

**SPECIAL PROVISIONS - GOVERNMENT PROPERTY
SP-12 REV. 2 01/28/03**

SPECIAL PROVISIONS - GOVERNMENT PROPERTY SP-12 Rev. 1 07/22/02 1

1.0 PREAMBLE 1

2.0 DEAR 970.5245-1 PROPERTY (COST REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACT) (MONTH AND YEAR TBE) 1

3.0 FAR 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACT) (DEC 1989) (MODIFIED)4

REPORT OF FINAL INVENTORY OF PROPERTY9

1.0 PREAMBLE

These Special Provisions are requirements of any contract in which this Special Provision document is incorporated. These Special Provisions are applicable in their entirety unless specifically deleted or amended in the Contract and are in addition to the General Provisions and other Special Provisions that apply to this Contract. In the event of a conflict between these Special Provisions and the General Provisions, these Special Provisions shall take precedence.

2.0 DEAR 970.5245-1 PROPERTY (COST REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACT) (MONTH AND YEAR TBE)

- A. Furnishing of Government property. The Government reserves the right to furnish any property or services required for the performance of the work under this Contract.
- B. Title to property. Except as otherwise provided by the Buyer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Buyer shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this Contract, or (2) commencement of processing or use of such property in the performance of this Contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.
- C. Identification. To the extent directed by the Buyer, the Contractor shall identify Government property coming into the Contractor's possession or custody, by marking and segregating in such a way, satisfactory to the Buyer, as shall indicate its ownership by the Government.
- D. The Contractor shall make such disposition of Government property which has come into the possession or custody of the Contractor under this Contract as the Buyer may direct during the progress of the work or upon completion or termination of this Contract. The Contractor may, upon such terms and conditions as the Buyer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Buyer and the Contractor as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of costs

allowable under this Contract or shall be otherwise credited to account to the Government, as the Buyer may direct. Upon completion of the work or the termination of this Contract, the Contractor shall render an accounting, as prescribed by the Buyer, of all Government property which had come into the possession or custody of the Contractor under this Contract.

E. Protection of Government property--management of high-risk property and classified materials.

1. The Contractor shall take all reasonable precautions, and such other actions as may be directed by the Buyer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect Government property in the Contractor's possession or custody.
2. In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.
3. High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

F. Risk of loss of Government property.

1. a. The Contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:
 - i. Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel;
 - ii. Failure of the Contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Buyer to safeguard such property under paragraph E. of this Clause; or
 - iii. Failure of Contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph H. 1. of this Clause.
- b. If, after an initial review of the facts, the Buyer informs the Contractor that there is reason to believe that the loss, destruction of, or damage to the Government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Contractor to show that the Contractor should not be required to compensate the Government for the loss, destruction, or damage.
2. In the event that the Contractor is determined liable for the loss, destruction or damage to Government property in accordance with F.1. of this Clause, the Contractor's compensation to the Government shall be determined as follows:
 - a. For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Buyer shall determine the value of such property, consistent with all relevant facts and circumstances.
 - b. For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs

associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Buyer shall determine the value of such property, consistent with all relevant facts and circumstances.

3. The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of risks of loss referred to in paragraph F. 1. of this Clause is not allowable.
- G. Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the Contractor with a value above the threshold set out in the Contractor's approved property management system, the Contractor:
1. Shall immediately inform the Buyer of the occasion and extent thereof,
 2. Shall take all reasonable steps to protect the property remaining, and
 3. Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Buyer. The Contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.
- H. Government property for Government use only. Government property shall be used only for the performance of this Contract.
- I. Property Management.
1. Property Management System.
 - a. The Contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the Contract. The Contractor's property management system shall be submitted to the Buyer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the Buyer may from time to time prescribe.
 - b. In order for a property management system to be approved, it must provide for:
 - i. Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;
 - ii. Employee personal responsibility and accountability for Government-owned property;
 - iii. Full integration with the contractor's other administrative and financial systems; and
 - iv. A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.
 - c. Approval of the Contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph I. 2. of this Clause.
 2. Property Inventory.
 - a. Unless otherwise directed by the Buyer, the Contractor shall within six months after execution of the Contract provide a baseline inventory covering all items of Government property.

- b. If the Contractor is succeeding another contractor in the performance of this Contract, the Contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The Contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this Contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.
- J. The term "Contractor's managerial personnel" as used in this Clause means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:
- 1. All or substantially all of the Contractor's business; or
 - 2. All or substantially all of the Contractor's operations at any one facility or separate location to which this Contract is being performed; or
 - 3. A separate and complete major industrial operation in connection with the performance of this Contract; or
 - 4. A separate and complete major construction, alteration, or repair operation in connection with performance of this Contract; or
 - 5. A separate and discrete major task or operation in connection with the performance of this Contract.
- K. The Contractor shall include this Clause in all cost reimbursable subcontracts.

3.0 FAR 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACT) (DEC 1989) (MODIFIED)

- A. Government-furnished property.
- 1. The Buyer shall deliver to the Contractor, for use in connection with and under the terms of this Contract, the Government-furnished property described in the schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").
 - 2. The delivery or performance dates for this Contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as is") will be delivered to the Contractor at the times stated in the schedule or, if not so stated, in sufficient time to enable the Contractor to meet the Contract's delivery or performance dates.
 - 3. If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Buyer, detailing the facts, and, as directed by the Buyer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Buyer shall make an equitable adjustment as provided in paragraph H. of this Clause.
 - 4. If Government-furnished property is not delivered to the Contractor by the required time, the Buyer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph H. of this Clause.
- B. Changes in Government-furnished property.
- 1. The Buyer may, by written notice,
 - a. Decrease the Government-furnished property provided or to be provided under this Contract, or
 - b. Substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this Contract. The

Contractor shall promptly take such action as the Buyer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

2. Upon the Contractor's written request, the Buyer shall make an equitable adjustment to the Contract in accordance with paragraph H. of this Clause, if the Government has agreed in the schedule to make the property available for performing this Contract and there is any --
 - a. Decrease or substitution in this property pursuant to subparagraph B. 1. of this Clause; or
 - b. Withdrawal of authority to use this property, if provided under any other contract or lease.
- C. Title in Government property.
1. The Government shall retain title to all Government-furnished property.
 2. All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this Clause. However, special tooling accountable to this Contract is subject to the provisions of the Special Tooling Clause and is not subject to the provisions of this Clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
 3. Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this Contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.
 4. If this Contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this Contract --
 - a. Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and
 - b. Title to all other material shall pass to and vest in the Government upon --
 - i. Issuance of the material for use in Contract performance;
 - ii. Commencement of processing of the material or its use in Contract performance; or
 - iii. Reimbursement of the cost of the material by the Government, whichever occurs first.
- D. Use of Government property. The Government property shall be used only for performing this Contract, unless otherwise provided in this Contract or approved by the Buyer.
- E. Property administration.
1. The Contractor shall be responsible and accountable for all Government property provided under this Contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this Contract.
 2. The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.
 3. If damage occurs to Government property, the risk of which has been assumed by the Government under this Contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Buyer. When any property for which the

Government is responsible is replaced or repaired, the Buyer shall make an equitable adjustment in accordance with paragraph H. of this Clause.

4. The Contractor represents that the Contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.
- F. Access. The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.
- G. Risk of loss. Unless otherwise provided in this Contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph C. of this Clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this Contract.
- H. Equitable adjustment. When this Clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes Clause. When appropriate, the Buyer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for --
1. Any delay in delivery of Government-furnished property;
 2. Delivery of Government-furnished property in a condition not suitable for its intended use;
 3. A decrease in or substitution of Government-furnished property; or
 4. Failure to repair or replace Government property for which the Government is responsible.
- I. Final accounting and disposition of Government property. Upon completing this Contract, or at such earlier dates as may be fixed by the Buyer, the Contractor shall submit, in a form acceptable to the Buyer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this Contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Buyer. The net proceeds of any such disposal shall be credited to the Contract price or shall be paid to the Government as the Buyer directs.
- J. Abandonment and restoration of Contractor's premises. Unless otherwise provided herein, the Government --
1. May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and
 2. Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph H. of this Clause may properly include restoration or rehabilitation costs.
- K. Communications. All communications under this Clause shall be in writing.
- L. Overseas contracts. If this Contract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this Clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

End of Clause

Alternate I (Apr 1984). As prescribed in [45.106\(b\)\(2\)](#), substitute the following paragraph G. for paragraph G. of the basic clause:

G. Limited risk of loss.

1. The term "Contractor's managerial personnel," as used in this paragraph G., means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of --
 - a. All or substantially all of the Contractor's business;
 - b. All or substantially all of the Contractor's operation at any one plant or separate location at which the Contract is being performed; or
 - c. A separate and complete major industrial operation connected with performing this Contract.
2. The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this Contract (or, if an educational or nonprofit organization, for expenses incidental to such loss, destruction, or damage), except as provided in subparagraphs 3. and 4. below.
3. The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this Contract (including expenses incidental to such loss, destruction, or damage) --
 - a. That results from a risk expressly required to be insured under this Contract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;
 - b. That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
 - c. For which the Contractor is otherwise responsible under the express terms of this Contract;
 - d. That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or
 - e. That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph E. of this Clause.
4.
 - a. If the Contractor fails to act as provided in subdivision G. 3. e. above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or non-acceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.
 - b. In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage --
 - i. Did not result from the Contractor's failure to maintain an approved program or system; or
 - ii. Occurred while an approved program or system was maintained by the Contractor.
5. If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Buyer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain

appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

6. Upon loss or destruction of, or damage to, Government property provided under this Contract, the Contractor shall so notify the Buyer and shall communicate with the loss and salvage organization, if any, designated by the Buyer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Buyer a statement of --a
 - a. The lost, destroyed, or damaged Government property;
 - b. The time and origin of the loss, destruction, or damage;
 - c. All known interests in commingled property of which the Government property is a part; and
 - d. The insurance, if any, covering any part of or interest in such commingled property.
7. The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Buyer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Buyer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the Contract price for the expenditures made in performing the obligations under this subparagraph G. 7. in accordance with paragraph H. of this Clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Buyer shall give due regard to the Contractor's liability under this paragraph G. when making such equitable adjustment.
8. The Contractor represents that it is not including in the price and agrees it will not hereafter include in any price to the Government any charge or reserve for insurance (including any self-insurance fund or reserve) covering loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this Contract.
9. In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property, or shall otherwise credit the proceeds to equitably reimburse the Government, as directed by the Buyer.
10. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Buyer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

REPORT OF FINAL INVENTORY OF PROPERTY

Contractor Name				Location of material if at other than at left				
Street Address								
City, State, Zip Code				Contractor Contact/Title/Phone				
Contract No.	Item No.	Item Name or Description	Part or Drawing No.	*Condition	Quantity	Cost		Contractor Disposition (Include charges or credits)
						Unit	Total	
*Condition Codes (Letter and Number) Example: R-3			Certification of Accuracy by Contractor Representative Authorized to Acknowledge Acquisition or Report of Final Physical Inventory of Property Listed Above.					
N = New		1 = Excellent	Name		Signature		Title	Date Signed
E = Used - Reconditioned		2 = Good						
O = Usable without Repair		3 = Fair						
R = Used - Repairs Required		4 = Poor						
X = Salvage or Scrap		5 = Contaminated						