

# 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.