

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1845 and 1852

RIN 2700-AD37

#### Government Property

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** NASA is issuing a final rule to revise the NASA FAR Supplement (NFS) to update Agency-level, property-related provisions, clauses, prescriptions and procedures to be consistent with changes made to Part 45 and Part 52.245 of the Federal Acquisition Regulation in Federal Acquisition Circular (FAC) 2005-17. FAC 2005-17 significantly rewrote FAR Part 45, Government Property, and changed property related definitions, provisions and clauses which are required to be used in all solicitations and contracts issued after the effective date of 14 June, 2007.

**DATES:** *Effective Date:* January 12, 2011.

**FOR FURTHER INFORMATION CONTACT:** Carl Weber, NASA, Office of Procurement, Contract Management Division (Suite 5K80), (202) 358-1784, e-mail: [carl.c.weber@nasa.gov](mailto:carl.c.weber@nasa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Federal Acquisition Circular (FAC) 2005-17 implemented the final rule amending the Federal Acquisition Regulation (FAR) to simplify procedures, clarify language, and eliminate obsolete requirements related to the management and disposition of Government property in the possession of contractors. FAC 2005-17 significantly rewrote FAR Part 45, Government Property, and changed property-related definitions, provisions and clauses which are required to be used in all solicitations and contracts issued after the effective date of 14 June, 2007. The purpose of this final rule is to establish a new NASA FAR Supplement (NFS) Part 1845, Government Property, and related Agency-level solicitation provisions and contract clauses in NFS Subpart 1852.245, that are consistent with the rewrite of FAR Part 45. This rewrite of NFS Part 1845 and Subpart 1852.245 realigns Agency regulations with the new definitions, practices and policy of the FAR, a policy that fosters efficiency, flexibility, innovation and creativity while continuing to protect the Government's interest. In addition, this final rule includes Agency-level

procedures, solicitation provisions, and contract clause language necessary to identify contractor-acquired assets which become capital assets of the Government, in order to comply with Statement of Federal Financial Accounting Standard (SFFAS) No. 6. NASA published a proposed rule at 73 FR 73202, December 2, 2008. The 60 day comment period for the proposed rule ended February 2, 2009. Three respondents provided comments for a total of 52 comments.

The public comments were considered by NASA in the formation of the final rule.

*Comment 1:* One respondent recommended that language in 1845.107-70(B)(5) be clarified to differentiate between government property acquired which the government has title to and property acquired under FAR 52.245-1 Alt 2, which is titled to the contractor.

*Response:* Concur. The word "Government" was appended to "property" in the language to differentiate between property acquired and titled to the contractor under the alternate and property titled to the Government.

*Comment 2:* One respondent recommended that the phrase "IPO's Center for transfer to the" be added to 1852.245-70, Alternate I as follows: (ii) If the Contractor determines that an item within NASA or Federal excess is suitable, it shall contact the Center Industrial Property Officer (IPO) to arrange for transfer of the item from the identified source to the *IPO's Center for transfer* to the contractor.

*Response:* Non-concur. With the issuance of the final rule, the process in Procurement Information Circular 05-07 will become obsolete. The process suggested is internal to NASA and would be addressed through Part 1845, and not thorough contract language. NASA may choose a variety of methods to effect a transfer.

*Comment 3:* One respondent recommended establishing a threshold for screening greater than \$10,000 for items of property proposed for acquisition by institutions of higher education and allowing institutions to reject items if they are not technically sufficient.

*Response:* Non-concur. FAR Part 8 and 40 U.S.C. 524 require screening of agency inventory and other agencies' excess prior to new acquisitions whenever practicable. Though the screening practice may not always be productive, screening activity is not impracticable; therefore, we are required to perform it.

*Comment 4:* One respondent recommended changing the date for report submission at 1852.245-73(c)(1) from October 15 to October 30.

*Response:* Non-concur. The October 15 date is needed to allow sufficient time for contractor held property values to be compiled into NASA's annual financial statement.

*Comment 5:* One respondent recommended modifying 1852.245-79(c) to change the phrase "Government-furnished property" to "Government Property" to clarify that it applies to both Government-furnished and Contractor Acquired Government property.

*Response:* Concur. Change made.

*Comment 6:* One respondent recommended modifying 1852.245-79(c) to change "approval of the NASA Industrial Property Officer to "approval of the Plant Clearance Officer".

*Response:* Concur. Change made.

*Comment 7:* One respondent recommended that the reference to "Industrial Property Officer or Property Administrator" in 1845.501-70(b) be changed to only reference "Government Property Administrator".

*Response:* Non-concur. Within NASA, the Industrial Property Officer is the integral link between the contracting functions and the property administration functions and serves as the advisor to the Contracting Officer on property related topics. The reference to the Industrial Property Officer and Property Administrator will remain.

*Comment 8:* One respondent recommended that 1845.501-70(b) be changed to reflect that the Contracting Officer makes the final determination as to the adequacy of the contractor's proposed property management systems, standards and practices based on various inputs, including those of the Property Administrator and Industrial Property Officer.

*Response:* Concur. Language changed accordingly.

*Comment 9:* One respondent recommended that the reference to "Industrial Property Officer or Property Administrator" at 1845.501-70(b)(1) be changed to reference only the Property Administrator.

*Response:* Non-concur. NASA contracts may operate under circumstances that are unknown to the property administrator or differ from those applied by the property administrator's own organization. Within NASA, the Industrial Property Officer is the integral link between the contracting functions and the property administration functions and serves as the advisor to the Contracting Officer on

property related topics. Original language left intact.

*Comment 10:* One respondent recommended that DCMA's PCARSS system be used for all NASA contracts.

*Response:* Non-concur: NASA does not share all contractors with DOD. As a result, NASA may need to disposition property outside of PCARSS. Further, NASA, as a separate Federal agency maintains its own disposal processes and may choose to use them when it is in the agency's best interest.

*Comment 11:* One respondent recommended simplification of paragraph (a) of 1845.7101-2.

*Response:* Paragraph (a) of 1845.7101-2 was not proposed to be changed in the proposed rule, and was not published for comment, but may be reviewed for change in the future.

*Comment 12:* One respondent recommended that 1845-7101-2(c) be revised to incorporate a proactive approach to identification and correction of property data, though no specific language was provided.

*Response:* Non-concur. The NASA proposed changes to this paragraph were made only to omit obsolete FAR citations and the paragraph is otherwise still applicable. While the CO may take proactive measures to develop data for property being transferred, this remains an alternative procedure to be used when data is found to be insufficient by the contractor.

*Comment 13:* One respondent recommended deleting the entire clause at 1852.245-70.

*Response:* Partially concur. The requirement for screening for property for reuse is based on law, and therefore cannot be eliminated. In addition, the FAR requires the contracting officer to determine whether it is in the best interest for the Government to provide property. The scope of the clause was, however, limited to equipment requested after award.

*Comment 14:* One respondent recommended that we remove the requirement for contractors to hold employees liable for LDD&T as specified at 1852.245-71(a). Collective bargaining agreements, labor relations laws, State and local law may prohibit holding an employee liable for LDD&T of Government owned property.

*Response:* Partially concur. Although the language was unchanged from the previous NFS clause, and the liability requirement was ameliorated by the phrase "as appropriate", the language will be changed to read: "In accordance with FAR 52.245-1(h)(1) the contractor shall be liable for property lost, damaged, destroyed or stolen by the contractor or their employees when

determined responsible by a NASA Property Survey Board, in accordance with the NASA guidance in this clause."

*Comment 15:* One respondent recommended that the language at 1852.245-71(b)(iii) be changed so that it is clear that contractors are not required to establish a property record until the property is titled to the government.

*Response:* Concur. 1852.245-71(b)(iii) is changed to read: "The Contractor shall establish a record for Government titled property as required by FAR 52.245-1 and shall maintain that record until accountability is accepted by the Government." The final sentence of the paragraph is deleted.

*Comment 16:* One respondent recommended that NASA rewrite the clause at 1852.245-72 to utilize DOD condition codes F, J and K in determining whether property is "economically repairable".

*Response:* Non-concur. The economic repair codes suggested by the contractor are Department of Defense codes not applicable to NASA. NASA utilizes its own criteria to determine whether it is economically feasible to repair items.

*Comment 17:* One respondent recommended revising the language at 1852.245-72(c) to make liability for Government property furnished more consistent with FAR 52.245-1(h)(i) and commercial practices.

*Response:* Concur. The phrase "or when sustained while the property is being worked upon and directly resulting from that work, including but not limited to, any repairing, adjusting, inspecting, servicing, or maintenance operation." is deleted from the first sentence of paragraph (c) of 1852.245-72.

*Comment 18:* One respondent recommended deleting paragraph (d) of 1852.245-72, regarding insurance requirements since in conflict with FAR Part 45.

*Response:* Concur. Paragraph (d) deleted.

*Comment 19:* One respondent recommended deleting the clause at 1852.245-73.

*Response:* Non-concur. The reporting requirements of this clause were not added or significantly altered in the proposed rule. NASA requires submission of this report to support generation of its financial statement and other Government financial management reporting requirements. Financial reporting requirements of NASA property in the custody of contractors may be revised in the future based on advances in electronic accounting and reporting systems, and public comment will be solicited.

*Comment 20:* One respondent recommended eliminating the UID number and Data matrix ID symbols requirements contained in the clause at 1852.245-74 for research and development contracts with higher education, non-profit organizations.

*Response:* Partially Concur. NASA requires identification to assure that its property is adequately managed and controlled. However, language has been added to allow performing entities to propose alternate, commercial methods of durable marking that retain the data required by the above standards. Such alternate methods may be used if approved by the NASA Industrial Property Officer.

*Comment 21:* One respondent recommended moving the clause at 1852.245-74 to 1852.211-XX for consistency with the FAR, and that a dollar threshold be established below which marking would not be required.

*Response:* Partially concur. This is a property specific requirement limited to equipment items to be delivered to the Government. While a threshold is not acceptable to NASA, material and Special Tooling are not included in this requirement, thereby eliminating many low dollar items from the requirement.

Equipment is well defined in FAR. It is not applicable to items used by the contractor unless those items are no longer required and instructions require delivery to the Government. NASA does wish to apply this to equipment produced for delivery to the Government. NASA intends that this clause will assist the administration in the identification and control of equipment items that qualify for internal management recordkeeping and controls on delivery to the agency.

*Comment 22:* One respondent recommended that the term "item" be substituted for the term "equipment" throughout the clause at 1852.245-74.

*Response:* Non-concur. The requirements in this clause are intended to apply to "equipment" as defined in FAR Part 45. The term "item" could have a much broader meaning, including such things as "parts" and "items of material" NASA does not intend to apply this requirement to materials (parts). Rather, it is intended for equipment only, hence the terminology used.

*Comment 23:* One respondent recommended that NASA utilize DOD's MIL STD 130 and related DOD infrastructure as the basis for its "Identifications and Markings. \* \* \*" clause at 1852.245-74.

*Response:* Partially concur. NASA has modified the clause language to allow the use of commercially produced

markings when those markings otherwise comply with the data and legibility requirements of the NASA standard.

*Comment 24:* One respondent recommended that 1852.245-74(c) include additional, specific instructions on what needs to be marked and those instructions be included in the contract. In addition, the respondent commented that the reporting requirements would be in addition to standard FAR requirements.

*Response:* Non-concur. NASA intends the use of these identification requirements only on delivered or transferred equipment. Instructions in the clause are sufficient to define its applicability.

*Comment 25:* One respondent recommended that the phrase "For Items physically transferred" in paragraph (d) of 1852.245-74 be clarified.

*Response:* Partially concur. Language is changed to clarify by adding the phrase, "equipment no longer required for contract performance." in paragraphs (a) and (d).

*Comment 26:* One respondent recommended deleting the requirement to provide item condition at 1852.245-74(d)(2) since condition code is not required by the FAR clause at 52.245-1.

*Response:* Partially concur. Condition codes are discussed within the FAR Property Clause at 52.245-1(j)(3)(iv) and are normally ascertained by the contractor at the time the items are no longer required for contract performance. Clause language is changed to implement condition codes used at time of disposal.

*Comment 27:* One respondent recommended deleting the requirement to provide "date last serviced" at 1852.245-74(d)(3).

*Response:* Concur. Requirement is deleted.

*Comment 28:* One respondent recommended replacing the term "equipment" in paragraph (f) of 1852.245-74 with the term "an end item" to standardize terminology throughout rule.

*Response:* Non-concur. NASA has standardized terminology on the term "equipment".

*Comment 29:* One respondent recommended deleting the clause at 1852.245-75, stating "portions are repetitive of the FAR requirements."

*Response:* Non-concur. This clause clarifies the term "significant" in the FAR clause at 52.245-1(b)(1) to ensure NASA is notified when contractor changes may increase risk to property and contract performance.

*Comment 30:* One respondent recommended the single point of contact referenced in paragraph (a) of 1852.245-75 be the Property Administrator.

*Response:* Partially concur. While the NASA Industrial Property Officer must be advised of significant changes as defined in this clause, the Property Administrator will be the single source for direction to the contractor regarding the acceptability of proposed changes.

*Comment 31:* One Respondent suggested that sub paragraphs (a)(1), (2), & (3) of the proposed clause at 1852.245-75 were written too broadly in an attempt to clarify the phrase "the Contractor shall disclose any significant changes to their property management system" at FAR 52.245-1(b)(1).

*Response:* Non-concur. This language provides more specific descriptions of what constitutes a "significant change" to a contractor's property management system as stated in FAR 52.245-1(b). The more specific language was written to ensure that NASA is notified when contractor changes may increase risk to property and risk to contract performance.

*Comment 32:* One respondent recommended that since the FAR states that any "significant" changes be disclosed to the Property Administrator (PA), the single point of contact should be PA in paragraph (b) the proposed rule at 1852.245-75.

*Response:* Partially concur. While the NASA Industrial Property Officer must be advised of significant changes as defined in this clause, the Property Administrator will be the single source for direction to the contractor regarding the acceptability of proposed changes.

*Comment 33:* One respondent suggested adding language allowing the contractor to acquire property identified in their proposal in response to the provision at 1852.245-80 without further approval.

*Response:* Concur. Such language will be added to the clause at 1852.245-70.

*Comment 34:* One respondent suggested adding the dates for FAR clauses referenced in the NASA FAR Supplement Clauses.

*Response:* Partially concur. Wherever FAR clauses are referenced in NASA FAR Supplement (NFS) clauses, the date of the FAR clause will be included at least once in the same clause, or the reference may use the language "FAR 52.245-X, as incorporated in this contract".

*Comment 35:* One respondent recommended deleting the clause at 1852.245-78, *Physical Inventory of Capital Personal Property*, suggesting the clause is overly prescriptive and

goes beyond industry and other government standards. The respondent further suggested, that in accordance with NASA's own accounting rules, property with an acquisition value of more than \$100,000 would not necessarily be considered a capital asset.

*Response:* Partially-concur. NASA believes the clause, and the specific annual physical inventory requirements required by the clause for high value items, are necessary to ensure the existence and completeness of inventory records associated with such items that may be included in NASA's financial statements as capital assets. The \$100,000 threshold was chosen since it matches one of the base criteria used to determine an item as a capital asset.

Since as the respondent suggests, contractors shouldn't and couldn't determine which items greater than \$100,000 were considered NASA Capital assets, the dollar threshold alone is used as a demarcation for ease of use by the contractor. Further, ASTM Standards allow for stratified inventories, as high value items may require more visibility than low value items.

*Comment 36:* One respondent recommended removing the requirement at 1852.245-78(a)(2) to use inventory results to validate the "condition and use status" in property record data, since inventory personnel rarely have the skill to determine condition of property and condition is generally determined at time of disposition.

*Response:* Partially concur. The requirement to validate "condition" and use are removed, however, the requirement to verify the existence of the items and the completeness of the records were restated.

*Comment 37:* One respondent suggested that the FAR deleted the requirement for "separation of duties" (inventory to be performed by individuals other than those assigned custody, or responsibility for maintenance or posting); likewise, NASA should delete the requirement for "separation of duties" at 1852.245-78(b).

*Response:* Non-concur. ASTM Standards and GAO Best Practices recommend separation of duties either physically or by technologic means. This rule allows for either.

*Comment 38:* One respondent recommended deleting the prohibition for manual entry of data at 1852.245-78(b)(1) when an electronic property identification systems is utilized.

*Response:* Non-concur. Allowing manual entry of critical data would permit tampering with existence and

completeness records and would negate the "separation of duties" benefit derived from software controls.

*Comment 39:* One Respondent recommended deleting the condition at 1852.245-78(b)(2)(ii) since it wasn't relevant to physical inventory.

*Response:* Concur. Deleted.

*Comment 40:* One Respondent recommended deleting the requirement at 1852.245-78(b)(3) for the contractor to obtain approval for waivers from the NASA IPO, and substituting approval from the Property Administrator.

*Response:* Concur. Waivers will be required to be submitted to and approved by the Property Administrator. NASA will accomplish desired IPO notification and concurrence requirements through delegation instructions to the Property administrator.

*Comment 41:* One respondent suggested that the requirement at 1852.245-78(c) to deliver the physical inventory report within 10-calendar days of completion of the physical inventory was not sufficient time considering time needed for reconciliation.

*Response:* Non-concur. 10 calendar days is sufficient time. NASA considers the reconciliation process to be included as part of the physical inventory process.

*Comment 42:* One respondent recommended that the requirement at 1852.245-78(c) to report the results of the physical inventory to the NASA IPO be changed to the Property Administrator.

*Response:* Concur. Language changed.

*Comment 43:* One Respondent recommended standardizing the "loss, damage or destruction \* \* \*" language at 1852.245-71(c)(2)(i) with the FAR language in 52.245-1.

*Response:* Concur. Language changed to "Loss, damage, destruction or theft \* \* \*"

*Comment 44:* One respondent recommended changing the requirement at 1852.245-78(d) for the Contractor to retain "all physical inventory records" to "pertinent physical inventory records".

*Response:* Partially-concur. Language changed to require the Contractor to "retain auditable physical inventory records".

*Comment 45:* One respondent recommended deleting the clause at 1852.245-79, Records and Disposition Reports for Government Property with Potential Historic or Significant Real Value.

*Response:* Non-concur. NASA believes this clause is necessary to ensure there are complete records for high value or historic value items.

*Comment 46:* One respondent suggested that the first two sentences of paragraph (a) of the clause at 1852.245-79 were "commentary" in nature and should be deleted.

*Response:* Concur. Sentences delete.

*Comment 47:* One respondent recommended changing the requirement for the Contractor to obtain approval from the NASA IPO to approval from the Property Administrator at 1852.245-79(c).

*Response:* Concur. Approval requirement changed from NASA IPO to Property administrator.

*Comment 48:* One respondent suggested that the provision at 1852.245-80, Government Property Management Information, was a duplicate of requirements in FAR Part 45.

*Response:* Noted. This provision implements requirements in FAR Part 45 by providing specific language for NASA Contracting Officers to include in NASA Solicitations.

*Comment 49:* One respondent recommended deleting paragraph (e) of the provision at 1852.245-80, since contractors must otherwise comply with CAS 402 which defines direct costs.

*Response:* Partially-concur. NASA agrees that compliance with CAS and the contractor's disclosure statement will determine how a particular cost can be allocated. The provision only requires the contractor to disclose in the proposal any such accounting practices.

*Comment 50:* One respondent recommended limiting the scope of paragraph (g) of 1852.245-80 to items valued over \$100,000, and eliminating the requirement for detailed information on the items.

*Response:* Partially-concur. Items below \$100,000 will still be required to be listed; however, detail will be limited to a description of the intended end item and its estimated value.

*Comment 51:* One respondent recommended changing the prescription at 1852.245-81 from "insert the following provision" to "insert the following clause".

*Response:* Non-concur. The Prescription references a solicitation provision.

*Comment 52:* One respondent recommended inserting the date for the FAR clause referenced at 1852.245-81(b).

*Response:* Concur. Date inserted.

This is not a significant regulatory action and, therefore, is not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

## B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it largely implements changes to the FAR Parts 45 and 52.245 set forth in FAC 2005-17, and does not impose an significant economic impact beyond that addressed in the FAC 2005-17 publication of the FAR final rule.

## C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) is applicable. However, the NFS changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* beyond those identified and approved as part of the FAR Part 45 rewrite contained in FAC 2005-17 (Ref OMB control no. 9000-0075) and those previously approved under NASA clearances (Ref OMB control nos. 2700-0017, 2700-0088, and 2700-0089)

### List of Subjects in 48 CFR Parts 1845 and 1852

Government procurement,  
Government property.

**William P. McNally,**

*Assistant Administrator for Procurement.*

- Accordingly, 48 CFR parts 1845 and 1852 are amended as follows:
- 1. The authority citation for 48 CFR parts 1845 and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2455(a), 2473(c)(1).

## PART 1845—GOVERNMENT PROPERTY

- 2. Subpart 1845.1 is revised to read as follows:

### Subpart 1845.1—General

#### 1845.107 Contract clauses.

#### 1845.107-70 NASA solicitation provisions and contract clauses.

(a)(1) The contracting officer shall insert the clause at 1852.245-70, Contractor Requests for Government-Provided Property, in cost reimbursement solicitations and contracts.

(2) Use the clause with its Alternate I when the center Supply and Equipment Management Officer (SEMO) consents to permit the contractor to screen Government inventory for available property in lieu of contractor acquisition of new items.

(b)(1) The contracting officer shall insert the clause at 1852.245-71, Installation—Accountable Government

Property, in solicitations and contracts when Government property is to be made available to a contractor working on a NASA installation, and the Government will maintain accountability for the property. The contracting officer shall list in the clause the applicable property user responsibilities. For purposes of this clause, NASA installations include local off-site buildings owned or leased by NASA.

(2) Use of this clause is subject to the SEMO's concurrence that adequate Government property management resources are available for oversight of the property in accordance with all applicable NASA installation property management directives.

(3) The contracting officer shall identify, in the contract, the nature, quantity, and acquisition cost of the property and make it available on a nocharge basis.

(4) The contracting officer shall use the clause with its Alternate I if the SEMO requests that the contractor be restricted from use of the center central receiving facility for the purposes of receiving contractor-acquired property.

(5) For contractors with both onsite and offsite performance requirements, contracting officers shall list Government property provided for offsite use separately in the contract. This Government property is furnished under FAR 52.245-1, Government Property, and remains accountable to the contractor during its use on the contract. This Government property is not subject to the clause at 1852.245-71, Installation—Accountable Government Property. The contracting officer shall address any specific maintenance considerations (e.g., requiring or precluding use of an installation calibration or repair facility) elsewhere in the contract.

(c) The contracting officer shall insert the clause at 1852.245-72, Liability for e Government Property Furnished for Repair or Other Services, in fixed-price, time-and-material, and labor-hour solicitations and contracts (except for experimental, developmental, or research work with educational or nonprofit institutions, where no profit is contemplated) for repair, modification, rehabilitation, or other servicing of Government property, if such property is to be furnished to a contractor for that purpose and no other Government property is to be furnished. The contracting officer shall not require additional insurance under the clause unless the circumstances clearly indicate advantages to the Government.

(d) The contracting officer shall insert the clause at 1852.245-73, Financial

Reporting of NASA Property in the Custody of Contractors, in cost reimbursement solicitations and contracts unless all property to be provided is subject to the clause at 1852.245-71, Installation—Accountable Government Property. The clause shall also be included in other types of solicitations and contracts when it is known at award that property will be provided to the contractor or that the contractor will acquire property title to which will vest in the Government prior to delivery.

(e) The contracting officer shall insert the clause at 1852.245-74, Identification and Marking of Government Property, in solicitations and contracts that—

(1) Include the clause at FAR 52.245-1; or

(2) Require the delivery of supplies.

(f) The contracting officer shall insert the clause at 1852.245-75, Property Management Changes, in solicitations and contracts that provide for progress payments or include any of the property clauses prescribed in FAR Part 45.

(g) The contracting officer shall insert the clause at 1852.245-76, List of Government Property Furnished Pursuant to FAR 52.245-1, in solicitations and contracts when the contractor is to be accountable under the contract for Government property.

(h) The contracting officer shall insert the clause at 1852.245-77, List of Government Property Furnished Pursuant to FAR 52.245-2, in solicitations and contracts containing the clause at 52.245-2, Government Property Installation Operation Services. In addition, the contracting officer shall insert the following language in the blanks in paragraph (e) of the clause at 52.245-2:

“The Government property provided under this clause is identified in clause 1852.245-77 of this contract.”

(i) The contracting officer shall insert the clause at 1852.245-78, Physical Inventory of Capital Personal Property, in cost reimbursement and fixed-price solicitations and contracts that provide Government property.

(j) The contracting officer shall insert the clause at 1852.245-79, Records and Disposition Reports for Government Property with Potential Historic or Significant Real Value, in solicitations and contracts when, after consultation with the center Historic Preservation Officer, it is determined that the items acquired for or produced by the contract are likely to have historic significance or increased value due to their use in support of NASA projects and programs.

(k)(1) The contracting officer shall insert the provision at 1852.245-80, Government Property Management

Information, in solicitations when it is known, or there is a reasonable chance, that Government property will be provided to the contractor for contract performance.

(2) The contracting officer shall use the provision with Alternate 1 when there are sufficient time and resources to allow prospective contractors the opportunity to inspect the property.

(l) The contracting officer shall insert the provision at 1852.245-81, List of Available Government Property, in solicitations when Government property will be made available for contract performance.

(m) The contracting officer shall insert the clause at 1852.245-82, Occupancy Management Requirements, in solicitations and contracts that require performance on, or in, any NASA Center, Installation, facility or other NASA owned property.

(n) The contracting officer shall insert the clause at 1852.245-83 Real Property Management Requirements, in solicitations and contracts for acquisition, construction, modification (including when the modification is a consequence of another approved task, e.g., installation of telephonic or local area network equipment), demolition, or management of real property.

■ 3. Subpart 1845.3 is added to read as follows:

### **Subpart 1845.3—Authorizing the Use and Rental of Government Property**

#### **1845.301-71 Use of Government property for commercial work.**

(a) The coverage at FAR 45.3 applies to a contractor's commercial (any non-Government) use of any NASA equipment.

#### **1845.302 Use of Government property on contracts with foreign governments or international organizations.**

(a) NASA contracting officers will recover a fair share of the cost of Government property if such property is used in performing services or manufacturing articles for foreign countries or for international organizations.

### **Subpart 1845.4—[Removed and Reserved]**

■ 4. Subpart 1845.4 is removed and reserved.

■ 5. Subpart 1845.5 is revised to read as follows:

### **Subpart 1845.5—Support Government Property Administration**

Sec.

1845.501-70 General.

1845.503-70 Delegations of property administration and plant clearance.

1845.505–70 Responsibilities of the property administrator.

1845.506–70 Responsibilities of the plant clearance officer.

### Subpart 1845.5—Support Government Property Administration

#### 1845.501–70 General.

(b) When the Industrial Property Officer or Property Administrator determines that the contractor's proposed systems, standards and practices for the management of Government property are inadequate to manage Government property, the Contracting Officer should: (1) Require the contractor to provide a written revision that addresses the determination of the Industrial Property Officer or Property Administrator.

#### 1845.503–70 Delegations of property administration and plant clearance.

(e) Under the clause at 1852.245–71, Installation-Accountable Government Property, property is managed by center logistics functions using NASA internal policy and procedural guidance, except—

(1) When contractors are provided or are allowed the use of property that is not governed by that procedural guidance, management of that property is governed by the applicable FAR clause.

(2) When the contractor is responsible for performance of any segment of a property system under a FAR property clause, then property administration and plant clearance are required.

#### 1845.505–70 Responsibilities of the property administrator.

(c) When the property administrator determines that all or a portion of a contractor's property management practices and processes do not afford sufficient protection against loss, damage or destruction of Government property:

(1) The property administrator shall increase surveillance to prevent, to the extent possible, any loss, damage, or destruction of Government property; and

(2) Advise the contracting officer of any known or reported incidence of loss, damage or destruction identified during any period in which the contracting officer has revoked the Government's acceptance of risk.

(d) The property administrator shall review records and the results of contractor actions to identify any and all incidence where the contractor fails to report property no longer required for performance for periods longer than called for in their standards and practices.

#### 1845.506–70 Responsibilities of the plant clearance officer.

When plant clearance is not delegated to DOD, NASA plant clearance officers shall be responsible for—

(a) Providing the contractor with instructions and advice regarding the proper preparation of inventory schedules;

(b) Accepting or rejecting inventory schedules;

(c) Conducting or arranging for inventory verification;

(d) Initiating prescribed screening and effecting resulting actions;

(e) Final plant clearance of contractor inventory;

(f) Pre-inventory scrap determinations, as appropriate;

(g) Evaluating the adequacy of the contractor's procedures for property disposal and providing feedback to the Property Administrator regarding the contractor's performance in property disposal activities;

(h) Determining the method of disposal;

(i) Surveillance of any contractor conducted sales;

(j) Accounting for all contractor inventory reported by the contractor;

(k) Advising and assisting, as appropriate, the contractor, the Supply and Equipment Management Officer (SEMO) and other Federal agencies in all actions relating to the proper and timely disposal of contractor inventory;

(l) Approving the method of sale, evaluating bids, and approving sale prices for any contractor-conducted sales; and

(m) Recommending the reasonableness of selling expenses related to any contractor-conducted sales.

### Subpart 1845.6—Reporting, Reutilization, and Disposal

■ 6. Section 1845.606–70 is added to read as follows:

#### 1845.606–70 Contractor's approved scrap procedure.

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not processed under this section.

(d) Property in scrap condition, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of FAR Part 45 and NFS 1845.

### Subpart 1845.7101—Forms Preparation

■ 7. Paragraph (c) of section 1845.7101–2 is revised to read as follows:

#### 1845.7101–2 Transfer of property.

\* \* \* \* \*

(c) *Incomplete documentation.* If contractors receive transfer documents having insufficient detail to properly record the transfer (*e.g.*, omission of property classification, FSC, unit acquisition cost, Government acquisition date, required signatures, *etc.*) they shall request the omitted data directly from the shipping contractor or through the property administrator. The contracting officer shall assist the Government Property Administrator and the receiving contractor to obtain all required information for the receiving contractor to establish adequate property records.

\* \* \* \* \*

#### 1845.7102 [Removed]

■ 8. Section 1845.7102 is removed.

### Subpart 1845.72—[Removed]

■ 9. Subpart 1845.72 is removed.

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. In Part 1852, sections 1852.245–70 through 1852.245–80 are revised and sections 1852.245–81 through 1852.245–83 are added to read as follows:

### Subpart 1852.2—Text of Provisions and Clauses

\* \* \* \* \*

Sec.

1852.245–70 Contractor requests for Government-provided property.

1852.245–71 Installation-accountable Government property.

1852.245–72 Liability for Government property furnished for repair or other services.

1852.245–73 Financial reporting of NASA property in the custody of contractors.

1852.245–74 Identification and marking of Government equipment.

1852.245–75 Property management changes.

1852.245–76 List of Government property furnished pursuant to FAR 52.245–1.

1852.245–77 List of Government property furnished pursuant to FAR 52.245–2.

1852.245–78 Physical inventory of capital personal property.

1852.245–79 Records and disposition reports for Government property with potential historic or significant real value.

1852.245–80 Government property management information.

1852.245–81 List of available Government property.

1852.245–82 Occupancy management requirements.

1852.245–83 Real property management requirements.

\* \* \* \* \*

**Subpart 1852.2—Text of Provisions and Clauses**

\* \* \* \* \*

**1852.245–70 Contractor Requests for Government-Provided Equipment.**

As prescribed in 1845.107–70(a)(1), insert the following clause:

**CONTRACTOR REQUESTS FOR GOVERNMENT-PROVIDED EQUIPMENT (JAN 2011)**

(a) The Contractor shall provide all property required for the performance of this contract. The Contractor shall not acquire or construct items of property to which the Government will have title under the provisions of this contract without the Contracting Officer's written authorization. Property which will be acquired as a deliverable end item as material or as a component for incorporation into a deliverable end item is exempt from this requirement. Property approved as part of the contract award or specifically required within the statement of work is exempt from this requirement.

(b)(1) In the event the Contractor is unable to provide the property necessary for performance, and the Contractor requests provision of property by the Government, the Contractor's request shall—

- (i) Justify the need for the property;
- (ii) Provide the reasons why contractor-owned property cannot be used;
- (iii) Describe the property in sufficient detail to enable the Government to screen its inventories for available property or to otherwise acquire property, including applicable manufacturer, model, part, catalog, National Stock Number or other pertinent identifiers;
- (iv) Combine requests for quantities of items with identical descriptions and estimated values when the estimated values do not exceed \$100,000 per unit; and
- (v) Include only a single unit when the acquisition or construction value equals or exceeds \$100,000.

(2) Contracting Officer authorization is required for items the Contractor intends to manufacture as well as those it intends to purchase.

(3) The Contractor shall submit requests to the Contracting Officer no less than 30 days in advance of the date the Contractor would, should it receive authorization, acquire or begin fabrication of the item.

(c) The Contractor shall maintain copies of Contracting Officer authorizations, appropriately cross-referenced to the individual property record, within its property management system.

(d) Property furnished from Government excess sources is provided as-is, where-is. The Government makes no warranty regarding its applicability for performance of the contract or its ability to operate. Failure of property obtained from Government excess sources under this clause is insufficient reason for submission of requests for equitable adjustments discussed in the clause at FAR 52.245–1, Government Property, as incorporated in this contract.

(End of Clause)

**ALTERNATE I (JAN 2011)**

As prescribed in 1845.107–70(a)(2), add the following paragraph (e).

(e) In the event the Contracting Officer issues written authorization to provide property, the Contractor shall screen Government sources to determine the availability of property from Government inventory or excess property.

(1) The Contractor shall review NASA inventories and other authorized Federal excess sources for availability of items that meet the performance requirements of the requested property.

(i) If the Contractor determines that a suitable item is available from NASA supply inventory, it shall request the item using applicable Center procedures.

(ii) If the Contractor determines that an item within NASA or Federal excess is suitable, it shall contact the Center Industrial Property Officer to arrange for transfer of the item from the identified source to the Contractor.

(2) If the Contractor determines that the required property is not available from inventory or excess sources, the Contractor shall note the acquisition file with a list of sources reviewed and the findings regarding the lack of availability. If the required property is available, but unsuitable for use, the contractor shall document the rationale for rejection of available property. The Contractor shall retain appropriate cross-referenced documentary evidence of the outcome of those screening efforts as part of its property records system.

**1852.245–71 Installation-accountable Government Property.**

As prescribed in 1845.107–70(b)(1), insert the following clause:

**INSTALLATION-ACCOUNTABLE GOVERNMENT PROPERTY (JAN 2011)**

(a) The Government property described in paragraph (c) of this clause may be made available to the Contractor on a no-charge basis for use in performance of this contract. This property shall be utilized only within the physical confines of the NASA installation that provided the property unless authorized by the Contracting Officer under (b)(1)(iv). Under this clause, the Government retains accountability for, and title to, the property, and the Contractor shall comply with the following:

NASA Procedural Requirements (NPR) 4100.1, NASA Materials Inventory Management Manual;

NASA Procedural Requirements (NPR) 4200.1, NASA Equipment Management Procedural Requirements;

NASA Procedural Requirement (NPR) 4300.1, NASA Personal Property Disposal Procedural Requirements;

[Insert any additional property management responsibilities.]

Property not recorded in NASA property systems must be managed in accordance with the requirements of the clause at FAR 52.245–1, as incorporated in this contract.

The Contractor shall establish and adhere to a system of written procedures to assure

continued, effective management control and compliance with these user responsibilities. In accordance with FAR 52.245–1(h)(1) the contractor shall be liable for property lost, damaged, destroyed or stolen by the contractor or their employees when determined responsible by a NASA Property Survey Board, in accordance with the NASA guidance in this clause.

(b)(1) The official accountable recordkeeping, financial control, and reporting of the property subject to this clause shall be retained by the Government and accomplished within NASA management information systems prescribed by the installation Supply and Equipment Management Officer (SEMO) and Financial Management Officer. If this contract provides for the Contractor to acquire property, title to which will vest in the Government, the following additional procedures apply:

(i) The Contractor's purchase order shall require the vendor to deliver the property to the installation central receiving area.

(ii) The Contractor shall furnish a copy of each purchase order, prior to delivery by the vendor, to the installation central receiving area.

(iii) The Contractor shall establish a record for Government titled property as required by FAR 52.245–1, as incorporated in this contract, and shall maintain that record until accountability is accepted by the Government.

(iv) Contractor use of Government property at an off-site location and off-site subcontractor use requires advance approval of the Contracting Officer and notification of the Industrial Property Officer. The property shall be considered Government furnished and the Contractor shall assume accountability and financial reporting responsibility. The Contractor shall establish records and property control procedures and maintain the property in accordance with the requirements of FAR 52.245–1, Government Property (as incorporated in this contract), until its return to the installation. NASA Procedural Requirements related to property loans shall not apply to offsite use of property by contractors.

(2) After transfer of accountability to the Government, the Contractor shall continue to maintain such internal records as are necessary to execute the user responsibilities identified in paragraph (a) of this clause and document the acquisition, billing, and disposition of the property. These records and supporting documentation shall be made available, upon request, to the SEMO and any other authorized representatives of the Contracting Officer.

(c) The following property and services are provided if checked:

(1) Office space, work area space, and utilities. Government telephones are available for official purposes only.

(2) Office furniture.

(3) Property listed in [Insert attachment number or "not applicable" if no equipment is provided].

(i) If the Contractor acquires property, title to which vests in the Government pursuant to other provisions of this contract, this property also shall become accountable to the Government upon its entry into Government records.

(ii) The Contractor shall not bring to the installation for use under this contract any property owned or leased by the Contractor, or other property that the Contractor is accountable for under any other Government contract, without the Contracting Officer's prior written approval.

(4) Supplies from stores stock.

(5) Publications and blank forms stocked by the installation.

(6) Safety and fire protection for Contractor personnel and facilities.

(7) Installation service facilities: [Insert the name of the facilities or "none"].

(8) Medical treatment of a first-aid nature for Contractor personnel injuries or illnesses sustained during on-site duty.

(9) Cafeteria privileges for Contractor employees during normal operating hours.

(10) Building maintenance for facilities occupied by Contractor personnel.

(11) Moving and hauling for office moves, movement of large equipment, and delivery of supplies. Moving services may be provided on-site, as approved by the Contracting Officer.

(End of clause)

#### ALTERNATE I (JAN 2011)

As prescribed in 1845.107-70(b)(4), substitute the following for paragraph (b)(1)(i) of the basic clause:

(i) The Contractor shall not utilize the installation's central receiving facility for receipt of contractor-acquired property. However, the Contractor shall provide listings suitable for establishing accountable records of all such property received, on a monthly basis, to the SEMO.

#### 1852.245-72 Liability for Government Property Furnished for Repair or Other Services.

As prescribed in 1845.107-70(c), insert the following clause:

#### LIABILITY FOR GOVERNMENT PROPERTY FURNISHED FOR REPAIR OR OTHER SERVICES (JAN 2011)

(a) This clause shall govern with respect to any Government property furnished to the Contractor for repair or other services that is to be returned to the Government. Such property, hereinafter referred to as "Government property furnished for servicing," shall not be subject to FAR 52.245-1, Government Property.

(b) The official accountable recordkeeping and financial control and reporting of the property subject to this clause shall be retained by the Government. The Contractor shall maintain adequate records and procedures to ensure that the Government property furnished for servicing can be readily accounted for and identified at all times while in its custody or possession or in the custody or possession of any subcontractor.

(c) The Contractor shall be liable for any loss, damage, or destruction of the Government property furnished for servicing when caused by the Contractor's failure to exercise such care and diligence as a reasonable prudent owner of similar property would exercise under similar circumstances.

The Contractor shall not be liable for loss, damage, or destruction of Government property furnished for servicing resulting from any other cause except to the extent that the loss, damage, or destruction is covered by insurance (including self-insurance funds or reserves).

(d) The Contractor shall hold the Government harmless and shall indemnify the Government against all claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the Government property furnished for servicing or arising from the presence of that property on the Contractor's premises or property.

(End of clause)

#### 1852.245-73 Financial Reporting of NASA Property in the Custody of Contractors.

■ As prescribed in 1845.106-70(d), insert the following clause:

#### FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS (JAN 2011)

(a) The Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with this clause, the instructions on the form and NFS subpart 1845.71, and any supplemental instructions for the current reporting period issued by NASA.

(b)(1) Subcontractor use of NF 1018 is not required by this clause; however, the Contractor shall include data on property in the possession of subcontractors in the annual NF 1018.

(2) The Contractor shall mail the original signed NF 1018 directly to the cognizant NASA Center Deputy Chief Financial Officer, Finance, unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(3) One copy shall be submitted (through the Department of Defense (DOD) Property Administrator if contract administration has been delegated to DOD) to the following address: [Insert name and address of appropriate NASA Center office.], unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(c)(1) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 15. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 15. Some activity may be estimated for the month of September, if necessary, to ensure the NF 1018 is received when due. However, contractors' procedures must document the process for developing these estimates based on planned activity such as planned purchases or NASA Form 533 (NF 533 Contractor Financial Management Report) cost estimates. It should be supported and documented by historical experience or other corroborating evidence, and be retained in accordance with FAR Subpart 4.7,

Contractor Records Retention. Contractors shall validate the reasonableness of the estimates and associated methodology by comparing them to the actual activity once that data is available, and adjust them accordingly. In addition, differences between the estimated cost and actual cost must be adjusted during the next reporting period. Contractors shall have formal policies and procedures, which address the validation of NF 1018 data, including data from subcontractors, and the identification and timely reporting of errors. The objective of this validation is to ensure that information reported is accurate and in compliance with the NASA FAR Supplement. If errors are discovered on NF 1018 after submission, the contractor shall contact the cognizant NASA Center Industrial Property Officer (IPO) within 30 days after discovery of the error to discuss corrective action.

(2) The Contracting Officer may, in NASA's interest, withhold payment until a reserve not exceeding \$25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports in accordance with NFS subpart 1845.71 and any supplemental instructions for the current reporting period issued by NASA. Such reserve shall be withheld until the Contracting Officer has determined that NASA has received the required reports. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(d) A final report shall be submitted within 30 days after disposition of all property subject to reporting when the contract performance period is complete in accordance with paragraph (b)(1) through (3) of this clause.

(End of clause)

#### 1852.245-74 Identification and Marking of Government Equipment.

■ As prescribed by 1845.107-70(e), insert the following clause.

#### IDENTIFICATION AND MARKING OF GOVERNMENT EQUIPMENT (JAN 2011)

(a) The Contractor shall identify all equipment to be delivered to the Government using NASA Technical Handbook (NASA-HDBK) 6003, Application of Data Matrix Identification Symbols to Aerospace Parts Using Direct Part Marking Methods/Techniques, and NASA Standard (NASA-STD) 6002, Applying Data Matrix Identification Symbols on Aerospace Parts or through the use of commercial marking techniques that: (1) are sufficiently durable to remain intact through the typical lifespan of the property; and, (2) contain the data and data format required by the standards. This requirement includes deliverable equipment listed in the schedule and other equipment when no longer required for contract performance and NASA directs physical transfer to NASA or a third party. The Contractor shall identify property in both machine and human readable form unless the use of a machine readable-only format is approved by the NASA Industrial Property Officer.



(b) Equipment shall be marked in a location that will be human readable, without disassembly or movement of the equipment, when the items are placed in service unless such placement would have a deleterious effect on safety or on the item's operation.

(c) Concurrent with equipment delivery or transfer, the Contractor shall provide the following data in an electronic spreadsheet format:

- (1) Item Description.
- (2) Unique Identification Number (License Tag).
- (3) Unit Price.
- (4) An explanation of the data used to make the unique identification number.

(d) For equipment no longer needed for contract performance and physically transferred under paragraph (a) of this clause, the following additional data is required:

- (1) Date originally placed in service.
  - (2) Item condition.
- (e) The data required in paragraphs (c) and (d) of this clause shall be delivered to the NASA center receiving activity listed below:

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(f) The contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that require delivery of equipment.

(End of clause)

#### **1852.245-75 Property Management Changes.**

■ As prescribed in 1845.107-70(f), insert the following clause.

#### **PROPERTY MANAGEMENT CHANGES (JAN 2011)**

(a) The Contractor shall submit any changes to standards and practices used for management and control of Government property under this contract to the assigned property administrator prior to making the change whenever the change—

- (1) Employs a standard that allows increase in thresholds or changes the timing for reporting loss, damage, or destruction of property;
- (2) Alters physical inventory timing or procedures;
- (3) Alters recordkeeping practices;
- (4) Alters practices for recording the transport or delivery of Government property; or
- (5) Alters practices for disposition of Government property.

(End of clause)

#### **1852.245-76 List of Government Property Furnished Pursuant to FAR 52.245-1.**

■ As prescribed in 1845.107-70(g), insert the following clause:

#### **LIST OF GOVERNMENT PROPERTY FURNISHED PURSUANT TO FAR 52.245-1 (JAN 2011)**

For performance of work under this contract, the Government will make available Government property identified below or in

Attachment [Insert attachment number or "not applicable"] of this contract on a no charge-for-use basis pursuant to the clause at FAR 52.245-1, Government Property, as incorporated in this contract. The Contractor shall use this property in the performance of this contract at [Insert applicable site(s) where property will be used] and at other location(s) as may be approved by the Contracting Officer. Under FAR 52.245-1, the Contractor is accountable for the identified property.

(End of clause)

#### **1852.245-77 List of Government Property Furnished Pursuant to FAR 52.245-2.**

■ As prescribed in 1845.107-70(h), insert the following clause:

#### **LIST OF GOVERNMENT PROPERTY FURNISHED PURSUANT TO FAR 52.245-2 (JAN 2011)**

For performance of work under this contract, the Government will make available Government property identified below or in Attachment [Insert attachment number or "not applicable"] of this contract on a nocharge-for-use basis pursuant to FAR 52.245-2, Government Property Installation Operation Services, as incorporated in this contract. The Contractor shall use this property in the performance of this contract at [Insert applicable site(s) where property will be used] and at other location(s) as may be approved by the Contracting Officer.

[Insert a description of the item(s), acquisition date, quantity, acquisition cost, and applicable equipment information]

(End of clause)

#### **1852.245-78 Physical Inventory of Capital Personal Property.**

■ As prescribed in 1845.107-70(i), insert the following clause.

#### **PHYSICAL INVENTORY OF CAPITAL PERSONAL PROPERTY (JAN 2011)**

(a) In addition to physical inventory requirements under the clause at FAR 52.245-1, Government Property, as incorporated in this contract, the Contractor shall conduct annual physical inventories for individual property items with an acquisition cost exceeding \$100,000.

- (1) The Contractor shall inventory—
  - (i) Items of property furnished by the Government;
  - (ii) Items acquired by the Contractor and titled to the Government under the clause at FAR 52.245-1;
  - (iii) Items constructed by the Contractor and not included in the deliverable, but titled to the Government under the clause at FAR 52.245-1; and
  - (iv) Complete but undelivered deliverables.

(2) The Contractor shall use the physical inventory results to validate the property record data, specifically location and use status, and to prepare summary reports of inventory as described in paragraph (c) of this clause.

(b) Unless specifically authorized in writing by the Property Administrator, the inventory shall be performed and posted by

individuals other than those assigned custody of the items, responsibility for maintenance, or responsibility for posting to the property record. The Contractor may request a waiver from this separation of duties requirement from the Property Administrator, when all of the conditions in either (1) or (2) of this paragraph are met.

(1) The Contractor utilizes an electronic system for property identification, such as a laser bar-code reader or radio frequency identification reader, and

(i) The programs or software preclude manual data entry of inventory identification data by the individual performing the inventory; and

(ii) The inventory and property management systems contain sufficient management controls to prevent tampering and assure proper posting of collected inventory data.

(2) The Contractor has limited quantities of property, limited personnel, or limited property systems; and the Contractor provides written confirmation that the Government property exists in the recorded condition and location;

(3) The Contractor shall submit the request to the cognizant property administrator and obtain approval from the property administrator prior to implementation of the practice.

(c) The Contractor shall report the results of the physical inventory to the property administrator within 10 calendar days of completion of the physical inventory. The report shall—

- (1) Provide a summary showing number and value of items inventoried; and
- (2) Include additional supporting reports of—

(i) Loss in accordance with the clause at 52.245-1, Government Property;

(ii) Idle property available for reuse or disposition; and

(iii) A summary of adjustments made to location, condition, status, or user as a result of the physical inventory reconciliation.

(d) The Contractor shall retain auditable physical inventory records, including records supporting transactions associated with inventory reconciliation. All records shall be subject to Government review and/or audit.

(End of clause)

#### **1852.245-79 Records and Disposition Reports for Government Property with Potential Historic or Significant Real Value.**

■ As prescribed in 1845.107-70(j), insert the following clause.

#### **RECORDS AND DISPOSITION REPORTS FOR GOVERNMENT PROPERTY WITH POTENTIAL HISTORIC OR SIGNIFICANT REAL VALUE (JAN 2011)**

(a) In addition to the property record data required by the clause at FAR 52.245-1, Government Property as incorporated in this contract, Contractor records of all Government property under this contract shall—

- (1) Identify the projects or missions that used the items;

(2) Specifically identify items of flown property;

(3) When known, associate individual items of property used in space flight operations with the using astronaut(s); and

(4) Identify property used in test activity and, when known, the individuals who conducted the test.

(b) The Contractor shall include this information within item descriptions—

(1) On any Standard Form 1428, Inventory Schedule;

(2) In automated disposition systems;

(3) In any other disposition related reports; and

(4) In other requests for disposition instructions.

(c) The Contractor shall not remove NASA identification or markings from Government property prior to or during disposition without the advanced written approval of the Plant Clearance Officer.

(End of clause)

#### **1852.245–80 Government Property Management Information.**

■ As prescribed in 1845.107–70(k)(1), insert the following provision.

#### **GOVERNMENT PROPERTY MANAGEMENT INFORMATION (JAN 2011)**

(a) The offeror shall identify the industry leading or voluntary consensus standards, and/or the industry leading practices, that it intends to employ for the management of Government property under any contract awarded from this solicitation.

(b) The offeror shall provide the date of its last Government property control system analysis along with its overall status, a summary of findings and recommendations, the status of any recommended corrective actions, the name of the Government activity that performed the analysis, and the latest available contact information for that activity.

(c) The offeror shall identify any property it intends to use in performance of this contract from the list of available Government property in the provision at 1852.245–81, List of Available Government Property.

(d) The offeror shall identify all Government property in its possession, provided under other Government contracts that it intends to use in the performance of this contract. The offeror shall also identify: The contract that provided the property, the responsible Contracting Officer, the dates during which the property will be available for use (including the first, last, and all intervening months), and, for any property that will be used concurrently in performing two or more contracts, the amounts of the respective uses in sufficient detail to support prorating the rent, the amount of rent that would otherwise be charged in accordance with FAR 52.245–9, Use and Charges (June 2007), and the contact information for the responsible Government Contracting Officer. The offeror shall provide proof that such use was authorized by the responsible Contracting Officer.

(e) The offeror shall disclose cost accounting practices that allow for direct

charging of commercially available equipment, when commercially available equipment is to be used in performance of the contract and the equipment is not a deliverable.

(f) The offeror shall identify, in list form, any equipment that it intends to acquire and directly charge to the Government under this contract. The list shall include a description, manufacturer, model number (when available), quantity required, and estimated unit cost. Equipment approved as part of the award need not be requested under NFS clause 1852.245–70.

(g) The offeror shall disclose its intention to acquire any parts, supplies, materials or equipment, to fabricate an item of equipment for use under any contract resulting from this solicitation when that item of equipment:

Will be titled to the government under the provisions of the contract; is not included as a contract deliverable; and the Contractor intends to charge the costs of materials directly to the contract. The disclosure shall identify the end item or system and shall include all descriptive information, identification numbers (when available), quantities required and estimated costs.

(h) Existing Government property may be reviewed at the following locations, dates, and times: [Enter the appropriate information]

(End of provision)

#### **ALTERNATE 1 (JAN 2011)**

As prescribed in 1845.107–70(k)(2) add the following paragraph (i).

(i) Existing available Government property listed in the provision at 1852.245–81 is provided “as-is.” NASA makes no warranty regarding its performance or condition. The offeror uses this property at its own risk and should make its own assessment of the property’s suitability for use. The equitable adjustment provisions of the clause at 52.245–1, Government Property as included in this solicitation, are not applicable to this property. The offeror must obtain the Contracting Officer’s written approval before acquiring replacement property when it intends to charge the cost directly to the contract.

#### **18.52.245–81 List of Available Government Property.**

■ As prescribed in 1845.107–70(l), insert the following provision.

#### **LIST OF AVAILABLE GOVERNMENT PROPERTY (JAN 2011)**

(a) The Government will make the following Government property available for use in performance of the contract resulting from this solicitation, on a no-charge-for-use basis in accordance with FAR 52.245–1, Government Property, included in this solicitation. The offeror shall notify the Government, as part of its proposal, of its intention to use or not use the property.

(b) The Government will make the following Government property available for use in performance of the contract resulting from this solicitation, on a no-charge-for-use basis in accordance with FAR 52.245–2, Government Property Installation Operation

Services, as included in this solicitation. The offeror shall notify the Government of its intention to use or not use the property.

(c) The selected Contractor will be responsible for costs associated with transportation, and installation of the property listed in this provision.

(End of provision)

#### **1852.245–82 Occupancy Management Requirements.**

■ As prescribed in 1845.106–70(m), insert the following clause:

#### **OCCUPANCY MANAGEMENT REQUIREMENTS (JAN 2011)**

(a) In addition to the requirements of the clause at FAR 52.245–1, Government Property, as included in this contract, the Contractor shall comply with the following in performance of work in and around Government real property:

(1) NPD 8800.14, Policy for Real Property Management.

(2) NPR 8831.2, Facility Maintenance Management.

[Insert any additional Center occupancy requirements here]

(b) The Contractor shall obtain the written approval of the Contracting Officer before installing or removing Contractor-owned property onto or into any Government real property or when movement of Contractor-owned property may damage or destroy Government-owned property. The Contractor shall restore damaged property to its original condition at the Contractor’s expense.

(c) The Contractor shall not acquire, construct or install any fixed improvement or structural alterations in Government buildings or other real property without the advance, written approval of the Contracting Officer. Fixed improvement or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. Title to such property shall vest in the Government.

(d) The Contractor shall report any real property or any portion thereof when it is no longer required for performance under the contract, as directed by the Contracting Officer.

(End of clause)

#### **1852.245–83 Real Property Management Requirements.**

■ As prescribed in 1845.106–70(n), insert the following clause:

#### **REAL PROPERTY MANAGEMENT REQUIREMENTS (JAN 2011)**

(a) In addition to the requirements of the FAR Government Property Clause incorporated in this contract (FAR 52.245–1), the Contractor shall comply with the following in performance of any maintenance, construction, modification, demolition, or management activities of any Government real property:

(1) NPD 8800.14, Policy for Real Property Management.

(2) NPR 8831.2, Facility Maintenance Management.

[Insert any real property related Center requirements here]

(b) Within 30 calendar days following award, the Contractor shall provide a plan for maintenance of Government real property provided for use under this contract. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Contracting Officer the need for replacement and/or capital rehabilitation. Upon acceptance by the Contracting Officer, the program shall become a requirement under this contract.

(c) Title to parts replaced by the Contractor in carrying out its normal maintenance obligations shall pass to and vest in the Government upon completion of their installation in the facilities. The Contractor shall keep the property free and clear of all liens and encumbrances.

(d) The Contractor shall keep records of all work done to real property, including plans, drawings, charts, warranties, and manuals. Records shall be complete and current. Record of all transactions shall be auditable. The Government shall have access to these records at all reasonable times, for the purposes of reviewing, inspecting, and evaluating the Contractor's real property management effectiveness. When real property is disposed of under this contract, the Contractor shall deliver the related records to the Government.

(e) The Contracting Officer may direct the Contractor in writing to reduce the work required by the maintenance program authorized in paragraph (b) of this clause at any time.

(End of clause)

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 070514119-0452-03]

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### High Seas Driftnet Fishing Moratorium Protection Act; Identification and Certification Procedures To Address Illegal, Unreported, and Unregulated Fishing Activities and Bycatch of Protected Living Marine Resources

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final action implements identification and certification

procedures to address illegal, unreported, and unregulated (IUU) fishing activities and bycatch of protected living marine resources (PLMRs) pursuant to the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act). The objectives of these procedures are to promote the sustainability of transboundary and shared fishery stocks and to enhance the conservation and recovery of PLMRs. The final rule is intended to implement existing U.S. statutory authorities to address noncompliance with international fisheries management and conservation agreements, and encourage the use of bycatch reduction methods in international fisheries that are comparable to methods used in U.S. fisheries. Agency actions and recommendations under this rule will be in accordance with U.S. obligations under applicable international trade law, including the World Trade Organization (WTO) Agreement.

**DATES:** This final rule is effective on January 12, 2011, except for §§ 302.205(b)(2), 300.206, and 300.207, which contain information collection requirements that have not yet been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). A document will be published in the **Federal Register** announcing the effective dates of these provisions after OMB provides its approval.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### Background

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA), which was signed into law in January 2007, amends the Moratorium Protection Act to require that actions be taken by the United States to strengthen international fishery management organizations and address IUU fishing and bycatch of PLMRs. IUU fishing has been defined in the Moratorium Protection Act and implemented through regulation at 50 CFR 300.201 as follows:

1. Fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, and bycatch reduction requirements;

2. Overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; and

3. Fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement. This final action amends the regulatory definition at § 300.201 to make the definition more consistent with the United Nations General Assembly Resolution 65-105.

The Moratorium Protection Act requires the Secretary of Commerce to identify in a biennial report to Congress those foreign nations whose fishing vessels are engaged in IUU fishing or fishing activities or practices that result in bycatch of PLMRs. The Moratorium Protection Act also requires the establishment of procedures to certify whether appropriate corrective actions have been taken to address IUU fishing or bycatch of PLMRs by fishing vessels of those nations. Identified nations that are not positively certified by the Secretary of Commerce could be subject to prohibitions on the importation of certain fisheries products into the United States and other measures, including limitations on port access, under the High Seas Driftnet Fisheries Enforcement Act (Enforcement Act) (16 U.S.C. 1826a). This final rule sets forth procedures to implement the identification and certification requirements of the Moratorium Protection Act.

NMFS published an Advance Notice of Proposed Rulemaking (ANPR) on June 11, 2007 (72 FR 32052), to announce that it was developing certification procedures to address IUU fishing and bycatch of PLMRs pursuant to the Moratorium Protection Act and, based upon comments received, a proposed rule was published on January 14, 2009 (74 FR 1919). Public comments were solicited on the proposed rule for a period of 120 days. In conjunction with publication of the proposed rule, NMFS held public hearings in 2009 in locations where it expected substantial public interest in the proposed procedures. These sessions were held in Boston, MA (March 16, 2009); Silver Spring, MD (April 6, 2009); San Diego, CA (April 13, 2009); Seattle, WA (April 14, 2009); Honolulu, HI (April 27, 2009);