

word “Aruba,” and adding the words “Armenia, Aruba,” in its place.

52.225–11 Buy American Act—Construction Materials Under Trade Agreements.

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BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS APR 2012

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■ 11. Amend section 52.225–23 by revising the date of the clause to read as set forth below; and in paragraph (a) removing from paragraph (1) of the definition “Designated country” and paragraph (1) of the definition “Recovery Act designated country” the word “(Aruba,” and adding the words “(Armenia, Aruba,” in its place.

52.225–23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements.

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REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS APR 2012

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[FR Doc. 2012–4495 Filed 3–1–12; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 31, 32, 45, 49, 51, 52, and 53

[FAC 2005–56; FAR Case 2010–009; Item VII; Docket 2010–0009, Sequence 1]

RIN 9000–AL95

Federal Acquisition Regulation; Government Property

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to clarify reporting, reutilization, and disposal of Government property.

DATES: *Effective Date:* April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement

Analyst, at 202–501–1448 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–56, FAR Case 2010–009.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the *Federal Register* at 76 FR 18497 on April 4, 2011. Eight respondents submitted comments on the proposed rule. The comments received were grouped by topic area.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

1. A definition of “surplus property” is added at FAR 2.101 to apply throughout the FAR.

2. Terminology used is updated and used consistently throughout the FAR, e.g., “loss of Government property” is defined at FAR 45.101, and “loss” is used consistently in lieu of “loss, damage, destruction, or theft.”

3. Clarified, and distinguished among, the responsibilities and authorities of the contracting officer, property administrator, plant clearance officer, and contractor.

4. Reorganized and clarified procedures and responsibilities for Government property disposal (see FAR subpart 45.6).

5. Reorganized, clarified, and updated the Government property clause at FAR 52.245–1 to conform with revisions to FAR part 45.

B. Government Responsibilities

Comments: A respondent recommended a number of revisions to the Government responsibilities, primarily those in FAR subpart 45.6, Reporting, Reutilization, and Disposal. The respondent recommended revising FAR 45.606–1(a) to require that the property administrator work in coordination with the plant clearance officer to ensure that contractor scrap disposal processes are effective and properly documented. Another recommendation was to revert to the current regulation’s use of “should” in lieu of “may” at FAR 45.602–1(c)(1) in order to ensure the Government’s agreement before Government property

is removed from a contractor’s inventory schedule. The respondent recommended modifying FAR 45.606–1(b) to require that any deviation from the contractor’s standard property plan and processes be identified as early as possible in the procurement process.

Response: The first two recommendations are adopted in this final rule. The final recommendation is not adopted because the Property Administrator can make that determination at any time.

Comments: The same respondent recommended a number of other revisions to the Government responsibilities, also primarily in FAR subpart 45.6, Reporting, Reutilization, and Disposal. The respondent proposed to revise FAR 45.600, Scope of subpart (which was not included in the proposed rule) to allow for either the contracting officer or the plant clearance officer to perform plant clearance officer duties. The respondent recommended removing the proposed rule’s requirement, at FAR 45.603(b), for the plant clearance officer to obtain approval at one level higher than the contracting officer before allowing the abandonment of sensitive property that does not require demilitarization. The respondent requested the addition of more examples of items considered to be incidental to the place of performance (see FAR 45.000).

Response: The above recommendations are not incorporated into the final rule because (1) contracting officers generally rely on the Government property expertise of plant clearance officers, (2) additional review and approval requirements can provide a broader perspective, and (3) too often, lists of examples are treated inappropriately as exhaustive lists.

C. Contractor Property Management Systems

Comments: Two respondents recommended revisions to FAR subpart 45.1, General. One recommendation was to revise FAR 45.105(b) to prevent the Government from notifying a contractor of deficiencies in its property management system unless the deficiencies were “material.” The other recommendation was to modify FAR 45.104(b) to add the following: “When determining noncompliance, FAR part 1 concepts apply, e.g., risk management, materiality, best value, and benefits of changes must justify their cost”.

Response: FAR part 1 is always applicable to all parts of the FAR. There is no need to repeat the statement in FAR part 45. “Materiality” is not defined in FAR part 2. If the Government determines that

deficiencies in a contractor's property management system are significant enough to warrant a correction letter, then the contractor should treat those deficiencies as material.

Comments: A number of respondents proposed changes to the clause at FAR 52.245-1 that were associated with contractors' property management systems. These included the following:

- FAR 52.245-1(b)(1): Add "internal controls," "efficient," and "a new;" and delete "except where inconsistent with law or regulation."

- FAR 52.245-1(b)(4): Change "property" to "asset."

- FAR 52.245-1(f)(1)(iii)(A):

Substitute "as appropriate to the circumstances" in place of "auditable."

- FAR 52.245-1(f)(1)(iii)(A)(1): Do not use "description;" instead, retain "manufacturer and model number (if applicable) for Equipment, ST, and STE."

- FAR 52.245-1(f)(1)(v)(A): Change "assets" to "items" and revise to read "shall have a process to manage Government property in the possession of subcontractors including identification and reporting of reportable items, as required in the contract as Government furnished or contractor acquired items."

- FAR 52.245-1(f)(1)(vii)(C)(1): Clarify what is included in "consumed" and that the property administrator is the official determining the reasonableness of adjustments.

- FAR 52.245-1(g): Change "analysis" to "audit."

- FAR 52.245-1(j): Delete, at FAR 52.245-1(j)(1)(i), "in consultation with the Property Administrator," and retain existing language at (j)(2). Add "in accordance with agency procedures if included in the contract."

- FAR 52.245-1(j): Delete (j)(3)(i)(B) and replace it with (j)(3)(i)(C). Revise the time allotted for contractor submission from "30 days" to "60 days or such other time frame agreed to by the PLCO."

- FAR 52.245-1: Add a dollar threshold for the contractor's reporting and tracking, *i.e.*, "* * * property in excess of \$5,000 or in accordance with risk levels in voluntary consensus standards or industry leading practices." The respondent suggested allowing contractors to defer any reporting of certain low-risk or low-value items until contract termination.

Response:

- FAR 52.245-1(b)(1): Two of the recommended additions to FAR 52.245-1(b)(1) are incorporated into the final rule because they better explain the Government's requirements for the contractor's property management

system. However, "a new" was not added because of the associated element related to "time." The phrase "except where inconsistent with law or regulation" is not deleted because contractors are never authorized to employ commercial practices, voluntary consensus standards, or industry-leading practices if the former do not comply with law or regulation.

- FAR 52.245-1(b)(4): The term "property" is retained to maintain consistency in terminology.

- FAR 52.245-1(f)(1)(iii)(A) and (A)(1): The Councils did not revise "auditable" to "as appropriate for the circumstances" because the proposed change is too vague and does not provide an understandable or consistent standard. The final rule does not revert back to the use of "manufacturer and model number * * *" because this is a reasonable number of data elements at the Federal level.

- FAR 52.245-1(f)(1)(v)(A): Applying the same principle as is used at the beginning of this response results in revising "assets" to "items" at FAR 52.245-1(f)(1)(v)(A). The language regarding the management of Government property in subcontractors' possession is not added to paragraph (f)(1)(v)(A) because it would be redundant to the requirement already at FAR 52.245-1(f)(1)(v)(B).

- FAR 52.245-1(f)(1)(vii)(C)(1): It is not necessary to revise FAR 52.245-1(f)(1)(vii)(C)(1) because the text already clearly designates the property administrator as the deciding official, and the use of the term "consumed" is clear in the context of (C)(1) ("Such property is consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator").

- FAR 52.245-1(g): "Analysis," not "audit," is the proper term.

- FAR 52.245-1(j): Paragraph (j) of the clause addresses contractor inventory disposal. The lead-in to paragraph (j) makes all contractor inventory disposal decisions subject to the authorization of the plant clearance officer; therefore, it is unnecessary to restate the qualifier in subordinate paragraphs of paragraph (j). Paragraph (j)(2) of the clause addresses inventory disposal schedules. The existing text had elicited many questions over time, so a revision was determined necessary to provide additional clarity; reverting to the current paragraph (j)(2) would be a step backward.

The authority to revise a contractor's use and receipt system for Government material (see FAR 52.245-1(f)(1)(iii)(B))

"in accordance with agency procedures * * *" is not included in the final rule because it would result in inconsistencies in treatment and problems when more than one Government agency had authorized the use of Government property in a single contractor facility.

- FAR 52.245-1(j): Effectively, the request to delete 52.245-1(j)(3)(i)(B) and replace it with (C) of the same paragraph would eliminate a 60-day period for submission of the contractor's inventory disposal schedule and replace it with a 120-day submission schedule. Allowing an extra two months for the contractor's submission is unnecessary if the contractor has an acceptable property management system. For the same reasons, the extension of the submission period from 30 days to 60 days is not made.

- FAR 52.245-1: The final recommendation would have established a dollar threshold and allowed contractors to defer any reporting of low-dollar items during contract performance. However, the Government property management principles have departed from the use of dollar thresholds and recognized that some low-dollar items may be sensitive and require closer management.

D. Disposal

Comment: One respondent recommended adding, at FAR 45.201, a requirement that the solicitation indicate how the contractor's property management system plan would be utilized for disposal.

Response: FAR 45.201(c)(4) requires that the solicitation include a description of the offeror's property management system, plan, and practices and standards used by the offeror in managing Government property. In addition, the clause at 52.245-1, Government Property, which is required to be included in solicitations, thoroughly addresses the Government's uses of contractors' property management systems.

Comment: One respondent suggested that any additional instructions to offerors on management of Government property, currently allowed only in the statement of work, could also be included in a special provision of the contract.

Response: The allowance for including this information in a special provision is added at FAR 45.201(d).

Comment: One respondent suggested that it was not clear at FAR 52.245-1(j)(1)(i) that, in disposing of certain property, the contractor is limited to transferring the property to another

Government contract, as opposed to any contract.

Response: The referenced section of the clause is revised to add “Government” in front of “contract” in two places.

Comment: One respondent suggested adding “with contractor’s consent” at FAR 45.603(a)(2).

Response: The proposed change would require the Government to obtain the contractor’s consent prior to abandoning non-sensitive property at the contractor’s or subcontractor’s premises. In order to minimize administrative burden, contractor consent is required only prior to abandoning sensitive property.

Comment: One respondent suggested revising FAR 45.604–1 to differentiate between formal and informal sales and “scrap” sales.

Response: The recommended change would require the creation of additional definitions. Any such distinctions are more appropriately located in the contractor’s property management procedures.

Comment: One respondent suggested revising FAR 45.606–1(c) to ensure that the disposition of scrap items is addressed in the contractor’s standard scrap processes and procedures.

Response: The decision on whether to abandon scrap (the subject of FAR 45.606–1) is a Government decision; it is not a subject to be included in the contractor’s scrap procedures.

E. Exceptions and applicability

Comment: One respondent suggested that FAR 45.102(b) be clarified to demonstrate when cost-reimbursement contracts are used.

Response: There is no need to revise FAR 45.102, Policy, because that section addresses the circumstances under which it is appropriate to provide property to contractors. The limitations and requirements for contract types, e.g., cost-reimbursement contracts, are found in FAR part 16 and are not related to whether Government property is provided.

Comment: The proposed rule included a new paragraph FAR 45.102(e) that would prohibit the installation, with certain exceptions, of Government 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.” One respondent recommended deleting the exception and creating a flat prohibition.

Response: Because there are instances when nonseverable installation of Government property may be

appropriate, a flat prohibition is not adopted. The bar to nonseverable installation of Government property is set sufficiently high, requiring the head of the contracting activity to make a determination to waive the requirement, that it is unlikely to become a common occurrence.

F. Crediting Monies Received

Comment: One respondent suggested adding a paragraph on crediting disposal proceeds to the clause at FAR 52.245–1, as follows: “Disposal proceeds. If the contractor’s practice is to commingle scrap from a variety of contract sources and ownership, the Contractor may credit net scrap proceeds to a contractor overhead account.”

Response: FAR 45.604–3 (formerly 45.604–4), Proceeds from sales of surplus property, requires that such monies be credited to the U.S. Treasury as miscellaneous receipts. Deposit of sales proceeds is already covered under FAR 45.604–3. No further regulatory amplification is needed.

Comment: Three respondents suggested various ways of crediting financial restitution to the contract, not back to the Treasury, as is required at FAR 45.104(e).

Response: With few statutory exceptions, monies received for the use of the United States, from whatever source, must be paid into the U.S. Treasury without deduction. The statute is the authoritative source.

G. Definitions

Comment: One respondent suggested revising the definition of “production scrap,” changing the term to “material scrap,” and including scrap from non-production activities in the definition at FAR 45.101 and 52.245–1(a).

Response: The term “production scrap” is the recognized and consistent term used throughout the FAR, but the additional text is added to clarify what is included in the term.

Comment: Two respondents suggested changing the term “unit acquisition cost” to “item acquisition cost” at FAR 45.101 and 52.245–1(a). One of these respondents also suggested adding “fair value at the time of loss” to the definition.

Response: The Councils prefer the term “unit acquisition cost” versus “item acquisition cost.” The unit acquisition cost, provided by the Government, is the actual cost at the time of purchase and is the proper measure of value.

Comments: Four recommendations were received for revising the definition of “loss of Government property.” Two

of these suggested adding “in the possession of a contractor under terms of a contract” to the definition. Another recommended adding “material” prior to “harm” to denote that damage should not include ordinary repairs due to normal wear and tear. A third recommendation was to add “occurrences such as” to the definition in order to make it consistent with Defense Federal Acquisition Regulation Supplement 252.245–7002.

Response: The first change is not made as it would be superfluous; i.e., the entire FAR part 45 refers to Government Property in contractor’s possession. “Material” is not added to the definition because the definition already excludes normal wear and tear. The phrase “occurrences such as” is added to the definition for additional clarity.

Comment: One respondent suggested adding a definition for “repair, maintenance, and overhaul scrap” at FAR 45.606–1.

Response: The essence of the proposed definition is included in the authority given to the contracting officer at FAR 45.603. There is no need to include a separate definition.

H. Contractor Use of Government Supply Sources

Comment: One respondent recommended revising the second sentence of the clause at FAR 52.251–1, Government Supply Sources, to state that title to such purchases vested in the Government “except when the transaction is based upon a cash sale to the Contractor.”

Response: There is no need to make distinctions in title vesting in this clause as long as the clause contains the phrase “unless otherwise specified in the contract.” Every contract must contain a payment clause, and it is the payment clause that determines when, and with whom, title vests.

I. Editorial Comments

The editorial comments are grouped by the FAR section they address.

Comments on FAR 45.104(d): This paragraph addresses contractor liability and the appropriate form of restitution once a loss of property has been established. One respondent recommended changing “lost property” to “property loss,” and another respondent suggested adding “fair value” and replacing “restitution” with “compensation.”

Response: The final rule uses “property loss” in lieu of “lost property.” The other recommendations are not incorporated in the final rule because (1) substituting “compensation”

for “restitution” does not add clarity, and (2) the use of “fair value” would introduce a new concept of valuation.

Comments on FAR 45.105: Three comments were received on this section. One recommended substituting “liability” for “and liability;” another suggested deleting either “and” or “or” in paragraph (b)(1); and a third recommended adding “under the Government property clause” in paragraph (d).

Response: These edits are not incorporated in the final rule because they do not further clarify the coverage.

Comments on FAR 45.201: One respondent suggested deleting either “and” or “or” at FAR 45.201(a)(1). Another respondent suggested adding the contractor’s property management “plan” to the list at FAR 45.201(c)(4), because the plan depicts the standard way a contractor does business.

Response: The final rule incorporates the recommended revisions because they increase clarity.

Comment on FAR 45.202: A respondent suggested that the rules for evaluating offers when one offeror possessed Government property, and other offerors did not, would be improved by adding the phrase “using the FAR 52.245–9 Rental Calculation process” in this section.

Response: FAR 45.202(a) is revised to read “a rental equivalent evaluation factor as specified in FAR 52.245–9.”

Comment on FAR 45.602: One respondent suggested changing “may entitle” to “entitles” at FAR 45.602–1(b)(4).

Response: This change, had it been incorporated in the final rule, would have been a policy change that effectively gave a contractor an absolute entitlement to an equitable adjustment if the Government did not provide timely disposition instructions. Contracting officers require discretion and flexibility in determining whether an equitable adjustment is warranted.

Comments on FAR 45.603: One respondent recommended relocating FAR 45.603(c) to 45.603(a)(1). A respondent recommended inserting “recipients” at FAR 45.603(c), and another respondent suggested adding “as applicable” to FAR 45.603(b).

Response: None of the recommendations is incorporated into the final rule. The Councils elected not to relocate FAR 45.603(c) because it would distort the proper sequence of events. “Recipient’s” was not added to paragraph (c) because the Government will not bear any of the costs incident to such donations, regardless of who incurred them. “As applicable” is not added to paragraph (b) because review

at a level higher than the plant clearance officer is required in cases of other contractor inventory.

Comment on FAR 45.606: One respondent suggested inserting “in coordination with the plant clearance officer” at FAR 45.606(a).

Response: The revision is incorporated in the final rule.

Comments on FAR 52.245–1(b): Several editorial revisions were recommended for this paragraph. One respondent suggested revising FAR 52.245–1(b)(4) by adding “surveillance, self-assessments, or” and deleting “and” in “and/or.”

Response: The final rule incorporates these edits, such that the contractor must perform periodic internal reviews, surveillances, self assessments, or audits.

Comments on FAR 52.245–1(f)(1)(vii): Five editorial recommendations were proposed for this paragraph of the Government Property clause, which addresses “Relief of stewardship responsibilities.” One recommendation was to revise 52.245–1(f)(1)(vii)(A) from “necessary” corrective actions to “any necessary,” and another was to delete “all” at paragraph 52.245–1(f)(1)(vii)(B)(10). Other recommendations were to amend paragraph 52.245–1(f)(1)(vii)(B)(8) to add “and preventive actions,” change “reimbursement” to “compensation,” insert “export controlled” and “and authorities” and delete “if so,” and amend paragraph 52.245–1(f)(1)(vii)(C)(3) so as not to unnecessarily limit the contractor’s discretion to dispose of property in accordance with other paragraphs of the Government Property clause.

Response: The first two recommendations are not incorporated in the final rule because they would have introduced ambiguity and unintentionally introduced a lower standard. The next two recommendations starting at “other recommendations” are incorporated in the final rule. The last recommendation is not incorporated in the final rule because the proposed language does not limit the contractor’s discretion.

Comments on FAR 52.245–1(h): One respondent suggested deleting “and/or” at paragraph (h)(1). A respondent suggested that paragraph (h)(3) should be revised to be more consistent with the policy intent. Another respondent recommended changing “directed” to “determined” at paragraph (h)(4).

Response: Paragraph (h)(1) is not changed because the intent is clear—either one or the other or both is acceptable. Paragraph (h)(3) is not revised because it is consistent with the

policy. Paragraph (h)(4) was revised to adopt “determined” as a more consistent use of terminology.

Comment on FAR 52.245–1(k): One respondent recommended adding “non-sensitive.”

Response: The applicability of this paragraph is clear without the addition.

J. Out of Scope

Comment: One respondent suggested that small businesses should use Systems Applications Products to track scrap material as large businesses do.

Response: The Government does not recommend any particular commercial product.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

DoD, GSA, and NASA are revising FAR parts 45 and 52. The focus of this effort is to clarify FAR subpart 45.6, Reporting, Reutilization, and Disposal, and the contractor requirements under the clause at FAR 52.245–1, Government Property.

The revisions include technical corrections to align the FAR with the requirements of the Federal Management Regulation. Also included is new and expanded policy language on the disposal of scrap, new language for contracting officers and contract specialists on depositing of monies received from contractors for property that is lost, damaged, destroyed, or stolen, and new language prohibiting personal property from being installed or constructed on contractor-owned real property in such fashion as to become nonseverable.

DoD, GSA, and NASA published a proposed rule at 76 FR 18497 on April 4, 2011. The rule does not place new requirements on contractors; rather, it clarifies existing policies and procedures and should simplify compliance for contractors and enable consistent Government oversight.

No comments were received on the initial regulatory flexibility analysis in the proposed rule.

Approximately 5,000 contractors have Federal property in their possession. DoD has approximately 3,000 contractors with potential contract-property reporting requirements. Approximately 60 percent of all DoD contractors are small businesses. Given that property in the possession of contractors is over-whelmingly DoD property, it is estimated the DoD ratio of small businesses to total businesses having such property is a reasonable approximation for all Government contractors. Therefore, approximately 3,000 small businesses have Government property in their possession.

FAR Case 2004-025 streamlined the requirements concerning property management in FAR part 45. FAR Case 2008-011 continued that philosophy. This final rule provides continuous improvement to property management by streamlining and clarifying the policies for the disposition of contractor inventory.

It should be noted that these recommended changes are consistent with the Office of the Under Secretary of Defense, Acquisition, Technology and Logistics, recent statements emphasizing the need to improve the productivity of the defense industry and remove Government impediments to efficiency.

There are four reports currently required to assure appropriate use and disposition of contract property (SF 1423, Inventory Verification Survey; SF 1424, Inventory Disposal Report; SF 1428, Inventory Disposal Schedule; and SF 1429, Inventory Disposal Schedule Continuation Sheet). All of these forms are available online and may be submitted by the contractor using electronic means. It should be noted that DoD no longer requires the use of the SF 1428 and 1429 forms and instead uses the Web-enabled Plant Clearance Automated Reutilization and Reporting System (PCARRS). NASA and other Federal agency contractors use PCARRS when their contracts are delegated to Defense Contract Management Agency (DCMA) for plant clearance. Use of PCARRS reduces burdens on small businesses as well as other businesses by providing an easily accessible Web-based reporting mechanism.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives that would meet the objectives of this rule. However, this rule is not expected to have a significant economic impact on a substantial number of small entities. In fact, the current impact to both large and small contractors will be reduced. For example, the current FAR requires Government approval of contractor scrap procedures prior to allowing the contractor to dispose of ordinary production scrap. In addition, the current practice of requiring contractors (without approved scrap procedures) to submit inventory schedules or scrap lists for production scrap assumes that such practice is in all cases economically or otherwise justified. This practice unnecessarily burdens small contractors that generate only small amounts of scrap.

The final rule removes the requirement for Government approvals of contractor scrap

procedures and submission of inventory schedules and scrap lists, thus easing the burden on large and small contractors alike. It should be noted that contractor procedures would still be required and evaluated by the agency responsible for contract administration, as a normal part of contract property administration. The new rule will also result in more consistent levels of Government oversight, further easing the burden on small entities.

The collection of information required by this rule has been reduced to the minimum necessary to assure compliance with the Government's statutory accountability requirements.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the Final Regulatory Flexibility Analysis (FRFA) to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule contains information collection requirements. OMB has cleared this information collection requirement under OMB Control Number 9000-0075, titled: Government Property.

List of Subjects in 48 CFR Parts 2, 31, 32, 45, 49, 51, 52, and 53

Government procurement.

Dated: February 21, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 31, 32, 45, 49, 51, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 31, 32, 45, 49, 51, 52, and 53 continues to read as follows:

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

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definition "Surplus property" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Surplus property means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA). (See 41 CFR 102-36.40).

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Amend section 31.205-19 by revising paragraphs (e)(2)(iv) introductory text, (e)(2)(iv)(A), and (e)(2)(iv)(C) to read as follows:

31.205-19 Insurance and indemnification.

* * * * *

(e) * * *

(2) * * *

(iv) Costs of insurance for the risk of loss of Government property are allowable to the extent that—

(A) The contractor is liable for such loss;

* * * * *

(C) Such insurance does not cover loss of Government property that results from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel (as described in FAR 52.245-1 (h)(1)(ii)).

* * * * *

PART 32—CONTRACT FINANCING

■ 4. Amend section 32.503-16 by revising the first sentence of paragraph (a) to read as follows:

32.503-16 Risk of loss.

(a) Under the Progress Payments clause, and except for normal spoilage, the contractor bears the risk of loss for Government property under the clause, even though title is vested in the Government, unless the Government has expressly assumed this risk. * * *

* * * * *

■ 5. Amend section 32.1010 by revising the first sentence of paragraph (a) to read as follows:

32.1010 Risk of loss.

(a) Under the clause at 52.232-32, Performance-Based Payments, and except for normal spoilage, the contractor bears the risk of loss for Government property, even though title is vested in the Government, unless the Government has expressly assumed this risk. * * *

* * * * *

PART 45—GOVERNMENT PROPERTY

■ 6. Revise section 45.000 to read as follows:

45.000 Scope of part.

(a) This part prescribes policies and procedures for providing Government property to contractors; contractors' management and use of Government property; and reporting, redistributing, and disposing of contractor inventory.

(b) It does not apply to—

(1) Government property provided under any statutory leasing authority, except as to non-Government use of property under 45.301(f);

(2) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance based payments;

(3) Disposal of real property;

(4) Software and intellectual property; or

(5) Government property that is incidental to the place of performance, when the contract requires contractor personnel to be located on a Government site or installation, and when the property used by the contractor within the location remains accountable to the Government. Items considered to be incidental to the place of performance include, for example, office space, desks, chairs, telephones, computers, and fax machines.

■ 7. Amend section 45.101 by—

■ a. Removing the definition “Acquisition cost”;

■ b. Adding, in alphabetical order, the definitions “Loss of Government property” and “Production scrap”;

■ c. Removing the definition “Surplus property”; and

■ d. Adding, in alphabetical order, the definition “Unit acquisition cost”. The added text reads as follows:

45.101 Definitions.

* * * * *

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.

* * * * *

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.

* * * * *

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.

■ 8. Amend section 45.102 by adding paragraph (e) to read as follows:

45.102 Policy.

* * * * *

(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.

■ 9. Amend section 45.104 by—

■ a. Revising the introductory text of paragraph (a);

■ b. Revising paragraph (b); and

■ c. Adding paragraphs (d) and (e).

The revised and added text reads as follows:

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:

* * * * *

(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.

* * * * *

(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)).

■ 10. Amend section 45.105, by revising the first sentence of the introductory text of paragraph (b), and paragraphs (b)(1) and (d) to read as follows:

45.105 Contractor’s property management system compliance.

* * * * *

(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. * * *

(1) Revocation of the Government’s assumption of risk for loss of Government property; and/or

* * * * *

(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.

■ 11. Amend section 45.107 by—

■ a. Revising paragraph (a)(1)(i);

■ b. Removing from paragraph (b) “service contracts” and adding “fixed-price service contracts” in its place; and

■ c. Removing from paragraph (d) “acquisition cost” and adding “unit acquisition cost” in its place.

The revised text reads as follows:

45.107 Contract clauses.

(a)(1) * * *

(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.

* * * * *

■ 12. Amend section 45.201 by—

■ a. Removing from paragraph (a)(1) “tracking and/or” and adding “tracking and management, and” in its place;

■ b. Removing from paragraph (a)(4) “tracking); and” and adding “tracking and management); and” in its place;

■ c. Revising paragraph (c)(4); and

■ d. Removing from paragraph (d) “providing property.” and adding “providing property or in a special provision.” in its place.

The revised text reads as follows:

45.201 Solicitation.

* * * * *

(c) * * *

(4) A description of the offeror's property management system, plan, and any customary commercial practices, voluntary consensus standards, or industry-leading practices and standards to be used by the offeror in managing Government property.

* * * * *

■ 13. Amend section 45.202 by revising paragraph (a) to read as follows:

45.202 Evaluation procedures.

(a) The contracting officer shall consider any potentially unfair competitive advantage that may result from an offeror or contractor possessing Government property. This shall be done by adjusting the offers by applying, for evaluation purposes only, a rental equivalent evaluation factor as specified in FAR 52.245-9.

* * * * *

■ 14. Amend section 45.602-1 by—

■ a. Removing from paragraphs (b)(2) and (b)(3) “Require a contractor” and adding “Require the contractor” in its place;

■ b. Removing from paragraph (b)(4) “might entitle” and adding “may entitle” in its place;

■ c. Revising the introductory text of paragraph (c) and the introductory text of paragraph (c)(1);

■ d. Removing from paragraph (c)(1)(i) “acquisition cost” and adding “unit acquisition cost” in its place; and

■ e. Revising paragraph (c)(1)(iv).

The revised text reads as follows:

45.602-1 Inventory disposal schedules.

* * * * *

(c) The contractor may request the plant clearance officer's approval to remove the Government property from an inventory schedule.

(1) Plant clearance officers should approve removal of Government property from an inventory schedule when—

* * * * *

(iv) The contractor has requested continued use of the Government property, and the contracting officer has authorized its retention and further use.

* * * * *

■ 15. Revise section 45.602-2 to read as follows:

45.602-2 Reutilization priorities.

Plant clearance officers shall initiate reutilization actions for all property not meeting the abandonment or destruction criteria of 45.603(b). Authorized

methods, listed in descending order from highest to lowest priority, are—

(a) Reuse within the owning agency;

(b) Transfer of educationally useful equipment to schools and nonprofit organizations (see Executive Order 12999, Educational Technology: Ensuring Opportunity For All Children In The Next Century, April 17, 1996, and 15 U.S.C. 3710(i));

(c) Report to GSA for reuse within the Federal Government or donation as surplus property;

(d) Dispose of the following property in accordance with agency procedures without reporting to GSA:

(1) Property determined appropriate for abandonment or destruction (see Federal Management Regulation (FMR) 102-36.305, 41 CFR 102-36.305).

(2) Property furnished to nonappropriated fund activities (see FMR 102-36.165, 41 CFR 102-36.165).

(3) Foreign excess personal property (see FMR 102-36.380, 41 CFR 102-36.380).

(4) Scrap, except aircraft in scrap condition.

(5) Perishables, defined for the purposes of this section as any personal property subject to spoilage or decay.

(6) Trading stamps and bonus goods.

(7) Hazardous waste or toxic and hazardous materials.

(8) Controlled substances.

(9) Property dangerous to public health and safety.

(10) Classified items or property determined to be sensitive for reasons of national security; and

(e) Dispose of nuclear materials (see 45.603-3(b)(5)) in accordance with the Nuclear Regulatory Commission, applicable state licenses, applicable Federal regulations, and agency regulations.

■ 16. Revise section 45.603 to read as follows:

45.603 Abandonment or destruction of personal property.

(a) When contractor inventory is processed through the reutilization screening process prescribed in 45.602-2 without success, and provided the property has no commercial value, does not require demilitarization, and does not constitute a danger to public health or welfare, plant clearance officers or other authorized officials may without further approval—

(1) Direct the contractor to destroy the property;

(2) Abandon non-sensitive property at the contractor's or subcontractor's premises; or

(3) Abandon sensitive property at the contractor's or subcontractor's premises, with contractor consent.

(b) Provided a Government reviewing official at least one level higher than the plant clearance officer or other agency authorized official approves, plant clearance officers or other agency authorized officials may authorize the abandonment, or order the destruction of other contractor inventory at the contractor's or subcontractor's premises, in accordance with FMR 102-36.305 through 325 (41 CFR 102-36.305-325) and consistent with the following:

(1) The property is not considered sensitive, does not require demilitarization, has no commercial value or reutilization, transfer or donation potential, and does not constitute a danger to public health or welfare.

(2) The estimated cost of continued care and handling of the property (including advertising, storage and other costs associated with making the sale), exceed the estimated proceeds from its sale.

(c) In lieu of abandonment or its authorized destruction, the plant clearance officer or authorized official may authorize the donation of property including unsold surplus property to public bodies, provided that the property is not sensitive property, does not require demilitarization, and it does not constitute a danger to public health or welfare. The Government will not bear any of the costs incident to such donations.

(d) Unless the property qualifies for one of the exceptions under FMR 102-36.330 (41 CFR 102-36.330), the plant clearance officer or requesting official will ensure prior public notice of such actions of abandonment or destruction consistent with FMR 102-36.325 (41 CFR 102-36.325).

■ 17. Revise the section heading of 45.604 to read as follows:

45.604 Sale of surplus personal property.

* * * * *

■ 18. Revise section 45.604-1 to read as follows:

45.604-1 Sales procedures.

Surplus personal property that has completed screening in accordance with 45.602-3(a) shall be sold in accordance with the policy for the sale of surplus personal property contained in the Federal Management Regulation, at part 102-38 (41 CFR part 102-38). Agencies may specify implementing procedures.

45.604-2 [Removed]

■ 19. Remove section 45.604-2.

45.604–3 and 45.604–4 [Redesignated as 45.604–2 and 45.604–3]

■ 20. Redesignate sections 45.604–3 and 45.604–4 as sections 45.604–2 and 45.604–3, respectively.

■ 21. Revise the newly redesignated section 45.604–2 to read as follows:

45.604–2 Use of GSA sponsored sales centers.

Agencies may use sales center services. Use of such centers for sale of surplus property is authorized when in the best interest of the Government, consistent with contract terms and conditions.

■ 22. Add section 45.604–4 to read as follows:

45.604–4 Sale of property pursuant to the exchange/sale authority.

Agencies should consider the sale of property pursuant to the exchange/sale authority in FMR 102–39 (41 CFR part 102–39) when agencies are acquiring or plan to acquire similar products and other requirements of the authority are satisfied.

■ 23. Revise section 45.605 to read as follows:

45.605 Inventory disposal reports.

The plant clearance officer shall promptly prepare an SF 1424, Inventory Disposal Report, following disposition of the property identified on an inventory disposal schedule and the crediting of any related proceeds. The report shall identify any lost or otherwise unaccounted for property and any changes in quantity or value of the property made by the contractor after submission of the initial inventory disposal schedule. The report shall be provided to the administrative contracting officer or, for termination inventory, to the termination contracting officer, with a copy to the property administrator.

45.606 [Removed]

■ 24. Remove section 45.606.

■ 25. Redesignate section 45.606–1 as section 45.606; and revise the newly designated section 45.606 to read as follows:

45.606 Contractor scrap procedures.

(a) The property administrator should, in coordination with the plant clearance officer, ensure that contractor scrap disposal processes, methods, and practices allow for effective, efficient, and proper disposition and are properly documented in the contractor’s property management procedures.

(b) The property administrator should determine the extent to which separate disposal processing or physical

segregation for different scrap types is or may be required. Such scrap may require physical segregation, unique disposal processing, or separate plant clearance reporting. For example, the scope of work may create scrap—

- (1) Consisting of sensitive items;
- (2) Containing hazardous materials or wastes;
- (3) Contaminated with hazardous materials or wastes;
- (4) That is classified or otherwise controlled;
- (5) Containing precious or strategic metals; or
- (6) That is dangerous to public health or safety.

(c) Absent contract terms and conditions to the contrary, the Government may abandon parts removed and replaced from property as a result of normal maintenance actions or removed from property as a result of the repair, maintenance, overhaul, or modification process.

45.606–2 and 45.606–3 [Removed]

■ 26. Remove sections 45.606–2 and 45.606–3.

PART 49—TERMINATION OF CONTRACTS

49.204 [Amended]

■ 27. Amend section 49.204 by removing from paragraph (b) “destroyed, lost, stolen, or” and adding “lost or” in its place.

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

51.106 [Amended]

■ 28. Amend section 51.106 by removing from paragraph (b) “having an” and adding “having a unit” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 29. Amend section 52.232–16 by revising the date of the clause, and the last sentence of paragraph (e) to read as follows:

52.232–16 Progress Payments.

* * * * *

PROGRESS PAYMENTS (APR 2012)

* * * * *

(e) * * * The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is lost (see 45.101).

* * * * *

■ 30. Amend section 52.232–32 by revising the date of the clause, and the last sentence of paragraph (g) to read as follows:

52.232–32 Performance-Based Payments.

* * * * *

PERFORMANCE-BASED PAYMENTS (APR 2012)

* * * * *

(g) * * * If any property is lost (see 45.101), the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

* * * * *

- 31. Amend section 52.245–1 by—
- a. Revising the date of the clause;
- b. In paragraph (a) by—
- i. Removing the definition “Acquisition cost”;
- ii. Adding, in alphabetical order, the definitions, “Loss of Government property”, and “Production scrap”;
- iii. Removing the definition “Surplus property”; and
- iv. Adding, in alphabetical order, the definition “Unit acquisition cost”.
- c. Revising paragraph (b)(1);
- d. Removing from paragraph (b)(2) “, stolen, damaged, or destroyed”;
- e. Adding paragraph (b)(4);
- f. Revising paragraph (e);
- g. Removing from the introductory text of paragraph (f)(1)(ii) “property (document the receipt)” and adding “property and document the receipt” in its place;
- h. Revising paragraphs (f)(1)(iii)(A)(1), (f)(1)(iii)(A)(10), (f)(1)(v)(A), (f)(1)(vi), and (f)(1)(vii);
- i. Removing from paragraph (f)(1)(x) “loss, theft, damage, or destruction” and adding “loss of Government property” in its place;
- j. Removing from paragraph (f)(2) “acquisitions and dispositions of” and adding “acquisitions, loss of Government property, and disposition of” in its place;
- k. Removing paragraph (f)(3);
- l. Removing from the introductory text of paragraph (h)(1) “loss, theft, damage or destruction to the” and adding “loss of” in its place;
- m. Revising paragraphs (h)(1)(ii), (h)(1)(iii), (h)(2), and (h)(3);
- n. Redesignating paragraph (h)(4) as paragraph (h)(5);
- o. Adding a new paragraph (h)(4);
- p. Adding the words “or authorizing official” to the end of the introductory text of paragraph (j);
- q. Removing paragraph (j)(1);
- r. Redesignating paragraphs (j)(2) through (j)(10) as paragraphs (j)(1) through (j)(9), respectively;
- s. Revising the newly redesignated paragraph (j)(1), the introductory text of

paragraph (j)(2)(i), (j)(2)(i)(A), (j)(2)(ii), (j)(2)(iii), (j)(2)(iv)(C), and (j)(3);

■ t. Removing from the first sentence of the newly redesignated paragraph (j)(6)(ii) the words “Government property” and adding “property” in its place;

■ u. Removing the newly redesignated paragraph (j)(7)(i);

■ v. Further redesignating newly redesignated paragraphs (j)(7)(ii) and (j)(7)(iii) as (j)(7)(i) and (j)(7)(ii), respectively;

■ w. Removing from the newly redesignated paragraph (j)(9) “paragraph (j)(4)” and adding “paragraph (j)(3)” in its place;

■ x. Removing from paragraphs (k)(1) and (k)(2) “Government property”, and adding “property” in its place;

■ y. Redesignating paragraph (k)(3) as paragraph (k)(4); and adding a new paragraph (k)(3);

■ z. Removing from Alternate I “(AUG 2010)” and adding “(APR 2012)” in its place; and removing from paragraph (h)(1) of Alternate I “loss, theft, damage, or destruction” and adding “loss” in its place; and

■ aa. Removing from Alternate II “(JUN 2007)” and adding “(APR 2012)” in its place; and removing from the first and second sentences of paragraph (e)(3) of Alternate II “having an” and adding “having a unit” in its place (two times).

The added and revised text reads as follows:

52.245-1 Government Property.

* * * * *

GOVERNMENT PROPERTY (APR 2012)

(a) * * *

Loss of Government property means unintended, unforeseen or accidental loss, damage or destruction to Government property that reduces the Government’s expected economic benefits of the property. Loss of Government property does not include 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.

* * * * *

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 remelted or reprocessed, e.g., textile and metal clippings, borings, and faulty castings and forgings.

* * * * *

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.

* * * * *

(b) * * *

(1) The Contractor shall have a system of internal controls to manage (control, use, preserve, protect, repair, and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective and efficient control of Government property. The Contractor shall disclose any significant changes to its property management system to the Property Administrator prior to implementation of the changes. The Contractor may employ customary commercial practices, voluntary consensus standards, or industry-leading practices and standards that provide effective and efficient Government property management that are necessary and appropriate for the performance of this contract (except where inconsistent with law or regulation).

* * * * *

(4) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness and shall perform periodic internal reviews, surveillances, self assessments, or audits. Significant findings or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

* * * * *

(e) *Title to Government property.* (1) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as “Government property”), is subject to the provisions of this clause. The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(2) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

(3) *Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts.* (i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor’s delivery of such property.

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

- (A) Issuance of the property for use in contract performance;
- (B) Commencement of processing of the property for use in contract performance; or
- (C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(f) * * *
 (1) * * *
 (iii) * * *
 (A) * * *

(1) The name, part number and description, National Stock Number (if needed for additional item identification tracking and/or disposition), and other data elements as necessary and required in accordance with the terms and conditions of the contract.

* * * * *

(10) Date placed in service (if required in accordance with the terms and conditions of the contract).

* * * * *

(v) * * *

(A) The Contractor shall award subcontracts that clearly identify items to be provided and the extent of any restrictions or limitations on their use. The Contractor shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss of Government property).

* * * * *

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

(vii) *Relief of stewardship responsibility and liability.* The Contractor shall have a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Government property, including losses that occur at subcontractor or alternate site locations.

(A) This process shall include the corrective actions necessary to prevent recurrence.

(B) Unless otherwise directed by the Property Administrator, the Contractor shall investigate and report to the Government all incidents of property loss as soon as the facts become known. Such reports shall, at a minimum, contain the following information:

- (1) Date of incident (if known).
- (2) The data elements required under paragraph (f)(1)(iii)(A) of this clause.
- (3) Quantity.
- (4) Accountable contract number.
- (5) A statement indicating current or future need.

(6) Unit acquisition cost, or if applicable, estimated sales proceeds, estimated repair or replacement costs.

(7) All known interests in commingled material of which includes Government material.

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

(9) A statement that the Government will receive compensation covering the loss of Government property, in the event the Contractor was or will be reimbursed or compensated.

(10) Copies of all supporting documentation.

(11) Last known location.

(12) A statement that the property did or did not contain sensitive, export controlled, hazardous, or toxic material, and that the appropriate agencies and authorities were notified.

(C) Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility and liability for property when—

(1) Such property is consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator;

(2) Property Administrator grants relief of responsibility and liability for loss of Government property;

(3) Property is delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or

(4) Property is disposed of in accordance with paragraphs (j) and (k) of this clause.

* * * * *

(h) * * *

(1) * * *

(ii) Loss of Government property that is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss of Government property due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss of Government property occurred while the Contractor had adequate property management practices or the loss did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the property from further loss. The Contractor shall separate the damaged and undamaged property, place all the affected property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss of Government property.

(4) The Contractor shall reimburse the Government for loss of Government property, to the extent that the Contractor is financially liable for such loss, as directed by the Contracting Officer.

* * * * *

(j) * * *

(1) *Predisposal requirements.* (i) If the Contractor determines that the property has the potential to fulfill requirements under other contracts, the Contractor, in consultation with the Property Administrator, shall request that the Contracting Officer transfer the property to the contract in question, or provide authorization for use, as appropriate. In lieu of transferring the property, the Contracting Officer may authorize the Contractor to credit the costs of Contractor-acquired property (material only) to the losing contract, and debit the gaining contract with the corresponding cost, when such material is needed for use on another contract. Property no longer needed shall be considered contractor inventory.

(ii) For any remaining Contractor-acquired property, the Contractor may purchase the property at the unit acquisition cost if desired or make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices.)

(2) *Inventory disposal schedules.* (i) Absent separate contract terms and conditions for property disposition, and provided the property was not reutilized, transferred, or otherwise disposed of, the Contractor, as directed by the Plant Clearance Officer or authorizing official, shall use Standard Form 1428, Inventory Disposal Schedule or electronic equivalent, to identify and report—

(A) Government-furnished property that is no longer required for performance of this contract;

* * * * *

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government, in the event that the property is offered for sale.

(iii) Separate inventory disposal schedules are required for aircraft in any condition, flight safety critical aircraft parts, and other items as directed by the Plant Clearance Officer.

(iv) * * *

(C) For precious metals in raw or bulk form, the type of metal and estimated weight.

* * * * *

(3) *Submission requirements.* (i) The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—

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

(B) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(C) 120 days, or such longer period as may be approved by the Termination Contracting

Officer, following contract termination in whole or in part.

(ii) Unless the Plant Clearance Officer determines otherwise, the Contractor need not identify or report production scrap on inventory disposal schedules, and may process and dispose of production scrap in accordance with its own internal scrap procedures. The processing and disposal of other types of Government-owned scrap will be conducted in accordance with the terms and conditions of the contract or Plant Clearance Officer direction, as appropriate.

* * * * *

(k) * * *

(3) Absent contract terms and conditions to the contrary, the Government may abandon parts removed and replaced from property as a result of normal maintenance actions, or removed from property as a result of the repair, maintenance, overhaul, or modification process.

* * * * *

■ 32. Amend section 52.245-2 by revising the date of the clause and paragraph (b) to read as follows:

52.245-2 Government Property Installation Operation Services.

* * * * *

GOVERNMENT PROPERTY INSTALLATION OPERATION SERVICES (APR 2012)

* * * * *

(b) The Government bears no responsibility for repair or replacement of any lost Government property. If any or all of the Government property is lost or becomes no longer usable, the Contractor shall be responsible for replacement of the property at Contractor expense. The Contractor shall have title to all replacement property and shall continue to be responsible for contract performance.

* * * * *

■ 33. Amend section 52.245-9 by revising the date of the clause; and removing from paragraph (e)(2) "The rental charge is" and adding "The hourly rental charge is" in its place.

52.245-9 Use and Charges.

* * * * *

USE AND CHARGES (APR 2012)

* * * * *

■ 34. Amend section 52.249-2 by revising the date of the clause and paragraph (h) to read as follows:

52.249-2 Termination for Convenience of the Government (Fixed-Price).

* * * * *

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (APR 2012)

* * * * *

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting

Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value as determined by the Contracting Officer, for the loss of the Government property.

* * * * *

■ 35. Amend section 52.249–3 by revising the date of the clause and paragraph (h) to read as follows:

52.249–3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).

* * * * *

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS) (APR 2012)

* * * * *

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, for the loss of the Government property.

* * * * *

■ 36. Revise section 52.251–1 to read as follows:

52.251–1 Government Supply Sources.

As prescribed in 51.107, insert the following clause:

GOVERNMENT SUPPLY SOURCES (APR 2012)

The Contracting Officer may issue the Contractor an authorization to use

Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. The provisions of the clause at FAR 52.245–1, Government Property, apply to all property acquired under such authorization. (End of clause)

PART 53—FORMS

■ 37. Amend section 53.245 by revising paragraph (c) to read as follows:

53.245 Government property.

* * * * *

(c) *SF 1423 (Rev. 5/04), Inventory Verification Survey.* (See 45.602–1(b)(1).)

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[FR Doc. 2012–4499 Filed 3–1–12; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2011–0081, Sequence 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–56; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005–56, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005–56, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

DATES: March 2, 2012.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–56 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

LIST OF RULES IN FAC 2005–56

Item	Subject	FAR Case	Analyst
*I	Women-Owned Small Business (WOSB) Program	2010–015	Morgan.
II	Proper Use and Management of Cost-Reimbursement Contracts	2008–030	Clark.
III	Requirements for Acquisitions Pursuant to Multiple-Award Contracts	2007–012	Clark.
*IV	Socioeconomic Program Parity	2011–004	Morgan.
V	Trade Agreements Thresholds	2012–002	Davis.
VI	New Designated Country (Armenia) and Other Trade Agreements Updates	2011–030	Davis.
*VII	Government Property	2010–009	Glover.
VIII	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005–56 amends the FAR as specified below:

Item I—Women-Owned Small Business (WOSB) Program (FAR Case 2010–015)

This rule adopts as final, with changes, an interim rule published in the **Federal Register** at 76 FR 18304 on April 1, 2011, which provides a tool to assist Federal agencies in achieving the 5 percent statutory goal for contracting with women-owned small businesses. This case is based on the Small Business Administration’s (SBA) regulations establishing the Women-Owned Small

Business (WOSB) Program, authorized under section 8(m) of the Small Business Act (15 U.S.C. 637(m)).

Agencies may restrict competition to Economically Disadvantaged Women-Owned Small Business (EDWOSB) concerns, for contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which SBA has determined that WOSBs are underrepresented in Federal procurement. For NAICS code industries where WOSBs are not just