

maintain documentation in existence when its return is filed regarding the allocation of gross income, and allocation and apportionment of expenses, losses, and other deductions, the methodologies used, and the circumstances justifying use of those methodologies. The taxpayer must make available such documentation within 30 days upon request.

(3) *Access to software.* If the taxpayer or any third party used any computer software, within the meaning of section 7612(d), to allocate gross income, or to allocate or apportion expenses, losses, and other deductions, the taxpayer must make available upon request—

(i) Any computer software executable code, within the meaning of section 7612(d), used for such purposes, including an executable copy of the version of the software used in the preparation of the taxpayer's return (including any plug-ins, supplements, etc.) and a copy of all related electronic data files. Thus, if software subsequently is upgraded or supplemented, a separate executable copy of the version used in preparing the taxpayer's return must be retained;

(ii) Any related computer software source code, within the meaning of section 7612(d), acquired or developed by the taxpayer or a related person, or primarily for internal use by the taxpayer or such person rather than for commercial distribution; and

(iii) In the case of any spreadsheet software or similar software, any formulae or links to supporting worksheets.

(4) *Use of allocation methodology.* In general, when a taxpayer allocates gross income under paragraph (b)(2)(iii), (b)(2)(iv), or (h)(1)(ii) of this section, it does so by making the allocation on a timely filed original return (including extensions). However, a taxpayer will be permitted to make changes to such allocations made on its original return with respect to any taxable year for which the statute of limitations has not closed as follows:

(i) In the case of a taxpayer that has made a change to such allocations prior to the opening conference for the audit of the taxable year to which the allocation relates or who makes such a change within 90 days of such opening conference, if the IRS issues a written information document request asking the taxpayer to provide the documents and such other information described in paragraphs (k)(2) and (3) of this section with respect to the changed allocations and the taxpayer complies with such request within 30 days of the request, then the IRS will complete its examination, if any, with respect to the

allocations for that year as part of the current examination cycle. If the taxpayer does not provide the documents and information described in paragraphs (k)(2) and (3) of this section within 30 days of the request, then the procedures described in paragraph (k)(4)(ii) of this section shall apply.

(ii) If the taxpayer changes such allocations more than 90 days after the opening conference for the audit of the taxable year to which the allocations relate or the taxpayer does not provide the documents and information with respect to the changed allocations as requested in accordance with paragraphs (k)(2) and (3) of this section, then the IRS will, in a separate cycle, determine whether an examination of the taxpayer's allocations is warranted and complete any such examination. The separate cycle will be worked as resources are available and may not have the same estimated completion date as the other issues under examination for the taxable year. The IRS may ask the taxpayer to extend the statute of limitations on assessment and collection for the taxable year to permit examination of the taxpayer's method of allocation, including an extension limited, where appropriate, to the taxpayer's method of allocation.

(l) *Effective date.* This section applies to taxable years beginning on or after the date of publication of final regulations in the **Federal Register**.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 05-18265 Filed 9-16-05; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**48 CFR Parts 1, 2, 17, 31, 32, 35, 42, 45, 49, 51, 52, and 53**

[**FAR Case 2004-025**]

**RIN: 9000-AK30**

### Federal Acquisition Regulation; Government Property

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

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (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. Various FAR parts are amended to implement a policy that fosters efficiency, flexibility, innovation, and creativity, while continuing to protect the Government's interest in the public's property. The proposed rule specifically impacts contracting officers, property administrators, and contractors responsible for the management of Government property.

**DATES:** Interested parties should submit written comments to the FAR Secretariat on or before November 18, 2005 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR case 2004-025 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR case number to submit comments.

- E-mail: [farcase.2004-025@gsa.gov](mailto:farcase.2004-025@gsa.gov). Include FAR case 2004-025 in the subject line of the message.

- Fax: 202-501-4067.
- Mail: General Services

Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAR case 2004-025 in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT** The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501-4082. Please cite FAR case 2004-025.

### SUPPLEMENTARY INFORMATION:

#### A. Background

In the late 1990s, the Department of Defense (DoD) initiated a complete rewrite of FAR Part 45 and associated clauses. Beyond attempting to address long-standing property management

issues, the effort reflected the general consensus that adoption of more typically commercial business practices would not only attract more commercial firms to the marketplace but also result in significant savings of acquisition dollars. For many reasons, only one portion of that rewrite - Subpart 45.6 with its associated clauses and forms, was published as a final rule. Therefore, another rewrite of Part 45 and its associated clauses is being proposed.

The proposed language, by encouraging efficiency, flexibility, innovation, and creativity, complements the use of current processes and technologies 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.

The concepts of the proposed rewrite have been discussed and presented to a wide audience. Briefings were presented at public meetings, defense industry representative meetings, industry and trade associations, and to the military departments, GSA Property Management Executive Council and other interested parties.

The new language reflects a life-cycle, performance-based approach to property management and permits the adoption of more typically commercial business practices.

The proposed rule requires contracting officers, property administrators and other personnel involved in awarding or administering contracts with Government property to be aware of industry-leading practices and standards for managing Government property. Other associated impacts include—

(a) Stricter policy for contracting officers to follow when determining whether or not to provide property to contractors.

(b) Possible contracting officer revocation of 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) An outcome-based framework for the management of property in possession of contractors.

(d) Identification by contractors of the standard or practice proposed for managing Government property.

Many of the policy language changes are administrative in nature (*i.e.*, deleting obsolete terms, eliminating duplicate language, clarifying and relocating definitions to clauses, etc.). Other policy changes include revising or adding new definitions as a result of

previous changes and/or lessons learned. FAR Subparts 45.1, General; 45.2, Competitive Advantage; 45.3, Providing Government Property to Contractors; 45.4, Contractor Use and Rental of Government Property; and 45.5, Management of Government Property in the Possession of Contractors, have been revised and reorganized in such a manner that it was necessary to delete language in these sections in their entirety and replace them with revised language and titles. FAR Subpart 45.6 remains unchanged, except for the revision of the term "Government property" found in FAR 45.600 to read "contractor inventory" and the movement of the definitions to the new FAR 45.101 and the revised clause at 52.245-1(a).

Definitions for "Special Test Equipment" and "Special Tooling" are revised and moved from Part 45 to Part 2 and a new definition "Voluntary Consensus Standards" is added in Part 2. The definition for "Plant Clearance Officer" in Part 2 is also revised.

Definitions for "Acquisition cost," "Real property," and "Government property" located in the clause at 52.245-9, Use and Charges, are revised and included in the new FAR 45.101.

The proposed rule includes the following new definitions in FAR 45.101 and the clause at 52.245-1:

- "Contractor Inventory"
  - "Contractor's Managerial Personnel"
  - "Equipment"
  - "Property"
  - "Provide"
  - "Unique Federal Property".
- The proposed rule, if adopted, would eliminate the following definitions:
- Agency Peculiar Property
  - Accessory Item
  - Auxiliary Item
  - Custodial Records
  - Facilities
  - Facilities Contracts
  - Government Furnished Material
  - Government Production and Research Property
  - Individual Item Record
  - Plant equipment
  - Nonprofit Organization
  - Salvage
  - Stock Record
  - Summary Record
  - Utility Distribution System
  - Work-in-Process.

The FAR clauses at 52.245-1, Property Records; 52.245-2, Government Property (Fixed Price Contracts); 52.245-5, Government Property (Cost-Reimbursement, Time and Material, or Labor Hour Contracts); and 52.245-19, Government Property Furnished "As Is", were combined to

form one new clause—52.245-1, Government Property. A new property clause at 52.245-2, Government Property (Installation Operations for Services), was added specifically to address contracts designed for military base-operating and installation-level contracts, particularly those awarded under the Office of Management and Budget Circular A-76 process. The Councils seek specific comment on the new clause at FAR 52.245-1 as to: (1) whether the proposed wording of paragraphs (f) and (g) are clear in their intent; and (2) whether the intent of paragraphs (f) and (g) could be achieved in some other manner.

The following clauses were deleted in their entirety because they were either obsolete or conflicted with the use of consensus standards and/or industry-leading standards and practices for property management:

- 52.245-3
- 52.245-4
- 52.245-5
- 52.245-6
- 52.245-7
- 52.245-8
- 52.245-10
- 52.245-11
- 52.245-12
- 52.245-13
- 52.245-14
- 52.245-15
- 52.245-16
- 52.245-17
- 52.245-18.

The rule deletes the current FAR text on facilities contracts and the associated clauses because the Councils believe they are outmoded and no longer necessary. The Councils found that facilities contracts, contracts established solely to account for property with subsequent contracts authorized to use that property, are rarely used. The Councils also found that facilities clauses are being used in service contracts for the operation of Government-Owned Contractor-Operated Facilities (GOCOs). In the case of GOCOs, it is believed that agencies' property management needs can better, and more appropriately, be met through tailoring the statement of work in these service contracts to the agency's specific needs and incorporating the new property clause at FAR 52.245-1. Should the facilities contract coverage be deleted in a subsequent final rule, any required administrative conforming revisions (*e.g.*, elimination of cross references to deleted facilities contract clauses) will be effected in the final rule.

The Councils seek specific comment on instances in which there is a continued need for coverage or clauses similar to those that are being deleted.

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

- Deletion of 42.302(a)(27). This paragraph refers to the Special Test Equipment clause which is being deleted.

- Revision of FAR 51.107 to delete references to facilities contracts.

- Revision of FAR 52.245–17, Special Tooling, was originally proposed under FAR Case 2002–015, Use and Rental and Special Tooling. Public comments recommended deletion of this clause rather than revision. Therefore, this case solicits comments on the deletion of the clause at 52.245–17, Special Tooling.

The cost principle at FAR 31.205–19 is revised to reflect the changes made in the proposed clause at FAR 52.245–1, to indicate that, unless the Government has determined that the contractor's property management practices are inadequate and/or present an undue risk to the Government, the cost of insurance is allowable when the contractor is liable and the insurance does not cover loss, damage, destruction, or theft which results from willful misconduct or lack of good faith on the part of the contractor's managerial personnel.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## B. Regulatory Flexibility Act

The changes may 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.*, because the rule affects the method of managing Government property and is intended to give agencies and contractors more flexibility in applying industry-leading practices and standards. As such, it is expected that the rule will have a positive effect on small business.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing revising the FAR to update FAR Parts 45 and 52. The revisions will attempt to address long-standing property management issues and will reflect a general consensus that adoption of more typically commercial business practices would not only attract more commercial firms to the marketplace but also result in significant savings of acquisition dollars. Moreover, 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.

Title II of the Federal Property and Administrative Services Act of 1949, Public Law 81–152, as amended, requires, in part that executive agencies account for Government property, determine when such property is excess, and dispose of excess Government property promptly. The proposed rule amends the FAR to revise the policies for the management of Government-owned property used and acquired by private industry in the performance of Government contracts.

It is estimated that approximately 5000 contractors have Federal property in their possession. DoD has 2,242 contractors. Approximately 62 percent of DoD's contractors are small businesses. Given that property in the possession of contractors is overwhelmingly DoD property, it is estimated the DoD ratio of small business to total businesses having such property is a reasonable approximation for all Government contractors. Therefore, it is estimated that approximately 3,100 small businesses have Government property in their possession.

This proposed rule substantially decreases the impact of the current FAR provisions by simplifying procedures, reducing recordkeeping and eliminating requirements related to the management of Government property in the possession of contractors. The rule continues the philosophy of ordinarily requiring contractors to furnish all property necessary to perform Government contracts, but also introduces more modern and innovative concepts.

The rule is structured around a number of principles or objectives which, it is believed, will have an overall positive impact on contractors regardless of size. The rule balances regulation with principle-based standards that allow for minimal regulatory requirement and greater flexibility and efficiency to achieve best value for the Government. The rule introduces commercial standards and industry best practices into the property management process to the maximum extent possible. This facilitates moving from a prescribed regulatory process to a performance-based outcome environment. The use of sound business practices should reduce both the Government's and the contractor's ongoing administrative costs of dealing with Government property. Contractors will initiate and maintain the processes, systems, records, and methodologies necessary for effective control of the Government's property.

While it may be that small businesses are more dependent on Government—furnished property than large businesses, the underlying philosophy has not changed (*i.e.*, contractors are ordinarily required to furnish all property necessary to perform the Government contracts).

The Federal Property Management Regulation and the Federal Management

Regulation published by the General Services Administration provide property management guidance to Government personnel. Some of the material overlaps or is duplicated by the FAR property management provisions. The duplication or overlap stems from the need to have contract administration issues addressed in the FAR and broadly disseminated to Government and contractor personnel.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 1, 2, 17, 31, 32, 35, 42, 45, 49, 51, 52, and 53, in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2004–025), in correspondence.

## C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. Accordingly, the FAR Secretariat submitted a request for a revised information collection requirement concerning Government Property to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

The present FAR requirements currently approved by the Office of Management and Budget (OMB) are being revised under OMB Control Number 9000–0075.

The information collection includes the following requirements relating to FAR Part 45 and 52.245:

1. FAR 45.606–1 requires a contractor to submit inventory schedules.

2. FAR 45.606–3(a) requires a contractor to correct and resubmit inventory schedules as necessary.

3. FAR 52.245–1(f)(1)(ii) requires contractors to receive, record, identify and manage Government property.

4. FAR 52.245–1(f)(1)(iii) requires contractors to create and maintain records of all Government property accountable to the contract.

5. FAR 52.245–1(f)(1)(iv) requires contractors to periodically perform, record, and report physical inventories during contract performance.

6. FAR 52.245–1(f)(1)(vi) requires contractors to have a process to create and provide reports.

7. FAR 52.245–1(f)(1)(viii) requires contractors to promptly disclose and report Government Property in their possession that is excess to contract performance.

8. FAR 52.245–1(f)(1)(ix) requires contractors to disclose and report to the Property Administrator the need for

replacement and/or capital rehabilitation.

9. FAR 52.245-1(f)(1)(x) requires contractors to perform and report to the Property Administrator contract property closeout.

10. FAR 52.245-1(f)(2) requires contractors to establish and maintain source data, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.

11. FAR 52.245-1(j)(4) requires contractors to submit inventory disposal schedules to the Plant Clearance Officer.

12. FAR 52.245-9(f) requires a contractor to submit a facilities use statement to the contracting officer within 90 days after the close of each rental period.

The information will be used to control and account for Government-owned property in the possession of contractors.

#### *Annual Reporting Burden:*

Public reporting burden for this collection of information is estimated to average .4598 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

*Respondents:* 15,100.

*Responses per respondent:* 896.71.

*Total annual responses:* 13,540,450.

*Preparation hours per response:* .46.

*Total response burden hours:* 6,226.350.

#### **D. Request for Comments Regarding Paperwork Burden**

Submit comments, including suggestions for reducing this burden, not later than November 18, 2005 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control Number 9000-0075, Government Property, in all correspondence.

#### **List of Subjects in 48 CFR Parts 1, 2, 17, 31, 32, 35, 42, 45, 49, 51, 52, and 53**

Government procurement.

Dated: September 7, 2005.

**Julia B. Wise,**

*Director, Contract Policy Division.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 1, 2, 17, 31, 32, 35, 42, 45, 49, 51, 52, and 53, as set forth below:

1. The authority citation for 48 CFR parts 1, 2, 17, 31, 32, 35, 42, 45, 49, 51, 52, and 53, is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

#### **PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**

##### **1.106 [Amended]**

2. Amend section 1.106 in the table following the introductory paragraph by removing FAR segments “52.245-3”, “52.245-5”, “52.245-7”, “52.245-8”, “52.245-10”, “52.245-11”, “52.245-16”, “52.245-17”, and “52.245-18” and the corresponding OMB Control Number “9000-0075”.

#### **PART 2—DEFINITIONS OF WORDS AND TERMS**

3. Amend section 2.101 in paragraph (b) by revising the definition “Plant clearance officer”, and by adding, in alphabetical order, the definitions “Special test equipment”, “Special tooling”, and “Voluntary Consensus Standards” to read as follows:

##### **2.101 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Plant clearance officer* 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 Federal installations as may be required under the scope of the contract.

\* \* \* \* \*

*Special test equipment* 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* 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, unique federal property, real property (except foundations and similar improvements necessary for installing special tooling), equipment, machine tools, or similar capital items.

\* \* \* \* \*

*Voluntary Consensus Standards* means common and repeated use of rules, conditions, guidelines or characteristics for products, or related processes and production methods and related management systems. Voluntary Consensus Standards are developed or adopted by domestic and international voluntary consensus standard making bodies.

\* \* \* \* \*

#### **PART 17—SPECIAL CONTRACTING METHODS**

4. Amend section 17.603 by revising paragraph (a)(5) to read as follows:

##### **17.603 Limitations.**

(a) \* \* \*

(5) Functions that can more properly be accomplished in accordance with Subpart 45.3, Authorizing the Use and/or Rental of Government Property.

\* \* \* \* \*

#### **PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES**

5. Amend section 31.205-19 by revising paragraph (e)(2)(iv) to read as follows:

##### **31.205-19 Insurance and indemnification.**

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(iv) Unless the Government has determined that the contractor's property management practices are inadequate and/or present an undue risk to the Government, costs of insurance for the risk of loss, damage, destruction, or theft of Government property are allowable to the extent that the contractor is liable for such loss, damage, destruction, or theft, and such insurance does not cover loss, damage, destruction, or theft which results from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel (as described in the FAR clause at 52.245-1(h)(1)(ii)).

\* \* \* \* \*

### 31.205-40 [Amended]

6. Amend section 31.205-40 in paragraph (a) by removing "45.101" and adding "2.101(b)" in its place.

## PART 32—CONTRACT FINANCING

7. Amend section 32.503-15 by revising paragraph (b)(1) to read as follows:

### 32.503-15 Application of Government title terms.

\* \* \* \* \*

(b) \* \* \*

(1) The clause at 52.245-1, Government Property.

\* \* \* \* \*

## PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

### 35.014 [Removed and Reserved]

8. Remove and reserve section 35.014.

## PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

### 42.302 [Amended]

9. Amend section 42.302 by removing and reserving paragraph (a)(27).

## PART 45—GOVERNMENT PROPERTY

10. Amend section 45.000 by revising the second sentence to read as follows:

### 45.000 Scope of part.

\* \* \* It does not apply to property under any statutory leasing authority, (except as to non-Government use of plant equipment under 45.301(f)); to property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments; or to disposal of real property.

11. Revise Subparts 45.1 through 45.5 to read as follows:

### Subpart 45.1—General

Sec.

- 45.101 Definitions.
- 45.102 Policy.
- 45.103 General.
- 45.104 Responsibility and liability for Government property.
- 45.105 Analysis of contractors' property management system.
- 45.106 Transferring accountability.
- 45.107 Contract clauses.

### Subpart 45.2—Solicitation and Evaluation Procedures

- 45.201 General.

### Subpart 45.3—Authorizing the Use and/or Rental of Government Property

- 45.301 Use and rental.
- 45.302 Contracts with foreign Governments or international organizations.
- 45.303 Use of Government property on independent research and development programs.

### Subpart 45.4—Title to Government Property

- 45.401 Title to Government property.

### Subpart 45.5—Support Government Property Administration

- 45.501 Support Government property administration.

### Subpart 45.1—General

#### 45.101 Definitions.

As used in this part—

*Acquisition cost* means—

(1) For contractor acquired property, the full cost determined in accordance with the system established by the Contractor in conformance with consistently applied sound accounting principles.

(2) For Government furnished property, the amount identified in the contract, or in the absence of such identification, the fair market value attributed to the item by the contractor.

*Common item* means material that is common to the applicable Government contract and the contractor's other work.

*Contractor acquired property* means property acquired, fabricated, or otherwise provided by the contractor for performing a contract and to which the Government has title.

*Contractor inventory* means—

(1) 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;

(2) 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 thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

*Contractor's managerial personnel* means the contractor's directors, 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.

*Demilitarization* means rendering a product designated for demilitarization unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

*Discrepancies incident to shipment* 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.

*Equipment* means a tangible article of personal property that is complete in-and-of-itself, durable, nonexpendable, and needed for the performance of a contract. 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.

*Government-furnished property* means property in the possession of, or directly acquired by, the Government and subsequently furnished to the contractor for performance of a contract.

*Government property* means all property owned or leased by the Government. Government property includes both Government-furnished and contractor-acquired property.

*Material* 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* means property that cannot be removed after erection or installation without substantial loss of value or damage to the installed property or to the premises where installed.

*Precious metals* means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

*Property* means all tangible property, both real and personal.

*Property Administrator* 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* means to furnish existing Government property or to allow the contractor to acquire property on behalf of the Government under this contract.

*Real property* means land, land rights, buildings, structures, utility systems, steam-generation systems, and equipment attached to and made part of buildings and structures (such as heating systems). 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.

*Sensitive property* means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability such as classified property, weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

*Surplus property* means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA).

*Unique Federal property* means Government-owned personal property that is peculiar to the mission of an agency, *e.g.*, military or space property. Unique federal property excludes material, special test equipment, special tooling, real property and equipment.

#### 45.102 Policy.

(a) Contractors are ordinarily required to furnish all property necessary to perform Government contracts.

(b) Contracting officers shall provide property to contractors only when it is clearly demonstrated—

(1) To be in the Government's best interest;

(2) That the overall benefit to the procurement significantly outweighs the increased cost of administration, including ultimate property disposal;

(3) That providing the property does not substantially increase the Government's assumption of risk; and

(4) That Government requirements cannot otherwise be met.

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

#### 45.103 General.

(a) Agencies shall—

(1) Allow and encourage contractors to use voluntary consensus standards (see 11.101(c)) and/or industry-leading

practices and standards 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 for Government purposes (see 45.602).

(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 generally require contractors to establish property management systems that are separate from a contractor's established procedures, practices, and systems used to account for and manage contractor-owned property.

#### 45.104 Responsibility and liability for Government property.

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

(b) However, 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. 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.

#### 45.105 Analysis of contractors' property management system.

(a) The agency responsible for contract administration shall conduct an analysis of the contractor's property management policies, procedures, practices, and systems. This analysis shall be accomplished as frequently as conditions warrant, in accordance with agency procedures.

(b) The property administrator shall notify the contractor in writing when

the contractor's 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 shall provide a schedule for their completion. If the contractor does not correct the deficiencies in accordance with the schedule, the contracting officer shall notify the contractor, in writing, that failure to take the required corrective action(s) may result in—

(1) Contract price adjustment;

(2) Withdrawal of the Government's assumption of risk for loss, damage, destruction, or theft; and/or

(3) Other such action as determined by the contracting officer.

(c) If the contractor fails to take the required corrective action(s) in response to the notification provided by the contracting officer in accordance with paragraph (b) of this section, the contracting officer shall notify the contractor in writing of any Government decision to apply the remedies described in paragraphs (b)(1) through (b)(3) of this section.

#### 45.106 Transferring accountability.

Government property shall be transferred from one contract to another only when firm requirements exist under the gaining contract (see 45.102). 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.

#### 45.107 Contract clauses.

(a)(1) Except as provided in paragraph (d) of this section, the contracting officer shall insert the clause at 52.245-1, Government Property, in—

(i) All cost reimbursement, time-and-material, and labor hour type solicitations and contracts; and

(ii) Fixed-price solicitations and contracts when the Government will provide Government property.

(2) The contracting officer shall use the clause with its Alternate I in contracts other than those identified in 45.104(a).

(3) The contracting officer shall use the clause with its Alternate II when a contract 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 35.014) is contemplated.

(b) The contracting officer shall insert the clause at 52.245-2, Government Property (Installation Operations for

Services), in service contracts to be performed on a Government installation when Government-furnished property will be provided for initial provisioning only and the Government is not responsible for repair or replacement.

(c) The contracting officer shall insert the clause at 52.245-9, Use and Charges, in solicitations and contracts when rental of Government property is contemplated.

(d) When the acquisition cost of the item to be repaired does not exceed the simplified acquisition threshold, purchase orders for property repair need not include a Government property clause.

#### **Subpart 45.2—Solicitation and Evaluation Procedures**

##### **45.201 General.**

(a) The contracting officer shall insert a listing of the Government property to be offered in all solicitations where Government-furnished property is anticipated (see 45.102). The listing shall include at a minimum—

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

(2) Quantity/unit of measure;

(3) Unit acquisition cost; and

(4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).

(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 in accordance with the clause at 52.245-9, Use and Charges.

(4) The voluntary consensus standard or industry leading practices and standards to be used in the management of Government property, or existing property management plans, methods, practices, or procedures for accounting for property.

(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 by applying, for evaluation purposes only, a rental equivalent evaluation factor; or

(2) By charging the offeror rent for using the property when adjusting the offer is not practical.

(e) The contracting officer shall ensure the offeror's property management plans, methods, practices, or procedures for accounting for property are consistent with the requirements of the solicitation.

#### **Subpart 45.3—Authorizing the Use and/or Rental of Government Property**

##### **45.301 Use and rental.**

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

(a) Government property shall normally be provided 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.

(d) In exchange for consideration as determined by the cognizant contracting officer(s), the contractor may use Government property under fixed-price contracts other than the contract to which it is accountable. When, after contract award, a contractor requests the use of Government property, the contracting officer shall obtain a fair rental or other adequate consideration if use is authorized.

(e) The cognizant contracting officer(s) may authorize the use of Government property on a rent-free basis on a cost-type Government contract other than the contract to which it is accountable.

(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 Head of the Contracting Activity is required where non-Government use is expected to exceed 25 percent of the total use of Government and commercial work performed.

##### **45.302 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.

##### **45.303 Use of Government property on independent research and development programs.**

The contracting officer may authorize a contractor to use the property on an independent research and development (IR&D) program, if—

(a) Such use will not conflict with the primary use of the property or enable the contractor to retain property that could otherwise be released;

(b) 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

(c) 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.

**Subpart 45.4—Title to Government Property****45.401 Title to Government property.**

(a) The Government retains title to all Government-furnished property until properly disposed of, as authorized by law or regulation. Property that is leased by the Government and subsequently furnished to the contractor for use shall be considered Government-furnished property under the clause at 52.245-1, Government Property.

(b) Under fixed price type contracts, the contractor retains title to all property acquired by the contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

(c) Under cost-type and time-and-material contracts, the Government acquires title to all property to which the contractor is entitled to reimbursement as a direct item of cost, provided the property acquired is reasonable, allocable, and allowable (see Part 31). If the contractor is covered by Cost Accounting Standards, its disclosure statement may affect the charging, and consequently, the title vesting provisions.

**Subpart 45.5—Support Government Property Administration****45.501 Support Government property administration.**

(a) To ensure subcontractor compliance with Government property administration requirements, the property administrator assigned to the prime contract may request support property administration from another contract administration office, provided the contractor has agreed to allow such property administration.

(b) In instances where the prime contractor does not agree to allow the support property administrator to provide support property administration, the prime property administrator shall immediately refer the matter to the contracting officer.

(c) In instances where the prime contractor does not concur with the findings of the support Property Administrator, the prime property administrator shall immediately refer the matter to the contracting officer.

(d) 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.

**45.600 [Amended]**

12. Amend section 45.600 by removing "Government property" and "or progress" and adding "contractor inventory" and "progress, or performance-based" in their places, respectively.

**45.601 [Removed and Reserved]**

13. Remove and reserve section 45.601.

**PART 49—TERMINATION OF CONTRACTS**

14. Amend section 49.108-3 by revising paragraph (b)(1) to read as follows:

**49.108-3 Settlement procedure.**

\* \* \* \* \*

(b) \* \* \*

(1) All subcontractor termination inventory be disposed of and accounted for in accordance with the procedures contained in paragraph (j) of the clause at 52.245-1, Government Property; and

**PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS****51.106 [Amended]**

15. Amend section 51.106 by removing from paragraph (b) "52.245-2" and adding "52.245-1" in its place, and removing "or 52.245-5, Alternate I".

**51.107 [Amended]**

16. Amend section 51.107 by removing the last sentence.

**51.200 [Amended]**

17. Amend section 51.200 by removing "45.304" and adding "45.102" in its place.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

18. Revise sections 52.245-1 and 52.245-2 to read as follows:

**52.245-1 Government Property.**

As prescribed in 45.107(a), insert the following clause:

**GOVERNMENT PROPERTY (DATE)**

(a) Definitions. As used in this clause—

*Acquisition cost* means—

(1) For Contractor acquired property, the full cost determined in accordance with the system established by the Contractor in conformance with consistently applied sound accounting principles.

(2) For Government furnished property, the amount identified in the contract, or in the

absence of such identification, the fair market value attributed to the item by the Contractor.

*Common item* means material that is common to the applicable Government contract and the contractor's other work.

*Contractor-acquired property* means property acquired, fabricated, or otherwise provided by the Contractor for performing a contract, and to which the Government has title.

*Contractor's managerial personnel* means the Contractor's directors, 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.

*Contractor inventory* means—

(1) 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;

(2) 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 thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

*Demilitarization* means rendering a product designated for demilitarization unusable for and not restorable to, the purpose for which it was designed or is customarily used.

*Discrepancies incident to shipment* 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.

*Equipment* means a tangible article of personal property that is complete in-and-of itself, durable, nonexpendable, and needed for the performance of a contract. 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.

*Government-furnished property* means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract.

*Government property* means all property owned or leased by the Government. Government property includes both Government-furnished and contractor-acquired property.

*Material* 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* means property that cannot be removed after erection or installation without substantial loss of value or damage

to the installed property or to the premises where installed.

*Precious metals* means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

*Property* means all tangible property, both real and personal.

*Property Administrator* 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* means to furnish existing Government property or to allow the Contractor to acquire property on behalf of the Government under this contract.

*Real property* means land, land rights, buildings, structures, utility systems, steam-generation systems, and equipment attached to and made part of buildings and structures (such as heating systems). 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.

*Sensitive property* means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability such as classified property, weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

*Surplus property* means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA).

*Unique Federal Property* means Government-owned personal property that is peculiar to the mission of an 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 have a system to manage (control, use, preserve, protect, repair and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, records, and methodologies necessary for effective control of Government property, consistent with voluntary consensus standards and/or industry-leading practices and standards for Government property management.

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, disposition, or via a completed investigation, evaluation, and final determination for lost, damaged, or destroyed property. This requirement applies to all Government property under the Contractor's accountability, stewardship, possession or control, including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).

(3) The Contractor shall include the requirements of this clause in all subcontracts under which Government

property is acquired or furnished for subcontract performance.

(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. The Contractor shall not modify, cannibalize, or make alterations to Government property unless this contract specifically identifies the modifications, alterations or improvements as work to be performed.

(d) *Government-furnished property.* (1) The Government shall deliver to the Contractor the Government-furnished property described in this 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 lose its identity as Government property by its attachment to real property.

(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 (see also paragraph (f)(1)(ii)(A) of this clause).

(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; or

(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 Contractor-acquired property.* Title to all property purchased by the

Contractor, for which the Contractor is entitled to be reimbursed as a direct item of cost, under this contract, shall pass to and vest in the Government upon—

(1) A vendor's or supplier's initial delivery of such property to the Contractor;

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

(3) Commencement of processing of the property for use in contract performance; or

(4) Reimbursement by the Government for the cost of the property, whichever occurs first.

(f) *Contractor plans and systems.* (1)

Contractors shall develop property management plans and systems, at the contract, program, site or entity level to enable the following outcomes:

(i) *Acquisition of property.* The Contractor shall document that all property was acquired consistent with its engineering, production planning, material control operations, and/or cost accounting disclosure statement.

(ii) *Receipt of Government property.* The Contractor shall receive Government property (document the receipt), record (the information necessary to meet the record requirements of paragraphs (f)(1)(iii)(A)(1), (2), (3), (4) and (5) of this clause), identify (as Government-owned), 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 and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) *Contractor-acquired property.* The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

(iii) *Records of Government property.* The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property.

(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 tracking and/or disposition).

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

(3) Unit acquisition cost.

(4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).

(5) Unit of measure.

(6) Accountable contract number or equivalent code designation.

(7) Location.

(8) Disposition.

(9) Posting reference and date of transaction.

(10) Date placed in service.

(B) When approved by the Property Administrator, the Contractor may maintain, in lieu of 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 physical inventories during contract performance. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances, e.g., overall reliability of the Contractor's system or the property is to be transferred to a follow-on contract.

(v) *Subcontractor control.* (A) The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract requirements, including any cost savings achieved as a result of its prime contract relationship with the Government.

(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.

(vi) *Reports.* The Contractor shall have a process to create and provide reports including: reports of discrepancies; loss, damage and destruction; physical inventory results; audits and self-assessments; corrective actions; and other reports as directed by the Contracting Officer.

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

(1) Date of incident (if known).

(2) The name, commercial description, manufacturer, model number, and National Stock Number (if applicable).

(3) Quantity.

(4) Unique Item Identifier (if available).

(5) Accountable Contract number.

(6) A statement indicating current or future need.

(7) Acquisition cost, or if applicable, estimated scrap proceeds, estimated repair or replacement costs.

(8) All known interests in commingled property of which the Government property is a part.

(9) Cause and corrective action taken or to be taken to prevent recurrence.

(10) A statement that the Government will receive any reimbursement covering the loss, damage, destruction, or theft, in the event the Contractor was or will be reimbursed or compensated.

(11) Copies of all supporting documentation.

(B) The Contractor shall take all reasonable actions necessary to protect the Government

property from further loss, damage, destruction, or theft. 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.

(C) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage, destruction, or theft of Government property.

(D) 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.

(vii) *Relief of stewardship responsibility.* Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility for Government property when such property is—

(A) 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;

(B) 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

(C) Disposed of in accordance with paragraphs (j) and (k) of this clause.

(viii) *Utilizing Government property.* The Contractor shall 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 contract performance.

(ix) *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 repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(x) *Property closeout.* The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss, damage, destruction, or theft cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

(2) The Contractor shall establish and 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 made available to the Property Administrator.

(g) *Systems analysis.* (1) The Government shall have access to the Contractor's

premises, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management systems, procedures, records, and supporting documentation.

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

(3) 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 as 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, destruction, or theft to the Government property furnished or acquired under this contract, except when any one of the following applies:

(i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement).

(ii) The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel. Contractor's managerial personnel, in this clause, means the Contractor's directors, 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.

(iii) The Contracting Officer has, in writing, withdrawn the Government's assumption of risk for loss, damage, destruction, or theft, due to a determination under paragraph (g) 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. If the Contractor can establish by clear and convincing evidence that the loss, damage, destruction, or theft of Government property occurred while the Contractor had adequate property management practices or the loss, damage, destruction, or theft of Government property did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The allowability of insurance costs shall be determined in accordance with 31.205-19 of the Federal Acquisition Regulation.

(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 the following—

(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.

(4) Failure to repair or replace Government property for which the Government is responsible.

(j) *Contractor inventory disposal.* Except as otherwise provided for in this contract, the Contractor shall not dispose of Contractor inventory 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 in the following order of priority—

- (i) May purchase the property at the acquisition cost;
- (ii) Shall 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); and
- (iii) Shall 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;

(B) Contractor acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract; and

(C) Termination inventory.

(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 this 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 Termination Contracting 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); and

(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 121st 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 Contractor inventory 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 U.S. Government-owned property prior to its disposal.

(iii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(9) *Disposal proceeds.* The Contractor shall credit the net proceeds from the disposal of Contractor inventory to the price or cost of work or as the Contracting 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 or termination inventory without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place, at which time all obligations of the Government regarding such property shall cease.

(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.

(m) *Overseas Contracts.* If this contract is to be performed outside of the United States and its outlying areas, 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 1 (Date).* As prescribed in 45.107(a)(2), substitute the following for paragraph (h)(1) of the basic clause:

(h)(1) The Contractor assumes the risk of, and shall be responsible for, any loss, damage, destruction, or theft 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 (Date).* As prescribed in 45.107(a)(3), substitute the following for paragraph (e) of the basic clause:

(e) 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 this 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 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).”

#### **52.245-2 Government Property (Installation Operations for Services).**

As prescribed in 45.107(b), insert the following clause:

Government Property (Installation Operations for Services) (Date)

(a) This Government Property is furnished to the Contractor in an “as-is, where is” condition. The Government makes no warranty regarding the suitability for use of the Government property specified in this 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 of it at Contractor expense.

(d) Except as provided in this clause, Government property furnished under this contract shall be governed by the Government Property clause of this contract. (End of clause)

#### **52.245-3 through 52.245-8 [Removed and Reserved]**

19. Remove and reserve sections 52.245-3 through 52.245-8.

20. Amend section 52.245-9 by—

a. Removing from the introductory paragraph “45.106(h)” and adding “45.107(c)” in its place;

b. Revising the date of the clause; and

c. Revising in paragraph (a) the definitions “Acquisition cost”, “Government property”, and “Real property”.

The revised text reads as follows:

#### **52.245-9 Use and Charges.**

\* \* \* \* \*

#### **USE AND CHARGES (DATE)**

(a) \* \* \*

*Acquisition cost* means—

(1) For Contractor acquired property, the full cost determined in accordance with the system established by the Contractor in conformance with consistently applied sound accounting principles.

(2) For Government-furnished property, the amount identified in the contract, or in the absence of such identification, the fair market value attributed to the item by the Contractor.

*Government property* means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property.

*Real property* means land, land rights, buildings, structures, utility systems, steam-generation systems, and equipment attached to and made part of buildings and structures (such as heating systems). 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.

\* \* \* \* \*

#### **52.245-10 through 52.245-19 [Removed and Reserved]**

21. Remove and reserve sections 52.245-10 through 52.245-19.

#### **PART 53—FORMS**

##### **53.245 [Amended]**

22. Amend section 52.245 in paragraph (e) by removing “52.245-2(i), 52.245-5(i)” and adding “52.245-1” in its place.

[FR Doc. 05-18516 Filed 9-16-05; 8:45 am]

**BILLING CODE 6820-EP-S**

#### **DEPARTMENT OF TRANSPORTATION**

#### **National Highway Traffic Safety Administration**

#### **49 CFR Part 572**

[Docket No. 2005-22068]

#### **Anthropomorphic Test Devices; Denial of Petition for Consideration Regarding Amending the Side Impact Dummy (SID); Specifications**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This notice denies a petition for rulemaking submitted by Ford Motor Company (Ford) on December 19, 2003, that asked the National Highway Traffic Safety Administration (NHTSA) to amend the Side Impact Dummy (SID) specifications in 49 CFR Part 572, Subpart F, for use in Federal Motor Vehicle Safety Standard (FMVSS) No. 214, “Side Impact Occupant Protection,” and the Side Impact New Car Assessment Program (Side NCAP).

**FOR FURTHER INFORMATION CONTACT:** For technical issues: Mr. Sean Doyle, NHTSA Office of Crashworthiness Standards. Telephone: (202) 366-1740. Facsimile: (202) 366-7002.

For legal issues: Ms. Dee Fujita, NHTSA Office of the Chief Counsel. Telephone: (202) 366-2992. Facsimile: (202) 366-3820.

Both officials can be reached by mail at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On October 30, 1990, NHTSA published a final rule (**Federal Register** Vol. 55, No. 210, Docket Number 88-06; Notice 8) to amend FMVSS No. 214, at the time titled, “Side Door Strength.” Prior to this final rule, a vehicle's side impact performance was determined solely by a static assessment of the ability of a door to resist forces imparted by a piston pressing a rigid steel cylinder against the door's outer surface. However, with the implementation of this final rule, effective September 1, 1993, vehicles were additionally required to undergo full-scale dynamic crash tests to assess occupant protection. Because of its acceptable reliability and durability during research testing conducted in support of the final rule, the agency chose the SID to measure the potential for injuries to an occupant's thorax and pelvis in a side impact crash (**Federal Register** Vol.