

because any start-up costs that contractors will incur to comply with the rule are expected to be minimal.

Moreover, the rule excludes items, as determined by the head of the agency, that are to be used to support a contingency operation; or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack; or for which a determination and findings has been executed concluding that it is more cost effective for the Government requiring activity to assign, mark, and register the unique item identification after delivery of an item acquired from a small business concern or a commercial item acquired under FAR part 8 or part 12.

The rule does not duplicate, overlap, or conflict with any other Federal rules. DoD considers the approach described in the rule to be the most practical and beneficial for both Government and industry.

V. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the rule does not impose additional information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 245 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 245 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 245 and 252 continues to read as follows:

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

PART 245—GOVERNMENT PROPERTY

■ 2. In section 245.102, paragraph (4) is added to read as follows:

245.102 Policy.

* * * * *

(4) *Government-furnished property identification.*

(i) It is DoD policy that Government-furnished property be tagged, labeled, or marked based on DoD marking standards (MIL Standard 130) or other standards, when the requiring activity determines that such items are subject to serialized item management (serially-managed items). The list of Government-furnished property subject to serialized item management will be identified in the contract in accordance

with PGI 245.201-71, GFP attachments to solicitations and awards.

(ii) *Exceptions.* The Contractor will not be required to tag, label, or mark—

(A) Government-furnished property that was previously tagged, labeled, or marked;

(B) Items, as determined by the head of the agency, that are to be used to support a contingency operation; or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack;

(C) Items for which a determination and findings has been executed concluding that it is more cost effective for the Government requiring activity to assign, mark, and register the unique item identification after delivery of an item acquired from a small business concern or a commercial item acquired under FAR part 12 or part 8.

(1) The determination and findings shall be executed by—

(i) The Component Acquisition Executive for an Acquisition Category (ACAT) I program; or

(ii) The head of the contracting activity for all other programs.

(2) A copy of the executed determination and findings shall be provided to the DoD Unique Item Identification Policy Office at this address: OUSD (AT&L) DPAP/Program Development and Implementation, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060; or by facsimile to 703-602-6047.

(D) Items that are contractor-acquired property;

(E) Property under any statutory leasing authority;

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

(G) Intellectual property or software; or

(H) Real property.

245.107-70 [Redesignated as 245.107]

■ 3. Section 245.107-70 is redesignated as 245.107 and revised to read as follows:

245.107 Contract clauses.

(a) Use the clause at 252.245-7000, Government-Furnished Mapping, Charting, and Geodesy Property, in solicitations and contracts when mapping, charting, and geodesy property is to be furnished.

(b) Use the clause at 252.245-7001, Tagging, Labeling, and Marking of Government-Furnished Property, in solicitations and contracts that contain the clause at FAR 52.245-1, Government Property.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. In section 252.245-7000, the introductory text is amended by removing “245.107-70” and adding in its place “245.107(a)”.

■ 5. Add section 252.245-7001 to read as follows:

252.245-7001 Tagging, Labeling, and Marking of Government-Furnished Property

As prescribed in 245.107(b), use the following clause:

TAGGING, LABELING, AND MARKING OF GOVERNMENT-FURNISHED PROPERTY (FEB 2011)

(a) *Definitions.* As used in this clause—
Government-furnished property is defined in the clause at FAR 52.245-1, Government Property.

Serially-managed item means an item designated by DoD to be uniquely tracked, controlled, or managed in maintenance, repair, and/or supply systems by means of its serial number.

(b) The Contractor shall tag, label, or mark Government-furnished property items identified in the contract as subject to serialized item management (serially-managed items).

(c) The Contractor is not required to tag, label, or mark Government-furnished property previously tagged, labeled, or marked.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 245 and 252

[DFARS Case 2008-D049]

RIN 0750-AG64

Defense Federal Acquisition Regulation Supplement; Reporting of Government Property Lost, Stolen, Damaged, or Destroyed

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to require contractors to report loss of Government property to the Defense Contract Management Agency (DCMA) eTools application.

DATES: *Effective Date:* February 2, 2011.
FOR FURTHER INFORMATION CONTACT: Ms. Clare Zebrowski, 703-602-0289.

SUPPLEMENTARY INFORMATION:**I. Background**

This final rule provides a clause at DFARS 252.245-7002, Reporting Loss of Government Property, that requires DoD contractors to report the loss, theft, damage, and destruction of Government property to the DCMA eTools application. The final rule changes—

- DFARS 245.102(4), Policy, to make editorial changes to remove subparagraphs that unnecessarily duplicate language contained in the clause at 252.245-7002, Reporting Loss of Government Property. This paragraph has been redesignated as 245.102(5).

- DFARS 245.107(2), Contract clauses, to correct the prescription for use of the clause at 252.245-7002, Reporting Loss of Government Property, by removing the reference to FAR 52.245-2, Government Property Installation Operation Services. This paragraph has been redesignated as 245.107(c).

- Clause 252.245-7002, Reporting Loss of Government Property, to—
 - Revise the clause title;
 - Change the defined term “acquisition cost” to “unit acquisition cost” and expand the definition to include contractor-acquired property;

- Revise the definition for “Government property” to state that the term is defined in the clause at FAR 52.245-1, Government Property;

- Add a new definition for “loss of Government property”;
- Revise the paragraph (b) title and (b)(1) to accommodate the new definition of “Loss of Government property”.

- Revise paragraph (b)(1) to add the word “unit” to reflect that reporting value shall be at “unit acquisition cost,” and to provide an updated Web page for accessing the eTools application;

- Revise paragraph (b)(3) to make editorial and format changes;
- Revise paragraph (b)(4) to make editorial changes and to delete reference to two specific property clauses and instead state that the reporting requirements do not change any other liability or other reporting requirement that may exist under the contract.

II. Discussion and Analysis

Three respondents submitted four comments on the proposed rule, which was published at 75 FR 22729 on April 30, 2010. Comments were due June 29, 2010. A discussion of the comments received follows:

A. Clause Prescription

Comment: One respondent recommended revising paragraph

245.107(2) to remove the reference to FAR 52.245-2, Government Property Installation Operation Services, as the loss of property reporting requirement stems directly from FAR 52.245-1 and not from 52.245-2.

DoD Response: DoD has revised the language accordingly.

B. Definition of “Government Property”

Comment: One respondent recommended that the definition of “Government property” in the proposed clause should make clear that it includes all property acquired by the contractor through indirect cost accounts.

DoD Response: The recommendation is outside the scope of the rule. The rule does not seek to alter or modify the definition of Government property as prescribed in the Federal Acquisition Regulations (FAR 52.245-1). However, in order to clarify the Government property definition, DoD has replaced the definition of “Government property” in the clause with a reference to the definition of “Government property” in FAR 52.245-1.

C. Use of Term “Losses”

Comment: One respondent recommended modifying the clause language in paragraph (b) to replace the term “lost, stolen, damaged, or destroyed” with “losses” to maintain simplicity and consistency.

DoD Response: A new definition for “loss of Government property” has been added to the clause at 252.245-7002, Reporting Loss of Government Property.

D. Definition of “Estimated Harm”/ “Acquisition Cost”

Comment: One respondent recommended adding a new definition of “estimated harm” to the proposed clause at 252.245-70XX and stated that estimated harm should consider other factors such as residual value, replacement cost, and care and handling cost. The respondent stated that the estimated harm should be expressed as a numeric value, and that providing only the acquisition cost without providing estimated harm to the Government is misleading and may result in poor decisions. According to the respondent, industry experience has proven that there typically is minimal or no harm to the Government and, even though the Government is self insured, replacement of lost items rarely occurs.

Similarly, a respondent stated the need to address the materiality of the loss and that without this information, decision makers may be misled and losses may be overstated. Further, according to the respondent, the rule

should then explain how to compensate the Government for losses when the “indirect costs used to buy the property” have been partially allocated to Government contracts and partially allocated to commercial work or firm-fixed-price contracts.

DoD Response: These recommendations are outside the scope of the rule. The clause seeks only to require the electronic reporting of data pertaining to Government property losses. It does not require reporting of the estimated harm or materiality of such losses to the Government.

However, in order to clarify the reporting value, the clause definition of “acquisition cost” has been revised to a definition of “unit acquisition cost.” The new definition clarifies that for Government-furnished property, the unit acquisition cost is the dollar value assigned by the Government and identified in the contract; and adds the method for determining the reporting value for contractor-acquired property. The revised definition is more comprehensive and clarifies the property values to be reported.

The final rule also revises paragraph (b)(4) of the clause to remove the references to 52.245-1 and 52.245-2, since the contract may contain other liability or other reporting requirements. This change clarifies that the new clause does not impact any other contractual reporting or liability requirements.

III. Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the individual specified herein. The analysis is summarized as follows:

The objective of this rule is to provide DoD with a single repository for reporting loss of Government property to improve accountability and control of DoD assets and contractor oversight.

None of the comments from the three respondents was in response to the initial regulatory flexibility analysis. Therefore, there is no change to the rule in this regard.

The rule applies to DoD contractors provided with Government property. The clause at 252.245-7002, Reporting Loss of Government Property, requires the contractor to use the Defense Contract Management Agency eTools software application for reporting loss of

Government property. The eTools software can be accessed from the DCMA homepage External Web Access Management application at <http://www.dcms.mil/aboutetools.cfm>.

Unless otherwise provided for in the contract, these requirements do not apply to normal and reasonable inventory adjustments, *i.e.*, losses of low-risk consumable material such as common hardware, as agreed to by the contractor and the Government property administrator. Such losses are typically a product of normal process variation. The contractor shall ensure that its property management system provides adequate management control measures, *e.g.*, statistical process controls, as a means of managing such variation.

Reporting requirements apply to losses of Government property outside normal process variation, *e.g.*, because of—

- (1) Theft;
- (2) Inadequate storage;
- (3) Inadequate security; or
- (4) “Acts of God.”

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because any start-up costs that contractors will incur to comply with the rule are expected to be minimal. The rule is expected to have a positive or beneficial impact on small entities by making available a Government-provided software application to use for reporting purposes. The rule does not duplicate, overlap, or conflict with any other Federal rules.

V. Paperwork Reduction Act

This final rule does not significantly increase the information collection requirements set forth under FAR 52.245-1(f)(vi), approved by the Office of Management and Budget under OMB clearance number 9000-0075. The rule will have a minimal impact on contractors, as such reporting is already common practice and is on an exception basis, *i.e.*, only when reportable property is lost. There were no comments received on the proposed rule concerning information collection.

List of Subjects in 48 CFR Parts 245 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 245 and 252 are amended as follows:

- 1. The authority citation for 48 CFR parts 245 and 252 continues to read as follows:

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

PART 245—GOVERNMENT PROPERTY

245.102 Policy.

- 2. Section 245.102 is amended by adding paragraph (5) to read as follows:

* * * * *

(5) *Reporting loss of Government property.* The Defense Contract Management Agency (DCMA) eTools software application is the DoD data repository for reporting loss of Government property in the possession of contractors. The requirements and procedures for reporting loss of Government property to eTools are set forth in the clause at 252.245-7002, Reporting Loss of Government Property, prescribed at 245.107.

- 3. Section 245.107 is amended by adding paragraph (c) to read as follows:

245.107 Contract clauses.

* * * * *

(c) Use the clause at 252.245-7002, Reporting Loss of Government Property, in solicitations and contracts that contain the clause at FAR 52.245-1, Government Property.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 4. Add section 252.245-7002 to read as follows:

252.245-7002 Reporting Loss of Government Property.

As prescribed in 245.107(c), use the following clause:

REPORTING LOSS OF GOVERNMENT PROPERTY (FEB 2011)

(a) *Definitions.* As used in this clause—
Government property is defined in the clause at FAR 52.245-1, Government Property.

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 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.

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 acceptable accounting principles.

(b) *Reporting loss of Government property.*

(1) The Contractor shall use the Defense Contract Management Agency (DCMA) eTools software application for reporting loss of Government property. Reporting value shall be at unit acquisition cost. The eTools “LTDD of Government Property” toolset can be accessed from the DCMA home page External Web Access Management application at <http://www.dcms.mil/aboutetools.cfm>.

(2) Unless otherwise provided for in this contract, the requirements of paragraph (b)(1) of this clause do not apply to normal and reasonable inventory adjustments, *i.e.*, losses of low-risk consumable material such as common hardware, as agreed to by the Contractor and the Government Property Administrator. Such losses are typically a product of normal process variation. The Contractor shall ensure that its property management system provides adequate management control measures, *e.g.*, statistical process controls, as a means of managing such variation.

(3) The Contractor shall report losses of Government property outside normal process variation, *e.g.*, losses due to—

- (i) Theft;
- (ii) Inadequate storage;
- (iii) Lack of physical security; or
- (iv) “Acts of God.”

(4) This reporting requirement does not change any liability provisions or other reporting requirements that may exist under this contract.

(End of clause)

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