

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Chapter 1****[Docket FAR–2007–0002, Sequence 2]****Federal Acquisition Regulation;  
Federal Acquisition Circular 2005–17;  
Introduction****AGENCIES:** Department of Defense (DoD),  
General Services Administration (GSA),and National Aeronautics and Space  
Administration (NASA).**ACTION:** Summary presentation of final  
rule.**SUMMARY:** This document summarizes  
the Federal Acquisition Regulation  
(FAR) rule agreed to by the Civilian  
Agency Acquisition Council and the  
Defense Acquisition Regulations  
Council in this Federal Acquisition  
Circular (FAC) 2005–17. A companion  
document, the Small Entity Compliance  
Guide (SECG), follows this FAC. The  
FAC, including the SECG, is available  
via the Internet at [http://](http://www.regulations.gov)  
[www.regulations.gov](http://www.regulations.gov).**DATES:** For effective dates and comment  
dates, see separate documents, which  
follow.**FOR FURTHER INFORMATION CONTACT:** The  
analyst whose name appears in the table  
below in relation to the FAR case.  
Please cite FAC 2005–17, FAR case  
2004–025. For information pertaining to  
status or publication schedules, contact  
the FAR Secretariat at (202) 501–4755.**LIST OF RULE IN FAC 2005–17**

| Item    | Subject                   | FAR case | Analyst  |
|---------|---------------------------|----------|----------|
| I ..... | Government Property ..... | 2004–025 | Parnell. |

**SUPPLEMENTARY INFORMATION:** Summary  
for the FAR rule follows. For the actual  
revisions and/or amendments refer to  
FAR case 2004–025.FAC 2005–17 amends the FAR as  
specified below:**Item I—Government Property (FAR  
Case 2004–025)**

This final rule amends Federal Acquisition Regulation (FAR) Part 45, Government Property, and associated FAR language and clauses to implement a policy that fosters efficiency, flexibility, innovation and creativity while continuing to protect the Government's interest. This rule simplifies procedures, clarifies language, and eliminates obsolete requirements related to the management and disposition of Government property in the possession of contractors by moving, clarifying, and deleting definitions; establishing a life-cycle approach to property management; and, sanctioning the use of consensus standards and/or industry-leading standards and practices for property management. This rule deletes outdated clauses, combines selected FAR property clauses into a single clause, and implements a new clause designed for military base and installation-level contracts awarded under the OMB Circular A–76 process. FAR language and associated clauses for special tooling, special test equipment and facilities contracts is deleted. It is not the Government's intention to change the intent or meaning of the language pertaining to "title to Government property."

Dated: May 2, 2007.

**Al Matera,***Acting Director, Contract Policy Division.***Federal Acquisition Circular**Federal Acquisition Circular (FAC)  
2005–17 is issued under the authority of  
the Secretary of Defense, the  
Administrator of General Services, and  
the Administrator for the National  
Aeronautics and Space Administration.Unless otherwise specified, all  
Federal Acquisition Regulation (FAR)  
and other directive material contained  
in FAC 2005–17 is effective June 14,  
2007.

Dated: April 30, 2007.

**Shay D. Assad,***Director, Defense Procurement and  
Acquisition Policy.*

Dated: April 27, 2007.

**George Barclay,***Acting Senior Procurement Executive,  
General Services Administration.*

Dated: April 19, 2007.

**Sheryl Goddard,***Acting Assistant Administrator for  
Procurement, National Aeronautics and  
Space Administration.*

[FR Doc. 07–2257 Filed 5–14–07; 8:45 am]

**BILLING CODE 6820–EP–S****DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 1, 2, 4, 7, 14, 15, 16, 17,  
18, 19, 22, 28, 31, 32, 35, 37, 41, 42, 43,  
44, 45, 46, 49, 51, 52, and 53****[FAC 2005–17; FAR Case 2004–025; Docket  
2007–0001, Sequence 2]****RIN 9000–AK30****Federal Acquisition Regulation; FAR  
Case 2004–025, Government Property****AGENCIES:** Department of Defense (DoD),  
General Services Administration (GSA),  
and National Aeronautics and Space  
Administration (NASA).**ACTION:** Final rule.**SUMMARY:** The Civilian Agency  
Acquisition Council and the Defense  
Acquisition Regulations Council  
(Councils) have agreed on a final rule  
amending 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. FAR parts are amended  
to implement a policy that improves the  
management of Government property  
while fostering efficiency, flexibility,  
innovation and creativity by adopting  
property practices typically used in the  
commercial arena while continuing to  
protect the Government's interest. In

addition, the rule simplifies requirements on contractors by reducing the number of FAR clauses from nineteen clauses to three overarching clauses. The final rule specifically impacts contracting officers, property administrators, and contractors responsible for the management of Government property.

**DATES:** Effective Date: June 14, 2007.

**FOR FURTHER INFORMATION CONTACT** For clarification of content, contact Mrs. Jeritta Parnell, Procurement Analyst, at (202) 501-4082. Please cite FAC 2005-17, FAR case 2004-025. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

The Department of Defense (DoD) proposed a rewrite of FAR Part 45, Government Property and associated clauses, to implement a policy that fosters efficiency, flexibility, innovation and creativity while continuing to protect the Government's interest. In the late 1990s, the DoD initiated a complete rewrite of the 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 of the proposed rules (Subpart 45.6) was implemented; the legalities and complexities that characterize Government property management drew out differences between the Government and industry parties, resulting in suspension of the rest of the project.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 70 FR 54878, September 19, 2005, and the public comment period closed November 18, 2005.

Forty respondents submitted two-hundred-eighty-seven comments. The two-hundred-eighty-seven comments were grouped into thirty-two categories. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule. Differences between the proposed rule and final rule are identified in the Summary of Changes in Section C, and discussed in the responses to the public comments in Section B.

##### **B. Public Comments**

The 287 comments received from forty respondents have been

dispositioned as discussed below. The comments received were grouped under 32 general topics. A summary of the comments follows:

###### **1. Title.**

###### **a. Title to Government Property.**

Fourteen comments were received from ten respondents regarding the title of Government property.

(1) Two respondents addressed the proposed FAR revision as containing an elimination of the state law "sale for resale" exemption for overhead property allocable to cost type contracts. The respondents stated that the proposed rule eliminates the exemption from sales and use taxes on contractor overhead property allocable to cost type contracts and should be withdrawn and full consideration given to the impact of the change.

(2) One respondent requested adding the statement to the proposed rule at FAR 52.245-1(e) "Under cost reimbursement and cost sharing contracts" to clarify title under cost type contracts versus fixed price contracts.

(3) One respondent requested an additional sentence be added to the title paragraph clarifying that when this clause is used with Time-and-Material (T&M) contracts, contractors shall only acquire material for direct charge to the contract.

(4) One respondent recommended the following change to clarify FAR 45.401, "Under fixed price type contracts, the contractor retains title to all property acquired by the contractor for use on the contract, up until the time that such property is received, delivered and accepted as a part of the deliverable end-item by the Government."

(5) One respondent recommended adding a section to address cost Contract Line Item Numbers (CLINs) under fixed price contracts in FAR 45.401(b).

(6) One respondent recommended that FAR 52.245-1(e) be revised to replace direct item of cost with, either directly or conditionally, based upon the sub paragraphs (2), (3), and (4) that followed.

(7) One respondent requested FAR 52.245-1(e) be revised to replace "direct item of cost" with "either directly or conditionally based on the subparagraphs (2), (3) and (4)" or use optional wording "FFP and Cost-type reimbursable contracts."

(8) One respondent recommended the retention of the current language in FAR 52.245-2 and 52.245-5 as to when title passes.

(9) One respondent requested a revision to title language referring to indirect title issues as proposed in FAR

45.401 and FAR 52.245-1(e) to clarify indirect and direct overhead property.

(10) One respondent provided the following response to the proposed rule at FAR 52.245-1, "While the Government has not asserted title to all materials that may support the charging of indirect costs, including (for instance) office supplies (some portions of the cost of which may be allocated to a contract), we believe that financing payments normally must be secured by a title interest in contract materials. As a general rule, the value of the payments will be fairly approximated by the value of goods that are either incorporated into the end items, or consumed in their production (such as cutting materials, abrasives, special tooling, etc.). The Government's interest in such materials is not dependent on whether their costs are charged as direct or indirect costs. Sections 45.401(b) and (c), and paragraph (e) of the proposed Government Property clause, have therefore been corrected in this draft to eliminate this distinction."

(11) One respondent provided three comments.

(i) A contract modification may not be necessary if contractor retention and use was the original intent of the contract. Requiring a modification serves no purpose. 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 item. If a deliverable item is to be furnished to the contractor for use after inspection and acceptance by the Government, it shall be made accountable to the receiving contract as Government-furnished property.

(ii) Clarify the FAR to be more consistent with the current and proposed title provisions. We believe there is no intent on the Government's part or the contractor's part to change how the title provisions currently function.

(iii) Revise 52.245-1(d) and (e).

*Response:* The intent of 52.245-2 and 52.245-5 remains unchanged. The proposed language at 45.401 and 52.245-1(d) and (e) is revised to reflect the current language in the FAR found at 52.245-2 and 52.245-5.

Administrative changes (*i.e.*, deletion of references to Special Tooling and Facilities) were made to 45.402 and 52.245-1(e)(2) and (3) in order to correlate with the final rule. Though the intent of the proposed rule was to provide clarity for title issues, the disparate public comments received gave evidence that questions still remain. Therefore, the Councils have

fundamentally retained existing FAR language under this case.

*b. Title Under Progress Payments.*

One respondent requested clarification in 52.232–16 that the Government does not take title to overhead property.

*Response:* The Councils do not believe the recommended change at 52.232–16 is necessary as related to this case. With respect to overhead materials, language will not be changed by the FAR Part 45 rewrite.

**2. Use of Government Property (Suitability for Use and As-Is).**

a. One respondent recommended that contractors be allowed the opportunity to inspect Government-furnished property, expected to be suitable for contract performance, after the property has been received and installed.

*Response:* The Councils agree that contractors should be allowed to determine whether Government-furnished property is suitable for contract performance. Therefore FAR 52.245–1(d)(3)(ii), renumbered as 52.245–1(d)(2)(ii), is revised to allow contractors the opportunity to determine whether Government-furnished property is suitable for use after receipt and installation.

b. One respondent recommended that FAR clause 52.245–1(d)(3)(i) and (ii) be revised to specify what constitutes a contractor's timely written request for equitable adjustment.

*Response:* The Councils believe the final rule language is adequate for the contractor to advise the contracting officer of Government property received in a condition not suitable for its intended use or if the property is not delivered to the contractor by the contractually required date. The rule allows flexibility in accordance with agency procedures and/or individual contract requirements.

c. One respondent recommended using original language as stated in FAR 52.245–2(a)(2) to disposition Government property not suitable for intended use. Since the property is owned by the Government, the decision concerning an appropriate action should rest with the contracting officer.

*Response:* The Councils believe the final rule language is sufficient for disposition of Government property not suitable for intended use. The language gives the contracting officer the flexibility when choosing a course of action to remedy the problem. FAR clause 52.245–1(d)(2)(ii) specifically states that actions may include repairing, replacing, modifying, returning or otherwise disposing of the property at the Government's expense. Upon completion of the action(s), the

contracting officer shall consider an equitable adjustment to the contract.

d. Six respondents offered recommendations to the language regarding property offered "as-is." The proposed rule did not address pre-contract inspection by the contractor for Government-furnished property offered in an "as-is" condition. This may cause adverse ramifications associated with the use of the "as-is" provisions.

*Response:* The Councils believe that the recommendation to add language addressing pre-contract inspection by the contractor for Government-furnished property offered in an "as-is" condition is appropriate and has added language at FAR 45.201(a)(5). The new language requires the contracting officer to include a statement in all solicitations as to whether the Government property is to be furnished in an "as-is" condition and provide instructions for physical inspection.

e. One respondent recommended that FAR clause 52.245–1(d)(3)(iii) be deleted in its entirety as the unilateral provisioning of "as-is" property is high risk to the contractor. In addition, it delays scheduling, increases cost to the contractor and to the Government and may present a costly event to the contractor should the item be determined hazardous.

*Response:* The Councils do not agree with the recommendation to delete the Government's option to furnish property in an "as-is" condition. The FAR currently provides language to provide property in an as-is condition and the Councils see no evidence to justify the removal of this language. However, the Councils recognize the respondent's concern and have mitigated the risk by revising FAR clause 52.245–1(d)(3)(iii), renumbered as 52.245–1(d)(2)(iii), to clarify that the contractor will be given the opportunity to inspect property provided in an "as-is" condition prior to the property being provided.

f. One respondent stated that the listing at FAR 45.201(a) should include all material information required to make an informed decision regarding Government property to be offered in solicitations in an "as-is" condition. The respondent recommended adding supply condition code and current location to the proposed listing.

*Response:* The Councils believe the list in the proposed final rule is sufficient for inclusion in solicitations where Government-furnished property is anticipated and should not be modified to add supply condition code and current location. The contractor has the right to inspect property furnished "as-is" and determine the condition relative to overall utility prior to the

property being provided under contract as stated in the revised rule, FAR clause 52.245–1(d)(3)(iii), renumbered as 52.245–1(d)(2)(iii).

g. One respondent recommended that a reference to the Changes clause be included at FAR 52.245–1(i). The respondent further commented that the language is somewhat limiting. If a contractor relies on Government-Furnished Property (GFP) and that property is delayed, received in an unsuitable condition, substituted, etc. (see FAR 52.245–1(i)(1)-(4)), contract performance may be impacted. An equitable adjustment may not be sufficient remedy for the contractor.

*Response:* The Councils believe that the proposed language should not be revised to include a reference to the Changes clause nor should the equitable adjustment language be revised. A change is affected according to whether or not the contracting officer determines the necessity for such, in accordance with contract terms and conditions. Equitable adjustments require agreement by both parties.

**3. Scope.**

a. One respondent suggested the addition of a sentence to FAR 45.000, scope of part, stating that "nothing in this part prohibits the use of a property management contract."

*Response:* The FAR does not prohibit the use of a contract for performance of property management. Contracts for the performance of property management are a common form of service contracts. The Councils do not believe it is necessary to specifically state that the use of a contract for performance of property management is "not prohibited."

b. One respondent suggested adding language to FAR 45.000, scope of part, to specifically exclude software.

*Response:* While the definition of Contractor-acquired property remains unchanged, FAR 45.000 is revised to exclude software and intellectual property from this rule.

c. Three respondents suggested replacing "plant" or "plant equipment" in the parenthetical phrase in FAR 45.000.

*Response:* The language is revised to delete the term "Plant equipment" and replace it with the word "Property" in the parenthetical phrase in FAR 45.000. The term "Property," rather than the term "Plant equipment" is more appropriately used because it is more inclusive and more definitive.

d. One respondent suggested that since the definition for plant equipment has been deleted, and the term "Equipment" has been substituted in most cases in the re-write, the all-

inclusive term "Government property," as used in FAR 45.301(f) of the proposed rule, should also be replaced with the term "Equipment" based on the context.

*Response:* The term "Government property," rather than the term "Equipment" or "Government equipment", is more appropriately used because it is more inclusive and more definitive.

#### 4. Definitions.

##### a. Acquisition Cost.

Seven comments were received from five respondents concerning the definition of "Acquisition cost." One respondent stated that the proposed definition did not provide for the use of original acquisition cost. One respondent recommended deleting the language at paragraph (2) of the definition. One respondent recommended that the definition be revised to refer to generally accepted accounting principles (GAAP), not consistently applied sound accounting principles, and asked whether Cost Accounting Standards (CAS) is applicable. One respondent stated the definition should be revised to state that the fair market value attributed to the item should be agreed upon by the parties. One respondent stated that the definition in 45.101, 52.245-1, and 52.245-9 included the term "full cost" which may be confusing to personnel unfamiliar with contractor's systems, e.g., for equipment, acquisition cost is referred to as "unit acquisition cost."

*Response:* The Councils recognize the concerns and have revised the definition of acquisition cost that provides sufficient detail to permit application. As part of this revision, the Councils have replaced the term "Full cost" with "Cost" to avoid any potential confusion.

##### b. Approved Scrap Procedure.

One respondent recommended including a definition for "Approved scrap procedures."

*Response:* The Councils believe there is no single definition for approved scrap procedure; it will vary, dependent upon the individual contractor.

##### c. Cannibalize.

Two respondents recommended adding a definition for "Cannibalize."

*Response:* The Councils agree with the recommendation and a definition for "Cannibalize" is added to 45.101 and 52.245-1.

##### d. Common Item.

Two comments received from one respondent recommended the definition for "Common item" be deleted at 45.101 and 52.245-1(a) because it is superfluous and not used elsewhere.

*Response:* The term "Common item" is used in Part 31 and in the inventory disposal forms. However, because the term is used in more than one section of the FAR, the Councils decided the definition should be moved to Part 2.

##### e. Contractor-Acquired Property.

Two comments received from two respondents recommended revising the definition of "Contractor-acquired property." One respondent recommended revising the definition as follows: "means property acquired or otherwise provided by the contractor for performing a contract and to which the Government *has provided funding or* has title." One respondent recommended adding the word "Government" to the term to say "Contractor acquired government property."

*Response:* The Councils believe the definition is adequate as written. The definition states "to which the Government has title" so, there is no additional value to adding the word Government to the term.

##### f. Contractor Inventory.

Eleven comments were received from three respondents recommending changes to the definition of "Contractor inventory." Four comments stated that paragraph (1) should be revised to state only: "Any property acquired by and or in the possession of a contractor or subcontractor under a contract for which title is vested in the Government and delete the language that states: "and which exceeds the amounts needed to complete full performance under the entire contract." Two comments stated the term should be changed to "Contract inventory." Two comments stated that paragraph (2) should be deleted. Two comments stated that paragraph (3) should be deleted. One comment stated that term should be "contractor property."

*Response:* The term and the definition of contractor inventory reflect the statutory definition in 40 U.S.C. 472.

##### g. Demilitarization.

Five comments were received from four respondents regarding the definition of "Demilitarization." One respondent stated that the definition of demilitarization was ill-suited for its intended purpose and recommended it be toned down and moved away from its military slant. Other terms suggested were disable, neutralize, incapacitate or decommission. One respondent stated that the word "demilitarization" should be removed from the body of the definition. One respondent stated that the definitions in 45.101 and 52.245-1 should be revised to say "demilitarization means rendering designated equipment or material

unusable for, and not restorable to, the purpose for which it was designed or is customarily used" by deleting the phrase "a product designated for demilitarization." One respondent stated that definition needed to be revised to replace "product designated for demilitarization" with "equipment and material."

*Response:* The definition is revised to remove the words "designated for demilitarization," but the Councils did not concur with substituting "equipment or material" with "disable, neutralize, incapacitate or decommission." Demilitarization is a term of art specific for military purposes and denotes more requirements than are implied by the suggested terms.

##### h. Discrepancies Incident to Shipment.

Four comments were received from three respondents to revise the definition of "Discrepancies incident to shipment" to mean any difference between the items documented to have been shipped and items actually received.

*Response:* The Councils agree with the suggested revisions and the definition is revised in 45.101 and 52.245-1.

##### i. Equipment.

Three comments were received from three respondents to revise the definition of "Equipment." One respondent stated the phrase "in-and-of-itself" is limiting, the statement on the expected useful life is superfluous and the phrase "does not lose its identity or become a component part of another article when put into use" creates confusion. One respondent stated "in-and-of-itself" should be replaced with "functionally complete for its intended purpose." One respondent stated special tooling should be a subset of equipment.

*Response:* The Councils agree that the phrase "in-and-of-itself" should be revised and replaced it with "functionally complete for its intended purpose," but there are instances where a piece of equipment becomes part of a higher assembly, so that distinction is necessary.

##### j. Government-Furnished Property.

Two comments were received from one respondent to revise the definition of "Government-furnished property" to be consistent with the Unique Identification (UID) requirements by adding the phrase "is a subset of property in the possession of a contractor (PIPC)," in both 45.101 and the clause at 52.245-1.

*Response:* The Councils do not believe the additional language is necessary and does not add clarity. UID is a unique DoD initiative, and the term

PIPC is a DoD unique term, and therefore are not appropriate for inclusion in the FAR.

*k. Industry Leading Standard or Practice.*

One respondent stated that there should be a definition for "Industry leading standard or practice" added to the clause at 52.245-1.

*Response:* The Councils believe that the term is a commonly used term and is meant to convey industry strategies and processes that are quantifiably and qualitatively demonstrated to be top performing.

*l. Information Technology Equipment.*

Two comments were received from one respondent stating that a definition should be added for "Information Technology Equipment (ITE)" in 45.101 and the clause at 52.245-1.

*Response:* A definition of information technology exists in 2.101 and captures information technology equipment within that definition.

*m. Material.*

Two comments were received from one respondent to revise the definition of "Material" to be more in line with the concept that tangible personal property is either material or equipment and to remove the exclusions of special tooling, special test equipment and unique Federal property, in 45.101 and in the clause at 52.245-1.

*Response:* The Councils believe special tooling and special test equipment are still valid classifications and the exclusion still applies. Unique Federal property may be applicable at an agency level. The term "Unique Federal property" was removed from the final rule language.

*n. Non-severable.*

Two comments were received from one respondent to substitute the word construction for erection in the definition of "Non-severable" in both 45.101 and the clause at 52.245-1.

*Response:* The definition is revised because the Councils believe that "construction" provides a better description.

*o. Personal Property.*

Two respondents stated that there is no definition for "Personal property" and a definition should be included here.

*Response:* The definition for Personal property can be found in 2.101.

*p. Property in the Possession of Contractors (PIPC).*

One comment was received stating there needed to be a definition for "Property in the Possession of Contractors (PIPC)."

*Response:* An additional definition is not necessary because this is not a term used in the FAR.

*q. Plant Clearance Officer (PLCO) and Property Administrator (PA).*

Four comments were received from two respondents regarding revisions to the definition of "Plant Clearance Officer" (PLCO) and "Property Administrator" (PA). One respondent stated that PLCO and PA should be defined in the same place and that the word "assigned" should be revised to read "appointed" in both definitions because they both must have a certificate of appointment. One respondent stated that the revisions to the PLCO definition appear to redefine the duties of the PLCO and proposed a revised definition as "an authorized representative of the contracting officer appointed to disposition property accountable under Government contracts." One respondent stated that the definition should be left as is.

*Response:* The definitions of PLCO and PA were revised to replace the word "assigned" with "appointed" in FAR 2.101 (PLCO), 45.101 (PA) and 52.245-1 (PA). The Councils believe the proposed revision most accurately reflects the duties and authorities of the appointed individual. PLCO is defined in FAR 2.101. PA is only used in 45 and is therefore inappropriate to be defined in FAR 2.101.

*r. Provide.*

Two comments were received from one respondent recommending that the definition of "Provide" should be consistent with the Defense Federal Acquisition Regulation Supplement (DFARS) 245.301 definition.

*Response:* The definition of "Provide" is revised in the final rule at 45.101 and 52.245-1.

*s. Real Property.*

Two comments were received from one respondent stating that the definitions for "Real property" should be moved from 45.101 and 52.245-1 to 2.101.

*Response:* The Councils believe that the definition for "Real property" is more appropriate in Part 45 because this definition relates to property management and may conflict with the use of the term as used elsewhere in the FAR. The final rule retains the current FAR Part 45 definitions of Real property and Plant equipment. The proposed rule included a revised definition of Real property in FAR Part 45, and also deleted the definition of Plant equipment. However, upon further review, the Councils are concerned that removing the term "Plant" from "Plant equipment" may inappropriately narrow the definition of Real property. The current definition states that Real property does not include the foundations and work necessary to

install plant equipment. Plant equipment is currently defined as encompassing only Personal property. However, the term "Equipment" can encompass both Real and Personal property. Thus, the Councils believe it is advisable to retain the current definitions of Real property and Plant equipment. However, in Section 45.000, Scope of part, the Councils believe that the term "Property" is more appropriate than "Plant equipment", *i.e.*, the distinction between Real and Personal property is not relevant in the context of this particular section.

*t. Scrap.*

Two comments were received from two respondents stating that the proposed rule does not provide a definition of "Scrap."

*Response:* FAR Part 2 includes a definition of scrap.

*u. Sensitive Property.*

One respondent stated that the definition of "Sensitive property" should include *sensitive and classified information*.

*Response:* A revision to the definition of "Sensitive property" is not necessary. The proposed rule applies only to tangible property and does apply to information such as software or intellectual property.

*v. Special Tooling and Special Test Equipment.*

Four comments were received from four respondents regarding the use of the terms "Special Tooling (ST)" and "Special Test Equipment (STE)" and the location of the definitions. One respondent stated that if the ST and STE clauses are being deleted, then the terms should be deleted as well. One respondent asked whether Part 2 was going to be revised to include the definitions of ST and STE, since it does not currently. One respondent stated that "replacement of these items" should be deleted from the definition of Special tooling.

*Response:* Even though the clauses for special tooling and special test equipment are being deleted, the terms are still appropriate classifications. The definitions of ST and STE are included in the proposed rule under Part 2. The Councils agree that the phrase "replacement of these items" should be deleted from the special tooling definition in FAR 2.101 and has revised the definition accordingly.

*w. Stewardship.*

Two respondents stated that the revised rule should include a definition of "Stewardship."

*Response:* The Councils believe the term is a common dictionary term and does not need to be defined.

*x. Surplus Property.*

Two comments were received from one respondent stating the definition of "Surplus property" should be revised in both 45.101 and 52.245-1 to state "excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA) or as delegated."

*Response:* GSA has not delegated the authority to determine that items are surplus to the Government.

y. *Unique Federal Property.*

Two comments were received from one respondent stating that "Unique Federal property" is a subset of equipment and the definition of "Unique Federal property" should be revised to replace the term "Personal property" with "Equipment" in both FAR 45.101 and the clause at 52.245-1.

*Response:* "Unique Federal property" is not exclusively a subset of equipment. "Unique Federal property" may include equipment and other classifications of personal property. However, the definition is deleted because it is not used in the prescriptive language or in the clause.

z. *Voluntary Consensus Standards.*

One respondent stated that definition of "Voluntary consensus standards" should be the same as the definition in OMB Circular A-119.

*Response:* The definition is based on the definition in OMB Circular A-119 and is tailored to the requirements of FAR Part 45.

aa. *Work In Progress (WIP).*

One comment was received regarding the addition of a definition for "WIP," in both Part 45 and the clause at 52.245-1.

*Response:* The term "WIP" is not used in Part 45, and therefore, there is no need to define the term.

5. **Policy.**

a. One respondent stated that the FAR should provide a more detailed explanation of what is needed for a contracting officer to provide property.

*Response:* FAR 45.102(b) sets forth overall requirements that must be met for contracting officers to make a determination to furnish Government property. Any further details are subject to Agency policies and procedures.

b. One respondent suggested the Councils clarify the intent of the requirement that contracting officers "provide property to contractors only when it is clearly demonstrated."

*Response:* The proposed language in FAR 45.102(b) sets forth clear requirements regarding what must be demonstrated in order for contracting officers to provide Government property. To further define these requirements would hinder contracting

officers' flexibility in making informed business decisions in the best interest of the Government.

c. One respondent questioned how contracting officers are supposed to calculate the cost of administration etc. under FAR 45.102(b)(2).

*Response:* Calculating the cost of administration should be considered on a case by case basis and in accordance with Agency procedures and individual contractual circumstances and requirements.

d. One respondent questioned what is meant by the phrase "increase the Government's assumption of risk" under FAR 45.102(b)(3).

*Response:* The Government's assumption of risk is not specifically defined since the FAR cannot predict all aspects of risk. Such aspects may include, but are not limited to, successful contract completion, loss of Government property, national security, etc. To further define these requirements would hinder contracting officers' flexibility in making informed business decisions in the best interest of the Government.

e. Two respondents were concerned that the proposed rule will make furnishing property to contractors much easier administratively, and consequently will result in more Government property being furnished to contractors.

*Response:* The language allows contracting officers, the flexibility to make appropriate business decisions regarding their contracts. This may include the provision of property, but only when it is in the best interests of the Government.

f. One respondent stated that FAR 45.103 also defines Voluntary consensus standards and as such, they embrace this concept whole-heartedly. The respondent suggested that for consistency, it would make sense to use the verbiage as spelled out in FAR 11.101(c).

*Response:* Section 11.101 provides guidance for the use of Voluntary consensus standards. To restate such guidance would be redundant. The definition of Voluntary consensus standards was added to 2.101 in the proposed rule and is based on the definition in OMB circular A-119.

6. **General.**

a. One respondent stated that it may be difficult to estimate Government-Furnished Property (GFP) utilization over a 5 or 10-year contract period and recommended that allowances be made for revisiting the timely turn-in of excess property, where exceptional circumstances exist.

*Response:* In order to ensure maximum practical use of the property and timely disposition of excess property, the Councils believe the final rule language found at FAR 45.103(a)(6), which requires contractors to justify retaining Government property not needed for contract performance, is necessary. It should be noted that the prescriptive language would be subject to agency procedures.

b. One respondent suggested that FAR 45.103(a)(2) be divided into two separate requirements, as the subject matter is not related.

*Response:* The Councils agree with the respondent and has revised FAR 45.103(a)(2) to make two separate requirements. As a result, proposed paragraphs (3), (4), and (5) have been renumbered in the final rule as (4), (5), and (6). In addition, the invalid reference to 45.602 has been deleted.

c. One respondent questioned what possible justification could a contractor provide to substantiate keeping Government property not required for performance of a Government contract.

*Response:* Normally Government property is returned to the Government. Contractors are required to justify retention of Government property not needed for contract performance in order to ensure maximum practical use of the property and to ensure timely disposition of excess property. There are several instances in which it is in the Government's best interest for contractors to retain Government property (e.g., future procurements and spare part procurements, medical studies and industrial readiness).

7. **Industry Leading Standards and Practices.**

a. One respondent, with respect to 45.103, asked who sets the "Leading Industry Standards."

*Response:* An "Industry leading" standard is meant to convey industry strategies and processes that are both quantifiably and qualitatively demonstrated to be top performing within a given industry.

b. Two respondents, with respect to the Background Section of the **Federal Register** Notice, stated that it is unclear how the use of commercial practices will apply to the management of Government property under Government contracts especially when contractors do not provide their own property to other contractors under their contracts.

*Response:* Contractors are not necessarily being asked to provide processes for contractor-to-contractor relationships. Rather, contractors are being required to apply the same industry leading standards or voluntary

consensus standards that they use to manage their own property.

c. One respondent stated, with respect to 45.103, that voluntary consensus standards currently in print would not be efficient to protect the Government's interest. An area that is unclear is whether contractors will be required to go to a voluntary consensus standard if for the past twenty years the contractor's property control system has met or exceeded the requirements of FAR Subpart 45.5. If contractor metrics ASTM, ISO, etc., are used by the Government to monitor contractor compliance, what precedent does the FAR, DoD Supplement, and DoD Manual have in relationship to the contractor based metric?

*Response:* The effectiveness of Voluntary consensus standards is well established; their use is prescribed in OMB Circular 119 and in FAR Part 11. The proposed rule included the requirement for consistent application of prescribed outcomes.

d. One respondent stated that the use of industry-leading standards and practices versus the previous standard of sound industrial practices imposes a hardship on small business.

*Response:* The Councils believe that the rule allows small businesses to use industry practices instead of Government imposed standards and is therefore less burdensome. Industry leading practices are not an exclusive purview of large business. 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.

e. One respondent asks, "How are contracting officers to be aware of industry leading practices? Will the council direct the creation of new Defense Acquisition University (DAU) courses specifically for this purpose?"

*Response:* The Councils believe that contracting officers are professionals in their fields of acquisition and are capable of accessing the necessary information from various sources applicable to their respective fields. The Councils will work with DAU to determine if and to what extent course revisions or new courses are required.

#### **8. Insurance and Indemnification (FAR 31.205–19).**

Three respondents requested a change to the use of "undue" and "theft" in regard to FAR 31.205–19. One respondent recommended a revision of paragraph 31.205–19(e)(2)(iv) to (1) remove "Government has determined" and replace with the "contracting officer has made a final determination," and (2) to use "material risk" instead of "undue

risk." The respondent stated that "materiality" is defined in FAR 30.602 (48 CFR 9903.305), and (3) remove the word "theft." The respondent stated that the word "loss" is still listed, and theft is just one specific type of "loss." The addition of the word "theft" here and in other parts of the re-write is redundant. Two respondents recommended that the word "undue" be replaced with "material" in FAR 31.205–19(e)(2)(iv) per the definition in 30.602, and both respondents recommended deleting the word "theft" as it is a subset of loss and should be deleted in FAR 31.205–19(e)(2)(iv) and in FAR 32.502–16 risk of loss.

*Response:* The Councils disagree with the recommendation to replace the term "Undue" with "Material" and have removed the language from this Subpart. The Councils did not agree with the deletion of the word "theft" because it denotes a specific meaning. In addition, the Councils believe that the term "Government" allows the Government decision maker greater flexibility than use of the term "final determination."

#### **9. Theft.**

Nine comments were received from one respondent recommending omitting the word "theft" from various parts and clauses in the proposed rule.

- One respondent recommended eliminating the word "theft" from FAR 45.104(a). The elimination would be consistent with prior comments on damage, or destruction, of Government property.

- One respondent recommended eliminating the word "theft" from FAR 52.245–1(f)(1)(vi)(A). The following change was suggested for "Loss, damaged, or destruction. 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, or destruction, as soon as the facts become known or when requested by the Government. Such reports shall, at a minimum, contain the following information...."

- One respondent recommended eliminating the word "theft" from FAR 52.245–1(f)(1)(vi)(B) and provided the suggested language as follows: "The contractor shall take all reasonable actions necessary to protect the Government property from further loss, damage, or destruction. The contractor shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs."

- One respondent recommended eliminating the word "theft" from FAR 52.245–1(f)(1)(vi)(C) and provided the following suggested language: "The contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damaged, or destruction, of Government property."

- One respondent recommended eliminating the word "theft" from FAR 52.245–1(f)(1)(x) and suggested replacing with the following language: "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, or destruction, 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."

- One respondent recommended eliminating the word "theft" from FAR 52.245–1(h) and suggested language as follows: "Contractor liability for government property. (1) Unless otherwise provided for in the contract, the contractor shall not be liable for loss, damaged, or destruction to the Government property furnished or acquired under this contract, except when any one of the following applies:"

- One respondent recommended eliminating the word "theft" from FAR 52.245–1(h)(1)(ii) and the suggested language as follows: "The loss, damage, or destruction, is the result of willful misconduct or lack of good faith on the part of the contractor's managerial personnel. Contractor's managerial personnel, in this clause mean 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."

- One respondent recommended eliminating the words "theft and undue" from FAR 52.245–1(h)(1)(iii). The respondent also recommended eliminating the words "Clear and convincing evidence," because the standard places an undue burden on Government contractors. The suggested change provided by the respondent is as follows: "The contracting office has, in writing, withdrawn the Government's assumption of risk for loss, damage, or destruction, due to a determination under paragraph (g) of this clause that the contractor's property management practices are inadequate, and/or present

a material risk to the Government, and the contractor failed to take timely corrective action. If the contractor can establish that the loss, damage or destruction of Government property occurred while the contractor had adequate property management practices, or the loss, damage, or destruction of Government property did not result from the contractor's failure to maintain adequate property management practices, the contractor shall not be held liable."

- One respondent recommended eliminating the word "theft" from the proposed rule at FAR 52.245-1(h) and the suggested language as follows: "The contractor assumes the risk of, and shall be responsible for, any loss, damage, or destruction, of Government property upon its delivery to the contractor as Government-furnished property. However, the contractor is not responsible for reasonable wear and tear to Government property properly consumed in performing this contract."

*Response:* The Councils concluded that the word "theft" would not be deleted from the FAR due to the specific meaning associated with the word.

#### 10. Responsibility and Liability.

a. One respondent recommended that procedures be added at FAR 45.102 for the flow of accountability for Government- Furnished Property (GFP) from a contractor back to the Government, with the Government organization in possession of the GFP having liability for the GFP, or alternatively that clarification be added that GFP provided to a contractor is for the sole use of the contractor in meeting the requirements of the contract, and not as a repository for Government property intended for actual use by the Government.

*Response:* Since procedures do exist in Agency directives and in individual contracts on the accountability of GFP, which is used by the Government, it is not necessary to prescribe procedures for such an event in the FAR. Liability and accountability are not synonymous and are addressed separately in the FAR. A contractor could serve as a repository for Government property, depending on contract requirements.

b. One respondent asked, what does "revoke Government's assumption of risk" at FAR 45.104(b) entail, and why would this compel compliance?

*Response:* Since revocation justification information would be set forth in agency procedures, it is not necessary to prescribe this information in the FAR. Revocation would compel compliance because contractors would then be financially liable for loss, damage, destruction, or theft.

c. One respondent stated that FAR 45.104(b) contains two separate thoughts and recommended that it be divided into two separate paragraphs (b) revocation and (c) dealing with prime and subcontractor risk of loss relationships.

*Response:* Paragraph is revised to reflect suggested structure.

d. One respondent recommended adding or reinstating language that is substantially similar to the current FAR 45.103(c) to proposed FAR 45.104, in order to be consistent with the proposed FAR clause 52.245-1(h). The current FAR 45.103(c) states that "the contract may require the contractor to assume greater liability for loss of or damage to Government property than that contemplated by the Government property clauses...."

*Response:* The Councils believe the liability provisions in proposed FAR 45.104 are sufficient to protect the Government's interest.

e. One respondent recommended that at FAR 45.105(b) the contractor rather than the Government provide the schedule for the correction of deficiencies to a contractor's management of property, since the contractor is in a better position to establish such a schedule. The respondent stated that a contractor-developed schedule would assist in correcting root causes rather than achieving a quick fix.

*Response:* The Councils believe that a Government provided schedule is necessary to ensure the correction of contractor deficiencies that place the Government at risk, within a reasonable period.

f. Two respondents recommended replacing the word "undue" with "material" in FAR 45.105(b), and change the wording to "shall request from the contractor prompt correction of deficiencies and a schedule for their completion."

*Response:* The Councils concluded that the term "undue" is better suited to the context of the prescriptive language. The Government must retain the right to determine the scope and schedule of any corrective actions for a contractor deficiency that puts the Government at risk.

g. One respondent recommended changes to FAR 52.245-1(g)(3) to allow for resolution where the contractor does not believe direction provided by the property administrator would result in the best value for the Government. The respondent suggested replacing the word "undue" with "material" and the addition of the following sentence:

"In instances where the contractor does not concur with the corrective

actions suggested by the Property Administrator, differences will be resolved with consultation with the contracting officer."

*Response:* The term "undue" is better suited to the context of the clause. The Councils believe that it is unnecessary to specifically state that consultation with the contracting officer is required. Communication between the Government and the contractor should take place throughout contract performance.

h. One respondent recommended replacing the word "undue" with "material" in FAR 45.104(b), as material can be quantified by industry writings and documents and the word undue is purely subjective

*Response:* The term "undue" is better suited to the context of the clause.

i. The respondent suggested adding the following language to 52.245-1(h):

"The prime contractor shall enforce for the benefit of the Government any liability that the subcontractor may have for loss, damage, destruction, or theft of Government property."

*Response:* The language provided for subcontractor controls is sufficient. The prime contractor has the right to enforce remedies against their subcontractors. The Government does not prescribe prime contractor remedies.

#### 11. Subcontractor.

a. One respondent recommended that instruction to the contractor related to subcontractor control be removed from 45.501 and be added to the clause at 52.245-1(f)(1)(v).

*Response:* The Councils revised the language in Subpart 45.5 and added language at 52.245-1(f)(1)(v).

b. Two respondents recommended that the language at 52.245-1(f)(1)(v) be revised to remove the language related to cost savings.

*Response:* The paragraph is revised to read, "The contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract terms and conditions, e.g., extent of liability for loss, damage, destruction or theft of Government property." The language related to cost savings is removed.

c. Two respondents recommended language related to the flow down of the appropriate assumption for risk of loss, damage or destruction to subcontracts. One respondent questioned the effect of the language regarding flow down of risk of loss to subcontractors.

*Response:* FAR 52.245-1(f)(1)(v) allows for flow-down to subcontractors. Limited risk of loss is added as an example. The paragraph is revised to read, "The contractor shall award subcontracts that clearly identify assets

to be provided and shall ensure appropriate flow down of contract terms and conditions, e.g., limited liability for loss, damage, destruction or theft of Government property.”

d. One respondent stated that the language at 52.245–1(f)(1)(v)(B) was vague because it did not assign responsibility for accomplishing reviews of subcontractors and providing determinations related to those reviews.

*Response:* The language assigns responsibility to the prime contractor for performance of subcontractors, including the performance of Government property management functions. The language provides the contractor the flexibility to determine the most appropriate method for accomplishing those reviews and obtaining subcontract compliance.

e. One respondent recommended the deletion of 52.245–1(f)(1)(v)(A) and 52.245–1(f)(1)(v)(B) because methods of subcontract property management would be included in the prime’s property plans.

*Response:* Paragraph A will not be deleted but the language is revised for clarity. This language and practice protects the Government’s interest. Paragraph B will not be deleted because this language and practice, as well, protects the Government’s interest.

## 12. Contractor Property Management System.

a. One respondent submitted two comments in regard to 45.105. The respondent suggested that FAR 45.105 should be renamed “Analysis and correction of contractor’s property management system” and that notification to the contractor for the withdrawal of assumption of risk should be by certified mail.

*Response:* The heading in FAR 45.105 is changed to “Contractor’s property management system compliance.” This is a more meaningful heading, consistent with the spirit of the respondent’s comment. Any additional requirements for certified mail notification would be addressed in Agency procedures.

b. One respondent recommended that “In areas where the FAR requires a response, a suggested time frame for responses should be stated (i.e., within 10 business days).”

*Response:* Specifying an exact number of days would limit flexibility. However, Agencies may require specific timeframes in their agency procedures and in accordance with specific issues.

c. One respondent recommended that after initial contract award, verification of the existence of inventory systems be done by exception. Requiring routine verifications places an unnecessary

additional burden on the contracting officer without a just cause to suspect the initial is faulty or not in use.

*Response:* The respondent suggests a risk-based approach to system analysis; the proposed rule does not prohibit such an approach. Current language allows agencies maximum flexibility in conducting system analysis.

d. One respondent recommended that FAR 45.105(b) be revised so that the contracting officer and not the property administrator is the official requesting/directing correction of deficiencies.

*Response:* The Property Administrator performs the analysis of the contractor’s system, and so is in the best position to request/direct the contractor on correction of deficiencies.

e. One respondent recommend that the language be changed at FAR 45.105(b)(3) to state, “other rights or remedies available to the contracting officer under the contract.”

*Response:* The Councils revised language at FAR 45.105(b)(3) to state “other rights or remedies available to the contracting officer.” In addition, FAR 45.105(b)(3) is renumbered as 45.105(b)(2) in accordance with another recommendation.

f. One respondent recommended changing the wording at FAR 45.105(b) to delete the words “shall provide” from the phrase “shall provide a schedule for their completion” which would allow the contractor to propose a schedule for corrective action instead of the Government.

*Response:* A definitive action and a schedule for completion of corrective actions are reasonable and mitigate risk to the Government.

g. One respondent recommended a requirement to maintain utilization data similar to that of FAR 45.509–2(b)(2) be reinstated.

*Response:* The current rule allows for the flexibility of data retention. FAR 45.105 allows contractors and property administrators to establish methods to ensure property is fully utilized.

h. One respondent recommends adding language to provide the option for the Property Administrator to request the contractor submit (by a specific date) a corrective action plan. As written, FAR 45.105(b) requires the Property Administrator to provide the contractor with a schedule for completion of corrective action.

*Response:* Definitive action and schedule of corrective actions needs to be defined by the Government for a contractor deficiency that puts the Government at risk. The FAR does not prohibit Property Administrators from negotiating a schedule and corrective action.

i. One respondent recommends adding language in the clause at 52.245–1(b)(1), “except where inconsistent with law or regulation” after the words “property management”.

*Response:* FAR 52.245–1(b)(1) is revised to add “except where inconsistent with law or regulation” after the words “property management.”

## 13. Contract Price Adjustment.

Three respondents made three comments recommending the deletion of “contract price adjustment” as one of the examples of corrective action if a contractor does not correct property management system deficiencies or suggested including enablers in the FAR clause 52.245–1 for contracting officers to effect a price adjustment.

*Response:* FAR 45.105(b)(1) is deleted and the remaining paragraphs renumbered because it would be difficult for contracting officers to quantify a contract price adjustment associated with the failure to correct a property management system deficiency.

## 14. Relief of Responsibility.

a. Two respondents requested addition of language that describes the conditions and circumstances under which a property administrator could grant contractors relief of accountability and responsibility.

*Response:* Language is added to 45.105(d) and 52.245–1(f)(1)(vii)(A) to describe the conditions and circumstances under which a property administrator could grant contractors relief of accountability and responsibility.

b. One respondent requested language to set a threshold for automatic relief of responsibility based on the contractor’s property plan.

*Response:* The Government intends to retain the authority to determine whether or not to grant relief of responsibility for loss, damage, destruction or theft. The Councils do not believe thresholds are advisable. The determination of relief of responsibility should be determined on a case-by-case basis.

## 15. Transferring Accountability.

a. One respondent requested clarification and additional language for warranty of Government-furnished property acquired or fabricated initially by the contractor.

*Response:* Language is added at 52.245–1(d) and 45.106 to provide for the inapplicability of warranties of suitability of use and timely delivery of Government-furnished property to property acquired or fabricated initially by the contractor, and subsequently transferred to another contract with this contractor.

b. One respondent requested that consideration might be given to adding guidance as to which contractor, gaining or losing, would typically absorb (or bill for) the cost of the property transfer.

*Response:* The language as written allows flexibility. Costs for the property transfer are covered under FAR Part 31.

c. One respondent stated confusion between 52.245-1(d)(4)(i) and 45.106. 52.245-1 states the contracting officer may by written notification, at any time increase or decrease the amount of Government-furnished property under this contract. FAR 45.106 states such transfer shall be documented by modification to both gaining and losing contracts.

*Response:* The coverage in FAR 45.106 (Transferring Accountability) is the policy for transferring Government-furnished property from one contract to another. The clause at 52.245-1(d)(4)(i) provides for the increase or decrease in the amount of Government-furnished property.

d. One respondent stated that requiring formal modifications to transfer property between contracts is incompatible with the FAR principle of minimizing administrative cost. The respondent has suggested that there should be another administrative mechanism to accomplish this effort more efficiently that satisfies the desired outcome. Current practice only requires a contract modification to the gaining contract. The respondent recommended the use of Wide Area Work Flow (WAWF) for such transfers.

*Response:* A contract modification is the only authority to affect the transfer of Government property between contracts.

#### 16. Contract Clauses.

a. Two respondents made three comments that recommended clarification of the prescription and use of the clauses provided in 45.107. Respondents recommended several changes regarding the use of the contract clauses including: the concurrent use of FAR clauses 52.245-1, Government Property, and 52.245-2, Government Property Installation Operations for Services; the mandatory use of FAR clause 52.245-9, Uses and Charges, in all solicitations and contracts that furnish or authorize the acquisition of Government Property; and the recommendation to add language regarding the appropriate use of FAR clause 52.245-1 in FAR Part 12 solicitations and contracts.

*Response:* The Councils believe that the recommended clarifications are appropriate and have revised FAR 45.107(a)(1)(iii), 45.107(b), 45.107(c),

45.107(d), and 52.245-2 to incorporate the recommended revisions.

b. One respondent recommended that the language found at 45.107(d) be changed to clarify the use of Government property clauses in purchase orders for property repair.

*Response:* The Councils agree the language should be clarified, and revised FAR 45.107(d) with some editorial changes to the respondent's recommended language.

c. One respondent recommended the Government property clause not be included in all cost reimbursement, time-and-material, and labor-hour solicitations and contracts, especially in service contracts where property is not involved or where the contractor supplies all required property.

*Response:* Due to the uncertainties involved in cost-reimbursement, time-and-material, and labor-hour contracts, and the fact that each contract has the potential for Government property, the Councils believe it is in the Government's best interest to include the Government property clause in those solicitations and contracts.

d. One respondent recommended the prescriptive language at FAR 45.107(b) specifically limit FAR clause 52.245-2 to fixed price contracts.

*Response:* The FAR clause 52.245-2 was created for use in solicitations and contracts for Installation Operation Services. This type of effort can be contracted using a fixed price arrangement or a cost-reimbursement arrangement.

e. One respondent recommended a Fixed Price with Cost CLINs contract type be listed among the types of contracts because fixed price contracts may contain cost-reimbursement type contract line items.

*Response:* The Councils believe the prescriptive language sufficiently addresses all FAR types of contracts, which are grouped into two broad categories (fixed price and cost-reimbursement). It is not necessary to name a combination of types.

f. One respondent questioned where the definition of "Simplified acquisition threshold" could be found in the FAR.

*Response:* The simplified acquisition thresholds are defined in FAR 2.101.

g. One respondent recommended the reference to FAR 35.014 be deleted from FAR 45.107(a)(3) as it is slated for removal, as stated in **Federal Register** Volume 70, Number 180, dated September 19, 2005 (FAR Case 2004-025).

*Response:* FAR 35.014 is not being deleted in its entirety, however, paragraph (e) is revised to delete references to outdated property clauses

and to remove references to facilities clauses.

#### 17. Solicitation and Evaluation Procedures.

a. One respondent recommended that a clause be established, or the current clause be modified, to provide the list of requirements found at FAR 45.201(a) when it is anticipated that Government-Furnished Property (GFP) will be provided.

*Response:* The Councils do not believe that an additional clause is necessary. The proposed FAR clause 52.245-1, paragraph (f)(1)(iii) requires the contractor to create and maintain records of all Government property, including GFP. The clause also requires the contractor to maintain certain information in the property record (paragraph (f)(1)(iii)(A)) which the Councils consider to be adequate for tracking GFP.

b. One respondent recommended Contract-Acquired Property (CAP) be identified by the contractor, and contracting officer approval be obtained prior to acquiring CAP.

*Response:* The Councils believe the proposed property rewrite is adequate and flexible enough to allow the contracting officer to establish solicitation requirements to sufficiently comply with FAR 45.102 and 45.105. Many times CAP cannot be identified at the time of award.

c. One respondent recommended changes to 45.201(b) to eliminate predetermined contractual requirements, as the requirements may be counter to seeking best value.

*Response:* FAR 45.201(b) states that "in a competitive acquisition, solicitations should specify that the contractor is responsible for" all costs related to making the property available for use - and it is generally in the Government's best interest to allow contractors to assess transportation, installation or rehabilitation costs. However, the language is flexible enough to allow contracting officers to adjust the requirements.

#### 18. Use and Rental.

a. One respondent recommended exclusion of Government-owned, contractor operated plants operating on a cost-plus-fixed-fee basis from rental charges.

*Response:* The Councils agree with the recommendation to change FAR 45.301(b) to remove the exception for Government-owned, contractor-operated plants operating on a cost-plus-fixed-fee basis from rental charges. The language in the final rule is revised accordingly.

b. One respondent stated FAR 45.303(b) conflicts with Cost Accounting Standards 420 and the

contractor's disclosure statement. The conflict will cause confusion and extraordinary administrative burden to the contractor and the Government as consideration for rental costs is required under FAR clause 52.245-9, Uses and Charges.

*Response:* The Councils recognize the concern and have revised the language to preclude "reimbursement" rather than not permitting the costs to be "charged."

c. One respondent recommended deletion of FAR 45.303(c).

*Response:* The Councils believe the language at FAR 45.303(c) is necessary because the rental charge protects the interest of the Government when independent research and development costs are allocated to commercial contracts. It should be noted that the original language is retained and relocated from 45.406(c) to 45.303(c) and the reference for computing rent is updated in the final rule.

#### **19. Support Property Administration.**

a. One respondent observed that the task of support property administration involves more than subcontractors.

*Response:* FAR 45.501 is revised to add language for clarification that the coverage includes subcontractors and prime contractor alternate locations.

b. Four respondents requested more clarification regarding the process for contracting officer action when a prime contractor rejects a request for support property administration.

*Response:* The language at 45.501(b) is renumbered as 45.502(a) and clarified to state that the prime contractor must agree to allow support property administration. However, the process can vary by agency and is most appropriately addressed in agency regulations.

c. Three respondents suggested changes to the language of 45.501 that would place the responsibility for initiating a request for support property administration with the prime contractor rather than the property administrator. The respondents suggest that the initiation of this action by the property administrator may exceed the scope of contract privity.

*Response:* The Councils do not completely agree. However, FAR Subpart 45.5 has been revised to clarify support Government property administration. This is not a privity of contract issue since the prime contractor still has responsibility for proper administration of Government property. The Government must have the right to inspect, review and assure that Government property is properly managed by the prime contractor regardless of location.

d. One respondent recommended that 45.501(b) and (c) be modified to allow a team approach to deciding whether or not support property administration is necessary and for resolution of other disputes when the prime does not agree.

*Response:* Ultimately, the responsibility for protecting the public's interest in Government property resides with the Government. A contractor disagreement with the Government's resolution is covered by the disputes clause.

e. One respondent recommended that FAR 45.501(d) be deleted, citing concerns that the prime contractor's property administrator is forced by the language to accept a support property administrator's findings.

*Response:* The prime contractor has responsibility for proper administration of Government property. However, the Government must have the right to inspect, review and assure that Government property is properly managed by the prime contractor regardless of location. FAR Subpart 45.5 has been revised to clarify support Government property administration.

#### **20. Use of Government Property.**

a. One respondent believes that there is confusion regarding the treatment of Government property (such as desks, computers, phones etc.) that remains under the Government's control as Government-furnished property subject to the requirement in FAR 45. They do not believe that the intent of the revision is to cover the aforementioned circumstances. If this is in fact correct, then the respondent believes this should be made clear. However, if this interpretation is incorrect, then they recommend a third alternate to the clause at 52.245-1, or a new clause, that specifically addresses the contractor's use of Government property that never leaves the Government's possession and for which the Government retains responsibility.

*Response:* Use of property by contractors performing on a Government installation does not meet the typical meaning of Government provided or furnished property. The Government retains responsibility for accountability, security, use, maintenance, and disposal of this property. Therefore, a third alternate to 52.245-1 is not necessary.

b. One respondent recommended revising FAR clause 52.245-1(c) to enable the contracting officer to effectively use discretionary authority without having to modify the contract. Such approvals are generally considered routine and administrative in nature, and the requirement to modify the contract in all such instances is

considered to be an undue administrative burden.

*Response:* FAR 52.245-1(c) does not require modification to the contract to obtain contracting officer approval. The contracting officer has the discretion as to whether a contract modification is necessary.

#### **21. Inventory Systems.**

One respondent believes that maintaining a separate property system for the management of Government property is an onerous burden on contractors and recommended that the proposed language be changed to allow contractors to use Government systems for the management of property when the systems exist and the records are already in the systems.

*Response:* Neither the current or proposed rules require contractors to establish separate property systems for the management of Government property, only that their systems meet minimal standards for protection of the Government's interest. In fact, contractors are encouraged to use the same property systems they use for their own property to manage Government property. Furthermore, contractors may use existing inventory systems to manage Government property under certain circumstances (GOCO's).

#### **22. Inventory Thresholds.**

Three respondents provided three comments regarding establishment of value thresholds for recording and reporting Government property.

a. One respondent commented that requiring recording of low dollar value equipment is not cost effective.

*Response:* Voluntary consensus standards and leading industry practices allow for the creation of summary records and recording of items in quantity rather than individually, based on the requirements of the contract. Also, reporting of contractor inventory for possible, alternative use by the Government or eligible donees is required by law, whenever the property is no longer required for contract performance. Without some form of records, it would be difficult or impossible to comply with this legal requirement.

b. One respondent stated that the use of voluntary consensus standards and sound business standards would be a major improvement for managing Government property if contractors didn't have to account for all Government owned property upon completion or termination of a contract. Contractors typically do not tag and record contractor owned equipment under their depreciation threshold.

*Response:* Reporting of contractor inventory for possible, alternative use

by the Government or eligible recipients is required by law, whenever the property is no longer required for contract performance. Without some form of record, it would be difficult or impossible to identify the available property and comply with this legal requirement.

c. One respondent expressed concern that contractors should be accountable for all Government property in their possession for the protection of the taxpayers' interests.

*Response:* The proposed rule establishes minimal standards within the clause and allows for flexibility for both the Government and the contractor to implement processes and practices to mitigate risk to the Government associated with the provision of property.

### 23. Physical Inventory.

a. Two comments questioned ambiguity of instructions regarding requirements for timing of physical inventories. One of these also questioned testing for unauthorized use.

*Response:* Physical inventory requirements cannot be reduced to a one-size fits-all regulatory requirement. The requirements contained in the clause are substantially the same as the current FAR. Physical inventory practices are complex, and can be effectively accomplished using a number of different techniques and practices. Effective physical inventory performance is not dependent solely on timing. Best physical inventory practices consider a variety of factors such as the value and sensitivity of the inventory, the number of transactions posted against the item's record, prior evaluations of record accuracy, and the results of prior physical inventories. Physical inventory practices should be included in the contractor's property management plan, based on the type of property, the scope of the procurement, and other factors. Unauthorized use of Government property will continue to be tested during Property Management System analysis.

b. One respondent recommended removal of all language requiring physical inventories, stating that this could be addressed within a contractors' property management plan.

*Response:* Physical inventories are the primary tool used to establish the existence of property and the completeness of Government property records. As such, they serve as the ultimate test of property record accuracy. They support both property management and financial reporting requirements. This language and practice protects the Government's interest.

### 24. Property Management.

a. Two respondents recommended adding "procedures" after the word 'systems' in the third sentence of the clause at FAR 52.245-1(b)(1) for clarification.

*Response:* The Councils agree and FAR 52.245-1(b)(1) is revised accordingly.

b. One respondent recommended revising FAR 52.245-1(f)(1) to add the word "procedures" to the first sentence in (f)(1) after the word "system."

*Response:* The Councils agree and FAR 52.245-1(f)(1) is revised accordingly for clarification.

c. One respondent recommended adding the word "move", *i.e.*, "consume, MOVE and store..." to FAR 52.245-1(f)(1)(viii).

*Response:* The Councils agree and FAR 52.245-1(f)(1)(viii) is revised accordingly for clarification.

d. One respondent recommended adding the words "including the multi-part assets" at FAR 52.245-1(b).

*Response:* The Councils do not believe additional language is necessary; the proposed language includes "all" property.

e. One respondent recommended revising 52.245-1(f)(1)(viii) to add the following at (B) "unless otherwise authorized in this contract or by the Property Administrator the contractor shall not commingle Government property with property not owned by the Government."

*Response:* The Councils agree and FAR 52.245-1(f)(1)(viii) is revised to include new paragraph (B) for clarification.

### 25. Systems Analysis.

a. One respondent recommended revising language at FAR 52.245-1(g) to include access to all Government property as well as premises.

*Response:* The Councils agree and FAR 52.245-1(g) is revised to require access to all Government property as well as premises.

b. One respondent recommends revising FAR 52.245-1(g)(1) to read as follows: "The Government shall have access to the contractor's premises, at reasonable times, for the purposes of reviewing, inspecting and evaluating the contractor's Government property management plan, systems, procedures, records, and supporting documentation that pertains to Government property."

*Response:* The Councils agree to revise FAR 52.245-1(g)(1) to add the words "plan" and "that pertains to Government property", to clarify that the focus is on Government property only. However, the Councils do not agree with the recommendation to add "Government" as this would imply a

separate system is required for management of Government property.

### 26. Contractor Plans and Systems.

a. One respondent recommends clarification of FAR 52.245-1(f)(1)(ii) to require identification of Government property by adding an addendum "physically identify the property as Government property with an appropriate identification, *e.g.*, stamp, tag, mark or other identification that is legible, conspicuous and securely affixed."

*Response:* The Councils agree that, in some instances, appropriate identification is necessary. However, the Councils also believe the recommend language is overly broad. Therefore, FAR 52.245-1(f)(1)(ii) is revised to clarify the identification of Government property.

b. One respondent recommended revising FAR 52.245-1(f)(1) to add a new paragraph as follows: "The contractor shall disclose significant changes in its property management system to the Property Administrator 30 Days prior to implementation."

*Response:* The Councils agree that contractors should be required to disclose significant changes to its property management system. FAR 52.245-1(b)(1) is revised. However, the Councils do not believe that a specific number of days should be specified. Contractors should notify the Government as soon as they become aware that significant changes will be made to their property management system.

c. One respondent recommended revising FAR 52.245-1(f)(1)(ii)(A) to add "The contractor shall report all discrepancies pertaining to the shipment, packaging, or transportation of Government-furnished property in accordance with agency procedures." In addition, the respondent recommends adding the following language, "Upon request from the contractor, the property administrator may assist and coordinate resolution of unresolved discrepancies."

*Response:* Additional prescriptive language is not necessary. Assisting and coordinating resolution of unresolved discrepancies is a normal part of the property administrator's duties and does not need to be specified in the FAR.

d. Two respondents recommended revising FAR 52.245-1(f)(1) to delete paragraphs (i) and (ii). The wording is redundant to 52.245-1(b)(1) and prescriptive in nature. In addition the respondents recommend inserting at 52.245-1(b)(1) "The contractor shall have a system to manage (acquire, receive, control, utilize, preserve, protect, move, repair, maintain, dispose

and report) Government property in its possession.”

*Response:* The Councils do not agree. The language at FAR 52.245–1(f)(1)(i) and (ii) is retained to protect the Government’s interest.

e. One respondent recommended revising FAR 52.245–1(f)(1)(i) to add “of the prime contractor” after “disclosure statement.”

*Response:* The reference to “cost accounting disclosure statement” was removed.

#### 27. Records.

a. One respondent recommended changing the phrase “all Government property accountable to the contract” at FAR clause 52.245–1(f)(1)(iii) to “all Government property in the contractor’s possession, regardless of value.” The respondent used the example of a logistics services operation where receipt, storage, loan and issue of Government property on a continuing basis is the primary function of the contract and that the contractor should not be required to maintain records of the property that was not specifically furnished to the contractor under the contract.

*Response:* The Councils believe that if a contract is for the storage, maintenance and issue of Government property, then the property should be listed on the contract and accountable to the contract and records maintained by the contractor.

b. One respondent stated that with the elimination of the language at the current FAR 45.105, it appears that it may now become necessary for the Government to maintain its own official property records separate from the contractor’s records. This respondent asked whether the contractor’s records are still intended to serve as the Government’s official property records. The respondent stated that if this is the case then those records should be clearly and concisely defined in the FAR.

*Response:* The Councils do not agree. Only the Government can keep the Government’s “official” records. The Government will maintain their own Government property records. However, custodial records must be maintained by the contractor.

c. One respondent recommends that at “FAR clause 52.245–1(f)(iii)(A)(3),” unit acquisition cost be revised to add “(or reasonable estimate if definite unit cost cannot be obtained)” because obtaining the actual unit cost of minor contractor fabricated items that must be identified and controlled is, at times, not practical or possible.

*Response:* The Councils do not agree. Contractors’ accounting systems should

have actual unit cost information available. Therefore, no change to the final rule is necessary.

d. One respondent states that while the Government does not specify a numbering system for items of property, the implementation of a consistent numbering system by contractors is critical and recommends that it should be added to the data elements set forth at FAR clause 52.245–1(f)(1)(iii)(A).

*Response:* The Councils believe that a numbering system is but one of many industry leading practices and does not need to be identified in the clause.

e. One respondent states that the term “Receipt and issue” is not clear at FAR clause 52.245–1(f)(1)(iii)(B). This respondent recommended adding a heading, “Use of a receipt and issue system for Government material,” and modifying the word “formal” to “stock record” or “perpetual inventory property record.”

*Response:* The Councils agree with the title addition. However, the Councils do not agree with the proposed revision to “stock record” or “perpetual inventory property record” because the term “formal record” is more encompassing and does not specify a particular recording system.

f. One respondent recommended adding acquisition contract number to the required fields at FAR clause 52.245–1(f)(1)(iii) to assist in the audit trail to validate correct ownership.

*Response:* The Councils believe that this information is not necessary and that the clause is sufficient for audit purposes.

g. One respondent recommended that FAR clause 52.245–1(f)(1)(viii) specify what constitutes prompt reporting.

*Response:* The Councils do not agree. As soon as the contractor determines that the property is no longer required for contract performance, they must report to the Government. The rule allows flexibility in accordance with agency procedures.

h. One respondent recommended that FAR clause 52.245–1(f)(1)(viii) specify what constitutes a prompt disclosure.

*Response:* The Councils do not agree. As soon as the contractor determines that the property is no longer required for contract performance, they must report it to the Government. The rule allows flexibility in accordance with agency procedures.

i. Two respondents recommended that the requirements at FAR clause 52.245–1(f)(3) be revised to clearly indicate access to a contractor’s internal audits and reviews will be limited to information related directly to Government property.

*Response:* The Councils do not completely agree. The proposed rule provides access to the results of the contractors’ internal audit of property relevant to a specific Government contract or groups of Government contracts. The recommended limitations would be inconsistent with FAR 52.215–2. However, FAR 52.245–1(f)(3) is revised to include “significant findings” and “audits pertaining to Government property” which provides access to findings and/or results of reviews related directly to Government property.

j. One respondent asks what does “posting reference” and “date of transaction” mean at FAR clause 52.245–1(f)(1)(iii). The respondent suggests clarifying them to respectively read “the document that caused the transaction” and “the date the transaction occurred.”

*Response:* The Councils believe the terms “posting reference” and “date of transaction” are self-explanatory.

k. One respondent states that the requirements at FAR clause 52.245–1(f)(1)(i) on documenting the acquisition of property are too prescriptive in light of the requirements for a property management system at paragraph (b)(1) of the same clause.

*Response:* The Councils believe that this documentation is necessary to protect the Government’s interest.

l. One respondent states that the requirements at FAR clause 52.245–1(f)(1)(i) on documenting the receipt of Government property are too prescriptive in light of the requirements for a property management system at paragraph (b)(1) of the same clause.

*Response:* The Councils believe that this documentation is necessary to protect the Government’s interest.

m. One respondent states that the requirements at FAR clause 52.245–1(f)(1)(ii)(A) on procedures for reporting damages/discrepancies upon the receipt of Government-furnished property to the Property Administrator are too prescriptive in light of the requirements for a property management system at paragraph (b)(1) of the same clause. The respondent further states that such reporting is currently handled through the Government’s Report of Discrepancy (ROD) form issued as required. The respondent also states that the ROD is processed per the ROD instructions, and that resolution of this type of issue is a contracts/quality/program office issue.

*Response:* The Councils do not agree. The Councils believe these procedures are necessary to protect both the Government’s interest and the contractor’s interest. The final rule language also protects the contractor in

terms of timeliness, availability, and possible liability for the property being furnished.

n. One respondent stated that in the data elements for property records under FAR clause 52.245–1(f)(1)(iii)(A)(1) that not all property has a “commercial part number,” that “Bulk identifier” is covered by “Unit of measure,” and that not all property has a “model number.” The respondent recommends substituting the following language, “The name, commercial part number, if provided, and description, manufacturer, model/part number, and National Stock Number (if needed for additional item identification tracking and/or disposition).” Another respondent recommended that the term “bulk identifier” be clarified.

*Response:* While the Councils do not agree with the specific recommended language, for clarification purposes the final rule is revised at 45.201(a)(1) and 52.245–1(f)(1)(iii)(A)(1) to replace “commercial part number” with “part number” and remove “bulk identifier.”

o. One respondent recommended revising the term “acquisition cost” for the property records data element at FAR clause 52.245–1(f)(1)(iii)(A)(3) because it may be confusing to personnel unfamiliar with contractors’ systems. This respondent states that “unit acquisition cost” is the more appropriate data element for the clause.

*Response:* No action is necessary. The term for the data element at FAR clause 52.245–1(f)(1)(iii)(A)(3) is “unit acquisition cost” rather than “acquisition cost.” This respondent referenced the same comment for FAR clause 52.245–1(f)(1)(iii)(A)(3) and FAR clause 52.245–1(a)(1) which does contain the term “Acquisition cost.”

p. One respondent recommended deleting the property records data element “date placed in service” at FAR clause 52.245–1(f)(1)(iii)(A)(10) for production material or non-capitalized items, citing needless, significant cost impact for system and process changes.

*Response:* The Councils believe the data must be required, unless otherwise determined by the Property Administrator. Capital equipment and real property requires “date placed in service” for accounting purposes. Agencies have different capital thresholds; therefore, the property administrator is in the best position for making these decisions.

q. One respondent recommended not requiring the approval at FAR clause 52.245–1(f)(1)(iii)(B) of the Property Administrator for contractors to 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, particularly in the case of non-production contracts, engineering studies, and low dollar research and development efforts. The respondent suggested the following substitute language “In accordance with a contractor’s property plan, 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.”

*Response:* The Councils believe the Property Administrator must approve receipt and issue records on a case-by-case basis. Receipt and issue systems may put the Government at risk and the Property Administrator is in the best position to determine the level of risk the Government is willing to accept. Property Administrator approval and the plan are not mutually exclusive. The contractor must identify in the proposed plan any requirement for receipt and issue.

#### 28. Reports.

a. One comment from one respondent recommended that the language at 52.245–1(f)(1)(vi)(B), (C), and (D) be moved to 52.245–1(h)(2), (3), (4), and (5) renumbered. The language was actually instructions to the contractor on how to store, protect and manage property that had been damaged or destroyed, not on the preparation of reports.

*Response:* The Councils agree. Language is moved from 52.245–1(f)(1)(vi)(B), (C), and (D) to 52.245–1(h)(2), (3), (4) and (5) renumbered for clarification.

b. Three comments were received from a single respondent.

(1) The first comment recommended adding the language, “The type, frequency and reporting format will be agreed upon between the contractor and property administrator” to the physical inventory reporting section at 52.245–1(f)(1)(iv) of the clause.

*Response:* The Councils do not believe that the recommended language should be accepted. Both industry leading standards and practices and voluntary consensus standards recognize the importance of physical inventories. Both include methods to perform them and to disclose their results. As a result, responsible contractor property management plans should include the format for disclosing physical inventory results and the timing of those disclosures. If these plans lack this, agencies will have the opportunity to review and recommend appropriate revision of plans prior to contract inception. However, the

language of 52.245–1(f)(1)(vi) requires that contractor systems are capable of providing results of physical inventories and the final language at 52.245–1(f)(1)(iv) is revised to require disclosure of the results of the physical inventory.

(2) A second comment was received from the same respondent, recommending that the proposed clause at 52.245–1(f)(1)(vi) be revised to include direction to subcontractors in the preparation of reports of loss, damage or destruction of Government property.

*Response:* The Councils do not completely agree. The Government’s contractual relationship remains with the prime contractor. Property is provided to the prime contractor for performance of the contract. Should the prime contractor further provide the Government property to a subcontractor, the prime retains responsibility for the compliance with contract terms and conditions and for obtaining any necessary information for the reports from subcontractors. However, the language of the clause at 52.245–1(f)(1)(v) is revised to require appropriate subcontractor flow down of contract requirements.

(3) A third comment recommended adding information to reports of loss, damage or destruction regarding the last known location of the property, whether or not the property was sensitive or hazardous and whether or not the agencies involved had been notified of the loss or theft.

*Response:* The Councils agree. FAR 52.245–1(f)(1)(vi) is revised to add paragraphs (12) and (13) to add language for last known location and a statement that the property did or did not contain sensitive or hazardous material, and if so, that the appropriate agencies were notified.

b. One respondent submitted two comments related to reports. One recommended clarification of the report requirement at 52.245–1(f)(1)(vi) by changing the language to read: “(vi) Reports. The contractor shall have a process to create and provide reports such as discrepancies; loss, damage and destruction; physical inventory results; audits and self-assessments; corrective actions; and other property related reports relevant to the contract as directed by the contracting officer.”

*Response:* The Councils do not completely agree. 52.245–1(f)(1)(vi) is revised to clarify the lead-in language for examples of reports to be provided by the contractor. The Councils believe the phrase “relevant to the contract” is not necessary, as all reports are relevant to the contract.

c. The respondent also suggested that a standard form be developed for reporting Lost, Damaged, or Destroyed (LDD) property in concert with Plant Clearance Automated Reutilization Screening System (PCARSS) changes.

*Response:* The Councils do not believe it is necessary to develop standard forms for reporting LDD property. Information required for a LDD report need not be submitted on a standard form. In addition, the FAR does not mandate the use of PCARRS. PCARRS is a Department of Defense electronic system and not all non-DoD agencies may have access to that system.

#### 29. Annual Reports.

One respondent stated that the requirement for an annual report is essential. Agencies have a continued need to collect and report the value of Government property associated with existing contracts as part of their financial statements and the associated audits. FAR should require contractors to submit an annual report.

*Response:* The final rule contains a requirement for the contractor to be able to produce "property" reports. The timing and format for such reports will be defined by Agencies.

#### 30. Disposal.

a. One respondent requested that the proposed rule accommodate Plant Clearance Automated Reutilization Screening System (PCARSS) and allow submission of a SF 1428 or electronic equivalents.

*Response:* The FAR does not mandate the use of PCARRS. PCARRS is a Department of Defense electronic system. Non-DoD agencies may not have access or choose not to use that system. Agencies may provide electronic equivalents as needed.

b. One respondent recommended deletion of the language "by the plant clearance officer" at FAR clause 52.245-1(j) because many contracts are not delegated for property management or for plant clearance and therefore do not have a plant clearance officer identified.

*Response:* The plant clearance officer is an authorized representative of the contracting officer and is appointed the responsibility of directing the disposal of contractor inventory from a contractor's plant or work site. In the absence of a delegation to a Plant Clearance Officer, the contracting officer would retain those responsibilities. The Councils believe the language in the final rule is adequate for contractor inventory disposal.

c. One respondent stated the contractors scrap plan/agreement should cover all items that would generally be produced under the contract and there would be no need to

require disposition schedules if disposition guidance is covered in the contract, via the scrap procedure. In addition, plans approved by the contracting officer may be developed with more expertise and understanding of the contractual requirements than those considered necessary by plant clearance officers. The respondent recommends revising the language at FAR clause 52.245-1(j)(1)(A) to add "is not covered under the contractor's property plan" to the last sentence of the paragraph.

*Response:* The Councils do not believe the recommended language should be added to the FAR. The proposed rule did not change the original disposal requirements. The risk associated with possible improper disposition of sensitive property or property requiring demilitarization necessitates Government oversight, notwithstanding whether disposal of the property is covered in the contractors' property plan.

d. One respondent recommended adding "overhaul, repair" to the description of services generating scrap. In addition the respondent recommended deletion of the inventory disposal schedule requirements list at FAR clause 52.245-1(j)(1)(B). Individual contracts should address disposition of aircraft parts under such contracts. The propose rule is contrary to current practices under long-term arrangements.

*Response:* The Councils do not believe the proposed rule is contrary to current practices, as the original disposal requirements for scrap resulting from other than production or testing have not changed. Proper disposition of scrap that is created from overhaul/repair is addressed at FAR 52.245-1(j)(1). The final rule is appropriate for disposal of scrap.

e. One respondent stated that internal contractor screening should occur before items are processed through plant clearance. The respondent recommended revising the language at FAR clause 52.245-1(j)(2) to add "under this contract or other contracts" for predisposal requirements.

*Response:* The Councils believe the final rule language is adequate and should not be changed to add contractor internal screening requirements. Contractor-acquired property is accountable to individual contracts and the recommended revised language would be redundant. Predisposal requirements allow Government visibility for the use of property on other contracts or for other Government use. In addition, FAR 45.106 sets forth the policy for transfer of Government

property between Government contracts.

f. One respondent recommended that "customary" be deleted from the language at FAR clause 52.245-1(j)(2)(ii) because it was redundant. By definition, a practice is done customarily.

*Response:* While the word "customary" may seem redundant when used with respect to all contractors, the final rule uses the word to refer to practices that are considered to be "customary" to that specific supplier. The Councils believe that the final rule provides clear guidance regarding predisposal requirements.

g. One respondent recommended revision of FAR clause 52.245-1(j)(2)(iii) because it was redundant with 52.245-1(j)(2)(i) and (ii).

*Response:* FAR clause 52.245-1(j)(2)(iii), renumbered as 52.245-1(j)(2)(ii), provides instructions for reporting property not included earlier in paragraph (j)(2). Therefore, the language is not considered to be redundant.

h. One respondent recommended deletion of FAR clause 52.245-1(j)(3)(iii)(A) through (G). Individual schedules are no longer required per FAR Subpart 45.6 for termination inventory.

*Response:* The Councils believe that separate schedules are required for disposal of different types of property. Prior revisions to FAR Subpart 45.6 eliminated duplicate reporting forms. However, unless the Plant Clearance Officer has agreed otherwise or the contract requires electronic submission, the contractor shall prepare separate inventory disposal schedules for different types of property, using the Standard Form 1428, Inventory Disposal Schedule.

i. One respondent recommended a revision of FAR clause 52.245-1(j)(3)(iv) to delete the first sentence and replace with "The contractor shall describe the property consistent with the requirements contained in FAR 52.245-1(f)(1)(iii)."

*Response:* Understanding the intended use or possible use of an item allows the Government to facilitate reutilization, transfer, or donation potential. Therefore, the Councils believe the final rule is adequate as written.

j. Two respondents recommended revisions to FAR clause 52.245-1(j)(4)(i) to provide an extension period for submitting inventory disposal schedules for screening and to remove reference to performance on the specific contract. The recommended changes will allow enough time for contractors to generate inventory schedules and to conduct

internal screening with other site contracts.

*Response:* The Councils believe the 30-day period allowed for submission of inventory disposal schedules to the plant clearance officer is reasonable. It should be noted that the original FAR disposal requirements have not changed. Regarding other site contracts, property is accountable to a specific contract and the contractor must make a determination that the Government property is no longer required for performance of that contract. FAR 45.106 prescribe the policy for transferring Government property between contracts.

k. One respondent recommended revisions to FAR clause 52.245-1(j)(6), removing the specific timeframe of 10 days for notification in order to enable reutilization of Government property within the contract. Post submission adjustments normally occur on an exception basis and timing is not usually controllable. The respondent also recommended elimination of plant clearance officer approval prior to withdrawal.

*Response:* The Councils believe the notification timeframes and approvals stated in the final rule are reasonable to flexibly manage post submission adjustments, e.g., to rescind actions that have occurred subsequent to acceptance of the inventory disposal schedule.

l. One respondent recommended FAR clause 52.245-1(j)(7)(ii) be deleted and replaced with, "The contractor shall notify the Plant Clearance Officer when property that is on a plant clearance case is relocated prior to final disposition instructions." The respondent believes contractors are already required to have a system in place to manage movement and storage of Government property.

*Response:* The Councils believe it is necessary for the contractor to obtain the plant clearance officer's approval before removing Government property from the premises in order to protect the interest of the Government in managing and tracking Government property. It should be noted that the proposed rule did not change the original storage requirements.

m. One respondent recommended changing the title and language of FAR clause 52.245-1(j)(8)(i) to read "scrap disposition instructions" and "inventory schedule or scrap list" because an inventory schedule can be a scrap list.

*Response:* The Councils believe disposition instructions include more than "scrap" and the recommended language would be too broad.

n. One respondent recommended revising the language at FAR clause 52.245-1(j)(9) to read "contract property" instead of "Contractor inventory."

*Response:* The Councils believe the term "Contractor inventory" has a specific meaning under statute and is relevant to the clause language.

o. One respondent recommended deleting FAR clause 52.245-1(j)(10), subcontractor inventory disposal schedules, because it limits the prime contractor's ability to minimize administrative costs. The prime should be able to delegate the submission of subcontractor inventory schedules directly to the plant clearance officer, as currently allowed in PCARSS.

*Response:* The Councils believe the FAR language for obtaining subcontractor inventory disposal schedules is necessary and should not be deleted. The language assigns responsibility to the prime contractor for performance of subcontractors, including the submission of subcontractor inventory disposal schedules. The language does provide the contractor the flexibility to determine the most appropriate methods for ensuring subcontractor performance.

#### *Abandonment of Government Property*

p. Two respondents recommended adding language to FAR clause 52.245-1(k)(1) and (k)(2) to prevent abandonment of Government property on a Federal installation.

*Response:* The Councils believe that policy relevant to preventing abandonment of Government property on a Federal installation would be more appropriately covered in agency procedures and not in the FAR because the cost of disposal is typically a local issue.

q. Two respondents submitted three recommendations to revise FAR clause 52.245-1(k)(1) to remove the word "sensitive" and require mutual consent for abandoning any Government property.

*Response:* The Councils believe the abandonment of sensitive Government property must be coordinated and managed in a manner that protects the interest of the Government. There are times when it is more advantageous to the Government to abandon Government property, e.g., estimated cost to sell the property is greater than the proceeds from the sale, and the Government may do so in accordance with FAR 45.604-2.

r. One respondent suggested deleting part of the language at FAR clause 52.245-1(k)(3) stating, "The

Government has no obligation to restore or rehabilitate the contractor's premises under any circumstances;" because it is overly restrictive.

*Response:* The Councils believe the language regarding abandonment of Government property stating that the Government has no obligation to restore or rehabilitate the contractor's premises under any circumstances is not overly restrictive. While the Government is not under obligation to restore or rehabilitate the contractors premises, there are situations which the Government may consider on a case by case basis where an equitable adjustment may properly include restoration or rehabilitation costs (see FAR clause 52.245-1(k)(3)). The language is necessary to protect the interest of the Government.

s. One respondent asked how the contracting officer will know the "authorized" law or regulation governing the disposition of property. The respondent requests that the Councils explain the rule or give reference to the law or regulation.

*Response:* The FAR (specifically FAR Subpart 45.6) provides regulatory guidance sufficient for the administration of the law.

t. One respondent stated that the proposed amendment does not address the disparity in the disposition of excess/surplus property in the possession of a Federal Agency and the same type of property in the possession of a contractor.

*Response:* There is no disparity in the disposition of excess/surplus property in the possession of a Federal Agency or contractor. However, the FAR provides an opportunity for the contractor to purchase contractor-acquired inventory, at acquisition cost, prior to the property being declared excess.

#### **31. Property Classification (Facilities, Special Tooling, Special Test Equipment).**

a. One respondent supports the elimination of the 1989 version of the special tooling clause, which is currently in the FAR. However, the respondent does not support elimination of the 1984 version of the special tooling clause that the Department of Defense is using through a Deviation that has been in force and effect since 1990. This protects the Government from multiple purchases of unidentified special tooling and should be retained.

*Response:* The Councils do not agree. If needed, Special Tooling (ST) may be obtained as a deliverable under a Contract Line Item (CLIN).

b. One respondent recommended redefining the term “facilities” in FAR Part 2 to mean real property.

*Response:* The Councils do not agree that the term “facilities” should be redefined in Part 2 to mean “real property.” The term “facilities” is broader than the term “real property” since it can also include equipment and utility services. However, the Council deleted the term “facilities” as it relates to facilities contracts. Where the term “facilities” is used to reference Government property, the term is substituted with “Government property.”

c. One respondent stated that “if the Special Tooling clause is eliminated, additional language should be added at 52.245–1 to either: 1) include a provision directing the contractor to submit a final list of acquired Special Tooling to the contracting officer for review, 60 days prior to contract completion, identifying those tools that have not become obsolete. The contracting officer will issue a modification, adding a Contract Line Item for those items of Special Tooling, and corresponding tool drawings (electronic or physical), required by the Government as deliverable end items, or 2) include a provision giving the Government unlimited rights to the tool drawings (electronic or physical) produced in performance of the contract.”

*Response:* The Councils do not agree. If needed, special tooling may be obtained as a deliverable under a contract line item number.

d. One respondent stated that they currently have a facilities type contract and having that type contract in place saves the Government both time and money. Property on this contract supports over 150 Government tasks, across multiple agencies. The elimination of the facilities use type of contracts will have a negative effect on how we currently manage Government property.

*Response:* The Councils do not agree. A “facilities contract” is merely a form of service contract for property management. Agencies are not prohibited from issuing service contracts for this purpose.

e. One respondent proposed that service contracts have a standard template of terms and conditions for the management of Government property for consistency through the various agencies.

*Response:* The Councils do not agree. Terms and conditions are negotiated on a contract by contract basis to provide flexibility to both Government and contractor communities rather than

prescriptive or proscriptive processes and requirements.

f. One respondent agreed with the deletion of the Special Tooling clause.

*Response:* The Councils agree.

g. One respondent stated that the Councils should carefully consider the impact of the elimination of facilities use contracting on tenant use agreements entered into under the authority of the Armament Retooling and Manufacturing Support (ARMS) Act.

*Response:* The Councils do not agree. A “facilities contract” is merely a form of service contract for property management. Agencies are not prohibited from issuing service contracts for this purpose.

h. One respondent does not agree with the elimination of the Special Test Equipment clause.

*Response:* The Councils do not agree. Screening of Special Test Equipment prior to acquisition is no longer feasible or practical because the Government no longer centrally manages Special Test Equipment.

i. One respondent does not agree with the elimination of the Special Tooling clause, especially right to title language. Air Force Equipment Management System (AFEMS) has been mandated for managing and tracking all Government owned tooling, which allows the Air Force to comply with CFO reporting requirements. Most of the AFEMS data requirements for tooling mirror the data requirement in the Special Tooling clause.

*Response:* The Councils do not agree. If needed, special tooling may be obtained as a deliverable under a contract line item. Reporting requirements may be imposed on a contract-by-contract basis dependant on performance requirements.

j. One respondent recommended that the Special Tooling clause be retained.

*Response:* The Councils do not agree. If needed, Special Tooling may be obtained as a deliverable under a Contract Line Item.

### 32. Miscellaneous.

a. *OMB Approvals.* One respondent stated that FAR 1.106 should be changed to match the proposed rule.

*Response:* FAR 1.106, which lists OMB approvals under the paperwork reduction act, should reflect the proposed rule. However, the Councils believe no further change is necessary, as the revision was accomplished in the proposed rule.

b. *Closeout.* One respondent requested moving paragraphs (2) and (3) from FAR 52.245–1(f)(1)(x) as it does not belong under property closeout to

paragraph (f) Contract plans and systems.

*Response:* The Councils do not agree. Paragraphs (2) and (3) are not part of (f)(1)(x); they are (f)(2) and (f)(3) and contain higher-level clausal language to support contract property closeout and are properly located under paragraph (f).

c. *Awards Under A–76.* One respondent stated that with the emphasis directed at awards under the A–76 process, consideration might be given to providing property accountability guidance relative to the different types of service providers (as opposed to merely contractors) that may be selected under A–76.

*Response:* The Councils do not agree. Property management for property in the custody of the Government is covered under the Federal Management Regulation and specific agency regulations. A–76 competitions that are won by commercial firms become contracts that are subject to FAR.

d. *Use of Government Sources.* One respondent stated that FAR 51.106(b) references an old clause that the proposed rule eliminates, and recommended that the final rule be updated to reflect the appropriate reference.

*Response:* The proposed rule updated the reference cited at FAR 51.106(b) to read “52.245–1” and no further change is necessary.

e. *Service Contracts.* One respondent requested that sample language be provided for use of Government property in services contracts when Government personnel will be maintaining records/inventories of the “provided property.”

*Response:* The Councils do not agree. The statement of work should reflect the individual requirements of the agency. Agencies may choose to provide examples within Agency policies and training materials.

f. *Inter-work Transfer Agreements (IWTAs).* One respondent asks, “Should IWTAs be addressed somewhere? Are all of the branches from a corporation really to be considered alternate locations?”

*Response:* The Councils do not agree. The Government does not use these types of documents.

g. One respondent supports the regulation as is.

*Response:* Noted.

### C. Summary of Proposed Rule Changes

The Team made the following changes to the proposed rule as a result of the public comments and Team deliberations:

*Facilities contracts:*

The final rule reflects the following changes and includes administrative changes as a result of the deletions of “facilities contracts” (ref: FAR Case 2005–008, Use of Facilities Contracts):

Revised or deleted FAR 4.703(b)(3), 4.804–4(b), 7.105(b)(14), 14.502(b)(2), 15.209(b)(2), 15.404–1(e)(1), 15.407–2(e)(1), 15.407–4(a)(1) and (c)(1), 15.605(b)(4), 16.302(b), 16.307(a)(1), (b), (d), (e)(1), (f)(1), (g)(1) and (2), (h), and (i), 17.603(a)(5), 19.803(b)(2), 19.1103(b), 19.1307(c), 22.405, 22.407(d), 31.106, 32.403(c), 32.407(c), 32.704(a)(1), 32.705–2(a), (b) and (c), 35.014(e), 35.017(a)(2), 37.101, 41.102(b)(6), 41.701(b), 42.302(a)(30), 42.1102, 42.1107, 42.1305(c) and (d), 43.205(b)(5), 44.101, 44.202–2(a)(2) and (10), extensively throughout Part 45 and especially Subpart 45.3, 46.310, 49.505, 51.107, 52.215–2 Alternate I, 52.216–11, 52.216–12, 52.216–13 and Alternate I, 52.216–14, 52.222–17, 52.232–20, 52.232–21, 52.242–16, 52.243–2 Alternate IV, 52.243–4, 52.246–10, 52.249–11, 52.249–12, 52.249–13, 52.249–14, and 52.251–1 Alternate I to remove any references to “facilities contracts.”

#### *Changes to definitions:*

Revised the definition of “Acquisition cost” in 45.101, 52.245–1, and 52.245–9 for compliance with Generally Accepted Accounting Principles.

Revised 45.101 and 52.245–1 to include a definition of “Cannibalize”.

Moved the definition of “Common item” from 45.101 and 52.245–1 to 2.101.

Revised the definition at 52.245–1 of “Contractor’s management personnel” to add paragraph (3) to be consistent with the same definition at 45.101.

Revised the definition of “Demilitarization” in 45.101 and 52.245–1.

Revised 45.101 and 52.245–1 for the definition of “Discrepancies incident to shipment” to clarify that it means any differences between items shipped and items received.

Revised 45.101 and 52.245–1 to clarify the definition of “Equipment”.

Revised 45.101 and 52.245–1 to replace “erection” with “construction” in the definition of “Non-severable”.

Retained the definition of “Plant equipment” in 45.101 and added the definition in 52.245–1 and 52.245–9.

Revised the definition of “Property Administrator” in 45.101 and 52.245–1 and Plant Clearance Officer in 2.101 to change “assigned” to “appointed.”

Revised 45.101 and 52.245–1 for the definition of “Provide” to clarify when property is Government-furnished or contractor-acquired.

Retained the definition of “Real property” in 45.101, 52.245–1, and 52.245–9.

In the definition of “Sensitive property” at 45.101 and 52.245–1, removed the example of classified property.

Revised 2.101 definition of “Special tooling” to remove references to “replacement” and “unique Federal property”.

Deleted the definition for “Unique Federal property” from FAR 45.101 and 52.245–1, and references to it in the definitions of “Material” and “Special tooling”.

In 2.101 added example of international voluntary consensus standard making bodies in the definition of “Voluntary consensus standards”.

#### *Other changes:*

Revised 31.205–19(e)(2)(iv) to clarify the allowability of the cost of insurance for the risk of loss, damage, destruction or theft of Government property.

Revised 32.503–15(b)(1) to make an editorial change.

Revised 45.000 to clarify language regarding management and use of Government property; to replace the term “Plant equipment” with the term “Property”; and to exclude software and intellectual property and the scenario for which the Government has acquired a lien or title to property solely because of performance-based payments from the scope of this subpart.

Revised 45.102 to set forth the exception for property furnished for repair or overhaul to requirements that must be met for contracting officers to make a determination to furnish Government property.

Revised FAR 45.103(a)(2) to correct a formatting error. As a result, subparagraphs (3), (4), and (5) have been renumbered as (4), (5), and (6).

Revised FAR 45.103(a)(3) to remove the invalid reference to FAR 45.602.

Revised 45.104(b) to identify two issues: (1) the revocation of Government’s assumption of risk and (2) prime and subcontractor risk of loss relationships, by reformatting the section into two paragraphs, (b) and (c).

Revised 45.105 to change the heading to “Contractor’s property management system compliance.”

Deleted 45.105(b)(1) and renumbered remaining paragraphs in order to eliminate “contract price adjustment” as one of the examples of corrective action if a contractor does not correct property management system deficiencies.

Revised 45.105(b)(3) to renumber as 45.105(b)(2) in accordance with another recommendation. 45.105(b)(2) was

revised to state “other rights or remedies available to the contracting officer.”

Revised 45.105(d) to add language describing the conditions and circumstances under which the Property Administrator may grant relief of responsibility.

Revised 45.106 and 52.245–1(d)(1) to add language for the inapplicability of warranties of suitability of use and timely delivery of Government-furnished property, to property acquired or fabricated initially by the contractor, and subsequently transferred to another contract with this contractor.

Revised 45.107(a)(1)(iii) to add language regarding the use of the Government property clause 52.245–1 in FAR Part 12 solicitations and contracts.

Revised 45.107(b) to clarify that Government property clauses 52.245–1 and 52.245–2 may be used concurrently under a single contract.

Revised 45.107(c) to mandate the use of clause 52.245–9, Uses and Charges, for all solicitations and contracts that furnish or authorize the acquisition of Government property.

Revised 45.107(d) to clarify the use of Government property clauses in purchase orders for property repair.

Revised 45.201(a)(1) and 52.245–1(f)(1)(iii)(A)(1) to replace “commercial part number” with “part number” and remove “bulk identifier” as required elements of property records.

Revised 45.201(a) to add a requirement for the contracting officer to include a statement in all solicitations as to whether the Government property is to be furnished in an “as-is” condition and instructions for physical inspection.

Revised 45.201 to move paragraphs (d) and (e) into FAR 45.202, and eliminate the (d)(2) requirement to charge rent when adjusting the evaluation is not practical; add a new paragraph (d) to provide guidance for the use of property on more than one contract.

Deleted the requirement of 45.301(b)(1) to exclude Government-owned, contractor-operated plants operating on a cost-plus-fixed-fee basis from rental charges. As a result of the deletion, 45.301(b) is restructured.

Revised 45.303(b) for clarification and (c) to update the reference for computing rent.

Revised 45.401(b) and (c), moved them into 45.402, and revised clause 52.245–1(d) and (e) to retain title language in the current FAR at 52.245–2 and 52.245–5.

Revised 45.501 to provide for the property administrator assigned to the prime contract to request support

property administration from another contract administration office, for purposes of evaluating prime contractor management of property located at subcontractors and alternate locations.

Revised 45.501 and 45.502 to provide that for property located at a subcontractor, the prime contractor must agree to allow support property administration. Should the prime contractor not agree, the property administrator assigned to the prime contractor shall immediately refer the matter to the contracting officer.

Revised 52.244–2(b) to delete the reference to special test equipment and the clause at 52.245–18.

Revised the third sentence of 52.245–1(b)(1) to add “procedures” and add “except where inconsistent with law or regulation” after the words “property management.”. Added a new fourth sentence: “During the period of performance, the contractor shall disclose any significant changes to their property management system to the Property Administrator prior to implementation.”

Revised 52.245–1(b)(2) to add words “or stolen.”

Revised clause 52.245–1(d)(3)(ii) (renumbered as (d)(2)(ii)) to allow the contractor the opportunity to inspect Government-furnished property, expected to be suitable for contract performance, after receipt and installation.

Revised clause 52.245–1(d)(3)(iii) (renumbered as (d)(2)(iii)) to ensure that the contractor is given the opportunity to inspect property furnished in an “as-is” condition prior to the property being provided on contract.

Revised 52.245–1(f)(1) to add the word “procedures” to the first sentence in (f)(1) after the word “system.”

Revised 52.245–1(f)(1)(ii) to clarify the identification of Government property.

Revised 52.245–1(f)(1)(iii)(B) to add the heading “Use of a Receipt and Issue System for Government Material” and make editorial changes.

Revised 52.245–1(f)(1)(iv) to require disclosure of the results of the physical inventory.

Revised 52.245–1(f)(1)(v) to provide that the contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract terms and conditions, *e.g.*, extent of liability for loss, damage, destruction or theft of Government property, and deleted the requirement to flow down any cost savings achieved as a result of its prime contract relationship with the Government.

Revised 52.245–1(f)(1)(vi) to clarify the lead-in language for examples of reports to be provided by the contractor.

Revised 52.245–1(f)(1)(vi)(B), (C), and (D); and moved language to 52.245–1(h)(2), (3), (4), and (5) and renumbered.

Revised 52.245–1(f)(1)(vi) to add paragraphs (12) and (13) to add language for last known location and a statement that the property did or did not contain sensitive or hazardous material, and if so, that the appropriate agencies were notified.

Revised 52.245–1(f)(1)(vii)(A) to state that a Property Administrator may grant relief for loss, damage, destruction or theft of Government property.

Revised 52.245–1(f)(1)(viii), adding the word “move”, and revised FAR 52.245–1(f)(1)(viii) to add a new paragraph (B).

Revised 52.245–1(f)(1)(ix) to add the words “and routine.”

Revised 52.245–1(f)(3) to include “significant” and “pertaining to Government property” which now provides access to significant findings and/or results of reviews and audits related directly to Government property.

Revised 52.245–1(g)(1) to add the words “plan” and “that pertains to Government property”, and (g)(1) and (4) are revised to require access to all Government property as well as premises, and to premises of the subcontractor as well as the prime.

Revised the title to the clause 52.245–2 and the prescriptive language for the clause in FAR 45.107(b) for clarity.

Revised 52.245–2(c) to delete “(*i.e.*)” and add the word “and.”

Revised 52.245–2 to add a paragraph (e) which requires the contracting officer to identify Government Property provided under the clause, and to revise paragraph (a) to add reference to (e).

This is not a significant regulatory action, and therefore, is 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.

#### D. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

This final regulatory flexibility analysis has been prepared consistent with 5 U.S.C. 604.

##### 1. Succinct statement of the need for, and the objectives of, the rule.

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 final 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.

##### 2. Summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

No comments were received that specifically mentioned the Initial Regulatory Flexibility Analysis.

##### 3. Description of and an estimate of the number of small entities to which the rule will apply.

It is estimated that approximately 5000 contractors have Federal property in their possession. Department of Defense (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.

##### 4. Description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities, which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The rule does not impose any new reporting, recordkeeping, or compliance requirements. This final rule substantially decreases the impact of the current Federal Acquisition Regulation (FAR) provisions by simplifying procedures, reducing recordkeeping and eliminating requirements related to the management of Government property in the possession of contractors. The final 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 final 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 voluntary consensus standards and leading industry practices should reduce both the Government's and the contractor's ongoing administrative costs of dealing with Government property. The 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).

**5. Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.**

The final rule changes the approach to managing Government property by accepting commercial practices and standards instead of prescriptive-type requirements, alleviating the need for a separate and costly Government-dictated property system. The final rule further alleviates the burden on small businesses by reducing their risk on “as-is” Government-furnished property by allowing contractors to inspect “as-is” property prior to acceptance. By moving to one clause at FAR 52.245–1, Government Property, the Government has streamlined numerous clauses into one “overarching” clause, simplifying the understanding of Government property to the contracting community. The rule will reduce burdens on the entire contracting community, large business as well as small.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

#### E. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements. Accordingly, the FAR Secretariat will forward a request for approval of a new information collection requirement concerning 9000–0075 to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

#### List of Subjects in 48 CFR Parts 1, 2, 4, 7, 14, 15, 16, 17, 18, 19, 22, 28, 31, 32, 35, 37, 41, 42, 43, 44, 45, 46, 49, 51, 52, and 53

Government procurement.

Dated: May 2, 2007.

Al Matera,

Acting Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 4, 7, 14, 15, 16, 17, 18, 19, 22, 28, 31, 32, 35, 37, 41, 42, 43, 44, 45, 46, 49, 51, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 4, 7, 14, 15, 16, 17, 18, 19, 22, 28, 31, 32, 35, 37, 41, 42, 43, 44, 45, 46, 49, 51, 52, and 53 continues to read as follows:

**Authority:** 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—

- a. Removing FAR segment “52.216–13”, and its corresponding OMB Control Number “9000–0069”;
- b. Removing FAR segment “52.232–21”, and its corresponding OMB Control Number “9000–0074”;
- c. Adding FAR segment “52.245–1”, and its corresponding OMB Control Number “9000–0075”; and
- d. Removing FAR segments “52.245–2”, “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 their corresponding OMB Control Number “9000–0075”.

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

■ 3. Amend section 2.101 in paragraph (b) by—

- a. Adding, in alphabetical order, the definition “Common item”;
- b. Revising the definition “Plant clearance officer”; and
- c. Adding, in alphabetical order, the definitions “Special test equipment”, “Special tooling”, and “Voluntary consensus standards” to read as follows:

##### 2.101 Definitions.

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

*Plant clearance officer* means an authorized representative of the contracting officer, appointed in accordance with agency procedures, responsible for 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 foundations and similar improvements necessary for installing special test equipment, and 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, 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, and all components of these items including foundations and similar improvements necessary for installing special test equipment, and 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, real property, 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 (*e.g.*, International Organization for Standardization (ISO) and ASTM-International). See OMB Circular A–119.

\* \* \* \* \*

#### PART 4—ADMINISTRATIVE MATTERS

##### 4.703 [Amended]

■ 4. Amend section 4.703 in paragraph (b)(3) by removing “, and subparagraph (c)(2) of the clause at 52.216–13, Allowable Cost and Payment—Facilities”.

##### 4.804–4 [Amended]

■ 5. Amend section 4.804–4 by removing from paragraph (b) “Facilities contracts and rental” and adding “Rental” in its place.

#### PART 7—ACQUISITION PLANNING

■ 6. Amend section 7.105 by revising paragraph (b)(14) to read as follows:

##### 7.105 Contents of written acquisition plans.

\* \* \* \* \*

(b) \* \* \*

(14) *Government-furnished property.*

Indicate any Government property to be furnished to contractors, and discuss any associated considerations, such as its availability or the schedule for its acquisition (see 45.102).

\* \* \* \* \*

**PART 14—SEALED BIDDING**

■ 7. Amend section 14.502 by revising paragraph (b)(2) to read as follows:

**14.502 Conditions for use.**

\* \* \* \* \*

(b) \* \* \*

(2) Government property to be made available to the successful bidder.

\* \* \* \* \*

**PART 15—CONTRACTING BY NEGOTIATION****15.209 [Amended]**

8. Amend section 15.209 by removing and reserving paragraph (b)(2).

**15.404-1 [Amended]**

■ 9. Amend section 15.404-1 by removing from paragraph (e)(1) “facilities” and adding “equipment, real property” in its place.

**15.407-2 [Amended]**

10. Amend section 15.407-2 by removing from paragraph (e)(1) “facilities” and adding “equipment or real property” in its place.

**15.407-4 [Amended]**

■ 11. Amend section 15.407-4 by removing from paragraph (a)(1) “facilities” and adding “equipment, real property” in its place; and by removing from paragraph (c)(1) “facilities” and adding “real property,” in its place.

**15.605 [Amended]**

■ 12. Amend section 15.605 by removing from paragraph (b)(4) “facilities, equipment, materials,” and adding “Government property” in its place.

**PART 16—TYPES OF CONTRACTS****16.302 [Amended]**

■ 13. Amend section 16.302 by removing from paragraph (b) “, and for facilities contracts”.

**16.307 [Amended]**

■ 14. Amend section 16.307 by—  
 ■ a. Removing from paragraph (a)(1) “(other than a facilities contract)”;  
 ■ b. Removing from paragraph (b) “facilities contract or a”;  
 ■ c. Removing from paragraph (d) “(other than a facilities contract)”;  
 ■ d. Removing from paragraph (e)(1) “or a facilities contract”;

■ e. Removing from paragraph (f)(1) “(other than a facilities contract)”;

■ f. Removing paragraphs (g) and (h); and redesignating paragraph (i) as paragraph (g); and

■ g. Removing the last sentence from the newly designated paragraph (g).

**PART 17—SPECIAL CONTRACTING METHODS**

■ 15. 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 Rental of Government Property.

\* \* \* \* \*

**PART 18—EMERGENCY ACQUISITIONS****18.123 [Amended]**

■ 16. Amend section 18.123 by removing “45.404(a)(3) and (4)” and adding “45.301” in its place.

**PART 19—SMALL BUSINESS PROGRAMS****19.803 [Amended]**

■ 17. Amend section 19.803 by removing from paragraph (b)(2) “facilities” and adding “equipment and real property” in its place.

**19.1103 [Amended]**

■ 18. Amend section 19.1103 by removing from paragraph (b) “facilities” and adding “property” in its place.

**19.1307 [Amended]**

■ 19. Amend section 19.1307 by removing from paragraph (c) “facilities” and adding “property” in its place.

**PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS****22.405 [Removed and Reserved]**

■ 20. Section 22.405 is removed and reserved.

**22.407 [Amended]**

■ 21. Amend section 22.407 by removing and reserving paragraph (d).

**PART 28—BONDS AND INSURANCE****28.303 [Amended]**

■ 22. Amend section 28.303 by removing “45.103” and adding “45.104” in its place.

**PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES****31.106 [Removed and Reserved]**

■ 23. Remove and reserve section 31.106.

■ 23a. Remove sections 31.106-1 through 31.106-3.

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

**31.205-19 Insurance and indemnification.**

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(iv) Costs of insurance for the risk of loss, damage, destruction, or theft of Government property are allowable to the extent that—

(A) The contractor is liable for such loss, damage, destruction, or theft;

(B) The contracting officer has not revoked the Government’s assumption of risk (see 45.104(b)); and

(C) 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 FAR 52.245-1(h)(1)(ii)).

\* \* \* \* \*

**31.205-40 [Amended]**

■ 25. Amend section 31.205-40 by removing from paragraph (a) “45.101” and adding “2.101(b)” in its place.

**PART 32—CONTRACT FINANCING**

■ 26. Amend section 32.403 by revising paragraph (c) to read as follows:

**32.403 Applicability.**

\* \* \* \* \*

(c) Contracts for acquisition, at cost, of property for Government ownership.

\* \* \* \* \*

**32.407 [Amended]**

■ 27. Amend section 32.407 by removing from paragraph (c) “facilities” and adding “property” in its place.

■ 28. Amend section 32.503-15 by removing from the introductory text of paragraph (b) “other clauses, as follows:” and adding an em-dash in its place; and 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; and

\* \* \* \* \*

**32.704 [Amended]**

■ 29. Amend section 32.704 by removing from paragraph (a)(1)

“52.232–21, Limitation of Cost (Facilities);”.

### 32.705–2 [Amended]

■ 30. Amend section 32.705–2 by removing from paragraph (a) “, except those for consolidated facilities, facilities acquisition, or facilities use”; removing paragraph (b); and redesignating paragraph (c) as paragraph (b).

## PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

■ 31. Amend section 35.014 by revising paragraph (e) to read as follows:

### 35.014 Government property and title.

(e) The policies in paragraphs (b)(1) through (b)(3) and paragraph (d) of this section are implemented in the Government Property clauses.

### 35.017 [Amended]

■ 32. Amend section 35.017 by removing from paragraph (a)(2) “facilities”, each time it appears, and adding “installations equipment and real property” in its place (twice).

## PART 37—SERVICE CONTRACTING

### 37.101 [Amended]

■ 33. Amend section 37.101, by removing from paragraph (5) of the definition “Service Contract” “facilities” and adding “real property” in its place.

## PART 41—ACQUISITION OF UTILITY SERVICES

### 41.102 [Amended]

■ 34. Amend section 41.102 by removing from paragraph (b)(6) “Government-owned facilities” and adding “Government-owned equipment and real property” in its place.

### 41.701 [Amended]

■ 35. Amend section 41.701 by removing from paragraph (b) “facilities” and adding “equipment and real property” in its place.

## PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 36. Amend section 42.302 by removing and reserving paragraph (a)(27); and by revising the introductory text of paragraph (a)(30), and (a)(30)(i) through (a)(30)(iii) to read as follows:

### 42.302 Contract administration functions.

(a) \* \* \*

(27) [Reserved]

\* \* \* \* \*

(30) When contractors request Government property—

(i) Evaluate the contractor’s requests for Government property and for changes to existing Government property and provide appropriate recommendations to the contracting officer;

(ii) Ensure required screening of Government property before acquisition by the contractor;

(iii) Approve use of Government property on a noninterference basis in accordance with the clause at 52.245–9, Use and Charges;

\* \* \* \* \*

### 42.705–1 [Amended]

■ 37. Amend section 42.705–1 by removing from paragraph (b)(1) “or 52.216–13”.

### 42.705–3 [Amended]

■ 38. Amend section 42.705–3 by removing from paragraph (b)(5)(ii) “16.307(i)” and adding “16.307(g)” in its place.

### 42.708 [Amended]

■ 39. Amend section 42.708 by removing from paragraph (b) “or 52.216–13”.

### 42.709–6 [Amended]

■ 40. Amend section 42.709–6 by removing “52.216–13”.

### 42.1102 [Amended]

■ 41. Amend section 42.1102 by removing “facilities”.

### 42.1107 [Amended]

■ 42. Amend section 42.1107 by removing from paragraph (a) “a facilities contract”.

### 42.1305 [Amended]

■ 43. Amend section 42.1305 by removing paragraph (c), and redesignating paragraph (d) as paragraph (c).

## PART 43—CONTRACT MODIFICATIONS

### 43.205 [Amended]

■ 44. Amend section 43.205 by removing and reserving paragraph (b)(5).

## PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

### 44.101 [Amended]

■ 45. Amend section 44.101 by removing the definition “Facilities”.

### 44.202–1 [Amended]

■ 46. Amend section 44.202–1 by removing from paragraph (c) “paragraph (k)” and adding “paragraph (j)” in its place.

■

■ 47. Amend section 44.202–2 by revising paragraphs (a)(2) and (a)(10) to read as follows:

### 44.202–2 Considerations.

(a) \* \* \*

(2) Is the subcontract for special test equipment, equipment or real property that are available from Government sources?

\* \* \* \* \*

(10) Has adequate consideration been obtained for any proposed subcontract that will involve the use of Government-provided equipment and real property?

\* \* \* \* \*

## PART 45—GOVERNMENT PROPERTY

■ 48. Revise section 45.000 to read as follows:

### 45.000 Scope of part.

This part prescribes policies and procedures for providing Government property to contractors, contractors’ management and use of Government property, and reporting, redistributing, and disposing of contractor inventory. It does not apply to property under any statutory leasing authority, (except as to non-Government use of property under 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; to disposal of real property; or to software and intellectual property.

■ 49. 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 Contractors’ property management system compliance.

45.106 Transferring accountability.

45.107 Contract clauses.

### Subpart 45.2—Solicitation and Evaluation Procedures

45.201 Solicitation.

45.202 Evaluation procedures.

### Subpart 45.3—Authorizing the Use and 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-furnished property.

45.402 Title to contractor-acquired property.

### Subpart 45.5—Support Government Property Administration

- 45.501 Prime contractor alternate locations.  
 45.502 Subcontractor locations.  
 45.503 Support property administrator findings.

### Subpart 45.1—General

#### 45.101 Definitions.

As used in this part—

*Acquisition cost* means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

*Cannibalize* means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

*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—

(1) All or substantially all of the contractor's business;

(2) All or substantially all of the contractor's operation at any one plant or separate location; or

(3) A separate and complete major industrial operation.

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

*Discrepancies incident to shipment* means any differences (*e.g.*, count or

condition) between the items documented to have been shipped and items actually received.

*Equipment* means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, 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 property 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, and special test equipment.

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

*Plant equipment* means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

*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 appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a contractor.

*Provide* means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

*Real property* means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary

for installing special tooling, special test equipment, or plant 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. Examples include 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).

#### 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 acquisition 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.

(d) *Exception.* Property provided to contractors for repair or overhaul is not subject to the requirements of paragraph (b) of this section.

#### 45.103 General.

(a) Agencies shall—

(1) Allow and encourage contractors to use voluntary consensus standards (see FAR 11.101(c)) and 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;

(3) Ensure maximum practical reutilization of contractor inventory for government purposes;

(4) Require contractors to use Government property already in their possession to the maximum extent practical in performing Government contracts;

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

(6) 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) Fixed-price contracts awarded on the basis of submission of cost or pricing data.

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

(c) A prime contractor that provides Government property to a subcontractor shall not be relieved of any responsibility to the Government that the prime contractor may have under the terms of the prime contract.

#### **45.105 Contractors' property management system compliance.**

(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, 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) Revocation of the Government's assumption of risk for loss, damage, destruction, or theft; and/or
- (2) The exercise of other rights or remedies available to 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) and (b)(2) of this section.

(d) When the property administrator determines that a reported case of loss, damage, destruction or theft of Government property constitutes a risk assumed by the Government, the property administrator shall notify the contractor in writing that they are granted relief of responsibility in accordance with FAR clause 52.245–1(f)(1)(vii). Where the property administrator determines that the risk of loss is not assumed by the Government, the property administrator shall forward a recommendation requesting that the contracting officer hold the contractor liable.

#### **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. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the contractor as contractor-acquired property that is subsequently transferred to another contract with the same contractor.

#### **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.

(iii) Contracts or modifications awarded under FAR Part 12 procedures where Government property that exceeds the simplified acquisition threshold, as defined in FAR 2.101, is furnished or where the contractor is directed to acquire property for use under the contract that is titled in the Government.

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

FAR 45.104(a), Responsibility and Liability for Government Property.

(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 also insert the clause at 52.245–2, Government Property (Installation Operation 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 the clause at 52.245–1 is included.

(d) Purchase orders for property repair need not include a Government property clause when the acquisition cost of Government property to be repaired does not exceed the simplified acquisition threshold, unless other Government property (not for repair) is provided.

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

#### **45.201 Solicitation.**

(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, part number and description, manufacturer, 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;

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

(5) A statement as to whether the property is to be furnished in an "as-is" condition and instructions for physical inspection.

(b) When Government property is offered for use in a competitive acquisition, solicitations should specify that the contractor is responsible for 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 FAR 52.245–9, Use and Charges; and

(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) When use of property on more than one contract is anticipated, any additional instructions to the contractor regarding property management, accountability, and use, not addressed in FAR clause 52.245–1, Government Property, should be specifically addressed in the statement of work on the contract providing property.

#### **45.202 Evaluation procedures.**

(a) The contracting officer shall consider any potentially unfair competitive advantage that may result from the contractor possessing Government property. This shall be done by adjusting the offers by applying, for evaluation purposes only, a rental equivalent evaluation factor.

(b) 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 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 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 claim reimbursement against any Government contract for the rental value of the property; and

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

### **Subpart 45.4—Title to Government Property**

#### **45.401 Title to Government-furnished property.**

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 52.245–1, Government Property.

#### **45.402 Title to contractor-acquired property.**

(a) 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. The Government acquires title to property acquired or fabricated by the contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. 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.

(b) Under cost type and time-and-material contracts, the Government acquires title to all property to which the contractor is entitled to reimbursement, in accordance with paragraph (e)(3) of clause 52.245–1.

### **Subpart 45.5—Support Government Property Administration**

#### **45.501 Prime contractor alternate locations.**

The property administrator assigned to the prime contract may request support property administration from another contract administration office, for purposes of evaluating prime contractor management of property located at subcontractors and alternate locations.

**45.502 Subcontractor locations.**

(a) For property located at a subcontractor, FAR 52.245-1(g) requires that the prime contractor allow support property administration. Should the prime contractor fail to comply with FAR 52.245-1(g), the property administrator assigned to the prime contractor shall immediately refer the matter to the contracting officer.

(b) 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.

**45.503 Support property administrator findings.**

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.

■ 50. Revise section 45.600 to read as follows:

**45.600 Scope of subpart.**

This subpart establishes policies and procedures for the reporting, reutilization, and disposal of contractor inventory excess to contracts and of property that forms the basis of a claim against the Government (e.g., termination inventory under fixed-price contracts). This subpart does not apply to the disposal of real property or to property for which the Government has a lien or title solely as a result of advance, progress, or performance-based payments that have been liquidated.

**45.601 [Removed and Reserved]**

■ 51. Remove and reserve section 45.601.

**PART 46—QUALITY ASSURANCE****46.202-3 [Amended]**

■ 52. Amend section 46.202-3 by removing from paragraph (a) “and 46.310.”.

**46.310 [Removed and Reserved]**

■ 53. Remove and reserve section 46.310.

**PART 49—TERMINATION OF CONTRACTS**

■ 54. 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  
\* \* \* \* \*

**49.502 [Amended]**

■ 55. Amend section 49.502 by removing from paragraphs (a)(1)(iv) and (b)(1)(i)(C) “49.505(a), (b), or (e)” and adding “49.505(a) or (c)” in its place.

■ 56. Amend section 49.505 by removing paragraphs (a) and (c), and redesignating paragraph (b) as paragraph (a), paragraph (d) as paragraph (b), and paragraph (e) as paragraph (c); and revising the last sentence of the newly designated paragraph (b) to read as follows:

**49.505 Other termination clauses.**

\* \* \* \* \*

(b) \* \* \* The contracting officer shall also insert the clause in time-and-material contracts, and labor-hour contracts.

\* \* \* \* \*

**49.603 [Amended]**

■ 57. Amend section 49.603 by removing “49.505(e)” and adding “49.505(c)” in its place.

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

■ 58. Amend section 51.106 by removing from paragraph (b) “52.245-2” and adding “52.245-1” in its place; and by removing “, or 52.245-5, Alternate I”.

**51.107 [Amended]**

■ 59. Amend section 51.107 by removing “may authorize” and adding “authorizes” in its place, and by removing the last sentence.

**51.200 [Amended]**

■ 60. Amend section 51.200 by removing “45.304” and adding “45.102” in its place.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****52.215-2 [Amended]**

■ 61. Amend section 52.215-2 by removing and reserving Alternate I.

**52.216-11 [Amended]**

■ 62. Amend section 52.216-11 by removing from the introductory text “or a facilities contract”.

**52.216-12 [Amended]**

■ 63. Amend section 52.216-12 by removing from the introductory text “(other than a facilities contract)”.

**52.216-13 and 52.216-14 [Removed and Reserved]**

■ 64. Remove and reserve sections 52.216-13 and 52.216-14.

**52.216-15 [Amended]**

■ 65. Amend the introductory text of section 52.216-15 by removing “16.307(i)” and adding “16.307(g)” in its place.

**52.222-17 [Removed and Reserved]**

■ 66. Remove and reserve section 52.222-17.

**52.232-20 [Amended]**

■ 67. Amend the introductory text of section 52.232-20 by removing “except those for consolidated facilities, facilities acquisition, or facilities use,”.

**52.232-21 [Removed and Reserved]**

■ 68. Remove and reserve section 52.232-21.

**52.232-22 [Amended]**

■ 69. Amend the introductory text of section 52.232-22 by removing “32.705-2(c)” and adding “32.705-2(b)” in its place.

**52.242-16 [Removed and Reserved]**

■ 70. Remove and reserve section 52.242-16.

**52.242-17 [Amended]**

■ 71. Amend the introductory text of section 52.242-17 by removing “42.1305(d)” and adding “42.1305(c)” in its place.

**52.243-2 [Amended]**

■ 72. Amend section 52.243-2 by removing and reserving Alternate IV.  
■ 73. Amend section 52.243-4 by revising the date of the clause and paragraph (a)(3) to read as follows:

**52.243-4 Changes.**

\* \* \* \* \*

CHANGES (JUNE 2007)

(a) \* \* \*

(3) In the Government-furnished property or services; or

\* \* \* \* \*

**52.244-2 [Amended]**

■ 74. Amend section 52.244-2 by—  
■ a. Revising the date of the clause to read “(JUNE 2007)”;  
■ b. Removing paragraph (b) and redesignating paragraphs (c) through (k) as (b) through (j), respectively;  
■ c. Amending the newly designated paragraph (b) by removing “paragraph (d) or (e)” and adding “paragraph (c) or (d)” in its place;  
■ d. Amending the newly designated paragraphs (e)(1) and (e)(2) by removing “paragraph (c), (d), or (e)” and adding “paragraph (b), (c), or (d)” in its place;

- e. Amending the newly designated paragraph (j) by removing “Paragraphs (d) and (f)” and adding “Paragraphs (c) and (e)” in its place; and
- f. Amending Alternate I as follows:
  - 1. Revising the date of Alternate I to read “(JUNE 2007)”;
  - 2. Removing from the introductory text of Alternate I “paragraph (f)(2)”, each time it appears, and adding “paragraph (e)(2)” in its place (twice);
  - 3. Redesignating paragraph (f)(2) as paragraph (e)(2), and removing “paragraph (d), or (e)” and adding “paragraph (c), or (d)” in its place; and
  - 4. Removing from the newly designated paragraph (e)(2)(ii) “paragraphs (f)(1)(i) through (f)(1)(iv)” and adding “paragraphs (e)(1)(i) through (e)(1)(iv)” in its place.
- 75. 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 (JUNE 2007)

(a) *Definitions.* As used in this clause—

*Acquisition cost* means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

*Cannibalize* means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

*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—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at any one plant or separate location; or

(3) A separate and complete major industrial operation.

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

*Discrepancies incident to shipment* means any differences (e.g., count or condition) between the items documented to have been shipped and items actually received.

*Equipment* means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, 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 and special test equipment.

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

*Plant equipment* as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

*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 appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a Contractor.

*Provide* means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

*Real property* means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant 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. Examples include 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).

(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, procedures, 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 except where inconsistent with law or regulation. During the period of performance, the Contractor shall disclose any significant changes to their property management system to the Property Administrator prior to implementation.

(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, destroyed, or stolen 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. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Contractor as contractor-acquired property and subsequently transferred to another contract with this Contractor.

(2) 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, or for Government-furnished property after receipt and installation, 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. The Contractor will be given the opportunity to inspect such property prior to the property being provided. 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.

(3)(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)(3)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

(e) *Title to Government property.* (1) The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(2) *Fixed-price contracts.* (i) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause.

(ii) Title to each item of equipment, special test equipment and special tooling acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(iii) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract—

(A) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(B) Title to all other material shall pass to and vest in the Government upon—

(1) Issuance of the material for use in contract performance;

(2) Commencement of processing of the material or its use in contract performance; or

(3) Reimbursement of the cost of the material by the Government, whichever occurs first.

(3) *Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts.* (i) 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 the vendor's delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—

(A) Issuance of the property for use in contract performance;

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

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

(iii) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (e)(3)(i) (collectively referred to as "Government property"), are subject to the provisions of this clause.

(f) *Contractor plans and systems.* (1) Contractors shall establish and implement property management plans, systems, and procedures 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, and material control operations.

(ii) *Receipt of Government Property.* The Contractor shall receive Government property (document the receipt), record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), 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:

(1) The name, part number and description, manufacturer, 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) *Use of a Receipt and Issue System for Government Material.* 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 disclose physical inventory results. 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 terms and conditions (e.g., extent of liability for loss, damage, destruction or theft of Government property).

(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 of discrepancies; loss, damage, destruction, or theft; physical inventory results; audits and self-assessments; corrective actions; and other property related reports as directed by the Contracting Officer.

(A) Loss, damage, destruction, or theft. Unless otherwise directed by the Property Administrator, the Contractor shall investigate and promptly furnish a written narrative of all incidents of loss, damage, destruction, or theft to the property administrator as soon as the facts become known or when requested by the Government.

(B) 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.
- (12) Last known location.
- (13) A statement that the property did or did not contain sensitive or hazardous material, and if so, that the appropriate agencies were notified.
- (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, including reasonable inventory adjustments of material as determined by the Property Administrator; or a Property Administrator granted relief of responsibility for loss, damage, destruction or theft of Government property;
  - (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.* (A) The Contractor shall utilize, consume, move, 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.
- (B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government property with property not owned by the Government.
- (ix) *Maintenance.* The Contractor shall properly maintain Government property. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine 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. Significant findings and/or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

(g) *Systems analysis.* (1) The Government shall have access to the contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(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.

(4) The Contractor shall ensure Government access to subcontractor premises, and all Government property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(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). The allowability of insurance costs shall be determined in accordance with 31.205–19.

(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, revoked 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 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.

(3) 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.

(4) Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

(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. The Contractor may not dispose of scrap resulting from production or testing under this contract without Government approval.

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

(A) May contact the Contracting Officer if use of the property in the performance of other Government contracts is practical;

(B) May purchase the property at the acquisition cost; or

(C) 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).

(ii) The Contractor shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not used in the performance of other Government contracts under paragraph (j)(2)(i)(A) of this clause, property that was not purchased under paragraph (j)(2)(i)(B) of this clause, and property that could not be returned to a supplier under paragraph (j)(2)(i)(C) of this clause.

(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 121<sup>st</sup> day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage facility shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability for such property under this contract.

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

(ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of 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.* As directed by the Contracting Officer, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the contract, or to the Treasury of the United States as miscellaneous receipts.

(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) *Contracts outside the United States.* 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 I "(JUNE 2007)".* 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 "(JUNE 2007)".* As prescribed in 45.107(a)(3), substitute the following for paragraph (e)(3) of the basic clause:

(e)(3) 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 costs shall be allowed 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 Operation Services.**

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

##### **GOVERNMENT PROPERTY INSTALLATION OPERATION SERVICES (JUNE 2007)**

(a) This Government Property listed in paragraph (e) of this clause 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 and 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.

(e) Government property provided under this clause:

(End of clause)

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

■ 76. Remove and reserve sections 52.245-3 through 52.245-8.

■ 77. Amend section 52.245-9 by—

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

■ b. Revising the date of clause;

■ c. Revising the definitions “Acquisition cost” and “Government property”;

■ d. Adding the definition “Plant equipment”; and

■ e. Amending the definition “Real property” by removing “or equipment” and adding “or plant equipment” in its place.

■ The revised and added text reads as follows:

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

\* \* \* \* \*

##### **USE AND CHARGES (JUNE 2007)**

(a) \* \* \*

*Acquisition cost* means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

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

*Plant equipment*, as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

\* \* \* \* \*

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

■ 78. Remove sections 52.245-10 through 52.245-19.

#### **52.246-10 [Removed and Reserved]**

■ 79. Remove and reserve section 52.246-10.

#### **52.249-11 [Removed and Reserved]**

■ 80. Remove and reserve section 52.249-11.

#### **52.249-12 [Amended]**

■ 81. Amend section 52.249-12 by removing from the introductory text “49.505(b)” and adding “49.505(a)” in its place.

#### **52.249-13 [Removed and Reserved]**

■ 82. Remove and reserve section 52.249-13.

■ 83. Revise the introductory text of section 52.249-14 to read as follows:

#### **52.249-14 Excusable Delays.**

As prescribed in 49.505(b), insert the following clause in solicitations and contracts for supplies, services, construction, and research and development on a fee basis whenever a cost-reimbursement contract is contemplated. Also insert the clause in time-and-material contracts, and labor-hour contracts. When used in construction contracts, substitute the words “completion time” for “delivery schedule” in the last sentence of the clause.

\* \* \* \* \*

#### **52.251-1 [Amended]**

■ 84. Amend section 52.251-1 by removing Alternate I.

### **PART 53—FORMS**

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

■ 85. Amend section 53.245 by removing from paragraph (e) “SF 1428 (Rev. 5/04)” and adding “SF 1428 (Rev. 6/2007)” in its place and removing “52.245-2(i), 52.245-5(i)” and adding “52.245-1,” in its place.

#### **53.249 [Amended]**

■ 86. Amend section 53.249 by removing from paragraph (b) “SF 1428 (Rev. 5/04)” and adding “SF 1428 (Rev. 6/2007)” in its place.

■ 87. Amend section 53.301-1428 by revising the form to read as follows:

#### **53.301-1428 Inventory Disposal Schedule.**

| INVENTORY DISPOSAL SCHEDULE<br>(See Reverse for Instructions)<br>(See FAR 52.245 - I (j))                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                      | 1. TYPE (Check block(s) where applicable)<br><input type="checkbox"/> TERMINATION <input type="checkbox"/> FINAL SCHEDULE |              | 2. SCHEDULE REFERENCE NUMBER          | PAGE NO.                                                  | NO. OF PAGES          | OMB No.: 9000-0075<br>Expires: 2/28/2010 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|---------------------------------------------------------------------------------------------------------------------------|--------------|---------------------------------------|-----------------------------------------------------------|-----------------------|------------------------------------------|
| Public reporting burden for this collection of information is estimated to average 1 hour 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VIR), Regulatory and Federal Assistance Division, GSA, Washington, DC 20405. |                      |                                                                                                                           |              |                                       |                                                           |                       |                                          |
| 3. PRIME CONTRACT NO.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                      | 4. SUBCONTRACTOR P.O. NO.                                                                                                 |              | 5. CONTRACT TYPE                      |                                                           | 6. TERM DOCKET NUMBER |                                          |
| 7. TOTAL LINE ITEMS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      | 8. TOTAL ACQUISITION COST                                                                                                 |              |                                       |                                                           |                       |                                          |
| 9a. CAGE CODE (8s. PRIME CONTRACTOR (Point of Contact))                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                      | 10a. CAGE CODE (10s. SUBCONTRACTOR (Point of Contact))                                                                    |              |                                       |                                                           |                       |                                          |
| 9c. STREET ADDRESS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                      | 10c. STREET ADDRESS                                                                                                       |              |                                       |                                                           |                       |                                          |
| 9d. CITY, STATE, AND ZIP CODE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                      | 10d. CITY, STATE, AND ZIP CODE                                                                                            |              |                                       |                                                           |                       |                                          |
| 11a. LOCATION OF PROPERTY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                      | 11b. POINT OF CONTACT FOR PROPERTY                                                                                        |              | 12. PRODUCT COVERED BY CONTRACT/ORDER |                                                           |                       |                                          |
| 13. ITEM NO.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 14. ITEM DESCRIPTION | 15. GOVT FURNISHED/ACQUIRED                                                                                               | 16. DML CODE | 17. PROPERTY CLASSIFICATION           | 18. GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER | 19. CONDITION CODE    | 20. QUANTITY                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                      |                                                                                                                           |              |                                       |                                                           |                       | 21. UNIT OF MEASURE                      |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                      |                                                                                                                           |              |                                       |                                                           |                       | 22. COST                                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                      |                                                                                                                           |              |                                       |                                                           |                       | UNIT (a)                                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                      |                                                                                                                           |              |                                       |                                                           |                       | TOTAL (b)                                |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                      |                                                                                                                           |              |                                       |                                                           |                       | 23. CONTRACTOR'S OFFER                   |
| 24a. SIGNATURE OF CONTRACTOR SUBMITTING SCHEDULE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                      | 24b. NAME OF CONTRACTOR SUBMITTING SCHEDULE                                                                               |              | 24c. TITLE                            |                                                           | 24d. DATE             |                                          |

**AUTHORIZED FOR LOCAL REPRODUCTION  
PREVIOUS EDITION IS NOT USABLE**

**STANDARD FORM 1428 (REV. 6/2007)**  
Prescribed by GSA-FAR (48 CFR) 53.245(e) and 53.249(b)

## INSTRUCTIONS

The Contractor shall submit all schedules to the Plant Clearance Officer.

**Manual submissions.** Prepare a separate schedule for items in each property classification (block 17) and a separate schedule for scrap. Submit an original and 2 copies of each scrap schedule and continuation sheet (SF 1429). For other schedules, an original and 7 copies are required.

**Electronic submissions.** Group all items of the same property classification. Submit separate schedules for scrap.

### General instructions.

**BLOCKS 1, 2 & 4 - Self-explanatory.**

**BLOCK 3 - PRIME CONTRACT NO. (For contract modifications and BOAs).** If the property applies solely to one contract modification indicate the modification number after the contract number. For task orders and orders under basic ordering agreements, enter the contract number or BOA number followed by the order number under which the property is accountable.

**BLOCK 5 - CONTRACT TYPE.** Use one of the following codes:

- J - Fixed-Price
- O - Other
- S - Cost-Reimbursement
- Y - Time-and-Material
- Z - Labor-Hour
- 9 - Task Order Contracts and Orders under Basic Ordering Agreements (BOAs)

**BLOCKS 6 - 8 - Self-explanatory.**

**BLOCKS 9a and 10a - CAGE CODE.** Enter the Commercial and Government Entity code when applicable.

**BLOCKS 9b-d, 10b-d, and 11a-13 - Self-explanatory.**

**BLOCK 14 - ITEM DESCRIPTION.** Describe each item in sufficient detail to permit the Government to determine its appropriate disposition. Scrap may be described as a lot including metal content, estimated weight and estimated acquisition cost. For all other property, provide the information required by FAR 52.245 - 1 (f)(1)(iii). List the national stock number (NSN) first. For the following, also provide:

**Special tooling and special test equipment.** Identify each part number with which the item is used.

**Computers, components thereof, peripheral and related equipment.** The manufacturer's name, model and serial number, and date manufactured.

**Work in process.** The estimated percentage of completion.

**Precious metals.** The metal type and estimated weight.

**Hazardous material or property contaminated with hazardous material.** The type of hazardous material.

**Metals in mill product form.** The form, shape, treatments, hardness, temper, specification (commercial or Government), and dimensions (thickness, width, and length).

**BLOCK 15 - GOVERNMENT FURNISHED/CONTRACTOR ACQUIRED.** Per line item, enter one of the following:

- GF - Government furnished
- CA - Contractor acquired

**BLOCK 16 - DML CODE. (Demilitarization code).** If applicable, enter the code specified in DoD 4160.21-M-1.

**BLOCK 17 - PROPERTY CLASSIFICATION.** Use one of the following classifications for each line item:

- EQ - Equipment
- M - Material
- STE - Special test equipment
- ST - Special tooling

In addition, when applicable, list one of the following sub classifications for each line item below the property classification:

- COM - Computers, peripherals, etc.
- AAE - Arms, ammunition and explosives
- PM - Precious metals
- HAZ - Hazardous materials
- ME - Metals in mill product form
- WIP - Work in process
- CL - Classified

**BLOCK 18 - Self-Explanatory.**

**BLOCK 19 - CONDITION CODE.** Assign one of the following codes to each item:

- Code 1.** Property which is in new condition or unused condition and can be used immediately without modifications or repairs.
- Code 4.** Property which shows some wear, but can be used without significant repair.
- Code 7.** Property which is unusable in its current condition but can be economically repaired.
- Code X.** Property which has value in excess of its basic material content, but repair or rehabilitation is impractical and/or uneconomical.
- Code S.** Property has no value except for its basic material content.

**BLOCKS 20 - 22 - Self-explanatory.**

**BLOCK 23 - CONTRACTOR'S OFFER.** The Contractor's offer to purchase the item if it survives screening.

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Chapter 1**

[Docket FAR–2007–0002, Sequence 2]

**Federal Acquisition Regulation;  
Federal Acquisition Circular 2005–17;  
Small Entity Compliance Guide**

**AGENCIES:** Department of Defense (DoD),  
General Services Administration (GSA),

and National Aeronautics and Space  
Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This Small Entity Compliance Guide has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005–17, which amends the FAR. An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested

parties may obtain further information regarding this rule by referring to FAC 2005–17, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov/>.

**FOR FURTHER INFORMATION CONTACT:**  
Laurieann Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

**LIST OF RULE IN FAC 2005–17**

| Item     | Subject                   | FAR case | Analyst  |
|----------|---------------------------|----------|----------|
| *1 ..... | Government Property ..... | 2004–025 | Parnell. |

**Item I—Government Property (FAR  
Case 2004–025)**

This final rule amends Federal Acquisition Regulation (FAR) Part 45, Government Property, and associated FAR language and clauses to implement a policy that fosters efficiency, flexibility, innovation and creativity while continuing to protect the Government's interest. This rule simplifies procedures, clarifies language, and eliminates obsolete requirements related to the management and disposition of Government property

in the possession of contractors by moving, clarifying, and deleting definitions; establishing a life-cycle approach to property management; and, sanctioning the use of consensus standards and/or industry-leading standards and practices for property management. This rule deletes outdated clauses, combines selected FAR property clauses into a single clause, and implements a new clause designed for military base and installation-level contracts awarded under the OMB Circular A–76 process. FAR language

and associated clauses for special tooling, special test equipment and facilities contracts is deleted. It is not the Government's intention to change the intent or meaning of the language pertaining to “title to Government property.”

Dated: May 2, 2007.

**Al Matera,**

*Acting Director, Contract Policy Division.*

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