

Subpart 1845.3—Providing Government Property to Contractors

1845.301 Definitions.

Facilities, as defined in the FAR, also include real property and commercially available equipment, whether owned or leased by NASA or reimbursed as a cost under the contract.

Provide, as used in this subpart in such phrases as “Government property provided to the contractor” and “Government-provided property,” means either to furnish, as in “Government-furnished property,” or to permit to be acquired, as in “contractor-acquired property.” See FAR 45.101 for definitions of “contractor-acquired property” and “Government-furnished property.”

1845.302 Providing facilities.

1845.302–1 Policy. (NASA supplements paragraph (a))

(a) In addition to the exceptions listed in FAR 45.302–1(a), existing NASA-owned facilities (whether contractor acquired or government furnished) being used by a contractor may be retained for the remainder of the contract period and furnished under any follow-on contract for the same effort if the contracting officer determines that to do so would be in the best interest of the Government, provided that:

(i) The facilities are required to accomplish the purpose of the contract;

(ii) The contract contains a provision requiring the contractor to replace any of the facilities that reach the end of their useful life during the contract period, or which are beyond economical repair, if the facilities are still needed for contract performance. Such replacements shall be made with contractor-owned facilities. The contract provision shall also expressly prohibit contractor acquisitions of facility items for the Government, unless specifically authorized by the contract or consent has been obtained in writing from the contracting officer pursuant to FAR 45.302–1(a);

(iii) Consideration has been given to any alternative uses by Government personnel within the agency, in con-

sultation with the center industrial property officer; and

(iv) The contracting officer documents the file with a detailed explanation of why continued furnishing of the facilities is in the best interest of the Government.

(a)(4)(A) The procurement officer is designated to make the determinations and findings (D&F) authorizing the use of Government facilities. See 1845.302–71 for D&F format.

(B) The requirements for a D&F and a prospective contractor’s written statement asserting inability to obtain facilities are not applicable in the circumstances listed under FAR 45.302–1(d). In these cases, the contracting officer shall document the contract file with the rationale for providing the facilities, including the reason for not requiring the contractor to provide them.

1845.302–2 Facilities contracts.

Unless termination would be detrimental to the Government’s interests, contracting officers shall terminate facilities contracts when the Government property is no longer required for the performance of Government contracts or subcontracts. Contracting officers shall not grant the contractor the unilateral right to extend the time during which it is entitled to use the property provided under the facilities contract.

1845.302–70 Securing approval of facilities projects.

(a) Pursuant to NMI 7330.1, Delegation of Authority—Approval Authorities for Facility Projects, the contracting officer must approve facilities projects involving leasing, construction, expansion, modification, rehabilitation, repair, or replacement of real property.

(b) The contracting officer’s written authorization is required before any change is made in the scope or estimated cost of any facilities project.

1845.302–71 Determination and findings.

(a) Procedure. Determination and findings (D&F) required under FAR 45.302–1(a)(4) and 1845.302–1(a)(4) shall be prepared by the contracting officer

and approved by the procurement officer. Prior to approval, concurrence must be obtained from the SEMO to ensure agreement on the use of the government facilities by the contractor. D&Fs shall address individual types of facilities to be provided to the contractor. Reference to specific variations in quantities of items to be provided should be included in the D&F if additional requirements are anticipated. A separate D&F is required before adding new types of items or significant changes in quantity or before adding any new work to the contract that requires additional Government facilities.

(b) Format. A sample format follows:

National Aeronautics and Space
Administration, Washington, DC 20546

Determination and Findings

Decision To Provide Government Facilities

On the basis of the following findings and determinations, Government-owned facilities may be provided to [insert the name of the contractor] pursuant to the authority of FAR 45.302-1(a)(4).

FINDINGS

1. The [insert the name of the contracting activity] and the contractor (have entered/ (proposed to enter) into Contract No. [Insert the contract number]. (Include the following information: Type of contract, contract value, and a brief description of the scope of work performed under the contract.)

2. (Justify that Government facilities are needed for performance under the contract. The justification shall demonstrate either (i) that the contract cannot be fulfilled by any other means, or (ii) that it is in the public interest to provide the facilities. It is imperative that the justification be fully substantiated by evidence.)

3. (If the contract effort cannot be fulfilled by any other means, indicate why the contractor cannot provide the facilities. For example, due to financial constraints, the contractor will replace the Government facilities with contractor-owned facilities. Address leadtime, validate the contractor's claims, and state that private financing was sought and either not available or not advantageous to the Government. If private financing was not advantageous to the Government, provide justification. Indicate other alternatives considered and reasons for rejection.)

4. (Describe the types of facilities to be provided and any variation in quantities of items based on functional requirements. Explain how these facilities pertain to the

scope of work to be completed. State that the contract cannot be accomplished without the specified facility items being provided. Include an estimate of the value of the facilities and a statement that no facilities items under \$10,000 unit cost will be provided unless the contractor is a nonprofit, on-site, or the facilities are only available from the Government.

5. (Indicate whether the property will be accountable under this contract or a separate facilities contract.)

Determination

For the reasons set forth above, it is hereby determined that the Government-owned facilities identified herein will be provided to the contractor.

Procurement Officer _____

Date _____

Subpart 1845.4—Contractor Use and Rental of Government Property

1845.402 Authorizing use of Government production and research property. (NASA supplements paragraph (a))

(a)(i) A NASA contracting officer desiring to authorize use of Government property under the cognizance of another contracting officer shall obtain that contracting officer's concurrence.

(ii) NASA contracting officers having cognizance over NASA property may authorize its use on contracts of other agencies if such use will not interfere with NASA's primary purpose for the property and will not extend beyond the expected expiration or completion date of the NASA contract.

1845.403 Rental—Use and Charges clause. (NASA supplements paragraph (a))

(a) The Center Director is designated as the authority to make the determinations on modified rental rates.

1845.405 Contracts with foreign governments or international organizations.

1845.405-70 NASA procedures.

(a) NASA policy is to recover a fair share of the cost of Government production and research property if such property is used in performing services or manufacturing articles for foreign