



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

FEB 12 2010

In reply refer to
DARS Tracking Number: 2010-O0003

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT), DASA(P)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION & LOGISTICS MANAGEMENT),
DASN(A&LM)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Class Deviation 2010-O0003, Responsibility and Liability for Government
Property

Effective immediately, contracting officers shall use the attached deviation from
Federal Acquisition Regulation (FAR) 45.104, Responsibility and liability for
Government property.

This deviation adds fixed-price contracts awarded on the basis of adequate
competition to the list of contract types under which contractors are not held liable for
loss, damage, destruction, or theft of Government property.

This deviation is effective until it is incorporated in the FAR or DFARS, or is
otherwise rescinded. My point of contact for this matter is Ms. Mary Overstreet,
703-602-0311 or mary.overstreet@osd.mil.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

(Deviation text is identified by **[brackets and bold type]**.)

45.104 Responsibility and liability for Government property. [DEVIATION]

(a) Generally, contractors are not held liable for loss, damage, destruction, or theft of Government property under the following types of contracts:

- (1) Cost-reimbursement contracts.
- (2) Time-and-material contracts.
- (3) Labor-hour contracts.
- (4) Fixed-price contracts awarded on the basis of submission of cost or pricing data.
- [(5) Fixed-price contracts awarded on the basis of adequate competition.]**

(b) The contracting officer may revoke the Government's assumption of risk when the property administrator determines that the contractor's property management practices are inadequate and/or present an undue risk to the Government.

(c) 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.