

45.302

contract, means property used for production, maintenance, research, development, or testing. It includes plant equipment and real property (see 45.101). It does not include material, special test equipment, special tooling, or agency-peculiar property.

Facilities contract, as used in this subpart, means a contract under which Government facilities are provided to a contractor or subcontractor by the Government for use in connection with performing one or more related contracts for supplies or services. It is used occasionally to provide special tooling or special test equipment. Facilities contracts may take any of the following forms:

(a) A facilities acquisition contract providing for the acquisition, construction, and installation of facilities.

(b) A facilities use contract providing for the use, maintenance, accountability, and disposition of facilities.

(c) A consolidated facilities contract, which is a combination of a facilities acquisition and a facilities use contract.

Government production and research property, as used in this subpart, means Government-owned facilities, Government-owned special test equipment, and special tooling to which the Government has title or the right to acquire title.

Material, as used in this subpart, means property that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. It includes assemblies, components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract.

Nonprofit organization, as used in this subpart, means any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Nonseverable, as used in this subpart, when related to Government production and research property, means property that cannot be removed after erection or installation without substantial loss of value or damage to the

48 CFR Ch. 1 (10-1-06 Edition)

property or to the premises where installed.

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45.302 Providing facilities.

45.302-1 Policy.

(a) Contractors shall furnish all facilities required for performing Government contracts except as provided in this subsection. Government facilities provided to contractors shall be individually identified in the solicitation, if possible, and contract. Agencies shall not furnish facilities to contractors for any purpose, including restoration, replacement, or modernization, except as follows:

(1) For use in a Government-owned, contractor-operated plant operated on a cost-plus-fee basis.

(2) For support of industrial preparedness programs.

(3) As components of special tooling or special test equipment acquired or fabricated at Government expense.

(4) When, as a result of the prospective contractor's written statement asserting inability to obtain facilities, the agency head or designee issues a Determination and Finding (see subpart 1.7) that the contract cannot be fulfilled by any other practical means or that it is in the public interest to provide the facilities.

(i) If the contractor's inability to provide facilities is due to insufficient lead time, the Government may provide existing facilities until the contractor's facilities can be installed.

(ii) Mere assertion by a contractor that it is unable to provide facilities is not, in itself, sufficient to justify approval. Appropriate Government officials must determine that providing Government facilities is justified.

(iii) The determination shall include findings that private financing of the facilities was sought but not available or that private financing was determined not advantageous to the Government. The determination shall also state that the contract cannot be accomplished without Government facilities being provided.

(iv) The original determination shall be included in the contract file.