

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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DEPARTMENT OF DEFENSE

48 CFR Parts 216, 245, and 252

[DFARS Case 97-D027]

Defense Federal Acquisition Regulation Supplement; Title to Government Property

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Under Secretary of Defense, Acquisition and Technology, has requested the Director, Defense Procurement, to obtain public comment on Government property management policy changes intended to reduce the amount of Government-owned tooling and equipment in the possession of DoD contractors. This proposed rule solicits those comments and is structured as a deviation from the Federal Acquisition Regulation (FAR) Part 45 proposed rule on Government property (FAR Case 95-013) that was published in the **Federal Register** on June 2, 1997 (62 FR 30186). This proposed DFARS rule will be amended at a later date to incorporate changes resulting from public comments on the FAR Part 45 proposed rule.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 16, 1997 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Director, Defense Procurement, Deputy Director, Major Policy Initiatives, Attention: Ms. Angelena Moy, Room 3C128, 3060 Defense Pentagon, Washington, DC 20301-3060. Please cite DFARS Case 97-D027 in all correspondence related to this proposed rule. Address E-mail (Internet) comments to Moyac@acq.osd.mil.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy by phone at (703) 695-1097/8, by fax at (703) 695-7569, or at the E-mail address provided above. Please cite DFARS Case 97-D027.

SUPPLEMENTARY INFORMATION:

A. Background

The value of Government-owned equipment and tooling in the possession of DoD contractors increased substantially during the past decade although long-standing acquisition policy generally requires contractors to furnish the property needed to perform Government contracts. An Integrated Process Team, led by the Office of the Under Secretary of Defense, Industrial Affairs and Installations, has made recommendations intended to reverse this trend and reduce the amount of Government property in the possession of DoD contractors. These recommendations are:

1. Under cost-reimbursement contracts, DoD should cease taking title automatically to contractor acquired or fabricated equipment and tooling. DoD should have the right to take title to all special tooling and special test equipment for which costs are allocated to DoD contracts as direct costs, and items of equipment having an acquisition cost in excess of the DoD internal property accountability threshold (currently \$2,500), the costs of which are allocated as direct costs to DoD contracts. This recommendation will reduce contract performance costs by removing low value equipment items from the property control, management, and disposal requirements in FAR Part 45. To implement this recommendation, language creating a deviation to the proposed FAR Part 45 rule appears in this proposed DFARS rule at 252.216-7002(c) and 252.245-7002(b)(2).

2. When a contractor that acquired or fabricated equipment, special tooling, or special test equipment to which DoD has taken title needs that equipment, special tooling, or special test equipment to perform follow-on contracts for the same items, DoD should furnish the equipment, special tooling, or special test equipment items to the contractor on an "as is" basis. To implement this recommendation, language creating a deviation to the proposed FAR Part 45 rule appears in this proposed DFARS rule at 252.245-7001(d)(2).

3. Property no longer needed for performance of a particular contract should be disposed of immediately if not needed for future procurements and placed under funded storage contracts if the future need is not within 60 days following the date the contractor identifies the property as no longer needed. This recommendation is intended to expedite property disposal and assure that contractors are paid for storing Government property. To

implement this recommendation, language creating a deviation to the proposed FAR Part 45 rule appears in this proposed DFARS rule at 245.101-71.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, et seq., because the rule further reduces the economic impact on small entities from the estimated impact contained in the proposed rule under FAR Case 95-013, FAR Part 45, Government Property Rewrite, by reducing the administrative burden on contractors through reduction of the amount of Government property in the possession of contractors. The impact is not considered significant because the rule applies only to those small entities that request Government property to perform a contract or create Government property during contract performance, and contract prices compensate such contractors for their Government property management activities. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97-D027 in correspondence.

C. Paperwork Reduction Act

This proposed rule reduces the amount of property that will become Government property under cost-reimbursement contracts. Therefore, the paperwork burden approved under Office of Management and Budget Clearance No. 9000-0151 for the proposed FAR rule published at 62 FR 30186 on June 2, 1997, is expected to be reduced.

List of Subjects in 48 CFR Parts 216, 245, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

There, 48 CFR Parts 216, 245, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 216, 245, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 216—TYPES OF CONTRACTS

2. Section 216.307 is added to read as follows:

216.307 Contract clauses.

(a)(1) Use the clause at 252.216–7002, allowable Cost and Payment, instead of the clause at FAR 52.216–7, Allowable Cost and Payment, in all cost-reimbursement contracts.

(2) Use the clause at 252.216–7002 with its Alternate I if the contract is a construction contract that contains the clause at FAR 52.232–27, Prompt Payment for Construction Contracts.

PART 245—GOVERNMENT PROPERTY

3. Section 245.101, 245.101–70, and 245.101–71 are added to read as follows:

245.101 Policy.

(d) Contractors are expected to have the means to perform DoD contracts. Furnish property to contractors only under the circumstances described in FAR 45.201 and only for performance of a specific contract or contracts.

245.101–70 Equipment, special tooling, and special test equipment.

Items of equipment, special tooling, or special test equipment that otherwise may be furnished to contractors under FAR 45.201 shall be furnished on an “as is” basis to the contractor that acquired or fabricated the items when that contractor needs the items for performance of follow-on contracts and the Government took title to the items under 252.245–7002, Right to Title—Equipment, Special Tooling, and Special Test Equipment.

245.101–71 Disposal and storage.

Immediately dispose of Government furnished property that a contractor has identified as no longer needed for contract performance except when there is a contractual requirement to furnish that property as Government furnished property under a follow-on contract.

Contract for the property's storage when the property owner has a known future need for the property, a follow-on contract(s) has not been awarded, and the property will not be used within 60 days of the date upon which the contractor identified the property as no longer needed for contract performance.

4. Section 245.102 is added to read as follows:

245.102 Contract clauses.

(a)(1) Use the clause at 252.245–7001, Government Furnished Property, instead of the clause at FAR 52.245–1, Government Furnished Property (Fixed-Price and Labor-Hour Contracts), in all solicitations and contracts for supplies,

services, or research and development if the Government anticipates furnishing property for performance of the contract.

(2) Use the clause at 252.245–7001 with its Alternate I in fixed-price competitive contracts or competitive labor-hour contracts.

(b)(i) Use the clause at 252.245–7002, Right to Title—Equipment, special Tooling, and Special Test Equipment, instead of the clause at FAR 52.245–2, Special Tooling and Special Test Equipment—Right to Title (Fixed-Price Contracts), in all solicitations and contracts.

(ii) Use the clause at 252.245–7002 with its Alternate I in cost-reimbursement or time-and-materials solicitations and contracts for basic or a applied research to be conducted by nonprofit organizations whose primary purpose is the conduct of scientific research on nonprofit institutions of higher education (see FAR 35.014).

(c)(i) Use the clause at 252.245–7003, Government Property Control, instead of the clause at FAR 52.245–3, Government Property Control, in all solicitations and contracts that include the clause at 252.245–7001.

(ii) Use the clause at 252.245–7003 with its Alternate I when the Government will maintain the Government's official property records (see FAR 45.302(b)).

(d) Use the clause at 252.245–7001, Government Furnished Property, instead of the clause at FAR 52.245–4, Government Property (Cost-Reimbursement and Time-and-Material Contracts), in all solicitations and contracts for supplies, services, or research and development if the Government anticipates furnishing property for performance of the contract.

245.505–14 [Removed]

5. Section 245.505–14 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.216–7002 is added to read as follows:

252.216–7002 Allowable Cost and Payment.

As prescribed in 216.307(a)(1), used the following clause:

Allowable Cost and Payment (XXX 19XX)

(a) *Invoicing.* The Government shall make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in

accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(b) Reimbursing costs.

(1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term “costs” includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(A) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(B) Direct labor;

(C) Direct travel;

(D) Other direct in-house costs; and

(E) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of progress and other payments that have been paid by cash, check, or other form of payment to the Contractor's subcontractors under similar cost standards.

(2) Contractor contributions to any pension or other post-retirement benefit, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided, that the Contractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Contractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Contractor actually makes the payment.

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (h) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (e) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost reimbursement under this clause.

(c) Title.

(1) Title to property acquired or fabricated by the Contractor for performance of this

contract, the costs of which are allocable to this contract as direct costs, shall vest in the Government. For property acquired or produced prior to execution of this contract, vestiture occurs upon execution of the contract. Otherwise, vestiture occurs when the property is or should have been allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices. Except as provided in the Right to Title—Equipment, Special Tooling, and Special Test Equipment clause of the contract, upon completion of deliveries under a contract for supplies or upon completion of effort required under a contract for services, the Contractor shall have title to all property acquired or fabricated for this contract that is not required to be delivered to the Government.

(2) Property to which the Government has obtained title under this clause is not "Government furnished property."

(d) *Small business concerns.* A small business concern may be paid more often than every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the contract, even though the concern has not yet paid for those items or services.

(e) *Final indirect cost rates.*

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the FAR in effect for the period covered by the indirect cost rate proposal.

(2) The Contractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the Contracting Officer, submit to the cognizant Contracting Officer responsible for negotiating its final indirect cost rates and, if required by agency procedures, to the cognizant audit activity, proposed final indirect cost rates for that period and supporting cost data specifying the contract and/or subcontract to which the rates apply. The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Within 120 days after settlement of the final indirect cost rates covering the year in which this contract is physically complete (or longer, if approved in writing by the Contracting Officer), the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(5) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause of this contract.

(f) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—(1) Shall be the anticipated final rates; and (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(g) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(h) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be reduced by amounts found by the Contracting Officer not to constitute allowable costs or adjusted for prior overpayments or underpayments.

(i) *Final payment.*

(1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (e)(4) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.
(End of clause)

ALTERNATE I (XXX 19XX). As prescribed in 216.307(a)(2), substitute the following paragraph (b)(1)(iii) for paragraph (b)(1)(iii) of the basic clause:

(iii) The amount of progress and other payments to the Contractor's subcontractors that either have been paid, or that the Contractor is required to pay pursuant to the Prompt Payment for Construction Contracts clause of this contract. Payments shall be made by cash, check, or other form of payment to the Contractor's subcontractors under similar cost standards.

7. Section 252.245–7001 is revised to read as follows:

252.245–7001 Government Furnished Property.

As prescribed in 245.102(a) (1) and (d), use the following clause:

Government Furnished Property (XXX 19XX)

(a) *Definitions.*

The terms defined in the Right to Title—Equipment, Special Tooling, and Special Test Equipment clause of this contract have the same meaning in this clause.

(b) *Property furnished for performance of this contract.*

(1) The Government furnished property identified in this contract may be used for performance of the contract on a rent-free basis. The Contractor shall not use such property on any other Government contracts or for commercial purposes without the Contracting Officer's prior approval. Unless otherwise permitted by law, commercial use shall be on a rental basis. The terms and conditions of the Rental Charges for Commercial Use clause of this contract shall apply to each rental.

(2) The Contractor shall not improve or make structural alterations to real property owned or leased by the Government and made available for performance of this contract unless expressly authorized to do so in writing by the Contracting Officer. Title to such improvements or alterations shall vest in the Government if the property is accountable under this contract or will be determined by the terms of the contract under which the real property is accountable.

(3) The Government retains title to Government furnished property including Government furnished property that is incorporated into or attached to any property it does not own. Government furnished property does not become a fixture or lose its identity as personal property by being attached to real property.

(4) The Government shall, when requested by the Contractor, provide information reasonably required for the property's intended use to the extent the Government has the right to release or disclose the information.

(5) If the Contractor commingles Contractor acquired or fabricated material with

Government furnished material, the provisions of paragraph (c) of this clause regarding suitability for intended use shall not apply to the commingled Government furnished material. Notwithstanding any other provision of this contract, the Contractor shall be responsible for any failure to comply with contract requirements attributable to material that was commingled.

(c) *Suitability for intended use.*

The contract delivery or performance dates are based upon the expectation that Government furnished property will be suitable for its intended use, except property furnished "as is" (see paragraph (d) of this clause), and delivered to the Contractor at the times stated in the contract or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(1) The Contractor shall notify the Contracting Officer promptly following receipt of Government furnished property that is not suitable for its intended use and take corrective action or dispose of the property as directed by the Contracting Officer. The contract shall be equitably adjusted in accordance with paragraph (g) of this clause.

(2) The Contractor may request an equitable adjustment when Government furnished property is not delivered to the Contractor by the required time and such untimely delivery has affected contract performance. Any equitable adjustment shall be made in accordance with paragraph (g) of this clause.

(d) *Property furnished as is.*

(1) Offerors and the Contractor are responsible for assuring that Government property made available on an "as is" basis is suitable for the offerors' or Contractor's purposes. Such property is furnished f.o.b. at the location specified in the solicitation or contract. Any cost incurred by the Contractor to transport, install, modify, repair, or otherwise make such property suitable for the Contractor's intended use shall not result in an increase in price or fee. Modifications to property furnished "as is" require the Contracting Officer's prior written approval.

(2) Equipment, special tooling, or special test equipment is furnished "as is" for performance of this contract if the Contractor acquired or fabricated, and the Government took title to, such items under this or a prior contract.

(3) The Government makes no warranty whatsoever with respect to property furnished "as is" except that the property will be in the same condition when placed at the specified f.o.b. location as when inspected by the Contractor or, if not inspected by the Contractor, as of the last date identified in the solicitation or contract for Contractor inspection. The Contractor is responsible for verifying that the property's condition has not changed during that period. If the Contractor determines the property's condition has changed and such change will adversely affect the Contractor, the Contractor shall immediately notify the Contracting Officer and identify the changed condition. If the Contracting Officer concurs that the property's condition has changed, the Contracting Officer may restore the

property or substitute other Government property at no change in price or fee; permit the Contractor to restore the property subject to an equitable adjustment; or decline to furnish the property subject to an equitable adjustment. The foregoing provisions for adjustment are the exclusive remedies available to the Contractor. The Government has no liability for changes in the property's condition discovered after removal from the specified f.o.b. location.

(4) Repairs to or modifications of property furnished "as is" do not affect the Government's title to such property.

(e) *Changes in Government furnished property.*

(1) The Contracting Officer may increase, decrease, or substitute other Government property for the property furnished or to be furnished for performance of this contract or require use of Government furnished property in lieu of Contractor property.

(2) Except as provided in paragraph (e)(4) of this clause, any increase in the amount of property furnished for performance of this contract shall result in an equitable reduction in price or fee, and an appropriate adjustment of the contract delivery or performance dates.

(3) The Contractor may request an equitable adjustment in accordance with paragraph (g) of this clause for a decrease in or substitution for the property identified in the contract or withdrawal of authority to use property accountable under another contract in performance of this contract, provided such decrease, substitution, or withdrawal increases the costs of contract performance.

(4) If the Contracting Officer directs the Contractor to use Government furnished property in lieu of Contractor property in performance of this contract, any adjustment to the contract shall be made in accordance with the Changes clause of this contract.

(f) *Limited risk of loss.*

(1) The Contractor's liability for loss, theft, or destruction of, or damage to, Government furnished property accountable under this contract shall be limited if the Contractor maintains a property control system that satisfies the requirements of the Government Property Control clause of this contract (hereinafter referred to as an approved system).

(2) When the Contractor maintains an approved system, the Contractor shall not be liable for loss, theft, or destruction of, or damage to, Government property accountable under this contract except loss, theft, destruction, or damage for which the Contractor is expressly responsible under the terms of this contract or loss, theft, destruction, or damage that results from—

(i) A risk expressly required to be insured under this contract but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) A risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement; or

(iii) Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(3) Following notice from the Government's property administrator to one of the Contractor's managerial personnel that the Contractor's or a subcontractor's property control system is not in compliance with the requirements of the Government Property Control clause of this contract, the Contractor's failure to correct its system or to have a subcontractor's system corrected within the dates specified by the Government's property administrator, or such other mutually agreed dates, shall be considered willful misconduct or lack of good faith on the part of the Contractor's managerial personnel. The Contractor shall be liable for any loss, theft, or destruction of, or damage to, the Government furnished property accountable under this contract except such loss, theft, destruction, or damage that the Contractor can establish by clear and convincing evidence—

(i) Did not result from the Contractor's failure to maintain an approved system; or

(ii) Occurred while an approved system was maintained by the Contractor.

(4) Except as provided in paragraphs (f)(3) (i) and (ii) of this clause, the Contractor shall be liable for loss, theft, or destruction of, or damage to, Government furnished property accountable under this contract immediately upon notice by certified mail that the Government has withdrawn approval of the Contractor's property control system.

(5) The Contractor is not liable for Government furnished property properly consumed in performing this contract. The Contractor shall have no liability for loss, theft, or destruction of, or damage to, Government property furnished for performance of services entirely on real property owned or leased by the Government when the Contractor does not control the use of, or access to, such property.

(6) The Contractor's transfer of Government furnished property to the possession and control of a subcontractor, does not affect the Contractor's liability for loss, theft, or destruction of, or damage to, that property.

(7) Except as provided in paragraph (f)(8) of this clause, the Contractor shall notify the Government's property administrator in writing promptly following the loss, theft, or destruction of, or damage to, Government furnished property. Such notice shall identify—

(i) Lost, stolen, destroyed, or damaged Government property by description, contract number, national stock number (if known), and either part number or identification number;

(ii) The date a loss or theft was discovered or damage or destruction occurred and, if known, the circumstances;

(iii) Each property item's acquisition cost;

(iv) The contracts affected;

(v) All known interests in commingled property of which Government furnished property is a part; and

(vi) The insurance, if any, covering any part of or interest in such commingled property.

(8) The Contractor is not required to provide notice of loss, theft, or destruction of, or damage to, low value property that the Contractor does not need for continued performance of this contract until contract

completion or termination. Such notice shall include the information required by paragraph (f)(7) of this clause.

(9) The Contractor shall take all reasonable action to protect damaged Government furnished property from further damage and to physically separate such property from all other property.

(10) The Contractor shall repair, renovate, or take such other action with respect to lost, stolen, damaged, or destroyed Government furnished property as the Contracting Officer directs and adjust the property records accordingly. When such repair, renovation, or action is not the Contractor's responsibility under this contract, the Contractor shall be entitled to an equitable adjustment in accordance with paragraph (g) of this clause. Contractor-responsible repairs to, or replacement of, Government furnished property shall be accomplished at no change price or fee.

(11) The Contractor shall not include in the price or fee of this contract any charge or reserve for insurance (including any self-insurance fund or reserve) covering loss, theft, or destruction of, or damage to, Government furnished property except to the extent the Government might have expressly required the Contractor to carry such insurance under another provision of this contract.

(12) If the Contractor is reimbursed or otherwise compensated for any loss, theft, or destruction of, or damage to, Government furnished property, the Contractor shall use the proceeds to repair, renovate, or replace such property or equitably reimburse the Government, as directed by the Contracting Officer, and adjust the property records accordingly.

(13) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, theft, or destruction of, or damage to, Government furnished property. When requested by the Contracting Officer, the Contractor shall, at Government 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.

(g) *Equitable adjustments.* (1) Equitable adjustments shall be the Contractor's exclusive remedy for Government actions under this clause and shall be made in accordance with the procedures of the Changes clause of this contract. The Government shall not be liable to suit for breach of contract for—

(i) Any delay in delivery of Government furnished property;

(ii) Delivery of Government furnished property in a condition not suitable for its intended use;

(iii) An increase or decrease in, or substitution of, Government furnished property; or

(iv) Failure to repair or replace Government furnished property when the Government is responsible for repair or replacement.

(2) An equitable adjustment for Government furnished property that is not in a condition suitable for intended use or the

withdrawal or substitution of Government furnished property may include an amount for the restoration and rehabilitation of the Contractor's premises caused by such condition, withdrawal, or substitution.

(h) *Maintenance responsibilities.* (1) The Contractor is responsible for the maintenance of Government furnished property accountable under this contract, including such property stored at a Contractor managed site. The Contractor shall perform all maintenance, including preventive maintenance, necessary to assure that Government furnished property remains suitable for its intended use unless the Contracting Officer specifically relieves the Contractor of its maintenance responsibility for a particular item or class of items. If routine and preventive maintenance are not sufficient to sustain a property item's suitability for intended use, the Contractor shall notify the Contracting Officer promptly and request direction regarding repair or replacement.

(2) The Contractor shall notify promptly the Government's property administrator of the need for any replacement of, or major repair or rehabilitation to, Government furnished property discovered during its maintenance activities and shall not effect such repair, replacement, or rehabilitation unless authorized to do so by the Contracting Officer.

(i) *Return of Government furnished property.* If this contract requires Government furnished property to be returned directly to the Government and not entered into the property disposal process—

(1) The Contractor shall notify the Contract Administration Office of its intent to return such property at least 10 working days prior to return. Notices shall identify the contracts under which the items are accountable and provide each item's name, description, and national stock number, if known, or part number or identification number.

(2) The property shall be returned to the Government in a condition suitable for its intended use except—

(i) Lost, stolen, or destroyed property that the Government has determined will not be replaced;

(ii) Damaged property that the Government has determined will not be repaired;

(iii) Property consumed in performance of this contract;

(iv) Property attached to, incorporated into, or delivered with, a deliverable end item; or

(v) Property furnished "as is" shall be returned in equal or better condition than when furnished to the Contractor.

(j) *Disposal of Government furnished property.*—(1) *Inventory disposal schedules.* Except as provided in paragraph (i) or (j)(2) of this clause, the Contractor shall identify Government furnished property no longer required for performance of this contract using Standard Form 1428, Inventory Disposal Schedule. Unless the plant clearance officer has agreed to a different submission basis, or the contract requires inventory disposal schedules to be submitted electronically, the Contractor shall prepare separate inventory disposal schedules for: special test equipment with general purpose components; special test equipment that does

not contain general purpose components; printing equipment; automatic data processing equipment; nonnuclear hazardous materials; and nuclear materials. Property with the same description, condition code, and reporting location may be grouped in a single line item. Special test equipment shall be described in sufficient detail to permit an understanding of the special test equipment's intended use. The Contractor may annotate the schedule to identify test equipment the Contractor wishes to purchase from the Government or general purpose components thereof the Contractor wishes to purchase or use in the performance of other Government contracts.

(2) *Scrap Lists.* Contractors that have Government approved scrap procedures may prepare scrap lists (provided such lists are consistent with the approved scrap procedures) in lieu of inventory disposal schedules except for scrap that—

(i) Requires demilitarization;

(ii) Is a classified item;

(iii) Is generated from classified items;

(iv) Contains hazardous materials; or

(v) Is dangerous to the public health, safety, or welfare.

(3) *Corrections.* If the plant clearance officer finds that property identified on an inventory disposal schedule or scrap list is not accountable under this contract or is not in the quantity or condition indicated on the inventory disposal schedule or scrap list, the plant clearance officer may require the Contractor to correct the inventory disposal schedule or scrap list, may reject such schedules or lists at any time, or may require submission of an inventory control schedule in lieu of a scrap list.

(4) *Submission requirements.* Inventory disposal schedules or scrap lists shall be submitted to the plant clearance officer for approval no later than—

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

(ii) 60 days following completion of contract deliveries or performance or such longer period as may be approved by the plant clearance officer; or

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

(5) *Inventory schedule adjustments.* The Contractor shall provide the plant clearance officer at least 10 working days advance written notice of its intent to remove a Government furnished property item, including an item identified as scrap, from an approved inventory disposal schedule. Unless the plant clearance officer objects to the intended schedule adjustment within the notice period, the Contractor may make the adjustment upon expiration of the notice period.

(6) *Storage.* The Contractor shall store the Government furnished property identified in an inventory disposal schedule pending receipt of disposal instructions. If the Government fails to provide disposal instructions within 120 days following receipt of an acceptable inventory disposal schedule, the Contractor might be entitled to

an equitable adjustment for costs incurred to store such property on or after the 121st day following receipt of an acceptable schedule.

(7) *Disposal.* Except as provided in paragraph (j)(7)(i) of this clause, Government furnished property shall not be disposed of until the Contractor has been authorized to do so by the plant clearance officer.

(i) If the Government does not provide disposition instructions to the Contractor within 60 days following receipt of an acceptable scrap list, the Contractor may dispose of the listed scrap.

(ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Government furnished property as directed by the plant clearance officer. The Contractor shall remove and destroy any markings identifying the property as Government property when the plant clearance officer directs disposal by sale or donation, notifies the Contractor that the Government has abandoned the property, or directs the Contractor to scrap the property.

(iii) The net proceeds from a disposal action of scrapped Government furnished property shall be credited to the contract under which the Government furnished property was accountable or, when scrapped Government furnished property cannot be segregated from other scrap, to an appropriate overhead account. The Contractor shall credit the net proceeds or other disposal actions in accordance with instructions provided by the plant clearance officer.

(iv) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. Any adjustment in contract price incident to the Contracting Officer's direction to demilitarize Government furnished property shall be made in accordance with paragraph (g) of this clause.

(8) *Contractor removal of property.* The Contractor must obtain the plant clearance officer's approval to remove Government furnished property from its premises prior to receipt of final disposition instructions. If approval is granted, the Contractor shall transport and store the property at no change in price or fee. The storage facility must be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of liability for loss, theft, or destruction of, or damage to, such property.

(9) *Subcontractor inventory disposal schedules.* When the Contractor permits a subcontractor or supplier to use, at a subcontractor or supplier managed site, Government property furnished to the Contractor for performance of this contract, the Contractor shall require the subcontractor or supplier to submit inventory disposal schedules or scrap lists to the Contractor in sufficient time for the Contractor to comply with the requirements of paragraph (j)(4) of this clause.

(k) *Abandonment and restoration of Contractor's premises.* (1) The Government shall not abandon Government furnished property that is or contains a hazardous material at a Contractor-owned location without the Contractor's written concurrence. The Contractor may request an equitable adjustment incident to such agreement.

(2) The Government, upon notice to the Contractor, may abandon any nonhazardous Government property in place at which time all obligations of the Government regarding such abandoned property shall cease. The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances and, except as provided in paragraphs (g)(2) and (k)(1) of this clause, has no liability for such restoration or rehabilitation.

(l) *Overseas contracts.* In a contract performed outside the United States, its territories, or possessions, the words "Government" and "Government furnished," as used in this clause, mean "United States Government" and "United States Government furnished," respectively.

(End of clause)

Alternate I (XXX 19XX). As prescribed in 245.102(a)(2), substitute the following paragraph (f) for paragraph (f) of the basic clause:

(f) *Risk of loss.*

(1) Except as provided in paragraph (f)(3) of this clause, the Contractor is liable for any loss, theft, or destruction of, or damage to, Government furnished property accountable under this contract.

(2) Contractor-responsible repairs to, or replacements of, Government furnished property shall be accomplished at no change in price or fee.

(3) The Contractor is not liable for—

(i) Government furnished property properly consumed in performing this contract; or

(ii) Loss, theft, or destruction of, or damage to, Government furnished property when the Contractor is providing services performed entirely on real property owned or leased by the Government and the Contractor does not control the use of, or access to, the Government furnished property.

(4) Except as provided in paragraph (f)(5) of this clause, the Contractor shall notify the Government's property administrator in writing promptly following the loss, theft, or destruction of, or damage to, Government furnished property. Such notice shall identify—

(i) Lost, stolen, destroyed, or damaged Government property by description, contract number, national stock number (if known), and either part number or identification number;

(ii) The date a loss or theft was discovered or damage or destruction occurred and, if known, the circumstances;

(iii) Each property item's acquisition cost;

(iv) The contracts affected;

(v) All known interests in commingled property of which the Government property is a part; and

(vi) The insurance, if any, covering any part of or interest in such commingled property.

(5) The Contractor is not required to provide notice of loss, theft, or destruction of, or damage to, low value property that the Contractor does not need for continued performance of this contract until contract completion or termination. Such notice shall include the contract number and each such property item's acquisition cost, description, national stock number (if known), and either its part number or identification number.

(6) The Contractor shall take all reasonable action to protect damaged Government furnished property from further damage and to physically separate such property from all other property.

(7) The Contracting Officer may replace, direct the Contractor to repair or replace, or direct the Contractor to take other appropriate action regarding lost, stolen, damaged, or destroyed Government furnished property for which the Government has specifically assumed such risks in this contract. When lost, damaged, stolen, or destroyed Government furnished property is replaced by the Government or the Contractor, the replacement property shall be entered into the property control system as a Government furnished property item. Any equitable adjustment incident to such direction shall be determined in accordance with paragraph (g) of this clause.

8. Section 252.245–7002 is added to read as follows:

252.245–7002 Right to Title—Equipment, Special Tooling, and Special Test Equipment.

As prescribed in 245.102(b)(i), use the following clause:

Right to Title—Equipment, Special Tooling, and Special Test Equipment (XXX 19XX)

(a) *Definitions.*

As used in this clause—

"Contractor's managerial personnel" means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business; or operations at a site connected with performance of this contract.

"Equipment" means items whose use is not limited to, or with only minor modification would be limited to, the development, production, or maintenance of a particular item or the performance of a particular service. The term includes, but is not limited to, automatic data processing equipment, office equipment, construction equipment, hand tools, machine tools (other than special tooling), test equipment (other than special test equipment or components thereof), furniture, and vehicles.

"Government property" means property the Government owns or leases.

"Government furnished property" means property provided by the Government to a contractor for performance of a contract.

"Low value property" means equipment, special tooling, or special test equipment that has an acquisition cost of \$2,500 or less and is not sensitive property.

"Material" means property to be consumed or expended to perform a service or produce a deliverable end item and property incorporated into or attached to an end item. The term includes assemblies, components, parts, raw and processed materials, and supplies that may be consumed in normal use in performing a contract. It does not include equipment, real property, special test equipment, special tooling, or unique Federal property.

"Nonprofit organization" means a business entity organized and operated exclusively for

charitable, scientific, or educational purposes, the net earnings of which do not inure to the benefit of any private shareholder or individual, that is exempt from Federal income taxation under section 501 of the Internal Revenue Code and does not conduct a substantial portion of its activities carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office.

"Personal property" means property of any kind or interest in it except real property, battleships, cruisers, aircraft carriers, destroyers, submarines, and records of the Government.

"Plant clearance officer" means a person appointed to perform plant clearance functions.

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

"Preventive maintenance" means regularly scheduled maintenance performed to sustain suitability for intended use and detect and correct minor deficiencies before they result in serious consequences.

"Property" means real and personal property.

"Property administrator" means a person appointed to perform Government property administration.

"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 equipment.

"Scrap" means personal property that has no value except its basic metallic, mineral, or organic content.

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

"Special test equipment" means a test unit or units designed, fabricated, or modified to accomplish special purpose testing, groupings of such items, that are interconnected and interdependent so as to become a new functional entity.

"Special tooling" means items, such as jigs, dies, fixtures, molds, patterns, taps, gauges, or other equipment and manufacturing aids, that are of such a specialized nature that without substantial modification or alteration their use is limited to the development, production, repair, or maintenance of particular supplies or components thereof, or to the performance of particular services.

"Unique Federal property" means Government owned personal property, or components thereof, that is specially designed to perform or support the mission of one or more Federal agencies and is not available to the public.

"Work in process" means bench stock materials, complete or incomplete fabricated parts, subassemblies, assemblies, and similar

items that are created during production of deliverable end items or are required to construct special tooling or special test equipment needed to produce deliverable end items.

(b) *Right to title.*—(1) *Fixed-price contracts.* The Government has the right, at no change in contract price, to take title to each special tooling or special test equipment item acquired or fabricated by the Contractor that is not required to be delivered under this contract if the item's cost is allocable to this contract as a direct cost.

(2) *Cost-reimbursement contracts.* The Government has the right, at no change in cost or fee, to take title to each—

(i) Special tooling or special test equipment item acquired or fabricated by the Contractor that is not required to be delivered under this contract if the item's cost is allocable to this contract as a direct cost.

(ii) Item of equipment acquired or fabricated by the Contractor that is not required to be delivered under this contract if the item's cost is greater than \$2,500 and is allocable to this contract as a direct cost.

(3) *Expiration.* The Government's rights in paragraphs (b)(1) and (b)(2) of this clause end upon expiration of the time period in paragraph (e) of this clause.

(c) *Reports.* (1) The Contractor shall submit to the Contracting Officer a report identifying right to title items as soon as practicable during contract performance but not later than the earlier of—

(i) 90 days prior to completion of scheduled deliveries (other than technical data) under this contract; or

(ii) 30 days following the Contractor's determination that a right to title item is no longer required for contract performance.

For each right to title item or groups of identical items, the reports shall identify the item's or group's—

(i) Nomenclature;

(ii) Quantity;

(iii) Acquisition cost;

(iv) Contract number;

(v) Part number(s) made or tested; and

(vi) Identification number.

(d) *Storage.* The Contractor shall store each right to title item identified in a report required by paragraph (c) of this clause at no increase in fee or price. The Contractor's storage obligations for a right to title item end when the Government notifies the Contractor that it has taken title to that item or upon expiration of the Government notice period. Items shall be stored in a manner sufficient to preserve capability and provide protection from damage. If the Government requires items to be stored subsequent to the Government's assumption of title, the Contractor might be entitled to an equitable adjustment as provided in paragraph (g) of this clause.

(e) *Assumption of title.* (1) The Government must notify the Contractor that it is taking title to an item or items within 120 days, or such other period mutually agreed upon, following receipt of a report required by paragraph (c) of this clause or other written notice from the Contractor identifying the item or items as no longer required for performance of this contract.

(2) The Government's notice shall be in writing, shall identify the item(s), and may, in any combination—

(i) Provide packing, packaging, marking, and shipping instructions;

(ii) Direct the Contractor to prepare the property for storage at the Contractor's facility or a Government facility; or

(iii) Provide instructions when accountability is to be transferred to another contract.

(3) The Contractor's storage obligations are not diminished if the Government notice period, or any extension thereof, extends beyond the date contract deliveries are completed.

(f) *Marking.* The Contractor shall legibly and conspicuously mark property to which the Government has taken title under this contract with the phrase "U.S. Government Property" (or a similar phrase that conveys Government ownership), as soon as practicable following the Government's assumption of title.

(g) *Price adjustment.* The cost and fee of a cost-reimbursement contract or the price of a fixed-price contract may be equitably adjusted for costs incurred by the Contractor to store, prepare for storage, package, pack, or mark for shipment, the equipment, special tooling, or special test equipment to which the Government has taken title. Any adjustment shall be made in accordance with the procedures of the Changes clause of this contract and only to the extent the Contracting Officer's actions under paragraph (e) of this clause required the Contractor to incur costs that it would not have incurred under customary commercial practices.

(h) *Risk of loss.* The Contractor is responsible for any loss, theft, or destruction of, or damage to, right to title items during the period commencing upon the Government's delivery of the notice required by paragraph (e) of this clause and ending upon placement aboard a carrier's conveyance (f.o.b. origin) or delivery at the specified f.o.b. destination point.

(i) *Flow down.* The Contractor shall insert this or a substantially similar clause in all contracts and similar instruments with its first-tier subcontractors or suppliers, other than subcontractors or suppliers of commercial items, that will fabricate or acquire equipment, special tooling, or special test equipment for performance of this contract.

(End of clause)

ALTERNATE I (XXX 19XX). As prescribed in 245.102(b)(ii), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) *Right to title.*—(1) *General.* The Government has the right, at no change in cost or fee, to take title to each—

(i) Special tooling or special test equipment item acquired or fabricated by the Contractor that is not required to be delivered under this contract if the item's cost is allocable to this contract as a direct cost.

(ii) Item of equipment acquired or fabricated by the Contractor that is not required to be delivered under this contract if the item's cost is greater than \$2,500 and is allocable to this contract as a direct cost.

(2) *Expiration.* Except as provided in paragraph (b)(3) of this clause, the

Government's rights in paragraphs (b)(1)(i) and (b)(1)(ii) of this clause end upon expiration of the time period in paragraph (e) of this clause.

(3) *Relinquishment of rights.* Prior to purchasing equipment, special tooling, or special test equipment with Government funds provided for the conduct of basic or applied research, nonprofit organizations whose primary purpose is the conduct of scientific research or nonprofit institutions of higher education (see FAR 35.014) may request the Contracting Officer to relinquish the Government's right to take title of such items. If the Contracting Officer agrees, prior to purchase, the Contractor shall have title to each such item having an acquisition cost less than \$5,000. The Contractor shall furnish the Contracting Officer a list of all purchased property to which the Government has relinquished right to title within 10 days following the end of the calendar quarter during which the Contractor receives the property. The Contractor agrees that it will not allocate depreciation or amortization costs for such property to any existing or future Government contract and such property may be used by the Government or its subcontractors without charge in performance of any Government contract or subcontract thereunder. As a condition for the Government's relinquishing its rights to title under this clause, the Contractor, by signing this contract, agrees that—

No person in the United States 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 (42 U.S.C. 2000d) under this contemplated financial assistance (title to equipment, special tooling or special test equipment).

9. Section 252.245–7003 is added to read as follows:

252.245–7003 Government Property Control.

As prescribed in 245.102(c)(i), use the following clause:

Government Property Control (XXX 19XX)

(a) *Definitions.* The terms defined in the Right to Title—Equipment, Special Tooling, and Special Test Equipment clause of this contract have the same meaning in this clause.

(b) *General.* (1) This clause is applicable to Government furnished property and Government property stored by the Contractor at the Government's direction including property to which the Government has taken title under the Right to Title—Equipment, Special Tooling, and Special Test Equipment clause of this contract. It does not apply to property in which title is vested in the Government solely as a result of the financing provisions of this contract.

(2) The Contractor is responsible for the maintenance, protection, and preservation of Government property in its or its subcontractors' possession. The Contractor shall account for such property as required by this contract.

(3) If the Contractor does not have a property control system that is approved by the Government's property administrator, it

shall establish a system that satisfies the requirements of this clause within 90 days following contract award (or such other mutually agreeable period). Notwithstanding any other provision of this contract regarding liability for loss, theft, or destruction of, or damage to, Government property in the Contractor's or its subcontractors' possession, the Contractor shall be liable for such loss, theft, destruction, or damage until its system is approved by the Government's property administrator. The Contractor shall maintain its system during the period Government property is in its or its subcontractors' possession.

(4) The Contractor should use its existing property control system or a modification thereof when the existing or modified system satisfies the requirements of this clause.

(c) *Control system requirements.* The property control system shall include written processes for—

(1) Assessing the system's efficiency and effectiveness, recommending corrective action or general improvements, and implementing appropriate changes;

(2) Obtaining approval of property actions from the responsible Government representative no later than the time specified in this contract (when such approval is required by this contract) and appropriately documenting such approval;

(3) Inspecting property acquired by the Contractor or furnished by the Government for performance of this contract upon receipt;

(4) Identifying Government property received by the Contractor that was intended for other persons or discrepancies between the type, quantity, or condition of Government furnished property shipped to and actually received by the Contractor and initiating corrective action;

(5) Promptly entering all Government property into the property control system;

(6) Ensuring that Government property is properly classified (see paragraph (f)(2)(viii) of this clause);

(7) Ensuring that Government property's used only as authorized by the Contracting Officer;

(8) Controlling the distribution and return of pilferable property;

(9) Scheduling and monitoring Government property maintenance to ensure timely performance and recording of all maintenance actions;

(10) Accurately recording by type and quantity Government furnished material consumed during contract performance;

(11) Performing, reporting, and recording all inventories required by this contract;

(12) Identifying and reporting lost, damaged, or destroyed Government property and generating corrective action recommendations;

(13) Maintaining special security for classified or sensitive property commensurate with the property's security classification, special handling requirements, or both;

(14) Accurately preparing and timely submitting the records and reports required by this contract;

(15) Ensuring the subcontractors have adequate procedures for the control and protection of Government property;

(16) Justifying the continued need for Government property to perform this contract;

(17) Moving and storing Government property in a manner commensurate with the property's handling and storage requirements; and

(18) Disposing of Government property in accordance with the requirements of this contract.

(d) *Access.* The Government shall have access, at all reasonable times, to the premises at which any Government property is located and to the Contractor's Government property records and supporting information.

(e) *Property control system submission, review, and approval.* (1) Except as provided in paragraph (e)(2) of this clause, offerors shall submit their written property control systems and processes with their offer if—

(i) The offeror does not have an existing property control system or its existing system has not been approved by a Government property administrator;

(ii) The offeror's property control system last was approved, or approval validated, more than 2 years prior to the date of its offer;

(iii) A Government property administrator has requested corrections to the offeror's system or procedures and such corrections have not been made; or

(iv) Approval of the system has been withdrawn.

(2) The submission requirements in paragraph (e)(1) of this clause do not apply to offerors that have a Government property system that has been approved or validated by the Government no more than 2 years prior to the time for submission offers. Such offerors are required only to submit to the Government's property administrator, within 90 days following contract award, changes required to conform the system with requirements in this contract. The submission date may be extended by the Government's property administrator if the property administrator determines that an extension is warranted.

(3) The Government's property administrator shall review the Contractor's system for conformance with contract requirements and approve or require corrections to the system and its implementing procedures. The Contractor shall accomplish the required corrections at no change in price or fee.

(4) The Government may review the Contractor's previously approved system or require the Contractor to review a subcontractor's system to assure compliance with contract requirements. The Government's property administrator may validate approval of, require corrections to, or with the Administrative Contracting Officer's concurrence, withdraw approval of the Contractor's system or require the Contractor to have a subcontractor's system corrected. The Contractor shall implement corrections required by the Government's property administrator by the date specified by the property administrator or such other date agreed upon at no change in price or fee. The Contractor's failure to implement corrections in a timely manner might result in the system's approval being withdrawn.

(5) The Contractor shall make available to the Government's property administrator all records and related information reasonably required to verify that the Contractor's or a subcontractor's property control system conforms to contract requirements. Any disagreement as to the amount or type of information required for such verification shall be referred to the Administrative Contracting Officer for resolution.

(f) *Property records and supporting information*—(1) *General*. (i) The Contractor shall establish or maintain a property record that is current and complete for each Government property item in its or its subcontractors' possession. Identical items may be consolidated in a single property record if the consolidated record provides the information required by this clause. The Contractor shall identify useable components permanently removed from Government property as Governmental property items, enter such items into its property control system, and establish and maintain appropriate property records. Property records created by a subcontractor that has an approved property system may be used in lieu of creating new records.

(ii) If the Contractor has an approved property control system, its documents evidencing receipt and issue shall be the property control records for Government material issued for immediate consumption.

(iii) When the Government is responsible for the replacement of a property item under this contract and has elected—

(A) To replace or have the Contractor replace the item, the Contractor shall annotate appropriately the property record for the item being replaced, close that record, and create a new property record for the replacement item; or

(B) Not to replace or have the Contractor replace the item, the Contractor shall close the property record for that item.

(iv) The Government shall provide the acquisition cost for Government furnished property within 30 days following delivery of the property to the Contractor. The Contractor shall notify the Government's property administrator promptly if the acquisition cost information is not received within the period.

(v) Property records are not required for work in process.

(2) *Standard information*. Each property control record shall contain the following information.

(i) The item's name, description, and national stock number (if the item has a national stock number). The national stock number for property controlled by documents evidencing that receipt and issue is not required until property disposal.

(ii) Contract number or equivalent code designation.

(iii) Quantity received, issued, and on hand.

(iv) The date of the most recent physical inventory or other posting reference.

(v) Acquisition cost.

(vi) Current location (for low value property, identify the initial location only).

(vii) The most recent transaction date.

(viii) The property's classification. (Use only one of the following for each property

item: Land, Buildings, Other Real Property, Equipment, Special Test Equipment, Special Tooling, Unique Federal Property, or Material.)

(3) *Additional information*—(i) *Special test equipment records*. The Contractor shall provide the information required by paragraph (f)(2) of this clause for each general purpose test equipment item that is a removable or reusable component or Government owned special test equipment it removal and reuse is economically feasible.

(ii) *Equipment records*. Each record shall include the manufacturer's name, Commercial and Government Entity (CAGE) code or equivalent information, serial number, and model or part number.

(iii) *Real property records*. (A) Records are not required for portable buildings or facilities specifically acquired or constructed for tests that will result in the destruction of such buildings or facilities.

(B) Real property records must be itemized, indexed, and contain a description of the property, its location, original acquisition cost, a description of property alterations made or construction work performed by the Contractor including an identification of the construction sites supporting such alterations or construction, and separately identify the cost of such alterations or construction. Supporting documentation shall include maps, drawings, plans, specifications, and, if necessary, supplementary data needed to completely describe and value the property.

(C) Costs incurred by the Government or the Contractor, to acquire, construct, alter, or improve Government owned or leased real property, including additions, expansions, extensions, conversions, shall be added to the property's acquisition cost if they increase the value, life, utility, capability, or serviceability of the property.

(D) The real property records shall be modified and annotated with a statement of the pertinent facts when property is sold, transferred, donated, destroyed, abandoned by the Government in place, or condemned.

(iv) *Records of maintenance actions*. The property records for items requiring maintenance shall contain the maintenance schedule, the dates maintenance actions were performed, and identify and deficiencies discovered.

(v) *Scrap records*. (A) The scrap records shall provide the—

(1) Contract number or equivalent code designation from which the scrap was derived;

(2) Scrap classification by material content; and

(3) Disposition and disposition dates.

(B) When Contractor and Government owned property of the same stock or classification are used to produce an item or any component thereof and property scrapped during such production cannot be identified as Contractor or Government owned property, the Government property scrap records shall reflect a proportional, equitable share of such scrap.

(vi) *Property returned under warranty*. The Contractor shall establish a separate property record for each item returned for correction under a warranty and maintain the records on a contract-by-contract basis. The records

shall identify the date received, the contract number under which the item was returned, the corrective action performed, and the date the item is returned to the Government. Once a property record has been established, identical items received for corrective action shall be added to the established record and the information required by this paragraph maintained for each item.

(vii) *Sensitive property*. Property records shall legibly and conspicuously identify sensitive property.

(g) *Reports*—(1) *Government property*. The Contractor shall report all Government property accountable under this contract that is in its or its subcontractors' possession as of September 30 of each calendar year or upon completion of all property disposal actions under this contract, whichever is sooner. The report shall be prepared using Standard Form 1422, U.S. Government Property in the Custody of Contractors (or an agency equivalent furnished by the Contracting Officer), and submitted to the Government's property administrator no later than October 31 of each calendar year.

(2) *Misdirected Government property*. The Contractor shall submit a written report to the Government's property administrator immediately following receipt of Government property intended for another person or Government property not required for performance of a Government contract and request disposition instructions. To the extent practical, the report shall identify the shipment's content, the intended recipient, the carrier that made delivery, the Government activity from which the shipment originated, and the shipment's current location.

(3) *Late Government furnished property*. The Contractor shall report to the Contracting Officer, with a concurrent copy to the Government's property administrator, a failure to receive Government furnished property at the time stated in the contract or, when a time is not stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates. Each report shall forward the Contractor's estimate of the extent to which such failure has affected or might affect contract performance.

(h) *Physical inventories*.—(1) *Periodic*. Except for low value property and work in process, the Contractor shall periodically physically inventory all Government property in its possession. The Contractor, with the approval of the property administrator, shall establish the method, frequency, and procedures for such inventories to ensure that the existence and location of such property are accurately established and the records and reports required by this clause are complete and accurate. For purposes of this clause, electronic, optical, electro-magnetic, or similar inventory systems approved by the Government's property administrator satisfy the requirement for physical inventories.

(2) *Contract termination or completion inventories*. The Contractor shall inventory all property furnished by the Government and all property to which the Government has taken title under this contract immediately following a notice of

termination or partial termination of this contract or upon completion of deliveries or performance under the contract except property that is authorized for use on a follow-on or other Government contract. Such property does not have to be inventoried if the Contractor has notified the property administrator that record balances have been transferred to the receiving contract.

(3) *Restriction.* The Contractor personnel who perform physical inventories shall not be the same individuals who maintain the property records required by this contract or have custody of the property unless authorized to do so by the property administrator.

(i) *Markings.* Promptly following receipt of Government furnished property, the Contractor shall determine whether the property bears a Government ownership marking, legibly and conspicuously mark unmarked property with the phrase "U.S. Government Property" (or a similar phrase that conveys Government ownership), and replace any control numbers affixed by others with the Contractor's control number.

(j) *Overseas contracts.* In a contract performed outside the United States, its territories, or possessions, the words "Government" and "Government furnished," as used in this clause, mean "United States Government" and "United States Government furnished," respectively.
(End of clause)

ALTERNATE I (XXX 19XX) As prescribed in 245.102(c)(ii), substitute the following paragraphs (f) and (g) for paragraphs (f) and (g) of the basic clause:

(f) *Property records.* The Contractor shall establish a separate property record for each Government property item returned for correction under a warranty and maintain the records on a contract-by-contract basis. The records shall identify the item's name, description, property classification, and national stock number (if the item has a national stock number), the date received, the contract number under which the item was returned, the corrective action performed, and the date the item is returned to the Government. Once a property record has been established, identical items received for corrective action shall be added to the established record and the information required by this paragraph maintained for each item.

(g) *Reports.*—(1) *Misdirected Government property.* The Contractor shall submit a written report to the Government's property administrator immediately following receipt of Government property intended for another person or Government property not required for performance of a Government contract and request disposition instructions. To the extent practical, the report shall identify the shipment's content, the intended recipient, the carrier that made delivery, the Government activity from which the shipment originated, and the shipment's current location.

(2) *Late Government furnished property.* The Contractor shall report to the Contracting Officer, with a concurrent copy to the Government's property administrator, a failure to receive Government furnished

property at the time stated in the contract or, when a time is not stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates. Each report shall forward the Contractor's estimate of the extent to which such failure has affected or might affect contract performance.

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DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 97-D029]

Defense Federal Acquisition Regulation Supplement; Reporting of Contract Performance Outside the United States

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to raise the threshold for reporting contract performance outside the United States from \$25,000 to the simplified acquisition threshold, under contracts exceeding \$500,000.

DATES: Comment date: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 16, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 97-D029 in all correspondence related to this issue. E-mail comments should cite DFARS Case 97-D029 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

The clause at DFARS 252.225-7026, Reporting of Contract Performance Outside the United States, presently requires a contractor to submit a report to the Deputy Director of Defense Procurement (Foreign Contracting) under a contract exceeding \$500,000, when any part that exceeds \$25,000 will be performed outside the United States,

unless a foreign place of performance is the principal place of performance and was indicated as such in the offer for the contract. This rule proposes to increase the \$25,000 threshold to the simplified acquisition threshold (\$100,000). In addition, the rule proposes to increase the threshold for incorporation of the clause in first-tier subcontracts from \$100,000 to \$500,000. These amendments are expected to reduce information collection requirements by approximately 40 percent.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Annually, approximately 55 contractors submit a total of approximately 1400 reports of contract performance outside the United States. Reporting varies from 1 to 50 reports per contractor. Most of the contractors that submit the reports are not small businesses, and the report is not excessively time-consuming. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97-D029 in correspondence.

C. Paperwork Reduction Act

The rule will result in a reduction of paperwork burden on contractors. The clause at DFARS 252.225-7026 presently has an approved annual information collection requirement of 900 hours under Office of Management and Budget Clearance Number 0704-0229. Based on a review of 1995 and 1996 data, it is estimated that the amendments in this rule will reduce annual information collection requirements by approximately 360 hours.

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 252 is proposed to be amended as follows:

1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.