

## Federal Acquisition Regulation

45.402

completion or termination or within a reasonable time thereafter (for example, the provision may require the contractor to purchase the property at a value determined by appraisal or at a price equal to its acquisition cost less depreciation at a specified rate);

(2) An option for the Government to acquire the underlying land; or

(3) An alternative provision that the agency head considers adequate to protect the Government's interests.

(b) If patent or other proprietary rights of a contractor may restrict the disposal of Government production and research property, the condition in either paragraph (a)(1) or (a)(3) above shall be satisfied before the property is provided.

(c) If Government production and research property is not available to all offerors, the solicitation shall identify the offerors to whom the property is available.

### **45.310 Providing agency-peculiar property.**

(a) Agency-peculiar property may be furnished to contractors when necessary for use as a standard or model, for testing the contractor's end item where suitable commercial equipment is not available, to establish equipment compatibility, or for other reasons that the contracting officer determines to be in the Government's interest.

(b) Agency-peculiar property may be furnished under a facilities contract, a supply or service contract containing the appropriate Government Property clause, or a special bailment agreement.

(c) Contracting officers shall provide special instructions for security, liability, maintenance, and/or property control, when agency-peculiar property requires special handling or safeguards.

### **45.311 Providing Government property by transfer.**

Government property shall be transferred only if there is a requirement under the gaining contract. Transfers of Government property, as Government-furnished property, shall be documented by a modification to the gaining contract. A modification or other documentation listing all items of

property transferred is required for the losing contract.

[59 FR 67054, Dec. 28, 1994]

## **Subpart 45.4—Contractor Use and Rental of Government Property**

### **45.400 Scope of subpart.**

This subpart prescribes policies and procedures for contractor use and rental of Government production and research property.

### **45.401 Policy.**

In performing Government contracts or subcontracts, Government production and research property in the possession of contractors or subcontractors shall be used to the greatest possible extent, provided that a competitive advantage is not conferred on the contractor or its subcontractors (see subpart 45.2). Prior approval of the contracting officer having cognizance of Government production and research property is required for any use, whether Government or non-Government, to ensure that the Government receives adequate consideration. Government use is defined as use in support of U.S. Government contracts and non-Government use is all other use (including direct commercial sales to domestic and foreign customers). As a general rule, Government use is on a rent-free basis. Non-Government use is on a rental basis. When Government production and research property is no longer required for the performance of Government contracts or subcontracts, it shall not continue to be made available to a contractor for non-Government use.

[51 FR 19717, May 30, 1986]

### **45.402 Authorizing use of Government production and research property.**

(a) Contracting officers who believe it to be in the Government's interest for a prospective contractor or subcontractor to use existing Government production and research property shall authorize such use in the contract. The contracting officer shall confirm the availability of the property before authorizing its use on either a rental or rent-free basis.

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(b) Unless the solicitation provides for the successful offeror to use Government production and research property in the offeror's possession, the solicitation shall require any offeror desiring to use such property to request the written concurrence of the contracting officer cognizant of the property. To preclude a competitive advantage, the contracting officer's concurrence should include any information required by subpart 45.2.

(c) The contracting officer shall review the contractor's request for non-Government use of Government production and research property when the property is no longer required for performing Government contracts but is retained for spares or for mobilization and readiness requirements. (Also see 45.302-1(b)(3).)

#### 45.403 Rental—Use and Charges clause.

(a) The contracting officer shall charge contractors rent for using Government production and research property, except as prescribed in 45.404 and 45.405. Rent shall be computed in accordance with the clause at 52.245-9, Use and Charges. If the agency head or designee determines it to be in the Government's interest, rent for classes of production and research property other than plant equipment identified in item (ii) of Table I of the clause at 52.245-9, Use and Charges, may be charged on the basis of use rather than the rental period, or on some other equitable basis. In such cases, the clause at 52.245-9, Use and Charges, shall be appropriately modified.

(b) The contracting officer cognizant of the Government production and research property shall ensure the collection of any rent due the Government from the contractor.

#### 45.404 Rent-free use.

(a) The rental required by 45.403 above does not apply to the following Government production and research property:

(1) That which is located in Government-owned, contractor-operated plants operated on a cost-plus-fee basis (but see 45.405).

(2) That which is left in place or installed on contractor-owned property

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for mobilization or future Government production purposes. However, rent computed in accordance with 45.403(a) shall apply to that portion of property or its capacity used or authorized for use.

(3) Items of equipment that are part of a general program approved by the Federal Emergency Management Agency (FEMA) and present unusual problems in relation to the time required for their preparation for shipment, installation, and operation because of size, complexity, or performance characteristics.

(4) Any other Government production and research property that may be excepted by FEMA.

(b) The contracting officer cognizant of the Government production and research property may grant written authorization for rent-free use of production and research property in the possession of nonprofit organizations when used for research, development, or educational work and—

(1) The use of the property is directly or indirectly in the national interest;

(2) The property will not be used for the direct benefit of a profitmaking organization; and

(3) The Government receives some direct benefit (such as rights to use the results of the work without charge) from its use. As a minimum, the contractor shall furnish a report on the work for which the property was provided.

(c) If the contracting officer has obtained adequate price or other consideration, Government production and research property may also be used rent-free under—

(1) Prime contracts that specifically authorize such use without charge; and

(2) Subcontracts of any tier, if the contracting officer awarding the prime contract has specifically authorized rent-free use by the subcontractor.

(d) After award, a contract may be modified to eliminate rent for using Government production and research property. In this case, the contract shall be equitably adjusted to reflect the elimination of rent and any other amount attributable thereto.