

45.102

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, facilities (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 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, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.

(b) Additional definitions also applying throughout this part appear in those subparts where the terms are most frequently used.

[48 FR 42392, Sept. 19, 1983, as amended at 51 FR 19716, May 30, 1986; 51 FR 33270, Sept. 19, 1986; 53 FR 27468, July 20, 1988]

45.102 Policy.

Contractors are ordinarily required to furnish all property necessary to perform Government contracts. However, if contractors possess Government property, agencies shall—

(a) Eliminate to the maximum practical extent any competitive advantage that might arise from using such property;

(b) Require contractors to use Government property to the maximum practical extent in performing Government contracts;

(c) Permit the property to be used only when authorized;

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

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(e) Require contractors to be responsible and accountable for, and keep the Government's official records of Government property in their possession or control (but see 45.105);

(f) Require contractors to review and provide justification for retaining Government property not currently in use; and

(g) Ensure maximum practical reutilization of contractor inventory (see 45.601) within the Government.

45.103 Responsibility and liability for Government property.

(a) Contractors are responsible and liable for Government property in their possession, unless otherwise provided by the contract.

(b) Generally, Government contracts do not hold contractors liable for loss of or damage to Government property when the property is provided under—

(1) Negotiated fixed-price contracts for which the contract price is not based upon an exception at 15.403-1;

(2) Cost-reimbursement contracts;

(3) Facilities contracts; or

(4) Negotiated or sealed bid service contracts performed on a Government installation where the contracting officer determines that the contractor has little direct control over the Government property because it is located on a Government installation and is subject to accessibility by personnel other than the contractor's employees and that by placing the risk on the contractor, the cost of the contract would be substantially increased.

(c) When justified by the circumstances, the contract may require the contractor to assume greater liability for loss of or damage to Government property than that contemplated by the Government property clauses or the clause at 52.245-8, Liability for the Facilities. For example, this may be the case when the contractor is using Government property primarily for commercial work rather than Government work.

(d) If the Government provides Government property directly to a subcontractor, the terms of paragraph (b) above shall apply to the subcontractor.

(e) Subcontractors are liable for loss of or damage to Government property furnished through a prime contractor.

However, if the prime contract is of a type listed in subparagraph (b)(1) or (2) above, the prime contractor may, after obtaining the contracting officer's consent, reduce the subcontractor's liability by including in the subcontract a clause similar to paragraph (g), Limited risk of loss, as provided in Alternate I of the clause at 52.245-2, Government Property (Fixed-Price Contracts), (for fixed-price contracts) or similar to the same paragraph of the clause at 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (for cost-reimbursement contracts). Before consenting to a clause that reduces the subcontractor's liability, the contracting officer should ensure that the Government's interests are sufficiently protected.

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

[48 FR 42392, Sept. 19, 1983, as amended at 53 FR 663, Jan. 11, 1988; 60 FR 48218, Sept. 18, 1995; 62 FR 51271, Sept. 30, 1997]

45.104 Review and correction of contractors' property control systems.

(a) The review and approval of a contractor's property control system shall be accomplished by the agency responsible for contract administration at a contractor's plant or installation. The review and approval of a contractor's property control system by one agency shall be binding on all other departments and agencies based on inter-agency agreements.

(b) The contracting officer or the representative assigned the responsibility as property administrator shall review contractors' property control systems to assure compliance with the Government property clauses of the contract.

(c) The property administrator shall notify the contractor in writing when its property control system does not comply with subpart 45.5 or other contract requirements and shall request prompt correction of deficiencies. If the contractor does not correct the deficiencies within a reasonable period, the property administrator shall request action by the contracting officer

administering the contract. The contracting officer shall—

(1) Notify the contractor in writing of any required corrections and establish a schedule for completion of actions;

(2) Caution the contractor that failure to take the required corrective actions within the time specified will result in withholding or withdrawing system approval; and

(3) Advise the contractor that its liability for loss of or damage to Government property may increase if approval is withheld or withdrawn.

45.105 Records of Government property.

(a) Contractor records of Government property established and maintained under the terms of the contract are the Government's official Government property records. Duplicate official records shall not be furnished to or maintained by Government personnel, except as provided in paragraph (b) below.

(b) Contracts may provide for the contracting office to maintain the Government's official Government property records when the contracting office retains contract administration and Government property is furnished to a contractor—(1) for repair or servicing and return to the shipping organization, (2) for use on a Government installation, (3) under a local support service contract, (4) under a contract with a short performance period, or (5) when otherwise determined by the contracting officer to be in the Government's interest.

[48 FR 42392, Sept. 19, 1983, as amended at 51 FR 2666, Jan. 17, 1986; 57 FR 60588, Dec. 21, 1992]

45.106 Government property clauses.

This section prescribes the principal Government property clauses. Other clauses pertaining to Government property are prescribed in subpart 45.3.

(a) The contracting officer shall insert the clause at 52.245-1, Property Records, in solicitations and contracts when the conditions in 45.105(b) exist and the Government maintains the Government's official Government property records.