

## Subpart 45.1 - General

**Parent topic:** [Part 45 - Government Property](#)

### 45.101 Definitions.

As used in this part-

*Cannibalize* means to remove parts from Government property for use or for installation on other Government property.

*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 item 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. Equipment does not include material, real property, special test equipment or special tooling.

*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-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification. Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost contract when accepted by the Government for continued use under the contract.

*Government property* means all property owned or leased by the Government. Government property includes both Government-furnished property and contractor-acquired property. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property and software.

*Loss of Government property* means unintended, unforeseen or accidental loss, damage, or destruction of Government property that reduces the Government's expected economic benefits of the property. Loss of Government property does not include occurrences such as purposeful destructive testing, obsolescence, normal wear and tear, or manufacturing defects. Loss of Government property includes, but is not limited to-

- (1) Items that cannot be found after a reasonable search;
- (2) Theft;
- (3) Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition; or
- (4) Destruction resulting from incidents that render the item useless for its intended purpose or beyond economical repair.

*Material* means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end-item. Material does not include equipment, special tooling, special test equipment or real property.

*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.

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

*Production scrap* means unusable material resulting from production, engineering, operations and maintenance, repair, and research and development contract activities. Production scrap may have value when re-melted or reprocessed, *e.g.*, textile and metal clippings, borings, and faulty castings and forgings.

*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.

*Property records* means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

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

*Real property* See Federal Management Regulation 102-71.20 (41 CFR 102-71.20).

*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.

*Unit acquisition cost* means-

(1) For Government-furnished property, the dollar value assigned by the Government and identified in the contract; and

(2) For contractor-acquired property, the cost derived from the contractor's records that reflect consistently applied generally accepted accounting principles.

## **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 under contracts for repair, maintenance, overhaul, or modification is not subject to the requirements of paragraph (b) of this section.

(e) Government property, other than foundations and similar improvements necessary for installing special tooling, special test equipment, or equipment, shall not be installed or constructed on contractor-owned real property in such fashion as to become nonseverable, unless the head of the contracting activity determines that such installation or construction is necessary and in the Government's interest.

## **45.103 General.**

(a) Agencies shall-

(1) Allow and encourage contractors to use voluntary consensus standards (see FAR [11.101\(b\)](#)) 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 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 certified 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 noncompliant with contract requirements.

(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.

(d) With respect to loss of Government property, the contracting officer, in consultation with the property administrator, shall determine-

(1) The extent, if any, of contractor liability based upon the amount of damages corresponding to the associated property loss; and

(2) The appropriate form and method of Government recovery (may include repair, replacement, or other restitution).

(e) Any monies received as financial restitution shall be credited to the Treasury of the United States as miscellaneous receipts, unless otherwise authorized by statute ( [31 U.S.C. 3302\(b\)](#)).

## **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, shall request prompt correction of deficiencies, and shall request from the contractor a corrective action plan, including a schedule for correction of the deficiencies. 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 of Government property; 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 of Government property is a risk assumed by the Government, the property administrator shall notify the contractor in writing that it is granted relief of stewardship responsibility and liability in accordance with [52.245-1\(f\)\(1\)\(vii\)](#). Where the property administrator determines that the risk of loss of Government property is not assumed by the Government, the property administrator shall request that the contracting officer hold the contractor responsible and 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 and time-and-material type solicitations and contracts, and labor-hour solicitations when property is expected to be furnished for the labor-hour contracts.
  - (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 fixed-price 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 unit acquisition cost of Government property to be repaired does not exceed the simplified acquisition threshold, unless other Government property (not for repair) is provided.