

■ 1. The authority citation for 48 CFR parts 209 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

#### **PART 209—CONTRACTOR QUALIFICATIONS**

■ 2. Add section 209.270–5 to read as follows:

##### **209.270–5 Contract clause.**

The contracting officer shall insert the clause at 252.209–7010, Critical Safety Items, in solicitations and contracts when the acquisition includes one or more items designated by the design control activity as critical safety items.

#### **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 3. Add section 252.209–7010 to read as follows:

##### **252.209–7010 Critical Safety Items.**

As prescribed in 209.270–5, use the following clause:

##### **CRITICAL SAFETY ITEMS (AUG 2011)**

###### *(a) Definitions.*

*Aviation critical safety item* means a part, an assembly, installation equipment, launch equipment, recovery equipment, or support equipment for an aircraft or aviation weapon system if the part, assembly, or equipment contains a characteristic any failure, malfunction, or absence of which could cause—

- (i) A catastrophic or critical failure resulting in the loss of, or serious damage to, the aircraft or weapon system;
- (ii) An unacceptable risk of personal injury or loss of life; or
- (iii) An uncommanded engine shutdown that jeopardizes safety.

*Design control activity.* (i) With respect to an aviation critical safety item, means the systems command of a military department that is specifically responsible for ensuring the airworthiness of an aviation system or equipment, in which an aviation critical safety item is to be used; and

(ii) With respect to a ship critical safety item, means the systems command of a military department that is specifically responsible for ensuring the seaworthiness of a ship or ship equipment, in which a ship critical safety item is to be used.

*Ship critical safety item* means any ship part, assembly, or support equipment containing a characteristic, the failure, malfunction, or absence of which could cause—

- (i) A catastrophic or critical failure resulting in loss of, or serious damage to, the ship; or
- (ii) An unacceptable risk of personal injury or loss of life.

(b) *Identification of critical safety items.* One or more of the items being procured under this contract is an aviation or ship

critical safety item. The following items have been designated aviation critical safety items or ship critical safety items by the designated design control activity:

*(Insert additional lines as necessary)*

(c) *Heightened quality assurance surveillance.* Items designated in paragraph (b) of this clause are subject to heightened, risk-based surveillance by the designated quality assurance representative.

(End of clause)

[FR Doc. 2011–20529 Filed 8–18–11; 8:45 am]

**BILLING CODE 5001–08–P**

#### **DEPARTMENT OF DEFENSE**

#### **Defense Acquisition Regulations System**

#### **48 CFR Parts 201, 245, and 252**

#### **RIN Number 0750–AG38**

#### **Defense Federal Acquisition Regulation Supplement; Government Property (DFARS Case 2009–D008)**

**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) regarding Government Property, to reflect the recent revisions to Government Property elsewhere in the Code of Federal Regulations.

**DATES:** *Effective Date:* August 19, 2011. **FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, 703–602–1302.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

DoD is revising subparts 245.6 and 245.7 to be consistent with the changes to FAR subparts 45.6 and 45.7, published in the **Federal Register** at 72 FR 27364 on May 15, 2007. A proposed DFARS rule was published in the **Federal Register** at 75 FR 75444 on December 3, 2010. The public comment period for the proposed rule closed February 1, 2011. Comments were received from three respondents. A discussion and analysis of the comments is provided in section II of this notice. Any revisions to the final rule based on public comments are addressed in the DoD responses to the comments received.

##### **II. Discussion and Analysis**

Comments received in response to the proposed rule are organized into six

categories and are discussed in the paragraphs that follow.

##### *A. Clarifying Responsibilities*

*Comment:* A respondent recommended that “\* \* \* or the head of the contract administration office” be added to DFARS 201.670(a).

*DoD response:* DFARS 201.670(a) has been revised to specify that the appropriate agency authority may delegate contract administration functions to the cognizant contract administration office, in which case the contract administration office appoints the property administrators and plant clearance officers in writing. This language was formerly found at DFARS 245.70.

*Comment:* A respondent recommended that DFARS 252.245–70XX(i) be revised to make the contractor’s responsibility for compliance with export control law and regulations a “due diligence responsibility.”

*DoD Response:* In the context of surplus sales, it is the buyer’s responsibility to adhere to export control laws and regulations. Therefore, the referenced paragraph has been deleted and a new paragraph (g) has been inserted to specify that disposition shall be in accordance with foreign and U.S. laws and regulations, including regulations involving export controls, host nation requirements, Final Governing Standards, and Government-to-Government agreements, and that the contractor’s responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of the information provided by the clause. The new language is consistent with the respondent’s recommendation and current DFARS language at 252.204–7008.

##### *B. Inventory Schedules*

*Comment:* A respondent stated that the requirement at DFARS 245.602–1 for “obtaining bills of material and reviewing recent purchases, and stock record entries” is not a part of the disposal process. The respondent commented that these duties require the plant clearance officer to have a working knowledge of every contract and that the process will drive up costs.

*DoD Response:* The proposed language at 245.602–1 exists today in the current DFARS at 245.7201. The proposed rule moved 245.7201 to subpart 245.6, and renamed the subpart Reporting, Reutilization, and Disposal, to conform with the FAR; however, the language at DFARS 245.602–1 has been

clarified to specify applicability only to termination inventory.

*Comment:* In reference to DFARS 245.602-1, Inventory disposal schedules, a respondent asked for guidance on when a physical count was required and suggested ways of addressing efficiency.

*DoD response:* Generally, the Government relies on quantity data provided by the contractor, and physical counts are usually required only if the plant clearance officer suspects data integrity issues; however, 245.602-1(2) has been clarified to specify potential methods of verifying quantities.

*Comment:* A respondent was concerned about the requirement at 252.245-70XX(b)(1)(i)(A) and (B) to provide Federal Supply Codes (FSCs) and manufacturer name, because this information is not always available or known.

*DoD Response:* The language at 252.245-7004(b)(1)(i)(A) and (B) has been modified in the final rule to require the FSC and manufacturer name only if the information is assigned and/or available.

*Comment:* A respondent recommended that new definitions for the terms “manufacturer name” and “manufacturer part number” be added at the clause at 252.245-70XX.

*DoD response:* These terms are used commonly; therefore, they have not been added to the definitions section of the clause.

*Comment:* In reference to 252.245-70XX(b), Inventory disposal schedules, a respondent recommended that the supplier name and part number be required for all items in Federal condition code A1 being reported as excess on inventory schedules.

*DoD Response:* The respondent’s recommendation would require reprogramming of the Plant Clearance Automated Redistribution and Screening System (PCARSS). The cost of such reprogramming would largely offset the marginal increase in reutilization realized.

### C. Sales of Surplus Property

*Comment:* In reference to 245.604-3, Sale of surplus property, a respondent suggested that risk-based techniques be used. For example, high value items should be treated differently, according to the respondent, from items with little potential for proceeds.

*DoD Response:* The language at 245.604-3(1) has been clarified to ensure that plant clearance officers consider the market potential of items prior to authorizing surplus sales and determine the best value sales approach.

*Comment:* A respondent recommended that 252.245-70XX(c), be changed to read “net proceeds.” The respondent cited the Federal Property Administration Act of 1949, which states that a portion of the proceeds goes to the “cost of the work.” The respondent also claimed that paragraph (c) conflicts with FAR 31.201-5 and ASTM International standard 2279-09, Establishing the Guiding Principles of Property Management (costs of sales may outweigh the return).

*DoD response:* The respondent’s recommendation implies that contractors are entitled to a share of sales proceeds to cover the contractor costs of conducting the sale. There is no basis for such policy or for otherwise directly reimbursing a contractor for costs incurred in conducting surplus property sales. Such action is a normal part of contractor responsibilities under the clause at FAR 52.245-1(b)(2). FAR 31.201-5 pertains to income, rebates, allowances, or other credits made to allowable costs. Because surplus property sales are a normal part of a contractor’s property management responsibilities under the clause at FAR 52.245-1(b)(2) and are typically provided by the contractor as an overhead function, FAR 31.201-5 has no application here. ASTM International standard 2279-09 is not germane to the issue of proper deposit of sales proceeds received under surplus sales.

*Comment:* A respondent recommended that a certification statement or a standard form providing the terms and conditions of the sale between the Government and buyer be provided at 252.245-70XX(e). The respondent also asked what the expectation is here.

*DoD Response:* The language exists today in 245.604. As indicated in the proposed rule, 245.604 has been updated and the language moved to the final rule clause at 252.245.70XX. Its requirements are an important policy safeguard to ensure the integrity of the surplus sales process.

*Comment:* A respondent requested that the language at 252.245-70XX(l)(2) be changed as follows, “(t)he Contractor shall solicit a sufficient number of bidders to obtain adequate competition and use informal invitations for bid unless the plant clearance officer approves use of formal bid procedures.”

*DoD Response:* The language, which has been revised and relocated to 252.245-7004(j)(4), specifies that informal bid procedures shall be used unless the plant clearance officer directs otherwise.

*Comment:* A respondent recommended that formal sales be considered a part of the Contract Data Requirements List (CDRL).

*DoD Response:* There is no basis for such policy. Including this on the CDRL would make the Government liable for directly reimbursing a contractor for costs incurred in conducting surplus property sales. However, such expenses are a normal part of contractor responsibilities under FAR 52.245-1(b)(2) and are not subject to direct reimbursement.

*Comment:* A respondent recommended removing the dollar threshold at 252.245-70XX(l)(6) and requiring the plant clearance officer, not the contractor, to send the sales notice to FedBizOps.

*DoD Response:* The plant clearance officer, not the contractor, is the appropriate sender of the sales notice; therefore, the requirement has been deleted. A more general requirement on the use of FedBizOps has been included in the DFARS companion resource, Procedures, Guidance, and Information (PGI) for the plant clearance officer.

*Comment:* A respondent recommended changing the second sentence of 252.245-70XX(e)(9)(7) to, “(b)id openings will be submitted to the plant clearance officer, either electronically or manually, two copies of the bid abstract.”

*DoD Response:* The language has been revised and relocated to paragraph (j)(8) of 252.245-7004, and clarifies that the contractor shall provide two copies of the bid abstract to the plant clearance officer.

*Comment:* A respondent recommended deleting the phrase “(f)orwarded to the plant clearance officer” from 252.245-70XX(c), Proceeds from sale of surplus inventory.

*DoD Response:* The language at 252.245-7004(c) has been clarified to require proceeds to be forwarded to the contracting officer or plant clearance officer, credited to the Government through a settlement agreement, credited to the contract, applied to the contract as directed by the contracting officer, or forwarded to the plant clearance officer unless otherwise provided for in the contract.

*Comment:* In reference to 252.245-70XX (l), a respondent asked if plant clearance officers must draw up and provide terms and conditions for the contractor to use on surplus sales. The respondent also requested that terms and conditions be included in this clause.

*DoD Response:* Contractors are required to use Government-provided sales terms and conditions. This is not

a new requirement. DCMA is leading an effort to revise and update the sales terms and conditions found today at 245.7309. Once completed, and in coordination with the Services, the sales terms and conditions will be incorporated into the DFARS. It should be noted that sales terms and conditions specific to demilitarization, mutilation, and destruction will remain within the clause at 252.245–7004 due to the general sensitivity of demilitarization, mutilation, and destruction actions.

#### D. Demilitarization, Mutilation, and Destruction

*Comment:* A respondent recommended that 252.245–70XX(e)(8) be deleted in its entirety and that special conditions be placed into the PGI, including that the agency must provide direction and funding.

*DoD Response:* It is incumbent upon the Government to provide the contractor, as part of contract terms and conditions, any demilitarization, mutilation, or destruction requirements (reference DoD 5000.2–R, paragraph C2.8.7., Demilitarization and Disposal Planning). No additional clarification is necessary.

*Comment:* A respondent requested confirmation that the requirement to validate disposal of contractor inventory in foreign countries at paragraph (d) of the clause at 252.245–70XX is a Government responsibility. The respondent also asked if validation takes place when the plant clearance officer reviews and accepts the bid and whether DCMA International should get involved. The respondent recommended indicating who has the responsibility, specifying that State Department approval is required, and adding a certification statement to the SF 1428 providing the validation to the contractor.

*DoD Response:* The language at DFARS 252.245–70XX(d) pertaining to disposal of contractor inventory overseas has been removed from the final rule. DFARS 252.245–7004, paragraph (g), has been clarified to ensure that disposal of contractor inventory located overseas is governed by contract terms and conditions. Additionally, the DoD responsibilities contained in the PGI sufficiently address this issue.

*Comment:* A respondent expressed concern that the language at DFARS 252.245–70XX could be interpreted as requiring the contractor to determine the appropriate level of demilitarization required; the respondent suggested clarifying the intent.

*DoD Response:* It is incumbent upon the Government to provide the

contractor with, as part of contract terms and conditions, any demilitarization, mutilation, or destruction requirements (reference DoD 5000.2–R, paragraph C2.8.7., Demilitarization and Disposal Planning). No additional clarification is needed.

#### E. Scrap Procedures

*Comment:* A respondent recommended deleting DFARS 252.245–70XX(j)(1), Contractor with an approved scrap procedure, in its entirety because the scrap procedures are typically incorporated within the contractor's property management system.

*DoD Response:* DoD agrees that a separate approval of contractor scrap procedures is neither practical nor necessary; however, the basic minimum requirements of an adequate scrap procedure are integral to proper application of the clause. Accordingly, the language referring to scrap procedure approvals at DFARS 252.245–70XX(j)(1) has been deleted from the final rule; the remaining language has been retained at paragraph (h) of 252.245–7004.

*Comment:* In reference to DFARS 252.245–70XX(j)(i)(ii), a respondent recommended retaining the current language found in DFARS 245.610–3(1)(iv)(B), as follows: “When commingling is approved, the net proceeds for contractors with an approved scrap procedure will ensure (that sales) proceeds are appropriately applied to an overhead account.”

*DoD Response:* While the requirement is still relevant, it is a normal part of a property administrator's oversight function; therefore, the language is more suitable to internal DoD component guidance, e.g., DCMA instructions.

*Comment:* A respondent recommended deleting the requirement for a scrap warranty at DFARS 252.245–70XX(j)(3).

*DoD Response:* The referenced language has been modified to allow Government discretion in requiring a scrap warranty.

*Comment:* A respondent recommended moving the requirements of DFARS 252.245–70XX(k), Disposal of contractor inventory for NATO cooperative services, to DFARS part 245 or providing clarification that its requirements are a Government responsibility.

*DoD Response:* The language has been deleted from the final rule clause, as DoD support to NATO cooperative projects is already covered under DFARS 225.871.

#### F. Other Changes

1. *Comment:* A respondent identified “untability” as a typographical error at DFARS 252.245–70XX(j)(1)(i).

*DoD Response:* The term has been changed to “accountability.”

2. *Comment:* A respondent stated that the proposed changes do a good job of cleaning up and consolidating the plant clearance process and that the new PGI for DFARS Case 2009–D008 also looks good.

*DoD Response:* Noted.

3. The following changes have been incorporated into the final rule based on internal DoD coordinations:

- Deleted the reference to FAR 52.245–2 at 245.107 because the FAR clause 52.245–2 is not a stand-alone clause and can only be used in conjunction with FAR 52.245–1;

- Added clarifying language on property condition at 245.602–1(3);

- Clarified that 245.602–1 applies only to termination inventory and that such inventory may be verified by appropriate technical personnel;

- Added clarifying language at 245.602–3 on disposition of contractor inventory in overseas locations; arrangement of inspection of property and security requirements; and consideration by the plant clearance officer of any special disposition requirements, such as demilitarization; and trade security requirements;
- Added 245.7101–5(d), Other disposal actions, to conform to the DD Form 1641;

- Added a caveat in the clause at 252.245–7004(b)(1) to use the Plant Clearance Automated Reutilization Screening System unless disposition instructions are otherwise included in the contract;

- Relocated paragraph (e) of the 252.245 clause to paragraph (j) to better align language with actual process;

- Deleted “Commerce control list” and “Munitions list items” from the definitions and added definitions of “Export-controlled items” and “Ineligible transferees” to the clause at 252.245–7004(a);

- Added the terms “mutilation/ destruction” and “mutilate/destroy,” as appropriate, after each instance of the term “demilitarization” for consistency with DoD policy;

- Deleted supply condition codes from 252.245–7004(b)(1), and added a hyperlink to DoD 4000.25–2–M;

- Added clarifying language for disposition of contractor inventory located in foreign countries to the clause at 252.245–7004;

- Modified language at 252.245–7004(h)(2) to allow the plant clearance

officer discretion in requiring scrap warranties;

- Added clarifying language at 252.245–7004(j)(9)(i) on verification of demilitarization actions by Government representatives, including use of DRMS Form 145 or equivalent; and

- Renumbered the DFARS text and clauses, as necessary.

### III. Executive Orders 12866 and 13563

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

### IV. Regulatory Flexibility Act

DoD 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 this final rule imposes no new requirements on small entities. The rule revises DFARS part 245, Government Property, to reflect the recent revisions to FAR part 45, Government Property. It makes no significant change to DoD policy for the management of Government property in the possession of contractors. No comments were received on the expected impact of this rule on small entities in response to publication of the proposed rule.

### V. Paperwork Reduction Act

The information collection requirements of the Defense Federal Acquisition Regulation Supplement (DFARS) part 245, Government Property, related clauses in DFARS part 252, and related forms in DFARS part 253, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0704–0246. No new information collection requirements are imposed by this final rule.

### List of Subjects in 48 CFR Parts 201, 245, and 252

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 201, 245, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 201; 245, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

### PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Add section 201.670 to read as follows:

#### 201.670 Appointment of property administrators and plant clearance officers.

(a) The appropriate agency authority shall appoint or terminate (in writing) property administrators and plant clearance officers.

(b) In appointing qualified property administrators and plant clearance officers, the appointing authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

### PART 245—GOVERNMENT PROPERTY

■ 3. Amend section 245.107 by adding paragraph (e) to read as follows:

#### 245.107 Contract clauses.

\* \* \* \* \*

(d) Use the clause at 252.245–7004, Reporting, Reutilization, and Disposal, in solicitations and contracts that contain the clause at FAR 52.245–1, Government Property.

■ 4. Add subpart 245.5, consisting of section 245.570, to read as follows:

#### Subpart 245.5—Support Government Property Administration

##### 245.570 Storage at the Government's expense.

All storage contracts or agreements shall be separately priced and shall include all costs associated with the storage.

■ 5. Revise subpart 245.6 to read as follows:

#### Subpart 245.6—Reporting, Reutilization, and Disposal

Sec.

245.602 Reutilization of Government property.

245.602–1 Inventory disposal schedules.

245.602–3 Screening.

245.602–70 Plant clearance procedures.

245.604 Disposal of surplus property.

245.604–3 Sale of surplus property.

### Subpart 245.6—Reporting, Reutilization, and Disposal

#### 245.602 Reutilization of Government property.

##### 245.602–1 Inventory disposal schedules.

For termination inventory, plant clearance officers shall verify inventory schedules, either directly or through appropriate technical personnel, to determine the following:

(a) *Allocability.*

(1) Review contract requirements, delivery schedules, bills of material, and other pertinent documents to determine whether schedules include property that—

(i) Is appropriate for use on the contract; or

(ii) Exceeds the quantity required for completion of the contract, but could be diverted to other commercial work or Government use.

(2) Review the contractor's—

(i) Recent purchases of similar material;

(ii) Plans for current and scheduled production;

(iii) Stock record entries; and

(iv) Bills of material for similar items.

(b) *Quantity.* Take measures to provide assurance that available inventory is in accordance with quantities listed on the inventory schedules. Quantities may be verified by actual item count, acceptance of labeled quantities in unopened/sealed packages, scale counts, or other appropriate methods.

(c) *Condition.* Ensure that the physical condition of the property is reasonably consistent with the Federal Condition Code supplied by the contractor.

##### 245.602–3 Screening.

Property will be screened DoD-wide, including the contracting agency, requiring agency, and, as appropriate, the General Services Administration. The requiring agency shall have priority for retention of listed items. All required screening must be completed before any sale of contractor inventory, including contractor inventory in overseas locations (foreign excess personal property) can take place. Upon request of the prospective reutilization, transfer, donation, or sales customer, the plant clearance officer shall arrange for inspection of property at the contractor's plant in such a manner as to avoid interruption of the contractor's operations, and consistent with any security requirements.

**245.602–70 Plant clearance procedures.**

Follow the procedures at PGI 245.602–70 for establishing and processing a plant clearance case.

**245.604 Disposal of surplus property.****245.604–3 Sale of surplus property.**

(a) Plant clearance officers shall determine a best value sales approach (formal or informal sales), to include due consideration for costs, risks, and benefits, e.g., potential sales proceeds.

(b) *Informal bid procedures.* The plant clearance officer may direct the contractor to issue informal invitations for bid (orally, telephonically, or by other informal media), provided—

- (1) Maximum practical competition is obtained;
- (2) Sources solicited are recorded; and
- (3) Informal bids are confirmed in writing.

(c) *Sale approval and award.* Plant clearance officers shall—

(1) Evaluate bids to establish that the sale price is fair and reasonable, taking into consideration—

- (i) Knowledge or tests of the market;
- (ii) Current published prices for the property;
- (iii) The nature, condition, quantity, and location of the property; and
- (iv) Past sale history for like or similar items;

(2) Approve award to the responsible bidder whose bid is most advantageous to the Government. The plant clearance officer shall not approve award to any bidder who is an ineligible transferee, as defined in 252.245–7004, Reporting, Reutilization, and Disposal; and

(3) Notify the contractor of the bidder to whom an award will be made within five working days from receipt of bids.

(d) *Noncompetitive sales.*

(1) Noncompetitive sales include purchases or retention at less than cost by the contractor. Noncompetitive sales may be made when—

- (i) The plant clearance officer determines that this method is essential to expeditious plant clearance; and
- (ii) The Government's interests are adequately protected.

(2) Noncompetitive sales shall be at fair and reasonable prices, not less than those reasonably expected under competitive sales.

(3) Conditions justifying noncompetitive sales are—

- (i) No acceptable bids are received under competitive sale;
- (ii) Anticipated sales proceeds do not warrant competitive sale;
- (iii) Specialized nature of the property would not create bidder interest;
- (iv) Removal of the property would reduce its value or result in disproportionate handling expenses; or

(v) Such action is essential to the Government's interests.

(e) Plant clearance officers shall consider any special disposal requirements such as demilitarization or trade security control requirements in accordance with DoDM 4160.28–M, Defense Demilitarization Manual, and DoDI 2030.08, Implementation of Trade Security Controls, respectively (See PGI 245.6.)]

**Subpart 245.70—[Removed]**

- 6. Remove subpart 245.70.

**Subpart 245.71—[Redesignated as Subpart 245.70]**

- 7a. Redesignate subpart 245.71 as subpart 245.70.

- 7b. Revise newly redesignated subpart 245.70 to read as follows:

**Subpart 245.70—Plant Clearance Forms**

Sec.

245.7001 Forms.

245.7001–1 Standard Form 97, Certificate of Release of a Motor Vehicle (Agency Record Copy).

245.7001–2 DD Form 1149, Requisition and Invoice Shipping Document.

245.7001–3 DD Form 1348–1, DoD Single Line Item Release/Receipt Document.

245.7001–4 DD Form 1640, Request for Plant Clearance.

245.7001–5 DD Form 1641, Disposal Determination/Approval.

245.7001–6 Defense Logistics Agency Form 1822, End Use Certificate.

**Subpart 245.70—Plant Clearance Forms****245.7001 Forms.**

Use the forms listed below in performance of plant clearance actions.

**245.7001–1 Standard Form 97, Certificate of Release of a Motor Vehicle (Agency Record Copy).**

Use for transfers, donations, and sales of motor vehicles. The contracting officer shall execute the SF 97 and furnish it to the purchaser.

**245.7001–2 DD Form 1149, Requisition and Invoice Shipping Document.**

Use for transfer and donation of contractor inventory.

**245.7001–3 DD Form 1348–1, DoD Single Line Item Release/Receipt Document.**

Use when authorized by the plant clearance officer.

**245.7001–4 DD Form 1640, Request for Plant Clearance.**

Use to request plant clearance assistance or transfer plant clearance.

**245.7001–5 DD Form 1641, Disposal Determination/Approval.**

Use to record rationale for the following disposal determinations:

- (a) Downgrade useable property to scrap.
- (b) Abandonment or destruction.
- (c) Noncompetitive sale of surplus property.
- (d) Other disposal actions.

**245.7001–6, DD Form 1822, End Use Certificate.**

Use when directed by the plant clearance officer.

**Subpart 245.72—[Removed]**

- 8. Subpart 245.72 is removed.

**Subpart 245.73—[Removed]**

- 9. Subpart 245.73 is removed.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

- 10. Add section 252.245–7004 to read as follows:

**252.245–7004 Reporting, Reutilization, and Disposal.**

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

**REPORTING, REUTILIZATION, AND DISPOSAL (AUG 2011)**

(a) *Definitions.* As used in this clause—

- (1) *Demilitarization* means the act of eliminating the functional capabilities and inherent military design features from DoD personal property. Methods and degree range from removal and destruction of critical features to total destruction by cutting, tearing, crushing, mangling, shredding, melting, burning, etc.

(2) *Export-controlled items* means items subject to the Export Administration Regulations (EAR) (15 CFR parts 730–774) or the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The term includes—

- (i) *Defense items*, defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, etc.; and
- (ii) *Items*, defined in the EAR as “commodities,” “software,” and “technology,” terms that are also defined in the EAR, 15 CFR 772.1.

(3) *Ineligible transferees* means individuals, entities, or countries—

- (i) Excluded from Federal programs by the General Services Administration as identified in the Excluded Parties Listing System (EPLS) (<https://www.epls.gov/>);
- (ii) Delinquent on obligations to the U.S. Government under surplus sales contracts;
- (iii) Designated by the Department of Defense as ineligible, debarred, or suspended from defense contracts; or
- (iv) Subject to denial, debarment, or other sanctions under export control laws and related laws and regulations, and orders

administered by the Department of State, the Department of Commerce, the Department of Homeland Security, or the Department of the Treasury.

(4) *Scrap* means property that has no value except for its basic material content. For purposes of demilitarization, scrap is defined as recyclable waste and discarded materials derived from items that have been rendered useless beyond repair, rehabilitation, or restoration such that the item's original identity, utility, form, fit, and function have been destroyed. Items can be classified as scrap if processed by cutting, tearing, crushing, mangling, shredding, or melting. Intact or recognizable components and parts are not "scrap."

(5) *Serviceable or usable property* means property with potential for reutilization or sale "as is" or with minor repairs or alterations.

(b) *Inventory disposal schedules*. Unless disposition instructions are otherwise included in this contract, the Contractor shall complete SF 1428, Inventory Schedule B, within the Plant Clearance Automated Reutilization Screening System (PCARSS). Information on PCARSS can be obtained from the plant clearance officer and at <http://www.dcmi.mil/ITCSO/CBT/PCARSS/index.cfm>.

(1) The SF 1428 shall contain the following:

(i) If known, the applicable Federal Supply Code (FSC) for all items, except items in scrap condition.

(ii) If known, the manufacturer name for all aircraft components under Federal Supply Group (FSG) 16 or 17 and FSCs 2620, 2810, 2915, 2925, 2935, 2945, 2995, 4920, 5821, 5826, 5841, 6340, and 6615.

(iii) The manufacturer name, make, model number, model year, and serial number for all aircraft under FSCs 1510 and 1520.

(iv) Appropriate Federal Condition Codes. See Appendix 2 of DoD 4000.25-2, Military Standard Transaction Reporting and Accounting Procedures manual, edition in effect as of the date of this contract. Information on Federal Condition Codes can be obtained at [http://www.DLA.Mil/J-6/DLMSO/Elibrary/Manuals/Milstrap/AP2\\_Index.asp](http://www.DLA.Mil/J-6/DLMSO/Elibrary/Manuals/Milstrap/AP2_Index.asp).

(2) If the schedules are acceptable, the plant clearance officer shall complete and send the Contractor a DD Form 1637, Notice of Acceptance of Inventory.

(c) *Proceeds from sales of surplus property*. Unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be—

(1) Forwarded to the Contracting Officer;

(2) Credited to the Government as part of the settlement agreement;

(3) Credited to the price or cost of the contract; or

(4) Applied as otherwise directed by the Contracting Officer.

(d) *Demilitarization, mutilation, and destruction*. If demilitarization, mutilation, or destruction of contractor inventory is required, the Contractor shall demilitarize, mutilate, or destroy contractor inventory, in accordance with the terms and conditions of the contract and consistent with Defense Demilitarization Manual, DoDM 4160.28-M,

edition in effect as of the date of this contract. The plant clearance officer may authorize the purchaser to demilitarize, mutilate, or destroy as a condition of sale provided the property is not inherently dangerous to public health and safety.

(e) *Classified Contractor inventory*. The Contractor shall dispose of classified contractor inventory in accordance with applicable security guides and regulations or as directed by the Contracting Officer.

(f) *Inherently dangerous Contractor inventory*. Contractor inventory dangerous to public health or safety shall not be disposed of unless rendered innocuous or until adequate safeguards are provided.

(g) *Contractor inventory located in foreign countries*. Consistent with contract terms and conditions, property disposition shall be in accordance with foreign and U.S. laws and regulations, including laws and regulations involving export controls, host nation requirements, Final Governing Standards, and Government-to-Government agreements. The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(h) *Disposal of scrap*. (1) *Contractor with scrap procedures*. (i) The Contractor shall include within its property management procedure, a process for the accountability and management of Government-owned scrap. The process shall, at a minimum, provide for the effective and efficient disposition of scrap, including sales to scrap dealers, so as to minimize costs, maximize sales proceeds, and, contain the necessary internal controls for mitigating the improper release of non-scrap property.

(ii) The Contractor may commingle Government and contractor-owned scrap and provide routine disposal of scrap, with plant clearance officer concurrence, when determined to be effective and efficient.

(2) *Scrap warranty*. The plant clearance officer may require the Contractor to secure from scrap buyers a DD Form 1639, Scrap Warranty.

(i) *Sale of surplus Contractor inventory*.

(1) The Contractor shall conduct sales of contractor inventory (both useable property and scrap) in accordance with the requirements of this contract and plant clearance officer direction.

(2) Any sales contracts or other documents transferring title shall include the following statement:

"The Purchaser certifies that the property covered by this contract will be used in (name of country). In the event of resale or export by the Purchaser of any of the property, the Purchaser agrees to obtain the appropriate U.S. and foreign export or re-export license approval."

(j) *Restrictions on purchase or retention of Contractor inventory*. (1) The Contractor may not knowingly sell the inventory to any person or that person's agent, employee, or household member if that person—

(i) Is a civilian employee of the DoD or the U.S. Coast Guard;

(ii) Is a member of the armed forces of the United States, including the U.S. Coast Guard; or

(iii) Has any functional or supervisory responsibilities for or within the DoD's property disposal/disposition or plant clearance programs or for the disposal of contractor inventory.

(2) The Contractor may conduct Internet-based sales, to include use of a third party.

(3) If the Contractor wishes to bid on the sale, the Contractor or its employees shall submit bids to the plant clearance officer prior to soliciting bids from other prospective bidders.

(4) The Contractor shall solicit a sufficient number of bidders to obtain adequate competition. Informal bid procedures shall be used, unless the plant clearance officer directs otherwise. The Contractor shall include in its invitation for bids, the sales terms and conditions provided by the plant clearance officer.

(5) The Contractor shall solicit bids at least 15 calendar days before bid opening to allow adequate opportunity to inspect the property and prepare bids.

(6) For large sales, the Contractor may use summary lists of items offered as bid sheets with detailed descriptions attached.

(7) In addition to mailing or delivering notice of the proposed sale to prospective bidders, the Contractor may (when the results are expected to justify the additional expense) display a notice of the proposed sale in appropriate public places, e.g., publish a sales notice on the Internet in appropriate trade journals or magazines and local newspapers.

(8) The plant clearance officer or representative will witness the bid opening. The Contractor shall submit, either electronically or manually, two copies of the bid abstract.

(9) The following terms and conditions shall be included in sales contracts involving the demilitarization, mutilation, or destruction of property:

(i) *Demilitarization, mutilation, or destruction on Contractor or subcontractor premises*. Item(s) \_\_\_ require demilitarization, mutilation, or destruction by the Purchaser. Insert item number(s) and specific demilitarization, mutilation, or destruction requirements for item(s) shown in Defense Demilitarization Manual, DoDM 4160.28-M, edition in effect as of the date of this contract. Demilitarization shall be witnessed and verified by a Government representative using DRMS Form 145 or equivalent.

(ii) *Demilitarization, mutilation, or destruction off Contractor or subcontractor premises*.

(A) Item(s) \_\_\_ require demilitarization, mutilation, or destruction by the Purchaser. Insert item number(s) and specific demilitarization, mutilation, or destruction requirements for item(s) shown in Defense Demilitarization Manual, DoDM 4160.28-M, edition in effect as of the date of this contract. Demilitarization shall be witnessed and verified by a Government representative using DRMS Form 145 or equivalent.

(B) Property requiring demilitarization shall not be removed, and title shall not pass to the Purchaser, until demilitarization has been accomplished and verified by a Government representative. Demilitarization

will be accomplished as specified in the sales contract. Demilitarization shall be witnessed and verified by a Government representative using DRMS Form 145 or equivalent.

(C) The Purchaser agrees to assume all costs incident to the demilitarization and to restore the working area to its present condition after removing the demilitarized property.

(iii) *Failure to demilitarize.* If the Purchaser fails to demilitarize, mutilate, or destroy the property as specified in the contract, the Contractor may, upon giving 10 days written notice from date of mailing to the Purchaser—

(A) Repossess, demilitarize, and return the property to the Purchaser, in which case the Purchaser hereby agrees to pay to the Contractor, prior to the return of the property, all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property;

(B) Repossess, demilitarize, and resell the property, and charge the defaulting Purchaser with all costs incurred by the Contractor. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the costs exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor; or

(C) Repossess and resell the property under similar terms and conditions. In the event this option is exercised, the Contractor shall charge the defaulting Purchaser with all costs incurred by the Contractor. The Contractor shall deduct these costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the excess costs to the Contractor exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor.

(End of clause)

[FR Doc. 2011–20530 Filed 8–18–11; 8:45 am]

**BILLING CODE 5001–08–P**