENTARY INFORMATION:

A. Background

The DoD has conducted a long and careful examination of the underlying principles of government property policy. As a result, the FAR provisions have been dramatically revised and restructured to allow a straightforward application of sound business practices. The primary objective of this rule is to comprehensively address the operative principles of property management.

Assure consistency with the Government's other regulatory and/or policy requirements; eliminate obsolete and/or conflicting requirements, and ease the administrative burden associated with contract compliance.

Sanction the use of industry leading practice for managing property; cease the long-standing requirement for contractors to develop separate "government approved" property management systems.

B. Regulatory Flexibility Act

The Initial Regulatory Flexibility Analysis (IRFA) submitted to the Chief Counsel for Advocacy of the Small Business Administration is applicable to this final rule. A summary of the analysis was published in the Federal Register on June 2, 1997.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub L. 104-13) applies. The proposed FAR change eliminates the government-unique record-keeping requirements and reduces notification and reporting requirements significantly from the information collection requirements currently approved under OMB Clearance Number 9000-0075. The information collection includes the requirements related to FAR Sub part 4 and the associated clauses at FAR 52.245.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing these burdens, not later than [90 days after publication] to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, with a copy to the General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Washington DC 20405.

PART 2 – DEFINITIONS AND TERMS

New Definitions.

“Property, Plant, and Equipment,” consists of:

Personal Property. Any property including military equipment, but excluding real property, consumable items, component parts of a higher assembly, or items that lose their individual identity through use. “Personal property,” as used in this Sub part, means property of any kind or interest, including of manufacturing or assembly drawings; installation, operation, repair, or maintenance instructions; and other similar information. Personal property excludes real property, records of the federal government, and naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.

Real Property. Land (including Stewardship Land), buildings, structures, utilities, and equipment attached to and made part of buildings and structures (such as heating systems), but not movable equipment (such as plant equipment). Land rights represent interests and privileges; for example, crops, timber rights, leaseholds, easements, rights-of-away, and mineral rights. As such, land rights are considered Real Property. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

The following definitions are deleted:

“Facilities”

“Government Production and Research Property”

“Stock Record”

“Summary Record”

“Utility Distribution System”

The definition of “Real Property” has been revised and incorporated under the new definition: Property, Plant and Equipment

Revise Sub part 45 to read as follows:

PART 45 – GOVERNMENT PROPERTY

45.000 -- Scope of part

This part prescribes policies and procedures for providing government property to contractors; for the contractor’s management of such property; and for the reporting, redistributing, and disposition of Contractor Inventory. It does not apply to property under any statutory leasing authority, except as to non-government use of property under FAR Sub part 45.400; or to property to which the government has acquired a lien or title solely because of contract financing arrangements, including partial, advance, or progress payments, or to disposal of real property. Property leased by the government and subsequently furnished to a contractor as Government-furnished Property is covered under this section.

45.101 – Definitions

“Accessory Item,” as used in this Sub part, means an item that facilitates or enhances the operation of plant equipment but which is not essential for its operation.

“Acquisition Cost,” as used in this Sub part means the acquisition cost recorded in the Contractor’s property management 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.

“Agency-Peculiar Property,” as used in this Sub part, means government-owned personal property that is peculiar to the mission of one agency (e.g., military or space property). It excludes government material, special test equipment, special tooling, real property and plant equipment.

“Auxiliary Item,” as used in this Sub part, means an item without which the basic unit of plant equipment cannot operate.

“Contractor-Acquired Property,” as used in this Sub part, means property acquired or otherwise provided by the contractor for performing a contract and to which the government has title.

“Contractor Inventory,” as used in this Sub part, means --

-Any property acquired by and in the possession of a contractor or subcontractor under a contract for which title is vested in the government and which exceeds the amounts needed to complete full performance under the entire contract;

-Any property that the government is obligated or has the option to take over under any type of contract as a result either of any changes in the specifications or plans there under or of the termination of the contract (or sub contract there under), before completion of the work, for the convenience or at the option of the government; and

-Government-furnished Property that exceeds the amounts needed to complete full performance under the entire contract.

“Custodial Records,” as used in this Sub part, means written memoranda of any kind, including requisitions, hand receipts, tool checks, and stock records used to control items issued from tool cribs and stockrooms.

“Discrepancies Incident to Shipment,” as used in this Sub part, means all deficiencies incident to shipment of government property to or from a contractor’s facility whereby differences exist between the property purported to have been shipped and property actually received. Such deficiencies include loss, damage, destruction, improper status and condition coding, errors in identity or classification, and improper consignment.

“Facilities Contract,” as used in this Sub part, means a contract under which government property is provided to, is acquired by, and/or is maintained by a contractor or subcontractor by the government for use in connection with performing one or more related contracts for supplies or services.

“Government-furnished Property,” as used in this Sub part, means property in the possession of, or directly acquired by, the government and subsequently made available to the contractor. More generally, a change of location for equipment previously acquired by the government as Property, Plant and Equipment.

“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 this section.

“Line Item,” as used in this Sub part, means a single line entry on a reporting form that indicates a quantity of property having the same description and condition code from any one contract at any one reporting location.

“Individual Item Record,” as used in this Sub part, means a separate card, form , document or specific line of computer data used to account for one item of property.”

“Material,” as used in this Sub part, means property that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a

contract. It includes assemblies, components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract.

“Nonprofit Organization,” as used in this Sub part, means any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

“Nonseverable,” as used in this Sub part, when related to government production and research property, means property that cannot be removed after erection or installation without substantial loss of value or damage to the property or to the premises where installed.

“Plant Equipment,” means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

“Property Administrator,” as used in this Sub part, means an authorized representative of contracting officer assigned to administer the contract requirements and obligations relating to government property.

“Property, Plant, and Equipment,” a financial term for property consisting of:

-Personal Property. Any property including military equipment, but excluding real property, consumable items, component parts of a higher assembly, or items that lose their individual identity through use. “Personal Property,” as used in this Sub part, means property of any kind or interest, including of manufacturing or assembly drawings; installation, operation, repair, or maintenance instructions; and other similar information.

-Real Property. Land (including Stewardship Land), buildings, structures, utilities, and equipment attached to and made part of buildings and structures (such as heating systems), but not movable equipment (such as plant equipment). Land rights represent interests and privileges; for example, crops, timber rights, leaseholds, easements, rights-of-away, and mineral rights. As such, land rights are considered Real Property. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

“Plant Clearance,” as used in this Sub part, means the process of screening, redistribution, and disposal of Contractor Inventory from a contractor’s plant or work site. The term “contractor’s plant” includes a contractor-operated government facility.

“Plant Clearance Officer,” as used in this Sub part, means an authorized representative of the contracting officer assigned responsibility for plant clearance.

“Plant Clearance Period,” as used in this Sub part, means the period beginning on the effective date of contract completion or termination and ending 90 days (or such longer period as may be agreed to) after receipt by the contracting officer of acceptable Inventory Schedules for each property classification. The final phase of the plant clearance period means that period after receipt of acceptable Inventory Schedules.

“Precious Metals,” as used in this Sub part, means uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are silver, gold, and the platinum group metals -- platinum, palladium, iridium, osmium, rhodium, and ruthenium.

“Public Body” means any State, Territory, or possession of the United States, any political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, any agency or instrumentality of any of the foregoing, any Indian tribe, or any agency of the federal government.

“Rental Period” means the calendar period during which government property is made available for commercial purposes.

“Rental Time” means the number of hours, to the nearest whole hour; rented property is actually used for commercial 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)

“Reporting Activity,” as used in this Sub part, means the government activity that initiates the Standard Form 120, Report of Excess Personal Property (or when acceptable to GSA, by data processing output).

“Salvage,” as used in this Sub part, means property that, because of its worn, damaged, deteriorated, or incomplete condition or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs, but has some value in excess of its scrap value.

“Scrap,” as used in this Sub part, means personal property that has no value except for its basic material content.

“Screening Completion Date,” as used in this Sub part, means the date on which all screening required is to be completed. It includes screening within the government and the donation screening period.

“Sensitive Property,” as used in this Sub part, means government property for which the theft, loss, or misplacement could be potentially dangerous to the public health or safety, or which must be subject to exceptional physical security, protection, control, maintenance or accountability, including but not limited to hazardous property, precious metals, arms, ammunition, and explosives and classified property.

“Serviceable or Usable Property,” as used in this Sub part, means property that has a reasonable prospect of use or sale either in its existing form or after minor repairs or alterations.

“Special Test Equipment,” as used in this Sub part, means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including standard or general-purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, real property (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

“Special Tooling,” as used in this Sub part, means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. It does not include material, special test equipment, real property or plant equipment (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.

“Surplus Property,” as used in this Sub part, means contractor inventory not required by any Federal agency.

“Surplus Release Date (SRD),” as used in this Sub part, means the date on which screening of personal property for Federal use is completed and the property is not needed for any Federal use. On that date, property becomes surplus and is eligible for donation.

“Termination Inventory,” as used in this Sub part, means any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. Termination inventory includes Government-furnished Property, but does not include real property or plant equipment, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.

“Unique Item Identifier,” a set of data for assets that is globally unique and unambiguous, ensures data integrity and data quality throughout life, and supports multi-faceted business applications and users.

“Work-in-Process,” as used in this Sub part, means material that has been issued to manufacturing, engineering, design or other services under the contract, and includes undelivered manufactured parts, assemblies, and products, either complete or incomplete.

45.102 - Policy

(a) Government property shall be furnished to contractors only when it is in the government's best interest, primarily, when, as a result of a prospective contractor's written statement asserting its inability to obtain property, the agency head or designee issues a Determination and Finding (see Sub part 1.7). The Determination and Finding shall, at a minimum, state that the contract cannot be fulfilled by any other practical means, or that it is otherwise in the public interest to furnish the property; that private financing was not available, or was determined not advantageous to the government.

(1) Property provided to contractors specifically for purposes of overhaul, maintenance and/or repair is exempt from the Determination and Finding requirement

(b) Agencies shall, if contractors possess government property:

(1) Allow contractors to use industry leading practices to manage government property in their possession; limit the use of separate systems and processes except where:

(i) The contractor has demonstrated an inability to meet industry leading practice. In such cases, the Contracting Officer will seek appropriate adjustment from the contractor.

(ii) When otherwise determined to be in the best interest of the government (e.g., for classified, sensitive property).

(c) Agencies will not customarily require contractors to establish property management systems that are separate and apart from the contractor's own established practice (i.e., those systems used to account for and manage contractow-owned property).

(d) Eliminate to the maximum practical extent any competitive advantage that might arise from using such property; ensure maximum practical reutilization of Contractor Inventory within the government;

(e) Require contractors to use government property already in their possession to the maximum practical extent in performing government contracts;

(f) Charge appropriate rentals when the property is authorized for use on other than a rent-free basis;

(g) Require contractors to review and provide justification for retaining government property not needed for contract performance, and to declare property as excess when no longer needed for contract performance;

45.103 – Analysis of the Contractor’s Property Management System

(a) A systems’ analysis of the contractor’s property management practices shall be performed to ensure compliance with the requirements of Sub part 45.505. The results of these reviews shall form the basis for potential decisions made under 45.102 (b) (1) (i).

(b) The review and approval (where applicable) of a contractor’s property management system shall be accomplished by the agency responsible for contract administration, and shall be binding on all other departments and agencies— based on interagency agreements.

(d) The Contracting Officer or the representative assigned the responsibility as Property Administrator shall assure the contractor’s property management system complies with the government property clauses of the contract.

(c) The Property Administrator shall notify the contractor, in writing, when its property management system does not comply with Sub part 45.5 or other contract requirements, and shall request prompt correction of deficiencies and a schedule for their completion. If the contractor does not correct the deficiencies within a reasonable period of time, the Property Administrator shall:

(1) Notify the contractor, in writing, that failure to take the required corrective actions (within a time specified) will result in the requirement for a separate and unique property management system or systems, requiring formal approval by the government; and may result in additional liability, on the part of the contractor, for loss, damage, destruction of government property. Should it be determined that such systems are required, the Contracting Officer will seek an equitable adjustment from the contractor.

(d) The government may review the contractor’s property management system as frequently as conditions warrant. These reviews may take place at any time during contract performance, upon contract completion or termination, or at any time thereafter during the period the contractor is required to retain such records (see FAR Part 4.7). The contractor shall make all such records and related correspondence available to the government officials.

45.104 -- Government Property Clauses

This section prescribes the principal government property clauses.

(a) The Contracting Officer shall insert the clause at 52.245-1, Government Property (Fixed-Price Contracts), in solicitations and contracts when either Government- furnished or Contractor-acquired Property is contemplated. If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014), the Contracting Officer shall use this clause along with its Alternate I.

(b) The Contracting Officer shall insert the clause at 52.245-2, Government Property (Cost-Reimbursement and Time-and-Material, or Labor-Hour Contracts) when either Government-furnished or Contractor-acquired Property is contemplated.

(c) The Contracting Officer shall insert the clause at 52.245-6, Liability for Government Property (Demolition Services Contracts) (in addition to the clauses prescribed at 37.304), in solicitations and contracts for dismantling, demolition, or removal of improvements.)

(d) The Contracting Officer shall insert the clause at 52.245-9, Use and Charges, in contracts where rental of government property is contemplated.

Sub part 45.2 – Solicitations

45.201 -- General

(a) When government property is offered for use in a competitive acquisition, solicitations will ordinarily require the contractor to assume all costs related to making the property available for use (such as payment of all transportation or rehabilitation costs.)

(b) The solicitation shall describe the evaluation procedures to be followed, including rental charges or equivalents and other costs or savings to be evaluated, and shall require all offerors to submit with their offers the following information:

(1) A list or description of all government property that the offeror or its subcontractors propose to use on a rent-free basis. The list shall include property offered for use in the solicitation, as well as property already in possession of the offeror and its subcontractors under other contracts.

(2) Identification of the contract or other instrument under which property already in possession of the offeror and/or its subcontractors is held, and authorization for its use from the Contracting Officer having cognizance of the property.

(3) The dates during which the property will be available for use (including the first, last, and all intervening months) and, for any property that will be used concurrently in performing two or more contracts, the amounts of the respective uses in sufficient detail to support proration of rent.

(4) The amount of rent that would otherwise be charged.

(c) Solicitations shall provide that using government property (other than as described and permitted in the solicitation) will be authorized under the contract only if approved by the Contracting Officer, and either rent calculated in accordance with the clause at 52.245-9, Use and Charges, is charged, or the contract price is reduced by an equivalent amount.

(d) The Contracting Officer shall award contracts based upon the best value of products and services necessary to meet customer's needs. The Contracting Officer shall consider the potential unfair competitive advantage that may result from the contractor possessing government property. This shall be done by:

(1) adjusting the offers of those contractors by applying, for evaluation purposes only, a rental equivalent evaluation factor or,

(2) by charging the contractor rent for using the property, when adjusting offers is not practical.

(e) In evaluating offers, the Contracting Officer shall also consider any costs or savings to the government related to providing such property, regardless of any competitive advantage that may result.

Sub part 45.3 – Authorizing the Use and/or Rental of Government Property

45.301 -- Scope of Sub part

This Sub part prescribes policies and procedures for contractor use and rental of government property.

45.302 -- Authorizing the Use of Government Property

(a) Unless otherwise provided, the Government-furnished Property shall be used only for performing this contract. Government property in the possession of contractors or subcontractors shall be used to the greatest possible extent, provided that a competitive advantage is not conferred on the contractor or its subcontractors. Unless the solicitation provides otherwise, prior approval of the Contracting Officer is required.

(b) When, after contract award, a contractor requests the use of government-owned property, the Contracting Officer shall obtain a fair rental (see 52.245-9) or other adequate consideration, if use is authorized. The value of the items, if known, and any amount included for them in the contract price shall be considered.

45.303 -- Rent-Free Use

(a) Rental charges do not apply to the following government property:

(1) That which is located in government-owned, contractor-operated plants operated on a cost-plus-fee basis.

(2) That which is left in place or installed on contractor-owned property for mobilization or future government production purposes; however, rental charges shall apply to that portion of property or its capacity used or authorized for use.

(b) The Contracting Officer cognizant of the government property may authorize the rent-free use of property in the possession of nonprofit organizations when used for research, development, or educational work and:

- (1) The use of the property is in the national interest;
- (2) The property will not be used for the direct benefit of a profit-making organization; and
- (3) The government receives some direct benefit (such as rights to use the results of the work without charge) from its use. At a minimum, the contractor shall furnish a report on the work for which the property was provided.

(c) If the Contracting Officer has obtained adequate price or other consideration, government property may also be used rent-free under:

- (1) Prime contracts that specifically authorize such use without charge; and
- (2) Subcontracts of any tier, if the Contracting Officer awarding the prime contract has specifically authorized rent-free use by the subcontractor.

45.304 -- Transferring Accountability

(a) Government property shall be transferred (from one contract to another) only when firm requirements exist under the gaining contract. Such transfers also require the Determination and Findings as prescribed in Sub part 45.102, and shall be documented by modifications to both gaining and losing contracts. Once transferred, all property shall be considered “Government-furnished Property” to the gaining contract.

45.305 -- Contracts with Foreign Governments or International Organizations

Requests by, or for the benefit of, foreign governments or international organizations to use government property shall be processed in accordance with agency procedures.

45.306 -- Use of Government Property on Independent Research and Development Programs

(a) The Contracting Officer may authorize a contractor to use the property on a rent free basis on an independent research and development (IR&D) program, where:

- (1) Such use will not conflict with the primary use of the property or enable the contractor to retain property that could otherwise be released;
- (2) The contractor agrees not to include as a charge against any government contract the rental value of the property used on its IR&D program; and

(3) A rental charge for the portion of the contractor's IR&D program cost allocated to commercial work, computed in accordance with 45.203, is deducted from any agreed-upon government share of the contractor's IR&D costs.

45.4 -- Non-Government Use of Government Property

45.401 Requirements for authorization and dollar thresholds for non-government use of specific types of plant equipment shall be set at the agency level. The following general policies and requirements shall be used by agencies in supplementing this section:

- (a) The Contracting Officer's advance written approval shall be required for any non-government use of active plant equipment. Before authorizing non-government use exceeding 25 percent, the Contracting Officer shall obtain approval of the head (or designee) of the agency that awarded the contract to which the property is accountable.
- (b) The approvals under this section may be granted only when in the government's interest. For example, to keep the equipment in a high state of operational readiness through regular use; because substantial savings to the government would accrue through overhead cost-sharing and receipt of rental; to avoid an inequity to a contractor who is required by the government to retain the equipment in place; in commercial sales for foreign military use.
- (c) If the contractor's request for non-government use in excess of 25 percent is approved, the Contracting Officer may require the contractor to insure the property against loss or damage. Contracts may be modified to require such insurance.
- (d) Charge an appropriate rental when non-governmental use is authorized.

Sub part 45.5 -- Management of Government Property in the Possession of Contractors

45.500 -- Scope of Sub part

This Sub part prescribes contractor's requirements for managing government-owned property in their possession (including subcontractors). It applies to contractors organized for profit and, except as otherwise noted, to non-profit organizations. In order for the special requirements pertaining to nonprofit organizations to apply, the contract must identify the contractor as a nonprofit organization. If there is any inconsistency between this Sub part and the terms of the contract under which the government property is provided, then the terms of the contract shall govern.

45.501 -- Contractor Responsibility

(a) Consistent with the terms of the contract, the contractor shall establish and maintain property records for all government property acquired, or otherwise obtained for the government, throughout an item's life-cycle—from initial acquisition and receipt, through stewardship and custody (i.e., controlling, protecting, preserving, and maintaining), until formally relieved of responsibility by authorized means, including disposition, or via a completed evaluation and investigation for lost, damaged, or destroyed property. This includes government property in the possession or control of a subcontractor.

(b) The contractor will manage (i.e., control, use, preserve, protect, repair and maintain) government-owned property in accordance with industry leading property management practices. Consistent with such practices are the following minimum property record data elements, which shall be adopted by the contractor for use in managing government-owned property.

- (1) The name, description, model number, and National Stock Number.
- (2) Quantity received (or fabricated), issued, and on hand.
- (3) Unique-item identifier, unit price, and if applicable, unit of measure.
- (4) Indicator as government-owned.
- (5) Contract number or equivalent code designation.
- (6) Location.
- (7) Disposition.
- (8) Posting reference and date of transaction.

(c) The contractor's property management system must be able to provide a complete, current, auditable record of all transactions. All records shall be readily accessible to authorized government personnel, and shall be safeguarded from tampering or destruction. Contractor records are created and maintained within the context of property stewardship, and shall not be construed as substituting for the government's fiduciary responsibilities or requirements.

(d) The contractor shall be responsible for the management of government property under this Sub part upon:

- (1) Delivery of Government-furnished Property into its custody or control;
- (2) Delivery, when property is purchased by the contractor for the government (this requirement does not alter or modify contractual requirements relating to passage of title);

- (3) Approval of its claim for reimbursement by the government or upon issuance for use in contract performance, whichever is earlier, of property withdrawn from contractor-owned stores and charged directly to the contract; or
- (4) Acceptance of title by the government when title is acquired pursuant to specific contract clauses or as a result of change orders or contract termination.
- (5) Property to which the government has acquired a lien or title solely as a result of advance, progress, or partial payments is not subject to the requirements of this Sub part.
- (e) The contractor shall require its subcontractors with government property under the prime contract to comply with the requirements of this Sub part. Procedures for assuring subcontractor compliance shall be included in the contractor's property management system. In cases where the Property Administrator assigned to the contract has requested supporting property administration from another contract administration office, the contractor may accept the results of the supporting Property Administrator's system's analysis (instead of performing duplicative actions to assure the subcontractor's compliance.)
- (f) Should it be determined that the contractor's property management practices are inadequate, or present an undue risk to the government, the Contracting Officer shall request the contractor prepare and submit formal procedures for a property management system. The Property Administrator shall review and approve such procedures in accordance with agency instructions. If the Property Administrator finds any portion of these procedures to be inadequate, the contractor must take any necessary corrective action before the system can be approved. If the contractor and Property Administrator cannot agree on the adequacy of management and/or the necessary corrective action(s), the matter shall be referred to the Contracting Officer.
- (g) When government property is disclosed to be in the possession or control of the contractor but not provided under any contract, the contractor shall promptly:
- (1) Record such property according to the established property management procedure; and
 - (2) Furnish to the Property Administrator the facts and circumstances pertaining to its receipt and a statement as to whether there is a need for its retention.
- (h) The contractor shall promptly declare as excess all government property in excess of the amounts needed to complete full performance under the contracts providing it or authorizing its use (see Sub part 45.6).

(i) When unrecorded government property is found, both the cause of the discrepancy and actions taken or needed, if any, to prevent recurrence shall be determined and reported to the Property Administrator.

(j) Government property must be marked/labeled as government owned; and removed at the time of disposal.

45.502-1 -- Discrepancies Incident to Shipment

(a) Government-furnished Property. If overages, shortages, or damages are discovered upon receipt of Government-furnished Property, the contractor shall provide a statement of the condition and apparent causes to the Property Administrator and to other activities specified in the approved property management system. Only that quantity of property actually received will be recorded on the contractor's records.

(b) Contractor-acquired Property. The contractor shall take all actions necessary in adjusting overages, shortages, or damages in shipment of Contractor-acquired Property from a vendor or supplier; however, when the shipment has moved by government bill of lading and carrier liability is indicated, the contractor shall report the discrepancy in accordance with paragraph (a) above.

45.503 -- Contractor Liability

(a) Subject to the terms of the contract and the circumstances surrounding the particular case, the contractor may be liable for shortages, loss, damage, destruction or unreasonable consumption (i.e., when the use of government property unreasonably exceeds the allowances provided for by the contract, the bill of material, or other appropriate criteria.)

(1) Generally, government contracts do not hold contractors liable for loss, damage, destruction, or unreasonable consumption of government property under negotiated fixed-contracts (for which the contract price is not based upon an exception at 15.403-1) and cost-reimbursement contracts; however, when justified by the circumstances, the contract may require the contractor to assume greater liability.

(2) A prime contractor that provides government property to a subcontractor shall not be relieved of any responsibility to the government it may have under the terms of the prime contract.

(b) Subcontractors are liable for loss of or damage to government-property furnished through their prime contractor. The prime contractor may, however, after obtaining the Contracting Officer's consent, reduce the subcontractor's liability. Before consenting to a clause that reduces the subcontractor's liability, the Contracting Officer should ensure that the government's interests are sufficiently protected.

(c) In the event the government provides property directly to a subcontractor, the terms of 45.103 (b) shall apply to the subcontractors.

(d) The contractor shall investigate and report to the Property Administrator all cases of loss, damage, or destruction of government property in its possession or control, including its subcontractors, as soon as the facts become known or when requested by the Property Administrator. The contractor shall furnish all necessary data to substantiate any request for relief from responsibility.

45.505 -- Relief from Responsibility

(a) Unless the contract or Contracting Officer provides otherwise, the contractor shall be relieved of responsibility for government property by:

(1) Reasonable and proper consumption of property in the performance of the contract as determined by the Property Administrator;

(2) Retention by the contractor, with the approval of the Plant Clearance Officer, of property for which the government has received consideration;

(3) Authorized sale of property, provided the proceeds are received by or credited to the government;

(4) Shipment from the contractor's plant, under government instructions, except when shipment is to a subcontractor or other location of the contractor; or

(5) Otherwise determined by the Contracting Officer

(b) Nonprofit organizations are relieved of responsibility for government property when title to the property is conveyed to the contractor (see 35.014).

45.506 -- Segregation of Government Property

Government property will be physically or accountably segregated from contractor-owned property, as approved by the Property Administrator.

45.507 -- Physical Inventories

During contract performance, the type and scope of physical inventory shall be determined by the contractor, and approved by the Property Administrator.

45.507-1 – Physical Inventory Upon Termination or Completion

(a) General. Immediately upon termination or completion of a contract, the contractor shall perform and cause each subcontractor to perform a physical inventory of all

government property applicable to the contract, unless the requirement is waived as provided in paragraph (b) of this section.

(b) Exception. The requirement for physical inventory at the completion of a contract may be waived by the Property Administrator when the property is authorized for use on a follow-on contract; provided that:

(1) Experience has established the adequacy of property management and an acceptable degree of inventory discrepancies; and

(2) The contractor provides a statement indicating that record balances have been transferred in lieu of preparing a formal inventory list and that the contractor accepts responsibility and accountability for those balances under the terms of the follow-on contract.

(c) Listings for disposal purposes. (Note: This paragraph applies only to nonprofit organizations.)

(1) Standard items that have been modified may be described on listings for disposal purposes as standard items with a general description of the modification.

(2) Items that have been fabricated, such as test equipment, shall be described in sufficient detail to permit a potential user to determine whether they are of sufficient interest to warrant further inspection.

45.508 -- Reports

When requested by the Property Administrator, the contractor's reports of results of physical inventory shall be prepared on a quantitative and monetary basis, and segregated by categories of property.

52.245 – Government Property Provisions and Clauses

As prescribed in 45.104 (a), insert the following clause:

52.245-1 -- GOVERNMENT PROPERTY (FIXED-PRICE COMPETITIVE CONTRACTS).

The contractor is responsible for managing (i.e., control, use, preserve, protect, repair and maintain) all property furnished or acquired under this contract, and shall comply with Federal Acquisition Regulation (FAR) Sub part 45.5, as in effect on the date of this document.

(a) Government-furnished Property

(1) The government shall deliver to the contractor, for the performance of this contract, the government-furnished property described in the schedule or specifications. The government shall provide related data and information needed for the intended use of the property.

(2) The delivery and/or performance dates for this contract are based upon the expectation that the Government-furnished Property is suitable for use (except for property furnished “as is”) and will be delivered to the contractor at the times stated in the schedule or specifications; or if not so stated, in sufficient time to enable the contractor to meet the contract’s delivery and/or performance dates.

(3) If Government-furnished Property is received by the contractor in a condition not suitable for its intended use, the contractor shall, upon receipt of the property, notify the Contracting Officer. The Contracting Officer shall advise the contractor on a course of action, to include repairing, replacing, modifying, returning, or otherwise disposing of the property, at government expense. Upon completion of the required action(s) the Contracting Officer shall make an equitable adjustment to the contract, as provided for in paragraph (e) of this clause.

(4) If Government-furnished Property is not delivered to the contractor within the required time, the Contracting Officer shall, upon the contractor’s timely request, make an equitable adjustment in accordance with paragraph (e) of this clause.

(5) The Contracting Officer may:

(i) increase or decrease the amount of Government-furnished Property provided, or to be provided under this contract;

(ii) substitute other Government-furnished Property for the property to be provided by the government or to be acquired by the contractor for the government under this contract.

(iii) withdraw authority to use property.

(6) The government shall retain title to all Government-furnished Property; title shall not be affected by incorporation into, or attachment, to any property not owned by the government, nor shall Government-furnished Property become a fixture or lose its identity as personal property by being attached to any real property.

(7) Unless otherwise provided for in this contract, the contractor shall not improve or make structural alterations to Government-furnished Real Property.

(b) Contractor-Acquired Property

(1) Title to property—both tangible and intangible—shall vest as set forth in the contract.

(i) If determined that title shall vest in the government, the decision shall be documented as a contract line item, sub line item, or informational sub line item. The government’s acquisition cost for items delivered shall be the unit price identified in the contract at the time of delivery.

(ii) If determined that title shall vest in the contractor, the contractor agrees that no charge will be made to the government for any depreciation, amortization, or use under any existing or future government contract or sub contract there under.

(c) Property Management

(1) The contractor shall initiate and maintain the processes, systems, records, and methodologies necessary for managing government property in its possession, to include subcontractors and other secondary locations, consistent with industry leading practice.

(2) Should it be determined that the contractor’s property management practices are not suitable, or present an undue risk to the government, the Contracting Officer shall request the contractor prepare and submit formal procedures for a property management system. The Property Administrator shall review and approve such procedures in accordance with agency instructions.

(3) The government and its designees shall have access at all reasonable times to the premises in which any government property is located, for the purpose of inspecting the government property and/or reviewing/evaluating the contractor’s property management practices.

(d) Risk of Loss, Damage, and Destruction

(1) In the event of loss, damage, or destruction of government property, the contractor shall provide to the Contracting Officer a written statement attesting to:

- (i) The lost, destroyed, or damaged government property;
- (ii) The time and origin of the loss, destruction, or damage;
- (iii) All known interests in commingled property of which the government property is a part; and
- (iv) The insurance, if any, covering any part of, or interest in, such commingled property.

(2) The contractor shall take all reasonable actions necessary to protect the government property from further damage, separate the damaged and undamaged government property, and shall place all the affected government property in the best possible order, and furnish

(3) The contractor shall repair, renovate, and take such other action with respect to damaged government property as the Contracting Officer directs. If the government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the contractor's) that separation is impractical, the contractor may, with the approval of (and subject to any conditions imposed by the Contracting Officer), sell such property for the account of the government. Such sales may be made in order to minimize the loss to the government, permit the resumption of business, or to accomplish a similar purpose. The contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph in accordance with paragraph (e) of this clause; however, the government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the contractor's liability under this paragraph when making such equitable adjustments.

(4) In the event the contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, government property, the contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged government property or shall otherwise credit the proceeds to or equitably reimburse the government, as directed by the Contracting Officer.

(5) The contractor shall do nothing to prejudice the government's rights to recover against third parties for any loss or destruction of, or damage to, government property. Upon the request of the Contracting Officer, the contractor shall, at the government's expense, furnish to the government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, government property, the contractor shall enforce for the benefit of the government the liability of the subcontractor for such loss, destruction, or damage.

(6) Unless otherwise provided for in this contract, the contractor shall not be liable for loss, damage, or destruction to the Government property furnished or acquired under this contract, except where

(i) the risk is expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) the risk is, in fact, covered by insurance or the contractor is otherwise reimbursed (to the extent of such insurance or reimbursement), or

(iii) the loss, damage or destruction is the result of willful misconduct or lack of good faith on the part of the contractor's managerial personnel (managerial personnel, in this case, means the contractor's officers, managers, superintendents, or equivalent representatives who have supervision of direction of all or substantially all of the contractor's business; all or substantially all of the contractor's operation at any one plant or separate location; or a separate and complete major industrial operation.)

(iv) the loss, damage or destruction occurred due to the contractor's failure to initiate and maintain the processes, systems, records, and methodologies necessary for compliance under Sub part 45.501. Unless the contractor can establish through clear and convincing evidence, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of contractor's managerial personnel.

(7) The contractor is not responsible for reasonable wear and tear or for property properly consumed in performing this contract.

(e) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. The right to an equitable adjustment shall be the contractor's exclusive remedy. The government shall not be liable to suit for breach of contract for:

(1) Any delay in delivery of Government-furnished Property;

(2) Delivery of Government-furnished Property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished Property; or

(4) Failure to repair or replace government property for which the government is responsible.

(f) Final Accounting and Disposition of Government Property.

(1) Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the contractor shall submit, in a form acceptable to the Contracting Officer, Inventory Schedules that report all items of excess government property. The contractor shall dispose of the government property as may be directed or authorized by the Contracting Officer (See Sub part 45.6.)

(2) The net proceeds of any such disposal shall be credited to the contract price or otherwise paid to the government as the Contracting Officer directs.

(g) Abandonment and Restoration of Contractor's Premises. Unless otherwise provided herein, the government

(1) May abandon any government property in place, at which time all obligations of the government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion); however, if the Government-furnished Property (listed in the schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other government property is substituted, then the equitable adjustment under paragraph (e) of this clause may properly include restoration or rehabilitation costs.

End of Clause

Note (1) Clauses 52.245-6 through 52.245-16 have not be revised, but will be renumbered consistent with this Rule.

(2) Clauses 52-245.17, 18, and 19 are deleted in their entirety.

As prescribed in 45.104(b), insert the following:

52.245-2 -- GOVERNMENT PROPERTY (FIXED PRICE NEGOTIATED, COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS)

The contractor shall be responsible for managing (i.e., control, use, preserve, protect, repair and maintain) all property furnished or acquired under this contract, and shall comply with Federal Acquisition Regulation (FAR) Sub part 45.5, as in effect on the date of this document.

(a) Government-furnished Property

(1) The government shall deliver to the contractor, for the performance of this contract, the Government-furnished Property described in the schedule or specifications. The government shall provide related data and information needed for the intended use of the property.

(2) The delivery and/or performance dates for this contract are based upon the expectation that the Government-furnished Property is suitable for use and will be delivered to the contractor at the times stated in the schedule or specifications, or if not so stated, in sufficient time to enable the contractor to meet the contract's delivery and/or performance dates.

(3) If Government-furnished Property is received by the contractor in a condition not suitable for its intended use, the contractor shall, upon receipt of the property, notify the Contracting Officer. The Contracting Officer shall advise the contractor on a course of action, to include repairing, replacing, modifying, returning, or otherwise disposing of the property, at government expense. Upon completion of the required action(s) the Contracting Officer shall make an equitable adjustment to the contract, as provided for in paragraph (e) of this clause.

(4) If government-furnished property is not delivered to the contractor within the required time, the Contracting Officer shall, upon the contractor's timely request, make an equitable adjustment in accordance with paragraph (e) of this clause.

(5) The Contracting Officer may:

(i) increase or decrease the amount of Government-furnished Property provided, or to be provided under this contract;

(ii) substitute other Government-furnished Property for the property to be provided by the government or to be acquired by the contractor for the government under this contract.

(iii) withdraw authority to use property.

The contractor shall promptly take such action as the Contracting Officer may direct.

(6) The government shall retain title to all Government-furnished Property; title shall not be affected by incorporation into, or attachment, to any property not owned by the government, nor shall Government-furnished Property become a fixture or lose its identity as personal property by being attached to any real property.

(7) Unless otherwise provided for in this contract, the contractor shall not improve or make structural alterations to Government-furnished Real Property.

(b) Contractor-Acquired Property

(1) Title to property—both tangible and intangible—purchased by the contractor, for which the contractor is entitled to be reimbursed as a direct item of cost, shall pass to and vest in the government upon the vendor's delivery of such property.

(2) Title to all other property, the costs of which are reimbursable to the contractor, shall pass to and vest in the government upon—

(i) Issuance of the property for use in contract performance

(ii) Commencement of processing of the property for use in contract performance; or

(iii) Reimbursement by the government for the cost of the property, whichever occurs first.

(3) The government's acquisition cost for items delivered shall be the unit price identified in the contract at the time of delivery.

(4) If determined that title shall vest in the contractor, the contractor agrees that no charge will be made to the government for any depreciation, amortization, or use under any existing or future government contract or subcontract there under.

(c) Property Management

(1) The contractor shall initiate and maintain the processes, systems, records, and methodologies necessary for managing government property in its possession, to include subcontractors and other secondary locations.

(2) Should it be determined that the contractor's property management practices are not suitable, or present an undue risk to the government, the Contracting Officer shall request the contractor prepare and submit formal procedures for a property management system. The Property Administrator shall review and approve such procedures in accordance with agency instructions.

(3) The government and its designees shall have access at all reasonable times to the premises in which any government property is located, for the purpose of inspecting the government property and/or reviewing/evaluating the contractor's property management practices.

(d) Risk of Loss, Damage, and Destruction

(1) In the event of loss, damage, or destruction of government property, the contractor shall provide to the Contracting Officer a written statement attesting to:

- (i) the lost, destroyed, or damaged government property;
- (ii) the time and origin of the loss, destruction, or damage;
- (iii) all known interests in commingled property of which the government property is a part; and
- (iv) insurance, if any, covering any part of, or interest in, such commingled property.

(2) The contractor shall take all reasonable actions necessary to protect the government property from further damage, separate the damaged and undamaged government property, and place all the affected government property in the best possible order.

(3) The contractor shall repair, renovate, and take such other action with respect to damaged government property as the Contracting Officer directs. If the government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the contractor's) that separation is impractical, the contractor may, with the approval of (and subject to any conditions imposed by the Contracting Officer), sell such property for the account of the government. Such sales may be made in order to minimize the loss to the government, permit the resumption of business, or to accomplish a similar purpose. The contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph in accordance with paragraph (e) of this clause; however, the government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the contractor's liability under this paragraph when making such equitable adjustments.

(4) In the event the contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, government property, the contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged government property or shall otherwise credit the proceeds to or equitably reimburse the government, as directed by the Contracting Officer.

(5) The contractor shall do nothing to prejudice the government's rights to recover against third parties for any loss or destruction of, or damage to, government property. Upon the request of the Contracting Officer, the contractor shall, at the government's expense, furnish to the government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, government property, the contractor shall enforce for the benefit of the government the liability of the subcontractor for such loss, destruction, or damage.

(6) Unless otherwise provided for in this contract, the contractor shall not be liable for loss, damage, or destruction to the Government property furnished or acquired under this contract, except where

(i) the risk is expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) the risk is, in fact, covered by insurance or the contractor is otherwise reimbursed (to the extent of such insurance or reimbursement), or

(iii) the loss, damage or destruction is the result of willful misconduct or lack of good faith on the part of the contractor's managerial personnel (managerial personnel, in this case, means the contractor's officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the contractor's business; all or substantially all of the contractor's operation at any one plant or separate location; or a separate and complete major industrial operation.)

(iv) the loss, damage or destruction occurred due to the contractor's failure to initiate and maintain the processes, systems, records, and methodologies necessary for compliance under Sub part 45.501. Unless the contractor can otherwise establish through clear and convincing evidence, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of contractor's managerial personnel.

(7) The contractor is not responsible for reasonable wear and tear or for property properly consumed in performing this contract.

(e) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the

Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the government. The right to an equitable adjustment shall be the contractor's exclusive remedy. The government shall not be liable to suit for breach of contract for:

- (1) Any delay in delivery of Government-furnished Property;
 - (2) Delivery of Government-furnished Property in a condition not suitable for its intended use;
 - (3) A decrease in or substitution of Government-furnished Property; or
 - (4) Failure to repair or replace government property for which the government is responsible.
- (f) Final accounting and disposition of government property.

- (1) Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the contractor shall submit, in a form acceptable to the Contracting Officer, Inventory Schedules that report all items of excess government property. The contractor shall dispose of the government property as may be directed or authorized by the Contracting Officer.

- (2) The net proceeds of any such disposal shall be credited to the contract price or otherwise paid to the government as the Contracting Officer directs (See Sub part 45.6.)

(g) Abandonment and restoration of contractor's premises. Unless otherwise provided herein, the government

- (1) May abandon any government property in place, at which time all obligations of the government regarding such abandoned property shall cease; and

- (2) Has no obligation to restore or rehabilitate the contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion); however, if the Government-furnished Property (listed in the schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other government property is substituted, then the equitable adjustment under paragraph (e) of this clause may properly include restoration or rehabilitation costs.