

Implementation Guidance for Contract Place of Performance – Public Health Considerations

Frequently Asked Questions:

Listed below are responses to the most frequently asked question(s) to the Defense Pricing and Contracting Memorandum titled “Contract Place of Performance – Public Health Considerations”, dated March 20, 2020. *A current version of the FAQs will be available at <https://www.acq.osd.mil/dpap/pacc/cc/COVID-19.html>.*

(Issued 4/28/2020)

Q1: As a result of COVID-19 we are requiring contractors to work offsite, can we provide them with items such as laptops? If so, may the laptops be considered property incidental to the place of performance?

A1: Yes, laptops and other Government property and equipment may be provided to contractor personnel to facilitate performance offsite. Property furnished by the Government to use in the performance of a contract is Government-Furnished Property (GFP). Therefore the requirements in the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), and DFARS Policy, Guidance, and Instructions (PGI) related to providing GFP to contractors must be met.

Even though FAR 45.000 lists laptops as an example of property that may be incidental to the place of performance, it is only applicable if three conditions are met:

- 1) The contract requires contractor personnel to be located on a Government site or installation;
- 2) The property is used by the contractor within that location; and
- 3) The property remains accountable to the Government.

As the second condition isn't met (and maybe the first and third condition as well) the property isn't incidental to the place of performance and must follow the requirement related to GFP.

First, the contracting officer will need to make a determination that it is in the best interest of the Government to furnish Government property (see DFARS PGI 245.103-70) to the contractor.

Second, the contract may need to be modified to include the appropriate FAR and DFARS property clauses (see FAR 45.107 and DFARS 245.107). For contracts awarded under FAR Part 12, the clauses are required if the property's total value exceeds the simplified acquisition threshold. For all other contracts the property clauses are required any time GFP is provided to the contractor.

Finally, if the contract has a GFP attachment, the GFP attachment will need to be modified to reflect any additional GFP provided to the contractor. If the contract does not already contain a GFP attachment, one will need to be created and added to the contract via a bilateral modification.

If urgency requires that the GFP be provided to the contractor before all administrative actions are completed, the contracting officer should inform the contractor that a contract modification will be issued adding the property as GFP to the contract, and should create a memorandum for the record documenting the urgency and interactions with the contractor. The Government should obtain hand receipts or similar documentation to ensure that accountability of the GFP is maintained until it can be formalized in the contract.