

## DRAFT – FOR DISCUSSION PURPOSES ONLY

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FAR CASE 2004-025 -- Government Contract Property

### Introduction

The following proposed rule revises policies for the management of Government-owned property used by private industry in the performance of Government contracts. The proposed rule builds on current and earlier efforts by Federal agencies and interagency groups and creates a Federal acquisition policy environment that fosters efficiency, flexibility, innovation and creativity as provided in FAR Part 1.102, Statement of the Guiding Principles for the Acquisition System.

The concepts contained within this proposed rule were presented and discussed at a public meeting held on April 13, 2004. Separate discussions and briefings were held with defense industry representatives; industry and trade associations; subject matter experts; and Federal civilian agencies via the General Services Administration (GSA) sponsored Property Management Executive Council;<sup>1</sup> the draft proposed rule was subsequently made available to all interested parties. Relevant comments were addressed and/or incorporated, as appropriate.

### Background

The General Accounting Office (GAO) and other audit organizations have repeatedly cited Federal agencies for poor accountability, visibility, and financial reporting of property being used by contractors; specifically, that a lack of adequate policies and processes impairs the Government's ability to:

- (1) know the quantity, location, condition, and value of its physical assets;
- (2) ensure that its assets are safeguarded from physical deterioration, theft, loss, or mismanagement;
- (3) prevent unnecessary storage and maintenance costs or redundant purchases 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 to make informed decisions about future funding, oversight of Federal programs, and operational readiness.<sup>2</sup> As a result, the Congress, through enabling legislation has demanded greater fiscal accountability for agencies' physical assets.<sup>3</sup> These mandates make this proposed rule all

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<sup>1</sup> PMEC members include: GSA, DoD, Dept. of Health and Human Services, Dept. of Veterans' Affairs, NASA, Dept. of Energy

<sup>2</sup> GAO-02-447G, Executive Guide, Best Practices in Achieving Consistent, Accurate Physical Counts of Inventory and Related Property, March 2002, page 6.

<sup>3</sup> 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

the more crucial as the current Federal Acquisition Regulation (FAR) related to property management expressly requires that the contractor’s property control records constitute the Government’s “official records.” This requirement literally prohibits the type of record-keeping requirements necessary to meet Congressional objectives, or to meet the Government’s fiduciary responsibilities.

Much of the current FAR language related to property management is well over fifty years old, and contains inconsistent, often conflicting guidance that is at odds with modern materials management technology such as Enterprise Resource Planning, relational databases, unique item identification, radio frequency tags, bar-coding, and the general trend toward commercialization of components and equipment contained within weapons systems.

In the late 1990s, the DoD initiated a complete rewrite of the FAR, Sub part 45 (Government Property). Beyond attempting to address long-standing property management issues, that effort reflected the general consensus that adoption of more typically commercial business practices would not only attract more commercial firms to the marketplace but would also result in significant savings of acquisition dollars.

For many reasons, the proposed rules were not implemented; the legalities and complexities that characterize Government property management drew out conflicts among the interests of the affected Government and industry parties, resulting in cancellation of the project. As a result, outmoded 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 also for other Federal agencies.

Still, that effort was not without benefit as both Government and industry developed a much greater understanding of the complexities involved in property management. Indeed, many of those “lessons learned” are embedded within this new proposed rule.

### **Highlights/Benefits**

This proposed rule specifies desired “outcomes” and allows contractors to determine how best to achieve those outcomes—an approach consistent with Congressional and Executive branch direction encouraging greater use of performance-based contracting. The rule shifts the focus from *process* to *results* and holds the promise of greater

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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.”

flexibility in dealing with the complexities of property management, thus reducing costs for both Government and industry.<sup>4</sup>

This proposed rule:

- Combines the requirements of FAR Sub part 45.5 and the clauses: 52.245-1, Property Records; 52.245-2, Government Property (Fixed-Price Contracts); 52.245-4, Government-furnished Property [Short Form]; and 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) into a single contract clause.
- Deletes in their entirety the following clauses at: 52.245-3, Identification of Government Property; 52.245-18, Special Test Equipment; and 52.245-19, “As Is”.
- Sanctions the use of consensus standards and industry-leading practices for property management.
- Introduces a new property clause designed for military base and installation-level contracts awarded under the Office of Management and Budget Circular A-76 process.

**The Goals of this Proposed Rule are to:**

Ensure consistency with the mission-oriented goals of the acquisition community. Integrate the principles of FAR, Subpart 1.102, and introduce commercial standards and best practices into the property management process to the maximum extent possible (e.g., ASTM E2279-3, Standard Practice for Establishing the Guiding Principles of Property Management).

Provide a framework by which performance outcomes can provide both the necessary conformity—and the elasticity needed to gravitate toward best value for the Government;

Balance the use of prescriptive regulations that provide consistent outputs with principle-based standards that allow for lean approaches and greater flexibility, efficiency, best value and customer satisfaction.

Shift the management of property in the possession of contractors from a prescriptive, regulation-based system to a process-oriented framework where empowered professionals make decisions by applying guiding principles, risk management and sound business judgment.

Update and clarify terminology; eliminate, where possible, the conflicting terms and treatment between property management and financial accounting. Establish a solid

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<sup>4</sup> GAO-03-674R, Contract Management, May 22, 2003

foundation supporting efficient overall lifecycle asset management, including the capture and reporting of accounting data.

Leverage existing resources for property management (e.g., policies, processes, systems) and begin working toward an integrated data environment enabled through unique item identification.

Limit, to the extent practicable, the amount of Government property furnished to contractors performing under Government contracts.

Create a modern, performance-based policy and enable a meaningful regulatory framework for further process improvement.

Allow, encourage, and support the use of a process-oriented, life-cycle approach to value-added property management, using techniques such as Lean and Six Sigma.

Leverage new technology and encourage the use of agreed-upon property management plans and value streams that benefit both contractor and Government by minimizing administrative cost through the elimination of non-value added expenditures.

Maximize continuous improvement and joint problem solving with a focus on performance outcomes and delegation of authority down to the lowest responsible level-- to foster greater efficiency and economy.

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

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR parts 45 and 52**

**FAR Case 2004-025**

**Federal Acquisition Regulation; Property Management**

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

**ACTION: Proposed Rule**

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**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the 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 in order 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, (202) 501-4755 for general information. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, (202) 501-4082. Please cite FAR case 2004-025.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The primary objectives of this rule are 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, ease the administrative burden associated with contract compliance; sanction the use of voluntary consensus standards and industry-leading standards and practices for managing property; cease the long-standing requirement for contractors to develop separate “Government unique” property management systems.

## **B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this proposed 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.*, as the proposal presents straightforward application of industry-leading standards and practices.

## **C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub L. 104-13) does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

## **D. Request for Comments**

The council seeks public comments on this proposed rule and, in addition, seeks public comment on the following additional proposals:

1) eliminate the following clauses related to Government property management: 52.245-17, Special Tooling; and 52.245-6, Liability for Government Property Demolition Services Contracts; 52.245-7, Consolidated Facilities; 52.245-8, Liability for the Facilities; 52.245-10, Facilities Acquisition; and 52.245-11, Facilities Use. The DoD believes these clauses are based on past requirements of (DoD) and may no longer be necessary. The council seeks Government and industry comments, prior to proceeding further.

2) create a new contract property clause designed for military base-operating and installation-level contracts, particularly those awarded under the Office of Management and Budget Circular A-76 process. This new clause is included as a part of the proposed rule.

## **E. Definitions**

The proposed rule includes the following new definitions:

“Best Value,” as used in this clause, means the expected outcome of an action provides the greatest overall benefit; more specifically, when the potential economic and practical benefits of operating in a manner consistent with a set of guidelines outweigh concerns about the loss of predictability, uniformity, and consistency.

“Equipment,” as used in this clause, means an article of personal property that is complete in-and-of itself, and is of a durable nature; a nonexpendable, tangible moveable property needed for the performance of a task or useful in effecting an obligation. For financial accounting purposes, equipment generally has an expected service life of one

year or more, and does not ordinarily lose its identity or become a component part of another article when put into use.

“Property,” as used in this clause, means all property, both real and personal.

“Provide,” as used in this clause, means to furnish existing Government property or to allow the contractor to acquire property for the Government under this contract.

“Unique Federal Property,” as used in this clause, means Government-owned personal property, which may or may not be Government capital property, and which is peculiar to the mission of one agency, e.g., military or space property. Unique Federal Property generally excludes Material, Special Test Equipment, Special Tooling, Real Property and Equipment.

The proposed rule, if adopted, would eliminate the following definitions:

Agency Peculiar Property  
Accessory Item  
Auxiliary Item  
Custodial Records  
Government-furnished Material  
Government Production and Research Property  
Individual Item Record  
Nonprofit Organization  
Salvage  
Stock Record  
Summary Record  
Utility Distribution System  
Work-in-Process

The proposed rule, if adopted, would eliminate the following clauses: 52.245-1, Property Records; 52.245-2, Government Property (Fixed-Price Contracts); 52.245-3, Identification of Government Property; 52.245-4, Government-furnished Property [Short Form]; and 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts), 52.245-18, Special Test Equipment; and 52.245-19, “As Is”.

## **F. ADMINISTRATIVE**

The following additional FAR changes are consistent with the intent of this proposed rule necessary:

1) Delete in its entirety the clause at 52.245-18, Special Test Equipment. This clause requires notification to the Contracting Officer prior to the contractor’s acquisition of Special Test Equipment, an obsolete requirement.

2) Delete Subpart 42.302, paragraph 27 [this paragraph refers to the Special Test Equipment clause, which is being deleted].

3) The paragraph at FAR 45.302-2 -- Facilities Contracts:

*“(c) No fee shall be allowed under a facilities contract. Profit or fee (plus or minus) shall be considered in awarding any related supply or service contract, consistent with the profit guidelines of 15.404-4.”*

This paragraph should be moved to a new paragraph at FAR 15.404 (c)(4)(ii) as follows: *“No fee shall be allowed under a facilities contract; however, profit or fee (plus or minus) shall be considered in awarding any related supply or service contract.”*

4) The paragraph at 45.302-3 -- Other Contracts:

*“No profit or fee shall be allowed on the cost of the facilities when purchased for the account of the Government under other than a facilities contract. General purpose components of special tooling or special test equipment are not facilities.”*

This paragraph should be moved to a new paragraph at FAR 15.404 (c)(4)(iii)

Rationale: These changes would consolidate “like” subject matter under their respective sections.

**PART 45 – Government Property****45.000 Scope of Part.**

This part prescribes policies and procedures for providing Government property to contractors, for contractor use and management of Government property, and for the subsequent reporting, redistributing, and disposing of contractor inventory. It does not apply to property under any statutory leasing authority (except as to non-Government use of property under FAR 45.302 (f)); to property to which the Government has acquired a lien or title solely because of partial, advance, or progress payments; performance-based payments; or to disposal of real property. If there is any inconsistency between this subpart and the terms of the contract, the terms of the contract shall govern.

**SUBPART 45.1 - General****45.101 - Policy**

(a) Contracting Officers shall provide property to contractors only when it is clearly demonstrated to be in the Government's best interest; that the overall benefit to the procurement significantly outweighs the increased cost of administration, including ultimate property disposal; that the assumption of risk by the Government is not substantially greater; and that Government requirements cannot otherwise be met.

(1) The contractor's inability or unwillingness to supply its own resources is not sufficient reason for the furnishing or acquisition of property.

(b) If use of additional Government property is authorized after contract award, the Contracting Officer shall obtain a fair rental in accordance with the clause at 52.245-9, Use and Charges, or other adequate consideration.

(c) Contracts shall state that using Government property (other than as described and permitted in the contract) will be authorized only if approved by the Contracting Officer.

**45.102 – General**

(a) Agencies shall:

(1) Allow and encourage contractors to use voluntary consensus standards [see FAR Part 11.101 (c)] and/or industry-leading standards and practices to manage Government property in their possession.

(2) Eliminate to the maximum practical extent any competitive advantage a prospective contractor may have by using Government property and ensure maximum practical reutilization of Contractor Inventory within the Government.

(3) Require contractors to use Government property already in their possession to the maximum extent possible in performing Government contracts.

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

(5) Require contractors to justify retaining Government property not needed for contract performance and to declare property as excess when no longer needed for contract performance.

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

**45.103 – Responsibility and Liability for Government Property**

(a) The Government typically self-insures against loss, damage, or destruction of Government property located at contractor plants [see FAR Part 31.205-19(e)(iv)].

(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.

**45.104 – Analysis of the Contractor’s Property Management System**

(a) The Contracting Officer or the representative assigned the responsibility as Property Administrator shall ensure the contractor’s property management system complies with the Government property clauses of the contract. A systems analysis of the contractor’s property management practices shall be performed to ensure compliance. This analysis shall be accomplished by the agency responsible for contract administration as frequently as conditions warrant, in accordance with agency instructions.

(c) The Property Administrator shall notify the contractor when its property management system does not comply with contractual requirements, i.e., is inadequate, not acceptable and/or presents an undue risk to the Government, and shall request prompt correction of deficiencies and a schedule for their completion. If the contractor does not correct the deficiencies in accordance with the schedule, the Property Administrator shall notify the contractor, in writing, that failure to take the required corrective action(s) within a time specified may result in:

(1) appropriate contract price adjustment and/or

(2) withdrawal of the Government’s assumption of risk for loss, damage, or destruction; and

(3) other such action as the Contracting Officer may direct in accordance with

agency procedures.

(d) If the contractor fails to take the necessary corrective action(s), the Contracting Officer shall take appropriate and necessary action to protect the Government's interests.

(e) The results of reviews by the agency responsible for contract administration shall be binding on all other departments and agencies, based on interagency agreements.

(f) Where the contractor has agreed to accept the results of a supporting Property Administrator's systems' analysis, instead of performing duplicative actions to ensure subcontractor compliance, the Property Administrator assigned to the prime contract may request supporting property administration from another contract administration office.

(1) The prime Property Administrator shall accept the findings of the delegated support Property Administrator and advise the prime contractor of any deficiencies within the subcontractor's property management system. In those instances where by the prime contractor does not support the findings of the support Property Administrator, the prime Property Administrator shall immediately refer the matter to the Contracting Officer for a determination, in accordance with agency procedures.

#### **45.105 – 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, in solicitations and contracts where the anticipated amount of Government Property (either furnished or acquired) will exceed the simplified acquisition threshold.

(1) If the contract is a Fixed-Price competitively awarded contract, the Contracting Officer shall use 52.245-1, Alternate I.

(2) 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 FAR 35.014], the Contracting Officer shall use 52.245-1, Alternate II.

(b) The Contracting Officer shall insert the clause at 52.245-3, Government Property (Installation Operations for Commercial Services), in contracts involving Government-furnished property for use in the performance of base operating or installation services contracts where Government-furnished Property is contemplated for initial provisioning, and the Contracting Officer determines that the Government has no continued need for the Government Property being offered to the contractor.

(c) The Contracting Officer shall insert the clause at 52.245-4, Liability for Government Property (Demolition Services Contracts) (in addition to the clauses prescribed at FAR 37.304), in solicitations and contracts for dismantling, demolition, or removal of improvements.

(d) 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 FAR 37.304, in solicitations and contracts for dismantling, demolition, or removal of improvements.

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

(f) The Contracting Officer shall insert the clause at 52.245-17, Special Tooling, in solicitations and contracts when

(1) a fixed-price contract is contemplated;

(2) the Government desires to reserve the right to obtain title in the special tooling acquired by the contractor; and

(3) the Special Tooling is not a required deliverable.

#### **45.106 – Required Government Property Clauses for Facilities Contracts.**

(a) The Contracting Officer shall insert the clause at 52.245-7, Government Property (Consolidated Facilities), in solicitations and contracts when a consolidated facilities contract is contemplated.

(b) The Contracting Officer shall insert the clause at 52.245-8, Liability for the Facilities, in solicitations and contracts when a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated.

(c) The Contracting Officer shall insert the clause at 52.245-9, Use and Charges, in solicitations and contracts --

(1) When a consolidated facilities contract or a facilities use contract; or

(2) When a fixed-price contract is contemplated, and Government property is provided other than on a rent-free basis.

(d) The Contracting Officer shall insert the clause at 52.245-10, Government Property (Facilities Acquisition), in solicitations and contracts when a facilities acquisition contract is contemplated.

(e) The Contracting Officer shall insert the clause at 52.245-11, Government Property (Facilities Use), in solicitations and contracts when a facilities use contract is contemplated. If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education, or is awarded to a nonprofit organization whose primary purpose is the conduct of scientific research [see FAR 35.014], the Contracting Officer shall use the clause with its Alternate II.

**45.107 – Optional Property-Related Clauses for Facilities Contracts.**

- (a) The Contracting Officer may insert the clause at 52.245-12, Contract Purpose (Nonprofit Educational Institutions), in solicitations and contracts when a facilities use contract is contemplated and award may be made to a nonprofit educational institution.
- (b) The Contracting Officer may insert the clause at 52.245-13, Accountable Facilities (Nonprofit Educational Institutions), in solicitations and contracts when a facilities contract is contemplated and award may be made to a nonprofit educational institution.
- (c) The Contracting Officer may insert the clause at 52.245-14, Use of Government Facilities, in solicitations and contracts when a facilities use contract is contemplated and award may be made to a nonprofit educational institution.
- (d) The Contracting Officer may, under a proper delegation of authority, insert the clause at 52.245-15, Transfer of Title to the Facilities, in solicitations and contracts when a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated 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.
- (e) The Contracting Officer may insert the clause at 52.245-16, Facilities Equipment Modernization, in solicitations and contracts when a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated under which the Government will furnish modernized or replacement facilities.

**SUBPART 45.2 – Solicitation Requirements for Government Property****45.201 -- General**

- (a) Contracting Officers shall insert a listing of the Government Property to be offered in all solicitations where Government-furnished Property is anticipated [see FAR 45.101].
- (b) When Government property is offered for use in a competitive acquisition, solicitations will ordinarily require that the contractor assume all costs related to making the property available for use such as payment of all transportation, installation or rehabilitation costs.
- (c) 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 the following information with their offers:
- (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 identify the accountable contract under which the property is held and the authorization for its use (from the Contracting Officer having cognizance of the property).

(2) 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 prorating the rent.

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

(d) The Contracting Officer shall consider any potentially unfair competitive advantage that may result from the contractor possessing Government property. At a minimum, 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.

**SUBPART 45.3 – Authorizing the Use and/or Rental of Government Property**

**45.301 – General**

This subpart prescribes policies and procedures for contractor use and rental of Government Property

**45.302 -- Rent-Free Use**

(a) Government property shall normally be used on a rent-free basis in performance of the contract under which it is accountable or otherwise authorized.

(b) Rental charges, to the extent authorized do not apply to the following:

(1) Government property that is located in Government-owned, contractor-operated plants operated on a cost-plus-fee basis.

(2) Government property that 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 for non-government commercial purposes or otherwise authorized for use.

(c) 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.
- (d) The cognizant Contracting Officer may authorize the use of Government property on a rent-free basis on a cost-reimbursement type Government contract (other than the contract to which it is accountable or authorized).
- (e) In exchange for consideration as determined by the cognizant Contracting Officer, the contractor may use Government property under fixed-price contracts (other than the accountable contract).
- (f) In exchange for consideration as determined by the cognizant Contracting Officer, the contractor may use Government property for commercial use. Prior approval of the Agency head (or designee) is required where non-Government use is expected to exceed 25 percent of the commercial work performed.

#### **45.303 -- Transferring Accountability**

Government property shall be transferred (from one contract to another) only when firm requirements exist under the gaining contract [see FAR 45.101]. Such transfers 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.

#### **45.304 -- 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.

#### **45.305 -- Use of Government Property on Independent Research and Development Programs**

- (1) The Contracting Officer may authorize a contractor to use the property on an independent research and development (IR&D) program, if --
  - (i) such use will not conflict with the primary use of the property or enable the contractor to retain property that could otherwise be released;

(ii) 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

(iii) a rental charge for the portion of the contractor's IR&D program cost allocated to commercial work is deducted from any agreed-upon Government share of the contractor's IR&D costs.

**45.4 (Reserved)**

**45.5 (Reserved)**

**52.245-1 Government Property.**

As prescribed in 45.105, insert the following clause:

**GOVERNMENT PROPERTY (DATE)****(a) Definitions**

“Acquisition Cost,” as used in this clause, means the acquisition cost, fair value, or the amount identified in contracts at the time of delivery that is 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 such as determining a reasonable rental charge.

“Best Value” as used in this clause, means the expected outcome of an action provides the greatest overall benefit; more specifically, when the potential economic and practical benefits of operating in a manner consistent with a set of guidelines outweigh concerns about the loss of predictability, uniformity, and consistency.

“Contractor-Acquired (Government) Property,” as used in this clause, means property acquired, fabricated, or otherwise provided by the contractor for performing a contract and to which the Government has title.

“Contractor Inventory,” as used in this clause, 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, e.g., as a result either of any changes in the specifications or plans there under or of the termination of the contract (or subcontract 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.

“Discrepancies Incident to Shipment,” as used in this clause, 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 but are not limited to overages, shortages, loss, damage, destruction, improper status and condition coding, errors in identity, and improper consignment.

“Equipment,” as used in this clause, means an article of personal property that is complete in-and-of itself, and is of a durable nature; a nonexpendable, tangible moveable property needed for the performance of a task or useful in effecting an obligation. For financial accounting purposes, equipment generally has an expected service life of one year or more, and does not ordinarily lose its identity or become a component part of another article when put into use.

“Facilities,” as used in this part and when used in other than a facilities contract, means property used for production, maintenance, research, development, or testing. Facilities include Equipment and Real Property but does not include Material, Special Test Equipment, Special Tooling, or Unique Federal Property.

“Government-furnished Property,” as used in this clause, means property in the possession of, or directly acquired by, the Government and subsequently provided to the contractor for performance of a contract.

“Government Property,” as used in this clause, means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired (Government) Property.

“Material,” as used in this clause, means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end-item. Material does not include Equipment, Special Tooling, Special Test Equipment, or Unique Federal Property.

“Nonseverable,” as used in this part, 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

“Personal Property,” as used in this clause, means any property, including military equipment; manufacturing or assembly drawings; installation, operation, repair, or maintenance instructions. Personal Property does not include Real Property.

“Plant Clearance Officer,” as used in this clause, means an authorized representative of the contracting officer assigned the responsibility of screening, redistributing, and disposing of Contractor Inventory from a contractor’s plant or work site. The term “contractor’s plant” includes, but is not limited to, Government-owned contractor-operated plants and military installations as may be required under the scope of the contract.

“Property,” as used in this clause, means all property, both real and personal.

“Property Administrator,” as used in this clause, means an authorized representative of the Contracting Officer assigned the responsibility of administering the contract requirements and obligations relating to Government property in the possession of a contractor

“Provide,” as used in this clause, means to furnish existing Government property or to allow the contractor to acquire property for the Government under this contract.

“Real Property,” as used in this clause, means land (including Stewardship Land), buildings, structures, utilities, steam-generation systems, and equipment attached to and made part of buildings and structures (such as heating systems), but not movable equipment (such as 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 equipment.

“Special Test Equipment,” as used in this clause, 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; Special Test Equipment does not include material, special tooling, real property (except foundations and similar improvements necessary for installing special test equipment), and equipment items used for general testing purposes, or property that with relatively minor expense can be made suitable for general purpose use.

“Special Tooling,” as used in this clause, means jigs, dies, fixtures, molds, patterns, taps, gauges, 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. Special Tooling does not include Material, Special Test Equipment, Federal Unique Property, Real Property or Equipment (except foundations and similar improvements necessary for installing Special Tooling), machine tools, or similar capital items.

“Unique Federal Property,” as used in this clause, means Government-owned personal property that is peculiar to the mission of one agency, e.g., military or space property. Unique Federal Property excludes Material, Special Test Equipment, Special Tooling, Real Property and Equipment.

**(b) Property Management**

(1) The contractor shall manage (control, use, preserve, protect, repair and maintain) Government property in its possession consistent with voluntary consensus standards for property management, or in the absence of such standards, industry-leading standards and practices for property management—adequate for the performance of this contract, as determined by the Property Administrator. This includes initiating and maintaining the processes, systems, records, and methodologies necessary for effective control of Government property—from the initial acquisition and receipt of property, through stewardship and custody, until formally relieved of responsibility by authorized means, including delivery, consumption, expending, disposition, or via a completed

evaluation and investigation for lost, damaged, or destroyed property. This requirement applies to all Government property in the contractor's possession or control, including its vendors or subcontractors.

(2) The contractor shall include the requirements of this clause in all subcontracts under which Government Property is needed for subcontractor performance.

(3) Property to which the Government has acquired a lien or title solely as a result of advance, progress, performance, or partial payments is not subject to the requirements of this clause.

**(c) Use of Government Property** The contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer.

**(d) Government-Furnished Property**

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

(2) 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. Government-furnished Property shall not become a fixture, become non-severable, or lose its identity as Government property by its attachment to real property. The contractor shall not improve or make structural alterations to Government-furnished real property unless this contract specifically identifies the alterations or improvements as work to be performed.

(3) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished Property will be suitable for contract performance and will be delivered to the contractor by the dates stated in the contract.

(i) If the property is not delivered to the contractor by the dates stated in the contract, the Contracting Officer shall, upon the contractor's timely written request, consider an equitable adjustment to the contract.

(ii) In the event property is received by the contractor in a condition not suitable for its intended use, the Contracting Officer shall, upon the contractor's timely written request, advise the contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government's expense. Upon completion of the required action(s) the Contracting Officer shall consider an equitable adjustment to the contract.

(iii) The Government may, at its option, furnish property in an “as is” condition. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for contract performance. Any repairs, replacement, and/or refurbishment shall be at the contractor’s expense.

(4) (i) The Contracting Officer may by written notice, at any time:

(A) Increase or decrease the amount of Government-furnished Property under this contract.

(B) Substitute other Government-furnished Property for the property previously furnished, to be furnished, or to be acquired by the contractor for the Government under this contract.

(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(4)(i) of this clause, and the contractor’s timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

**(e) Title to Government Property Acquired by the Contractor**

(1) Title to all property purchased by the contractor, for which the contractor is entitled to be reimbursed as a direct item of cost (see the “Allowable Cost and Payment” clause of this contract), under this contract, shall pass to and vest in the Government upon:

(i) a vendor’s or supplier’s delivery of such property to the contractor;

(ii) issuance of the property for use in contract performance, including the installation of parts through normal maintenance;

(iii) commencement of processing of the property for use in contract performance; or

(iv) reimbursement by the Government for the cost of the property, whichever occurs first.

(2) Paragraph (e)(1) of this clause shall not apply to property purchased by the contractor for performance of fixed-price contracts or fixed-price line items.

**(f) Contractor Plans and Systems**

(1) Contractors shall develop property management plans and systems, at the contract, program, site or entity level that reflect their efforts to obtain best value. Such plans and systems shall enable the following outcomes:

(i) Acquisition Planning. The contractor shall only acquire property consistent with its engineering, production planning, and material control operations. The contractor shall account for such property acquisition consistent with its cost accounting disclosure statement; and under a cost-reimbursement type contract, only that property for which the contractor is entitled to be reimbursed as a direct item of cost under the “Allowable Cost and Payment” clause of the contract. This includes purchase, transfer, fabrication, or acquisition by other means, notwithstanding if the property is already in existence or must be created, developed, demonstrated, and evaluated.

(ii) Receipt of Government Property. The contractor shall receive Government property and identify, document, and manage any discrepancies incident to shipment.

(A) Government-furnished Property. The contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages are discovered upon receipt of Government-furnished Property.

(B) Contractor-acquired Property. The contractor shall take all actions necessary to adjust overages, shortages, or damages in shipment of Contractor-acquired Property from a vendor or supplier, so as to ensure the proper allowability of associated costs.

(iii) Records of Government Property. The contractor shall create and maintain of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property (e.g., Special Tooling and Special Test Equipment).

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following data:

(1) The name, commercial part number and description, manufacturer, bulk identifier, model number, and National Stock Number (if needed for additional item identification and/or tracking).

(2) Quantity received (or fabricated), issued, and balance-on-hand.

(3) Unique-item identifier or equivalent (if available and necessary for individual item tracking), unit price and, if applicable, unit of measure.

(4) Accountable contract number or equivalent code designation.

(5) Location.

(6) Disposition.

(7) Posting reference and date of transaction.

(B) When approved by the Property Administrator, the contractor may maintain, in lieu of a formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

(iv) Physical Inventory. The contractor shall periodically perform, record, and report periodic physical inventories during contract performance. A final physical inventory shall also be performed upon contract completion or termination. The Property Administrator may waive this requirement, depending on the circumstances, e.g., overall reliability of the contractor's system, the property is required for a follow-on contract.

(v) Subcontractor Control.

(A) The contractor shall be responsible for: the issuance of subcontracts that clearly identify assets to be provided; ensuring appropriate flow down contract requirements and clauses consistent with FAR Part 52.245-1; and including the Contracting Officer's written approval for each subcontract that will relieve the subcontractor of the risk of loss of Government property.

(B) Unless support Property Administration has been delegated to a Support Property Administrator, the contractor shall retain complete responsibility in assuring that the provisions of the subcontracts are properly administered and that reviews are periodically performed to determine that the subcontractor's property management system is consistent with consensus standards and/or industry leading standards and practices for property management.

(C) The contractor shall report to the Property Administrator any sustaining deficiencies that are attributed to inadequate property management practices and/or present an undue risk to the Government.

(vi) Reports. The contractor shall have a process to create reports including: reports of discrepancies; loss, damage and destruction; physical inventory results; audits and self-assessments; corrective actions; and other contractually required reports.

## (A) Reporting Loss, Damage and Destruction

(I) Unless otherwise determined by the Property Administrator, the contractor shall investigate, and furnish to the Property Administrator, a written narrative of all incidents of loss, damage, or destruction, as soon as the facts become known or when requested by the Government. Such reports shall, at a minimum, contain the following information:

- (i) Date of incident (if known)
- (ii) The name, commercial description, manufacturer, model number, and National Stock Number (if applicable).
- (iii) Quantity
- (iv) Unique Item Identifier (if available)
- (v) Accountable Contract number
- (vi) A statement indicating current or future need
- (vii) Acquisition cost, estimated scrap proceeds (if applicable), repair, direct labor and material costs (if applicable), or estimated cost to replace (if applicable)
- (viii) All known interests in commingled property of which the Government property is a part
- (ix) Cause and corrective action taken or to be taken to prevent recurrence
- (x) A statement that no insurance costs or other means of covering the loss, damage, or destruction of Government property were charged to the contract
- (xi) A statement that the government will receive any reimbursement covering the loss, damage or destruction, in the event the contractor was or will be reimbursed or compensated

(xii) Copies of all supporting documentation

- (2) The contractor shall take all reasonable actions necessary to protect the Government property from further loss, damage or destruction. The contractor shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.
- (3) The contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage or destruction of Government property.
- (4) 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.

(B) Unless the contract provides otherwise, the contractor shall be relieved of stewardship responsibility for Government property when such property is:

- (1) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract as determined by the Property Administrator, including reasonable inventory adjustments.
- (2) Delivered or shipped from the contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the contractor; or
- (3) Disposed of in accordance with paragraph (j) and (k) of this clause.

(vi) Utilizing Government Property. The contractor shall properly utilize, consume, and store Government Property only as authorized under this contract. The contractor shall promptly disclose and report Government property in its possession that is excess to the need of performance.

(vii) Maintenance. The contractor shall properly maintain Government property. The contractor's maintenance program shall enable the

identification, disclosure, and performance of normal preventative maintenance and major repair, replacement and/or capital rehabilitation [see also FAR Part 31.205-24, Maintenance and Repair Costs].

(viii) Property Closeout. The contractor shall promptly perform contract property closeout, to include reporting, investigating and closing all loss, damage, and destruction cases; physically inventorying all property upon termination or completion of this contract; and disposing of excess items at the time they are determined to be excess to contractual needs.

(2) The contractor shall establish, maintain, Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.

(3) The contractor shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. The findings and/or results of such reviews and audits shall be provided to the Property Administrator, upon request.

**(g) Systems Analysis**

(1) The Government may, at any time, review, inspect and evaluate the contractor's property management systems, procedures, records, and supporting documentation—and shall have access at all reasonable times to the contractor's premises.

(2) All Government property records shall be readily available to authorized Government personnel and shall be safeguarded from tampering or destruction.

(3) 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.

(4) Should it be determined by the Government that the contractor's property management practices are inadequate or not acceptable for the effective management and/or control of Government property under this contract; and/or present an undue risk to the Government, the contractor shall immediately take all necessary corrective actions directed by the Property Administrator.

**(h) Contractor Liability for Government Property**

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

(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 covered by insurance or the contractor is otherwise reimbursed (to the extent of such insurance or reimbursement).

(iii) The contractor is otherwise responsible under other clauses in this contract.

(iv) 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 clause, 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.

(v) The Contracting Officer has withdrawn the Government's assumption of risk for loss, damage, or destruction due to a determination under paragraph (e) of this clause that the contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the contractor failed to take timely corrective action. Such action shall always be in writing.

(vi) The transfer of Government property to the possession and control of a subcontractor, shall not affect the prime contractor's liability for loss, damage or destruction. The contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability.

(2) The contractor is not required to, and under a cost-reimbursement type contract shall not, purchase insurance or reserve for losses of Government property, unless otherwise directed by the Government.

(i) **Equitable Adjustment**. Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. The right to an equitable adjustment shall be the contractor's exclusive remedy and 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) an increase, decrease, or substitution of Government-furnished Property; or
- (4) failure to repair or replace Government property for which the Government is responsible.

**(j) Government Property Disposal.** Except as otherwise provided for in the contract, the contractor shall not dispose of Government property until authorized to do so by the Plant Clearance Officer.

(1) Scrap to which the Government has obtained title under paragraph (e) of this clause—

(i) Contractor with an approved scrap procedure.

(A) The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the contractor shall submit the scrap on an inventory disposal schedule.

(B) For scrap from other than production or testing the contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures), except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that—

- (1) requires demilitarization;
- (2) is a classified item;
- (3) is generated from classified items;
- (4) contains hazardous materials or hazardous wastes;
- (5) contains precious metals; or
- (6) is dangerous to the public health, safety, or welfare.

(ii) Contractor without an approved scrap procedure. The contractor shall submit an inventory disposal schedule for all scrap.

(2) Predisposal requirements. Once the contractor determines that Contractor-acquired property is no longer needed for contract performance, the contractor may (in the following order of priority):

- (i) Purchase the property at the acquisition cost.
- (ii) Make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier’s customary practices).
- (iii) List, on Standard Form 1428, Inventory Disposal Schedule, property that was not purchased under paragraph (j(2)(i) of this clause, could not be returned to a supplier, or could not be used in the performance of other Government contracts.

(3) Inventory disposal schedules.

(i) The contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify—

(A) Government-furnished Property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of this contract; and

(B) Property acquired or produced by the contractor, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract.

(ii) The contractor may annotate inventory disposal schedules to identify property the contractor wishes to purchase from the Government.

(iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the contractor shall prepare separate inventory disposal schedules for—

- (A) Special Test Equipment with commercial components;
- (B) Special Test Equipment without commercial components;
- (C) printing equipment;
- (D) Information Technology (e.g., computers, computer components, peripheral equipment, and related equipment);
- (E) precious metals;
- (F) nonnuclear hazardous materials or hazardous wastes; or
- (G) nuclear materials or nuclear wastes.

(iv) The contractor shall describe the property in sufficient detail to permit an understanding of its intended use. Property with the same description, condition code, and reporting location may be grouped in a single line item.

(4) Submission requirements. The contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—

(i) 30 days following the contractor’s determination that a Government property item is no longer required for performance of the contract;

(ii) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(iii) 120 days, or such longer period as may be approved by the Plant Clearance Officer, following contract termination in whole or in part.

(5) Corrections. The Plant Clearance Officer may:

(i) reject a schedule for cause (e.g., contains errors, determined to be inaccurate).

(ii) require the contractor to correct an inventory disposal schedule

(6) Postsubmission adjustments. The contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the contractor may make the necessary adjustments to the inventory schedule.

(7) Storage.

(i) The contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government’s failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the contractor to an equitable adjustment for costs incurred to store such property on or after the 121<sup>st</sup> day.

(ii) The contractor shall obtain the Plant Clearance Officer’s approval to remove Government property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage facility shall be appropriate for assuring the

property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability for such property under this contract.

(8) Disposition instructions.

(i) If the Government does not furnish disposition instructions to the contractor within 45 days following acceptance of a scrap list, the contractor may dispose of the listed scrap in accordance with the contractor's approved scrap procedures.

(ii) The contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Government property as directed by the Plant Clearance Officer. If not returned to the Government, the contractor shall remove and destroy any markings identifying the property as Government property prior to its disposal.

(iii) The Contracting Officer may require the contractor to demilitarize the property prior to shipment or disposal.

(9) Disposal proceeds. The contractor shall credit the net proceeds from the disposal of Government property to the price or cost of work or as the Plant Clearance Officer directs.

(10) Subcontractor inventory disposal schedules. The contractor shall require its subcontractors to submit inventory disposal schedules to the contractor in accordance with the requirements of paragraph (j)(4) of this clause.

**(k) Abandonment of Government Property.**

(1) The Government shall not abandon sensitive Government property without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place at when all obligations of the Government regarding such property have ceased.

(3) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

**(l) Communication.** All communications under this clause shall be in writing or electronically signed and appropriately archived.

**(m) Overseas Contracts.** If this contract is to performed outside of the United States of America, its territories, or possessions, the words “Government” and “Government-furnished” (wherever they appear in this clause) shall be construed as “United States Government” and “United States Government-furnished,” respectively.

(End of Clause)

#### **ALTERNATE I**

As prescribed in 45.105 (a)(1), insert the following as new paragraph (h)(1) of the basic clause:

“The contractor assumes the risk of, and shall be responsible for, any loss, damage or destruction of Government property upon its delivery to the contractor as Government furnished Property. However, the contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.”

#### **ALTERNATE II (July 1985) (Basic or Applied Research at Nonprofit Institutions of Higher Education or at Nonprofit Organizations)**

As prescribed in 45.105 (a)(2), substitute the following paragraph for paragraph (e)(1) of the basic clause.

Title to property (and other tangible personal property) purchased with funds available for research and having an acquisition cost of less than \$5,000 shall vest in the contractor upon acquisition or as soon thereafter as feasible; provided that the Contractor obtained the Contracting Officer’s approval before each acquisition. Title to property purchased with funds available for research and having an acquisition cost of \$5,000 or more shall vest as set forth in the contract. If title to property vests in the contractor under this paragraph, 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 thereunder. The contractor shall furnish the Contracting Officer a list of all property to which title is vested in the contractor under this paragraph within 10 days following the end of the calendar quarter during which it was received. Vesting title under this paragraph (c) is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract, the contractor accepts and agrees that-

“No person in the United States or its outlying areas shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to property).”

**FAR 52.245-4 -- Government Property (Installation Operations for Commercial Services)**

As prescribed in 45.105 (b), insert the following clause when contracting through the Office of Management and Budget Circular A-76 process or for the performance of base operating services where Government furnished property is contemplated and the Contracting Officer determines that the Government has no continued need for the Government Property being offered to the contractor.

- (a) This Government Property is furnished to the contractor in an “as-is, where is” condition, and for initial provisioning only. The Government makes no warranty regarding the suitability for use of the Government property specified in the contract. The contractor shall be afforded the opportunity to inspect the Government property as specified in the solicitation.
- (b) The Government bears no responsibility for repair or replacement of any lost, damaged or destroyed Government property. If any or all of the Government property is lost, damaged or destroyed or becomes no longer usable the contractor shall be responsible for replacement of the property at contractor expense. The contractor shall have title to all replacement property and shall continue to be responsible for contract performance.
- (c) Unless the Contracting Officer determines otherwise, the Government abandons all rights and title to unserviceable (i.e., scrap) property resulting from contract performance. Upon notification to the Contracting Officer, the contractor shall remove such property from the Government premises and dispose at contractor expense.
- (d) Except as provided in this clause Government property furnished in under this contract shall be governed by the Government Property clause of this contract.

(End of Clause)