



June 29, 2010

Defense Acquisition Regulations System
Attn: Ms. Mary Overstreet
OUSD (AT&L) DPAP (DARS)
3060 Defense Pentagon, Room 3B855
Washington, D.C. 20301-3060

Subject: DFARS Case 2008-D049, Reporting of Government Property Lost, Stolen, Damaged, or Destroyed

Dear Ms. Overstreet:

The Aerospace Industries Association (AIA), on behalf of its over 300 member companies, is pleased to respond to the request for comments published in the April 30, 2010, Federal Register, regarding reporting on lost, stolen, damaged, or destroyed Government property. AIA companies embody every high-technology manufacturing segment of the U.S. aerospace and defense industry from commercial aviation and avionics, to manned and unmanned defense systems, to space technologies and satellite communications. The proposed rule would amend the Defense Federal Acquisition Regulation Supplement (DFARS) to require contractors to report loss, theft, damage, and destruction (LTDD) of government property utilizing the Defense Contract Management Agency "eTools" application.

AIA supports the intent of the proposed rule and believes that the rule would simplify reporting. We offer two comments to further improve this proposed rule. First, we recommend that a new definition be added to the final rule that would help in the decision making process when a loss occurs. This new definition would address materiality and provide a more accurate estimate of value for loss of Government owned property. Second, we recommend that the final rule use the term "loss" to define property that is lost, damaged, stolen, or destroyed in place of other terms. This new definition focuses on the "outcome" (mirroring the intent of the FAR Government Property clause 52.245-1 JUN 2007), rather than the "cause" of a loss, and would provide simplicity and consistency in application. Attached for your use is a matrix that shows our recommendations in the context of the proposed rule.

We appreciate your consideration of these comments. If you have any questions or need additional information, please do not hesitate to contact me. I may be reached by phone at 703-358-1087 or by e-mail at susan.tonner@aia-aerospace.org.

Sincerely,

A handwritten signature in black ink that reads 'Susan Tonner'.

Susan Tonner
Assistant Vice President, Acquisition Policy

Attachment

<p>[Federal Register Volume 75, Number 83 (Friday, April 30, 2010)] [Proposed Rules] [Pages 22729-22731] DEPARTMENT OF DEFENSE Defense Acquisition Regulations System 48 CFR Parts 245 and 252 RIN 0750-AG64</p>	<p>ADDRESSES: You may submit comments, identified by DFARS Case 2008-D049, using any of the following methods: Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. E-mail: dfars@osd.mil. Include DFARS Case 2008-D049 in the subject line of the message. Fax: 703-602-0350. Mail: Defense Acquisition Regulations System, Attn: Ms. Mary Overstreet, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060. Comments received generally will be posted without change to http://www.regulations.gov, including any personal information provided. FOR FURTHER INFORMATION CONTACT:</p>	<p>B. Regulatory Flexibility Act DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows: The objective of this rule is to provide DoD with a single repository of all LTDD data to improve accountability and control of DoD assets and contractor oversight. The rule generally will apply to DoD contractors provided with Government-furnished property. The proposed clause at 252.245-70XX Reporting Loss, Theft, Damage, or Destruction of Government Property, requires the contractor to use the Defense Contract Management Agency</p>	<p>C. Paperwork Reduction Act The information collection requirements under this proposed rule were formerly set forth under FAR 52.245-1(f)(vi), and have been approved by the Office of Management and Budget under Clearance Number 9000-0075. The requirements of this proposed rule are not expected to change significantly the burden hours approved under Clearance Number 9000-0075. List of Subjects in 48 CFR Parts 245 and 252 Government procurement. Ynette R. Shelkin, Editor, Defense Acquisition Regulations System.</p>
<p>Defense Federal Acquisition Regulation Supplement; Reporting of Government Property Lost, Stolen, Damaged, or Destroyed (DFARS Case 2008-D049) AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD). ACTION: Proposed rule with request for comments. ----- SUMMARY: DoD proposes to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to require contractors to</p>			

report loss, theft, damage, and destruction (LTDD) of Government property to the DCMA ``eTools`` application.

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DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 29, 2010 to be considered in the formation of the final rule.

Ms. Mary Overstreet,
703-602-0311.
SUPPLEMENTARY
INFORMATION:

A. Background

DoD is pursuing the migration from paper-based processes to greater use of automation. This proposed rule revises requirements for all DoD contractors to report the loss, theft, damage, and destruction (LTDD) of Government property to the DCMA ``eTools`` application.

``e-Tools`` software application for reporting of loss, damage, or destruction of Government property, which can be accessed from the DCMA homepage External Web Access Management application at <http://www.dcmsa.mil>. 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, and any such costs should be offset by the reduced administrative costs that are expected to result from implementation of this rule. At this time, DoD is unable to estimate the number of small entities to which this rule will apply. Therefore, DoD invites comments from small business concerns and other interested parties on

	<p>the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2008-D049) in correspondence.</p>		
<p>1. Therefore, DoD proposes to amend 48 CFR parts 245 and 252 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. Amend section 245.102 by adding paragraph (4) to read as follows:</p>			
<p>2. 245.102 Policy. * * * * * (4) Reporting of Government Property Lost, Damaged, Destroyed, or Stolen.</p>			

	<p>(i) The Defense Contract Management Agency (DCMA) 'e-Tools' software application shall be the DoD data repository for reporting of loss, theft, damage, or destruction of Government property in the possession of contractors. Reporting value shall be at acquisition cost. The 'e-Tools' system can be accessed from the DCMA home page External Web Access Management application at http://www.dcmsa.mil.</p>			
3.	<p>(ii) Unless otherwise provided for in the contract, the requirements of paragraph (4)(i) of this section do not apply to normal and reasonable inventory adjustments of 'low risk' consumable material such as common hardware, as agreed to by the contractor and Government Property Administrator. Such losses are typically a product of normal process variation.</p>			
4.	<p>(iii) Reporting requirements apply to losses outside such variation. For example, due to theft of; or when losses occur due to a failure to provide adequate storage or security, e.g., failure to repair a leaky roof; or due to 'acts of God,' e.g., tornado damages warehouse or stockroom.</p>			

5.	<p>(iv) The aforementioned reporting requirements in no way change the liability provisions or reporting requirements under the clauses at FAR 52.245-1, Government Property, or FAR 52.245-2, Government Property Installation Operation Services.</p>			
6	<p>4. Amend section 245.107-70 by revising the section heading, redesignating the introductory text as paragraph (1), and adding paragraph (2) to read as follows:</p>			
7	<p>245.107-70 Contract Clauses.</p> <p>(1) 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.</p> <p>(2) Use the clause at 252.245-70XX in solicitations and contracts that contain the clause at--</p> <p>(i) FAR 52.245-1, Government Property; or</p> <p>(ii) FAR 52.245-2, Government Property Installation Operation Services.</p>			
8	<p>PART 252--SOLICITATION PROVISIONS AND CONTRACT CLAUSES</p>			

<p>5. Section 252.245-70XX is added to read as follows:</p>	<p>252.245-70XX Reporting Loss, Theft, Damage, or Destruction of Government Property.</p> <p>As prescribed in 245.107-70, use the following clause:</p> <p>REPORTING LOSS, THEFT, DAMAGE, OR DESTRUCTION OF GOVERNMENT PROPERTY (DATE)</p>	<p>(a) Definitions. As used in this clause--</p> <p>Acquisition cost, for Government-furnished property, means the amount identified in the contract, or in the absence of such identification, the item's fair-market value.</p> <p>Government property means all property owned or leased by the Government.</p> <p>Government property includes both Government-furnished property and Contractor-acquired property. Government property consists of material, equipment, special tooling, special test equipment, and real property.</p>	<p>New Definition. This is more appropriate for decision making on a loss.</p>
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<p>10</p>			
<p>11</p>	<p>Estimated harm to the government: Direct and indirect costs associated with the loss, i.e. item is no longer used = scrap value less cost of disposition or item required = direct and indirect cost to replace. Consider residual value; replacements cost and care and handling cost.</p>		
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<p>13</p>	<p>(b) Policy for Contractor Reporting of Government Property Lost, Stolen, Damaged, or Destroyed.</p> <p>(1) The Contractor shall use the Defense Contract Management Agency (DCMA) 'e-Tools' software application for reporting of loss, theft, damage, or destruction of Government property. Reporting value shall be at acquisition cost. The 'e-Tools' system can be accessed from the DCMA home page External Web Access Management application at http://www.dcma.mil.</p>	<p>(b) Policy for Contractor Reporting of Government Property Losses.</p> <p>(1) The Contractor shall use the Defense Contract Management Agency (DCMA) 'e-Tools' software application for reporting of loss, of Government property. Reporting value shall be at acquisition cost and provide material information regarding the loss for decision making purposes. The 'e-Tools' system can be accessed from the DCMA home page External Web Access Management application at http://www.dcma.mil.</p>	<p>Define losses in the body to include damage, destruction and theft.</p> <p>Simplicity and consistency needs to be maintained.</p> <p>Need to address the materiality of the loss. Without this information, decision makers may be misled. Losses may be overstated.</p>	<p>Deleted: Lost</p> <p>Deleted: Stolen, Damaged, or Destroyed</p> <p>Deleted: theft, damage, or destruction</p>
<p>14</p>	<p>(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.</p>			

15	<p>(3) Reporting requirements apply to losses outside such variation. For example, due to theft of; or when losses occur due to a failure to provide adequate storage or security, e.g., failure to repair a leaky roof; or due to ``acts of God,`` e.g., tornado damages warehouse or stockroom.</p>		
16	<p>(4) The aforementioned reporting requirements in no way change the liability provisions or reporting requirements under the clauses at FAR 52.245-1, Government Property, or FAR 52.245-2, Government Property Installation Operation Services. (End of clause)</p>		
17	<p>[FR Doc. 2010-9890 Filed 4-29-10; 8:45 am] BILLING CODE 5001-08-P</p>		