

**Federal Acquisition Regulation; FAR Case 2008-011, Government Property – Proposed Rule – August 6, 2009
CODSIA Comments**

Line#	FEDERAL REGISTER	SUGGESTED CHANGE	RATIONALE
	PART 2--DEFINITIONS OF WORDS AND TERMS		
2	Amend section 2.101, in paragraph (b)(2), by removing from the definition “Plant clearance office” the words “contractor-operator plants, and Federal installations” and adding “contractor-operator plants, Federal installations and Federal and non-Federal industrial operations”, in its place; and removing from the definition “Special tooling” the words “test equipment, and” and adding “tooling, and” in its place.	Concur.	
	PART 4--ADMINISTRATIVE MATTERS		
3	Amend section 4.705-3 by adding paragraph (h) to read as follows: 4.705-3 -- Acquisition and Supply Records. * * * * * (h) Property records (see 45.101 and 52.245-11): Retain 4 years.	Provide clarification about the meaning of “property records” and “retain for 4 years”.. Specifically, what constitutes “records” in 45.101 Definitions, and when does the retention period start, upon, occurrence, disposition of property, upon final payment, upon contract close? Recommend that the retention period begin at disposition of property. Delete in 4.705(c) “consisting of equipment usage and status reports”	Clarification. Equipment usage logs and status reports are no longer required with the issuance of the current FAR 45 Government Property.
	PART 15 – CONTRACTING BY NEGOTIATION		

4	<p>Amend section 15.404-4 by adding a sentence to the end of paragraph (a)(3) to read as follows:</p> <p>15.404-4 Profit</p> <p>(a) * * *</p> <p>(3) * * * Unless the contractor acquired property is a deliverable under the contract, no profit or fee shall be permitted on the cost of the property.</p> <p>* * * * *</p>	Delete amendment.	Addressed in cover letter.
	PART 32 – CONTRACT FINANCING		
5	<p>Amend section 32.503-16 by removing from paragraph (a) “loss, theft, destruction, or damage to” and adding “lost, stolen, damaged, or destroyed in its place.</p>	<p>Change proposed amendment by removing from paragraph (a) “loss, theft, destruction, or damage to” and adding “loss” in its place.</p>	<p>Consistency and industry best practice.</p> <p>There is a need to consider the cost vs. benefit in how the traditional “Loss, Damage and Destruction” (LDD) is described – Loss, Damage, Destruction, and Theft (LDDT); Loss, Theft, Damage, and Destruction (LTDD) and now lost, stolen, damaged, or destroyed (LSDD).</p> <p>These small changes, without a substantial difference, cost a considerable amount of unnecessary time to discuss and implement changes to company forms and procedures - -- all with no corresponding benefit. Theft, damage, and destruction are all subsets of property loss. There is no requirement to individually capture these subsets. Simplicity should trump precision.</p> <p>This approach is consistent with commercial practices and definitions.</p>

6	Amend section 32.1010 by removing from paragraph (a) ``loss, theft, destruction, or damage to" and adding ``lost, stolen, damaged, or destroyed" in its place.	Change the proposed amendment by removing from paragraph (a) ``loss, theft, destruction, or damage to" and adding "loss" in its place.	See comments in line item #5 above.
	PART 42--CONTRACT ADMINISTRATION AND AUDIT SERVICES		
7	Amend section 42.302 by revising paragraphs (a)(30)(iii) and (a)(30)(v) to read as follows: 42.302 Contract administration functions. (a) * * * (30) * * * (iii) Evaluate the use of Government property on a non-interference basis in accordance with the clause at 52.245-9, Use and Charges; * * * * * (v) Modify contracts to reflect addition of Government furnished property and ensure appropriate consideration. * * * * *	Add to the following to the end of revised paragraph (a)(30)(iii): (iii) Evaluate the use of Government property on a non-interference basis in accordance with the clause at 52.245-9, Use and Charges; and guidance at 45.103(a)(4) with the maximum use of Government property already in the contractors' possession.	Clarification. Clarify the intent of the Government to maximize use and return on investment of Government Property with or without rental payments.
	PART 45--GOVERNMENT PROPERTY		
8	Amend section 45.101 by— a. Revising the definitions ``Cannibalize", ``Equipment", ``Government-furnished property", and ``Government property";	Change the amended definitions to read: Cannibalize means to remove worthwhile parts from property for probable use or installation on other property.	Clarification and correction. Proposed change to the amended definition will continue to reinforce the concept that cannibalization should be worthwhile.

	<p>b. Removing from the definition "Material" the words "test equipment" and adding "test equipment or real property" in its place;</p> <p>c. Removing the definition "Plant equipment";</p> <p>d. Adding the definition "Property records"; and</p> <p>e. Revising the definition "Real property."</p> <p>The revised and added text reads as follows:</p> <p>45.101 Definitions. * * * * *</p> <p>Cannibalize means to remove parts from equipment, special tooling or special test equipment in order to install them on other property. * * * * *</p> <p>Equipment means a tangible item that is functionally complete for its intended</p>	<p>Government-furnished property means property in the possession of the contractor that was directly acquired by the Government and subsequently furnished to the contractor for performance of a contract. Government-furnished property includes, but is not limited to spares and property furnished for repair, maintenance, overhaul, or modification. Contractor acquired property becomes Government furnished property upon delivery in place; by contract modification or reutilization transfers through plant clearance.</p> <p>Concur.</p> <p>Concur.</p> <p>Concur.</p> <p>Concur.</p>	<p>Incorporate all types of categories of property; e.g. equipment, special tooling or special test equipment; material; repairables</p> <p>All Government property in possession is not government furnished.</p> <p>Government furnished property may be in the form of equipment or material – repairables or expendables, etc. and may be transferred from a prior contract as deliverable.</p>
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purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use. Equipment does not include material or real property.

Government-furnished property means property in the possession of, or directly acquired by, the Government and subsequently furnished to the contractor for performance of a contract. Government-furnished property includes spares and property furnished for repair, maintenance, overhaul, or modification

Government property means all property owned or leased by the Government. Government property includes both Government-furnished property and contractor-acquired property. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property, and software.

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Property records means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

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	Real property. See Federal Management Regulation 102-71.20 (41 CFR 102-71.20.) * * * * *		
8a	Not Addressed	<p>Add the following new definition to 45.101</p> <p>Property loss(es) means unintended, unforeseen or accidental loss, damage and destruction to tangible Government property that reduces the government's expected economic benefits of the property. Loss includes items that cannot be found after a reasonable search that are probably lost or stolen. Losses are not routine inventory adjustments and clerical or process errors or omissions. Damages are unexpected harm to property that require repair to restore to usable condition. Destruction occurrences to property are those instances rendering the item useless for its intended purpose or beyond economical repair. Losses do not include purposeful destructive testing, loss in value due to business conditions, obsolescence or normal wear and tear, shrinkage or manufacturing defects. Property loss occurrences are deemed harmful to the government and are subject to paragraph (h) <i>Contractor Liability for Government Property of FAR 52.245-1 Government Property.</i></p>	<p>Completeness and clarity.</p> <p>A large portion of the modification of the proposed rule contains references to Loss, damage and destruction of government property, yet it is not defined. As such, no definition or loose application can mislead decision makers or cause unreasonable expenditure of indirect or direct costs to find things that are not worthwhile. Theft is a subset to loss and by giving it a separate standing infers a criminal act that generally needs to be proven.</p> <p>It is time to consider fewer words. "Loss" which is the industry term for such occurrences, would encompass all scenarios: the unexpected loss of property whether it is through loss, damage, destruction, theft, etc.</p>
9	Amend section 45.102 by revising paragraph (d) to read as follows: 45.102 Policy.	Concur.	

	<p>*****</p> <p>(d) Exception. Property provided under contracts for repair, maintenance, overhaul, or modification is not subject to the requirements of paragraph (b) of this section.</p>		
9a	Not Addressed	<p>Add the following new paragraph to 45.102:</p> <p>(e) It is the policy of the Federal Government to spend taxpayer dollars effectively, and more effectively each year. Agencies shall apply taxpayer resources efficiently in a manner that maximizes the effectiveness of Government programs in serving the American people.</p> <p>Those who have oversight of the management control, and accountability of Government property, as well as contractors who have possession of Government property, shall seek continuous process improvement in order to seek best value for customers. Processes must seek to minimize administrative operating costs. Materiality concepts apply. Processes and policies should only be promulgated to the extent when their benefits clearly exceed the costs of their development, implementation, administration, and enforcement.</p>	<p>Consistency.</p> <p>The existing policy statement policy does not provide the proper overall tone for effective and efficient property management. <i>Executive Order 13450 - Improving Government Programs</i> was not in existence when the 52-245-1 clause was released in 2007. It should be quoted in the FAR.</p> <p>Inefficient Government property management practices continue, in many cases, to cause the government to spend taxpayer resources less efficiently than need be.</p> <p>Frequently the property management clause is referenced as justification to continue inefficient and ineffective practices. Government contractors and Government oversight officials need to be reminded that the cost vs. benefits and materiality are constraints that must be recognized in order to achieve best value for the customer and the taxpayer.</p> <p>Frequently oversight officials do not consider cost vs. benefits and materiality and thus enforce uneconomical practices under the guise or based upon contract compliance or the elimination of risk.</p>

			The inserted paragraph recognizes the requirements of the executive order as well as the requirements in FAR Part 1.
9b	Not Addressed	Amend 45.103(a)(2) as follows: 45.103 General. (a) Agencies shall— (2) Eliminate to the maximum practical extent any competitive advantage during the contract award process a prospective contractor may have by using Government property;	Contractors have experienced a reluctance on the part of contracting officers to allow contractors to use Government property, even with rental charges, because of competitive advantage reasons. The additional words emphasizes that that consideration of competitive advantage only applies during the solicitation and award process. Thereafter maximum use property is desired to the best benefit of the Government.
10	Amend section 45.104 by revising the introductory text of paragraph (a) to read as follows: 45.104 Responsibility and liability for Government property. (a) Generally, contractors are not held liable for loss, theft, damage, or destruction of Government property under the following types of contracts: * * * * *	Change the proposed amendment by replacing "loss, theft, damage, or destruction" with "loss" so that the amended paragraph reads: (a) Generally, contractors are not held liable for loss of Government property under the following types of contracts:	See comments in line item #5 above.
11	Amend section 45.105 by revising paragraph (b)(1); and removing from paragraph (d) "damage, destruction, or theft" and adding "theft, damage, or destruction" in its place. The revised text reads as follows: 45.105 Contractors' property management system compliance.	Change the amendment of 45.105(b) to read as follows: (b) The property administrator shall notify the contractor in writing when the contractor's property management system does not comply with contractual requirements, and shall request prompt correction of deficiencies (and shall provide) with a	Improve audit protocol and due process. There is a need for a better audit protocol and due process. Frequently indentified deficiencies are of an immaterial nature and costs to correct greatly exceed benefits from those corrections. Property administrators and contracting

<p>***** (b) *** (1) Revocation of the Government's assumption of risk for loss, theft, damage, or destruction; and/or *****</p>	<p>schedule for their completion. Identified deficiencies must rise to the level of probable material negative impact to contract cost and schedule.</p> <p>(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall—</p> <p>(A) Within 30 days (or such other date as may be mutually agreed to by property administrator and the Contractor), state its agreement in writing; and</p> <p>(B) Within 60 days (or such other date as may be mutually agreed to by the property administrator and the Contractor), correct the deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.</p> <p>(ii) If the Contractor disagrees with the report findings and recommendations, the Contractor shall, within 30 days (or such other date as may be mutually agreed to by the property administrator and the Contractor), state its rationale for each area of disagreement and respond to the property administrator and the contracting officer.</p> <p>(2) The property administrator will evaluate the Contractor's response and will notify the Contractor in writing of the—</p> <p>(i) Determination concerning any remaining deficiencies;</p> <p>(ii) Adequacy of any proposed or completed corrective action plan; and</p> <p>(iii) Need for any new or revised corrective action plan.</p> <p>(3) When the property administrator and contracting officer determines the deficiencies have a material impact on Government contract costs, the contracting</p>	<p>officers must work together and agree the suggestions made are worth while – including the diversion of program resources to property management activities.</p> <p>Constructive dialogue between the government and the contractor is important to arrive at optimal solutions.</p> <p>The suggested protocol was adapted from the MMAS clause in DFARS 252.242-7004 Material Management and Accounting System.</p>
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12	<p>Amend section 45.201 by removing from paragraph (a)(4) “Unique-item” and adding “Item unique” in its place; and removing from paragraph (d) “When use of property on more than one contract is anticipated, any” and adding “Any” in its place.</p>	<p>Change the amendment to use the term “unique item identifier (UII)” in place of “item unique”.</p>	<p>Clarification.</p> <p>Per the DFARS clause and other UID materials from the DoD Program Office, the correct term is <u>unique item identifier or (UII)</u></p>
12a	<p>Not Addressed</p>	<p>Amend 45.202(a) to read:</p> <p>(a) The contracting officer shall consider any potentially unfair competitive advantage that may result from the prospective contractor possessing Government property. This shall be done by adjusting the offers by applying, for evaluation purposes only, a rental equivalent evaluation factor.</p>	<p>Clarification.</p> <p>The restriction only applies during the contract solicitation and award process. Limiting the use of government property at appropriate times is harmful to the Government and the contractor. This issue has been confusing to some contracting officers. Not having access to Government property for use on other cost objectives may cause the contractor to purchase like capital or IR&D equipment, which will become indirect cost to contracts.</p>

12b	Not Addressed	<p>Amend 45.301 by inserting a comma after the word “authorized” in paragraph (b) and making two sentences out of paragraph (b) so that it reads as follows:</p> <p>(b) Rental charges, to the extent authorized, do not apply to Government property that is left in place or installed on contractor-owned property for mobilization or future Government production purposes;</p> <p>(c) Rental charges shall apply to property to be used for non-government commercial purposes,</p>	Clarification.
12c	Not Addressed	<p>Amend 45.303 by adding “rent-free” to the use of property on IR&D programs and replacing “reimbursement” with “rental value.” Remove the current paragraph (c) and replace it with a new paragraph (c). The resulting 45.303 reads as follows:</p> <p>The contracting officer may authorize a contractor to use the property on an independent research and development (IR&D) program rent free, if—</p> <p>(a) Such use will not conflict with the primary use of the property or enable the contractor to retain property that could otherwise be released;</p> <p>(b) The contractor agrees not to claim rental value against any Government contract for the property; and</p> <p>(c) Estimated rental proceeds are immaterial or rental cost to the contractor would subsequently, in a substantial way, be charged back to the Government as part of indirect cost.</p>	<p>Clarification.</p> <p>The current language is confusing, provides disincentives for improvements to products and needlessly causes excessive administrative cost.</p> <p>For substantial amounts – the contracting officer retains the right to charge rent via the Use and Charges Clause.</p>

13	<p>Amend section 45.402 by revising paragraph (a) to read as follows:</p> <p>45.402 Title to contractor-acquired property.</p> <p>(a) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property. * * * * *</p>	<p>Revise the amended 45.402(a) so that it reads as follows:</p> <p>(a) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract upon delivery (through a contract modification listing the item) as Government-furnished property.</p>	<p>Cost Reduction.</p> <p>If the deliverable item is delivered, as intended, in place per the contract -- then there is not need for a contract modification as no modification has occurred. For example, if the Government intends to take title to Special Test Equipment on a cost plus contract and the STE is a deliverable in the contract, upon delivery the item is recorded as Government Furnished Equipment in the contractor's records. Creating a modification provides no value and just provides unnecessary administrative cost.</p>
14	<p>Revise section 45.502 to read as follows:</p> <p>45.502 Subcontractor and alternate prime contractor locations.</p> <p>(a) To ensure subcontractor compliance with Government property administration requirements, and with prime contractor consent, the property administrator assigned to the prime contract may request support property administration</p>	<p>Revise 45.501 and the amended 45.502 to read as follows:</p> <p>45.501 Prime contractor alternate locations. (a) The property administrator assigned to the prime contract may request support property administration from another contract administration office, for purposes of evaluating prime contractor management of property located at the prime contractor's alternate locations.</p>	<p>Clarification.</p> <p>Prime contractor alternate locations are not the same as subcontractors in many respects.</p> <p>FAR 45.501 should apply to the prime's alternate locations and 45.502 should apply to subcontractor locations.</p>

	<p>from another contract administration office. If the prime contractor does not provide consent to support property administration at subcontractor locations, the property administrator shall refer the matter to the contracting officer for resolution.</p> <p>(b) The prime property administrator shall accept the findings of the delegated support property administrator and advise the prime contractor of the results of property management reviews, including deficiencies found with the subcontractor's property management system.</p> <p>(c) Prime contractor consent is not required for support delegations involving prime contractor alternate locations.</p>	<p>(b) Prime contractor consent is not required for support delegations involving prime contractor alternate locations</p> <p>45.502 Subcontractor locations. (b) The prime property administrator shall accept the findings of the delegated support property administrator and advise the prime contractor of the results of property management reviews, including deficiencies found with the subcontractor's property management system.</p>	
15	<p>Amend section 45.602-3 by removing from paragraph (b)(3) "North Capitol and H Streets" and adding "732 North Capitol Street" in its place.</p>	<p>Concur with amendment to 45.602-3(b)(3).</p> <p>Add amendment to 45.602-3(b)(2) to address fair market value in lieu of acquisition cost. New paragraph (b)(2)(iii) would read as follows:</p> <p>(iii) If the property is contractor-acquired or produced, and the contractor or subcontractor has expressed an interest in acquiring the property, and no other party expresses an interest during agency or GSA screening, the property may be sold to the contractor or subcontractor at fair value. For guidance in arriving at fair value estimates use FAR 52.245-9 the Use and Charges clause or agency internal depreciation policy.</p>	<p>Reasonableness and consistency.</p> <p>It is unreasonable to expect contractors to pay acquisition cost for used items. A fair and reasonable price would be fair value – generally a depreciated amount.</p> <p>The requiring acquisition cost has its roots from old policy prior to the Government depreciating assets. New policy should reflect recent accounting rules.</p>
15a	<p>Not Addressed</p>	<p>Rewrite 45.603 so that it reads as follows:</p>	<p>Clarification and cost reduction.</p>

45.603 Abandonment, destruction or donation of excess personal property.

(a) Abandonment of non-sensitive property should be considered a part of the a property utilization analysis, prior to the disposition process and acted upon when the estimated care and handling cost to sell the property, including disassembly, moving, storage, inspections advertising and other administrative costs associated with making the sale, is greater than the probable sale proceeds. Performing this analysis and considering abandonment after spending significant care and handling cost is wasteful. Plant clearance officers should consider contractor requests for abandonment and grant approval when in the best interest of the Government. Plant clearance officers may abandon sensitive property that does not require demilitarization, with contractor consent, provided appropriate instructions are provided with respect to the proper care, handling, and disposal of the property.

(b) Destruction or demilitarization of property should be considered when sale, donation and abandonment are inappropriate and the Government has an obligation to demilitarize or remove Government property from a contractor's premises. The Plant Clearance Officer shall coordinating funding for demilitarization, destruction and removal with the contracting officer.

(c) Donation of excess Government personal property to eligible donees in lieu of

The actions of abandonment are treated differently from destruction and donation under the Federal Property and Administrative Services Act of 1949. The regulation should also reflect those differences. Each alternative should be used as appropriate. Mandatory wasteful processes, such as considering abandonment only after significant care and handling cost have been spent should be eliminated.

		<p>abandonment should be considered if the Government will not bear any of the costs incident to a donation.</p> <p>(d)(1) Before abandoning, destroying, or donating excess personal property, the plant clearance officer shall</p> <p>(i) Determine in writing that the property does not constitute a danger to public health or welfare, and</p> <p>(ii) The property has no residual monetary value.</p> <p>(2) A Government reviewing official shall approve all written determinations for abandonment and destruction actions.</p>	
16	<p>Revise section 45.604-3 to read as follows:</p> <p>45.604-3 Sale of surplus personal property.</p> <p>Policy for the sale of surplus personal property is contained in the Federal Management Regulations, at Part 102-38 (41 CFR Part 102-38). Agencies may specify implementing procedures.</p>	Concur.	
17	<p>Amend section 45.606-1 by revising paragraph (b) and adding paragraph (c) to read as follows:</p> <p>45.606-1 Contractor with an approved scrap procedure.</p> <p>* * * * *</p> <p>(b) For scrap from other than production or testing, the contractor may</p>	<p>Revise the amendment so that paragraph 45-606-1(b) reads as follows:</p> <p>(b) For scrap from other than production or testing, the contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the property management plan or approvals by the property administrator or contracting</p>	<p>Cost reduction.</p> <p>Approvals regarding contracts and contract cost are best performed by those who are responsible for the success of the contract.</p> <p>Approved scrap procedures should be a component of the contractor's property management plan.</p>

	<p>prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures).</p> <p>(c) Inventory disposal schedules shall be submitted for all aircraft regardless of condition, flight safety critical aircraft parts, and scrap that--</p> <ol style="list-style-type: none"> (1) Requires demilitarization; (2) Is a classified item; (3) Is generated from classified items; (4) Contains hazardous materials or hazardous wastes; (5) Contains precious metals that are economically beneficial to recover; or (6) Is dangerous to the public health, safety, or welfare. 	<p>officer). (the approved scrap procedures.)</p>	<p>This will encourage planning on the part of the contractor and the government to efficiently handle contract scrap and ultimately reduce administrative costs.</p>
	<p>PART 52--SOLICITATION PROVISIONS AND CONTRACT CLAUSES</p>		
<p>18</p>	<p>Amend section 52.232-16 by--</p> <ol style="list-style-type: none"> a. Removing from the clause heading "(JUL 2009)" and adding "(DATE)" in its place; b. Removing from paragraph (d)(2)(ii) "under any other clause of this contract"; c. Removing from paragraph (d)(3) "or special tooling"; and d. Removing from paragraph (e) "is damaged, lost, stolen, or" and adding "is lost, stolen, damaged, or" in its place. 	<p>Revise amendment in 52.232-16(e) by deleting the addition "is lost, stolen, damaged, or" and removing "destroyed" from the current language and replacing LSDD by "is lost." The new sentence would read as follows:</p> <p>"The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is lost."</p>	<p>See comments in line item #5 above.</p>
<p>19</p>	<p>Amend section 52.232-32 by—</p> <ol style="list-style-type: none"> a. Removing from the clause heading 	<p>Revise amendment in 52.232-16(g) by deleting the addition "is lost, stolen,</p>	<p>See comments in line item #5 above.</p>

	<p>“(JAN 2008)” and adding “(DATE)” in its place;</p> <p>b. Removing from paragraph (f)(2)(ii) “under any other clause of this contract”;</p> <p>c. Removing from paragraph (f)(3) “or special tooling”; and</p> <p>d. Removing from paragraph (g) “is damaged, lost, stolen, or” and adding “is lost, stolen, damaged, or” in its place.</p>	<p>damaged, or” and removing “destroyed” from the current language and replacing LSDD by “is lost.”</p>	
20	<p>Amend section 52.245-1 by—</p> <p>a. Revising the date of the clause;</p> <p>b. In paragraph (a) by—</p> <p>1. Revising the definition “Cannibalize”;</p> <p>2. Removing from the definition “Equipment” the word “asset” and adding the word “item” in its place; and adding a sentence to the end of the definition;</p> <p>3. Adding a sentence to the end of the definition “Government-furnished property”;</p>	<p>Change the amended 52.245-1 as shown below:</p> <p>Concur.</p> <ul style="list-style-type: none"> Revise the amended definitions in 52.245-1(a) to read as follows: <p>Cannibalize means to remove worthwhile parts from property for probable use or installation on other property.</p> <p>Concur</p> <p>Government-furnished property means property in the possession of the contractor that was directly acquired by the Government and subsequently furnished to the contractor for performance of a contract or acquired by the contractor and delivered to the</p>	<p>Clarification and accuracy.</p> <p>Proposed change to the amended definition will continue to reinforce the concept that cannibalization should be worthwhile.</p> <p>Incorporate all types of categories of property; e.g. equipment, special tooling or special test equipment; material; repairables</p> <p>All Government property in possession is not government furnished. Government furnished property may be in the form of equipment or material – repairables or expendables, etc.</p>

	<p>4. Adding a sentence to the end of the definition ``Government property";</p> <p>5. Adding the words ``or real property" to the end of the definition ``Material";</p> <p>6. Removing the definition ``Plant equipment";</p> <p>7. Adding, in alphabetical order, the definition ``Property records"; and</p> <p>8. Revising the definition ``Real property";</p> <p>c. Revising the first sentence of paragraph (b)(2), (c), and (e)(2)(ii);</p> <p>d. Removing from paragraphs (e)(2)(iii) and (f)(1)(i) the word ``material" and adding the word ``property" wherever it occurs (8 times);</p> <p>e. Removing from paragraph (f)(1)(iii)(A)(4) the word ``Unique-item" and adding the words ``Item unique" in its place;</p>	<p>Government. Government-furnished property includes, but is not limited to spares and property furnished for repair, maintenance, overhaul, or modification. Contractor acquired property becomes Government furnished property upon delivery, e.g. in place; by contract modification or reutilization through plant clearance.</p> <p>Concur.</p> <p>Concur.</p> <p>Concur.</p> <p>Concur.</p> <p>Concur.</p> <p>• Change the amended 52.245-1(b)(2) to read "... or via a completed investigation, evaluation, and final determination for loss of property." Concur with (c) and (e)(2)(ii)</p> <p>Concur.</p> <p>• Change the amended 52.245-1(f)(1)(iii)(A)(4) to use the term "unique</p>	<p>See comments in line item #5 above.</p> <p>See comments in line item #12 above.</p>
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	<p>f. Revising paragraph (f)(1)(v)(A), introductory text of paragraph (f)(1)(vi), paragraphs (f)(1)(vi)(A), (f)(1)(vi)(B)(4), (f)(1)(vi)(B)(10), (f)(1)(vii)(A), (f)(1)(viii)(B), (f)(1)(x), (h)(1), the first sentence of paragraph (h)(1)(ii), (h)(1)(iii), the first sentence of paragraph (h)(2), paragraph (h)(3), the second sentence of paragraph (i), and paragraph (j)(1)(i)(B);</p>	<p>item identifier (UII)” in place of “item unique”</p> <ul style="list-style-type: none"> • Change the amended 52.245-1(f)(1)(v)(A) to read “... conditions (e.g., extent of liability for loss, of Government property).” • Change the amended 52.245-1(f)(1)(vi) to replace “loss, theft, damage, or destruction” with “loss.” • Change the amended 52-245-1(f)(vi)(A) to replace “loss, theft, damage, or destruction” with “loss” both places where it appears. • Change the amended 52.245-1(f)(1)(vi)(B)(4) to replace “Item unique item identifier” with “unique item identifier”. • Change the amended 52-245-1(f)(1)(vi)(B)(10) to replace “loss, theft, damage, or destruction” with “loss.” • Change the amended 52-245-1(f)(1)(vii)(A) to replace “loss, theft, damage, or destruction” with “loss.” • Change the amended 52-245-1(f)(1)(viii)(B) to read as follows: <p>Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle, while in storage or in stockrooms, Government material with material not owned by the</p>	<p>See comments in line item #5 above.</p> <p>See comments in line item #5 above.</p> <p>See comments in line item #5 above.</p> <p>See comments in line item #12 above.</p> <p>See comments in line item #5 above.</p> <p>See comments in line item #5 above.</p> <p>Expendables in use may be collocated – it is understood that commingling of items should be avoided if ownership rights will be breached. Reference MMAS.</p>
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		<p>Government. This excludes items in the production process such as bench stock, expendables, or scrap.</p> <ul style="list-style-type: none"> • Change the amended 52-245-1(f)(1)(x) to read: <p>The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss cases; physically inventorying [a#] property adequate for contract closure upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.</p> <ul style="list-style-type: none"> • Change the amended 52.245-1(g)(1) to read as follows: <p>The Government shall have access to the contractor’s premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor’s property management plan(s), systems, procedures, records, and supporting documentation that pertains to Government property.</p> <ul style="list-style-type: none"> • Change the amended 52.245-1(g)(3) to read as follows: <p>(i) Insignificant observations, recommendations, corrections or improvements should be resolved at the lowest responsible level during the analysis, either verbally or in writing. Should it be</p>	<p>See comments in line item #5 above.</p> <p>Inventories should be limited to accountable property, otherwise expensive and time consuming inventories will be conducted on immaterial items. This will mitigate unnecessary inventories where inventories are normal part of contractor processes. No need to drive unnecessary administrative costs. The language “adequate for contract closure” is an industry leading practice and was used in FAR 45.508-1 March 2005.</p> <p>There may be more than one plan.</p> <p>There is a need for a better audit protocol and due process. Frequently indentified deficiencies are of an immaterial nature and the costs to correct greatly exceed benefits from those corrections.</p> <p>Property administrators and contracting officers must work together and agree the suggestions made are worthwhile – including</p>
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		<p>determined by the Government that the Contractor's [(or subcontractor's)] property management practices are deficient inadequate or not acceptable for the effective and efficient management and control of Government property under this contract, or present an undue risk to the Government, the Contractor shall [immediately] take all reasonable necessary corrective actions in a timely manner as directed by the Property Administrator. Direction believed to be beyond the scope of the contract shall be resolved with the contracting officer.</p> <p>(ii) The property administrator shall notify the contractor in writing when the contractor's property management system does not comply with contractual requirements, and shall request prompt correction of deficiencies with a schedule for their completion. Identified deficiencies must rise to the level of probable material negative impact to contract cost and schedule.</p> <p>(1) If the Contractor agrees with the analysis findings and recommendations, the Contractor shall—</p> <p>(A) Within 30 days (or such other date as may be mutually agreed to by property administrator and the Contractor), state its agreement in writing; and</p> <p>(B) Within 60 days (or such other date as may be mutually agreed to by the property administrator and the Contractor), correct the deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.</p> <p>(2) If the Contractor disagrees with the report</p>	<p>the diversion of program resources to property management activities.</p> <p>Constructive dialogue between the government and the contractor is important to arrive at optimal solutions.</p> <p>The suggested protocol was adapted from the MMAS clause in DFARS 252.242-7004 Material Management and Accounting System.</p> <p>Contractors must balance completing objectives – cost, schedule and risk. Disagreements must be resolved via the contracting officer. Constructive conflict is healthy for the contracting process.</p>
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		<p>findings and recommendations, the Contractor shall, within 30 days (or such other date as may be mutually agreed to by the property administrator and the Contractor), state its rationale for each area of disagreement and respond to the property administrator and the Contracting Officer.</p> <p>(A) The property administrator will evaluate the Contractor's response and will notify the Contractor in writing of the—</p> <p>(i) Determination concerning any remaining deficiencies;</p> <p>(ii) Adequacy of any proposed or completed corrective action plan; and</p> <p>(iii) Need for any new or revised corrective action plan.</p> <p>(B) When the property administrator and Contracting Officer determines the deficiencies have a material impact on Government contract costs, the Contracting Officer must reduce progress payments by an appropriate percentage based on affected costs (in accordance with FAR 32.503-6) and/or disallow costs on vouchers (in accordance with FAR 42.803) until the Contracting Officer determines that--</p> <p>(i) The deficiencies are corrected; or</p> <p>(ii) The amount of the impact is immaterial.</p> <ul style="list-style-type: none"> • In the amended 52.245-1(h)(1) change “loss, theft, damage, or destruction” to “loss”. • In the amended 52.245-1(h)(1)(ii) change “loss, theft, damage, or destruction” to 	<p>See comments in line item #5 above.</p> <p>See comments in line item #5 above.</p> <p>See comments in line item #5 above.</p>
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	<p>g. Add paragraphs (j)(3)(v), and (j)(3)(vi);</p> <p>h. Add paragraph (j)(1)(i)(C);</p> <p>i. Revise paragraphs (j)(3)(iii)(E), and (j)(3)(iv);</p>	<p>“loss”.</p> <ul style="list-style-type: none"> • In the amended 52.245-1(h)(1)(iii) change “loss, theft, damage, or destruction” to “loss” each time it appears. • In the amended 52.245-1(h)(2) change “loss, theft, damage, or destruction” to “loss”. • In the amended 52.245-1(h)(3) change “loss, theft, damage, or destruction” to “loss”. • In the amended 52.245-1(j)(1)(i)(B) change the amended paragraph to read as follows: <p>For scrap from other than production or testing, the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the contractor’s property management plan or approvals by the property administrator or contracting officer) [approved scrap procedures].</p> <p>Concur.</p> <p>Concur.</p> <ul style="list-style-type: none"> • Delete the new paragraph 52.245-1(j)(3)(iv)(A) regarding special tooling and special test equipment and renumber the remaining paragraphs accordingly and 	<p>See comments in line item #5 above.</p> <p>See comments in line item #5 above.</p> <p>Consistent with use of the Property Management Plan.</p> <p>Remove the requirement or limit its application. The cost of this requirement will greatly exceed the benefits derived. Extensive experience with the reutilization of Special Tooling and Special Test Equipment shows these types of efforts are never worth while. If this information is required it should be a CDRL and the items should be</p>
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	<p>j. Remove from paragraph (j)(7)(ii) the word ``facility" and add the word ``area" in its place;</p> <p>k. Revise paragraph (j)(8)(ii);</p>	<p>delete paragraph 52.245-1(j)(3)(iv)(F).</p> <p>Concur.</p> <ul style="list-style-type: none"> • Change the amended 52.245-1(j)(8)(ii) to read as follows: <p>The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. Unless otherwise directed by the</p>	<p>identified as deliverable up front.</p> <p>The following DFARS addresses ST and therefore all ST should be identified up front. 2008-D042 DFARS Part 234 - Preservation of Tooling for Major Defense Acquisition Programs Implement section 815 of the National Defense Authorization Act FY 2009, enacted October 14, 2008. Section 815 requires the preservation and storage of unique tooling associated with the production of hardware for a major defense acquisition program through the end of the service life of the end item associated with such a program. 06/17/2009DARC received revised report.</p> <p>Both paragraphs (A) and (F) are ambiguous and are not a FAR required data element in the property record.</p> <p>Items with DoD unique item identifiers should not be removed. If we are shipping “tagged” property with virtual unique item identifiers, the property tag must remain affixed as it is the innate identifier in accordance with the item unique identification clause and rules of unique identification. See 52.211-7007. This exception must be noted in DFARS.</p>
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<p>1. In Alternate I, revise the date of the alternate, and the first sentence of paragraph (h)(1).</p> <p>The added and revised text reads as follows:</p> <p>52.245-1 Government Property. * * * * *</p> <p>GOVERNMENT PROPERTY (DATE) (a) * * * * * * * *</p> <p>Cannibalize means to remove parts from equipment, special tooling or special test equipment in order to install them on other property. * * * * *</p> <p>Equipment * * * Equipment does not include material or real property</p> <p>Government-furnished property * * * Government-furnished property includes spares and property furnished for repair, maintenance, overhaul, or modification.</p> <p>Government property * * * Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property, and software. * * * * *</p>	<p>Contracting Officer or by the Plant Clearance Officer, the Contractor shall remove or destroy any [Government affixed] markings identifying the property as U.S. Government-owned property prior to its disposal unless superseded in the contract.</p> <ul style="list-style-type: none"> • In the amended 52.245-1 Alternate 1 (Date) *** (h)(1), replace “loss, theft, damage, or destruction” with “loss”. 	<p>See comments in line item #5 above.</p>
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Property records means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

Real property. See Federal Management Regulation 102-71.20 (41 CFR 102-71.20).

* * * * *

(b) * * *

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost, stolen, damaged, or destroyed property. * * *

* * * * *

(c) Use of Government property. (1) The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer.

(2) Modifications or alterations of Government property are prohibited, unless they are--

(i) Reasonable and necessary due to the scope of work under this contract or its terms and conditions;

(ii) Required for normal maintenance;

or

(iii) Otherwise authorized by the Contracting Officer.

(3) The Contractor shall not cannibalize Government property unless otherwise provided for in this contract or approved by the Contracting Officer.

* * * *

(e) * * *

(2) * * *

(ii) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

* * * *

(f) * * *

(1) * * *

(v) * * *

(A) The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract terms and

conditions (e.g., extent of liability for loss, theft, damage, or destruction of Government property).

* * * * *

(vi) Reports. The Contractor shall have a process to create and provide reports of discrepancies; loss, theft, damage, or destruction; physical inventory results; audits and self-assessments; corrective actions; and other property related reports as directed by the Contracting Officer.

(A) Loss, theft, damage, or destruction. Unless otherwise directed by the Property Administrator, the Contractor shall investigate and promptly furnish a written narrative of all incidents of loss, theft, damage, or destruction to the property administrator as soon as the facts become known or when requested by the Government.

(B) * * *

(4) Item unique Item Identifier (if available).

* * * * *

(10) A statement that the Government will receive any reimbursement covering the loss, theft, damage, or destruction in the event the Contractor was or will be reimbursed or compensated.

* * * * *

(vii) * * *

(A) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory

adjustments of material as determined by the Property Administrator; or a Property Administrator granted relief of responsibility for loss, theft, damage, or destruction of Government property;

* * * * *

(viii) * * *

(B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government material with material not owned by the Government.

* * * * *

(x) Property closeout. The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss, theft, damage, or destruction cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

* * * * *

(g) Systems analysis

(1) The Government shall have access to the Contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property. This access includes all site locations and, with the Contractor's consent, all

subcontractor premises.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be appropriately safeguarded.

(3) Should it be determined by the Government that the Contractor's (or subcontractor's) property management practices are inadequate or not acceptable for the effective management and control of Government property under this contract, or present an undue risk to the Government, the Contractor shall immediately take all necessary corrective actions as directed by the Property Administrator.

* * * * *

(h) * * *

(1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, theft, damage, or destruction to the Government property furnished or acquired under this contract, except when any one of the following applies--

* * * * *

(ii) The loss, theft, damage, or destruction is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel. * * *

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss, theft, damage, or destruction, due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an

undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss, theft, damage, or destruction of Government property occurred while the Contractor had adequate property management practices or the loss, theft, damage, or destruction of Government property did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the Government property from further loss, theft, damage, or destruction. * * *

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, theft, damage, or destruction of Government property.

* * * * *

(2) The Contractor shall take all reasonable actions necessary to protect the Government property from further loss, theft, damage, or destruction. * * *

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, theft, damage, or destruction of Government property.

* * * * *

(i) Equitable adjustment. * * *
However, the Government shall not be liable for breach of contract for the

following:

* * * * *

(j) * * *

(1) * * *

(i) * * *

(B) For scrap from other than production or testing the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures.).

(C) Inventory disposal schedules shall be submitted for all aircraft regardless of condition, flight safety critical aircraft parts, and scrap that--

(1) Requires demilitarization;

(2) Is a classified item;

(3) Is generated from classified items;

(4) Contains hazardous materials or hazardous wastes;

(5) Contains precious metals that are economically beneficial to recover; or

(6) Is dangerous to the public health, safety, or welfare.

* * * * *

(3) * * *

(iii) * * *

(E) Precious metals in raw or bulk form;

* * * * *

(iv) The Contractor shall provide the information required by 52.245-1(f)(1)(iii) along with the following:

(A) or special tooling and special test equipment, identify each part number with which the item is used.

(B) For work-in-progress, the estimated percentage of completion.

(C) For precious metals, the type of metal and estimated weight.

(D) For hazardous material or property contaminated with hazardous material, the type of hazardous material.

(E) For metals in mill product form, the form, shape, treatment, hardness, temper, specification (commercial or Government) and dimensions (thickness, width and length.)

(F) Any additional information that may facilitate understanding of the property's intended use

(v) Property with the same description, condition code, and reporting location may be grouped in a single line item.

(vi) Scrap should be reported by ``lot" along with metal content, estimated weight and estimated value.

* * * * *

(8) * * *

(ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. Unless otherwise directed by the Contracting Officer or by the Plant Clearance Officer, the Contractor shall remove and destroy any Government affixed markings identifying the property as U.S. Government-owned property prior to its disposal.

* * *

Alternate I (Date). * * *

(h)(1) The Contractor assumes the risk of, and shall be responsible for, any loss, theft, damage, or destruction of

	Government property upon its delivery to the Contractor as Government-furnished property. * * * * * * * *		
20a	Not Addressed	Amend 52.245-1(f)(1)(iii) (B) as follows: [When approved by the Property Administrator,] [T]he Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of property [material] that is issued for immediate consumption.	Clarification. Approval should not be required as receipt and issue processes are normal industry and government practice when property is purchased outside of an Enterprise Resource Planning (ERP) or Material Management and Accounting System (MMAS). Contractors, as part of normal internal control practices, must maintain adequate records with requirements and approvals of acquisitions. Approval of a receipt and issue is unnecessary, compliance to internal processes and contract requirements is mandatory. Without receipt and issue processes contractors must maintain stockrooms, with unnecessary processes just to record receipt and issue to a given requester. When looking from a “lean” perspective, stockrooms and associated in and out processes are major generators of waste and are eliminated or reduced. Unnecessary approvals or required use of inefficient processes should be eliminated.
20b	Not Addressed	Amend 52.245-1(g)(4) to read as follows: The Government shall have access to the Contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan, systems, procedures,	Clarification. This access includes all contractor site locations and, with the Contractor's consent, subcontractor premises.

		records, and supporting documentation that pertains to Government property. This access includes all site locations and, with the Contractor's consent, all subcontractor premises.	
20c	Not Addressed	Amend 52.245-1(d)(2)(i)(B) by replacing “the acquisition cost” with “ fair value ”.	<p>Best practices.</p> <p>It is unreasonable to expect contractors to pay acquisition cost for used items. A fair and reasonable price would be fair value – generally a depreciated amount.</p> <p>Requiring acquisition cost has its roots from old policy prior to the Government depreciating assets, based upon recent accounting rules.</p> <p>Generally when contractors purchase property either direct or indirect cost – these costs generally flow back to the Government with additional adders, for example a \$10,000 item the Government owned and the Contractor purchased as a capital equipment, the Government would ultimately pay about \$12,000 to \$14,000 as a result of adders (G&A, cost of money and profit). Paying prices beyond fair value is wasteful and counter to good business operations for both the Government and the contractor.</p>
20'	<p>Amend section 52.245-2 by revising the date of the clause, and the first two sentences of paragraph (b) to read as follows:</p> <p>52.245-2 Government Property Installation Operation Services.</p> <p>*****</p> <p>GOVERNMENT PROPERTY</p>	<p>Revise amendment in 52.245-2 by deleting the addition “is lost, stolen, damaged, or” and removing “destroyed” from the current language and replacing LSDD by “is lost.”</p> <p>The revised language should read as follows:</p> <p>(b) The Government bears no responsibility</p>	See comments in line item #5 above.

	<p>INSTALLATION OPERATION SERVICES (DATE) ***** (b) The Government bears no responsibility for repair or replacement of any loss, theft, damage, or destruction of Government property. If any or all of the Government property is lost, stolen, damaged, or destroyed or becomes no longer usable, the Contractor shall be responsible for replacement of the property at Contractor expense. * ** *****</p>	<p>for repair or replacement of any loss, of Government property. If any or all of the Government property is lost, the Contractor shall be responsible for replacement of the property at Contractor expense. *</p>	
21	<p>Amend section 52.245-9 by revising the date of the clause, and the introductory text of paragraph (a); and removing the definitions ``Acquisition cost'', ``Government property'', ``Plant equipment'', and ``Real property''. The revised text reads as follows: 52.245-9 Use and Charges. ***** USE AND CHARGES (DATE) (a) Definitions. Definitions applicable to this contract are provided in the clause at 52.245-1, Government Property. Additional definitions as used in this clause include: *****</p>	Concur.	
23	<p>*****Amend section 52.251-1 by revising the date of the clause, and</p>	Concur.	

<p>the last sentence of the clause to read as follows:</p> <p>52.251-1 Government Supply Sources.</p> <p>* * * * *</p> <p>GOVERNMENT SUPPLY SOURCES (DATE)</p> <p>* * * The provisions of the clause entitled ``Government Property," at 52.245-1, shall apply to all property acquired under such authorization.</p>		
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