



OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

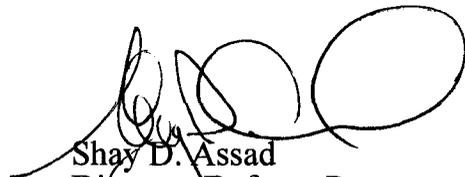
OCT 26 2007

MEMORANDUM FOR DIRECTORS OF THE DEFENSE AGENCIES
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION AND LOGISTICS MANAGEMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR
FORCE (CONTRACTING)
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Implementation of the New FAR Government Property Rule
(FAR Case 2004-025)

The Federal Acquisition Regulation (FAR) Final Rule for Government Property (FAR Case 2004-025), Part 45 and its associated clauses were published on May 15, 2007 and became effective on June 14, 2007. The attached guidance was prepared to assist Contracting Officers in implementing the new FAR Government Property Rule via a block change should Contracting Officers decide it is in the best interest of the government to do so. Additional information is also available at FAR 1.108 (d), "Application of FAR changes to solicitations and contracts".

If you have any questions or need additional information, please contact Mr. Michael Canales at (703) 695-8571 or by e-mail: michael.canales@osd.mil.


Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Attachments:
As stated.



Block Changes under FAR CASE 2004-025

Background

FAR Case 2004-025 amends the Federal Acquisition Regulation, Part 45, Government Property, and associated language and clauses to implement a policy that fosters efficiency, flexibility, innovation and creativity while continuing to protect the Government's interests. Operations under this new policy will be beneficial to both the Government and Industry.

Discussion

FAR 1.108 (d)--Application of FAR changes to solicitations and contracts states that, unless otherwise specified:

- (1) FAR changes apply to solicitations issued on or after the effective date of the change;
- (2) Contracting officers may, at their discretion, include the FAR changes in solicitations issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date; and
- (3) Contracting officers may, at their discretion, include the changes in any existing contract with appropriate consideration.

Block changes may be executed for existing contracts by incorporating the new clause at 52.245-1 and deleting the previous clauses 52.245-1 (Property Records); 52.245-2 or 52.242-5 (as appropriate), and as appropriate: 52.245-3 (Identification of Government-Furnished Property); 52.245-4 (Government-Furnished Property [Short Form]; and 52.245-19 (Government Property Furnished) [As Is].

Block changes may be executed except when: (1) the Contracting Officer has withdrawn approval of the contractor's system; (2) pending disputes or litigation are involved; (3) situations where clearly inappropriate, or (4) the Contracting Officer does not believe it is in the best interest of the Government to make the block change.

The following clauses, deleted as a result of the rule, should remain in effect until contract completion or otherwise determined by the contracting officer. Contracting Officers may modify existing contracts on a case-by-case basis, consistent with FAR 1.108(d) (3).

52.245-6 -- Liability for Government Property (Demolition Services Contracts)

52.245-7 -- Government Property (Consolidated Facilities)

52.245-8 -- Liability for the Facilities

52.245-10 -- Government Property (Facilities Acquisition)

52.245-11 -- Government Property (Facilities Use)

52.245-12 -- Contract Purpose (Nonprofit Educational Institutions)

52.245-13 -- Accountable Facilities (Nonprofit Educational Institutions)

52.245-14 -- Use of Government Facilities

52.245-15 -- Transfer of Title to the Facilities

52.245-16 -- Facilities Equipment Modernization.

52.245-17¹ -- Special Tooling

52.245-18 -- Special Test Equipment

Consideration: FAR 1.108 (d) (3) allows Contracting Officers to include the new Clause 52.245-1 in existing contracts with appropriate consideration (monetary or non-monetary).

Consideration may be viewed as the contractor's overall operational and process efficiencies, e.g., consistency with commercial practices, which are inherent in the new rule.

Contract modifications incorporating the new Government Property clause into existing contracts benefits the Government as well, in the form of ease of application and elimination of superfluous, obsolete and conflicting regulatory requirements.

Given the aforementioned benefits, it is permissible for such modifications to be made with no change to contract price or funding. However, it is important for the Contracting Officer to make a reasoned business decision as to whether or not consideration is appropriate based on the specifics of the situation.

¹ DoD is currently using a 1984 deviation to 52.245-17