

AMS/FAST CHANGE REQUEST (CR) COVERSHEET

Change Request Number: 18-56

Date Received: June 28, 2018

Title: Government Property - Policy Revisions

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Policy and Guidance: (check all that apply)

- Policy
- Procurement Guidance
- Real Estate Guidance
- Other Guidance
- Non-AMS Changes

Summary of Change:

General update to Government Property AMS Policy.

Reason for Change:

Update of Policy to reflect current standards for management of Government Property and to replace outdated language. Concurrent updates also being made to AMS Guidance and Clauses.

Development, Review, and Concurrence: Government Furnished Property/Transportation Group (ALO-500), Acquisition Policy, Contracts, and Procurement Legal

Target Audience: Property Management, Contracting, and Program Management Office personnel

Briefing Planned: No.

ASAG Responsibilities: Review and comment. ASAG approved October 4, 2018..

Section / Text Location: AMS Policy 3.10.3

The redline version must be a comparison with the current published FAST version.

- I confirm I used the latest published version to create this change / redline
or
 This is new content

Links:

https://fast.faa.gov/docs/acquisitionManagementPolicy/acquisitionManagementPolicy_3.pdf

Attachments: Redline and final documents.

Other Files: N/A

Redline(s):

Section Revised:

3.10.3.1 Applicability

3.10.3.2 Policy

Section Added

3.10.3.2.1 General.

3.10.3.2.2 Responsibility and Liability for Government Property

3.10.3.2.3 Contractors' Property Management System Compliance

3.10.3.2.4 Transferring Accountability

Acquisition Management Policy - (~~7/2018~~ 10/2018)

3.10 Contract Administration

3.10.1 Contract Administration

3.10.1.1 Applicability

3.10.1.2 Policy

3.10.2 Subcontracting Policies

3.10.2.1 Applicability

3.10.2.2 Policy

3.10.3 Government Property Revised 1/2015

3.10.3.1 Applicability Revised 10/2018

3.10.3.2 Policy Revised 10/2018

3.10.3.2.1 General. Added 10/2018

3.10.3.2.2 Responsibility and Liability for Government Property Added 10/2018

3.10.3.2.3 Contractors' Property Management System Compliance Added 10/2018

3.10.3.2.4 Transferring Accountability Added 10/2018

3.10.4 Quality Assurance

3.10.4.1 Applicability

3.10.4.2 Policy Revised 10/2011

3.10.5 Product Improvement/Technology Enhancement

3.10.5.1 Applicability

3.10.5.2 Policy

3.10.6 Termination of Contracts

3.10.6.1 Applicability

3.10.6.2 Policy

3.10.7 Extraordinary Contractual Actions

3.10.7.1 Applicability

3.10.7.2 Policy

3.10.8 First Article Approval and Testing

3.10.9 Closeout of Completed Contracts

3.10 Contract Administration

3.10.1 Contract Administration

3.10.1.1 Applicability

The types of activities included in the contract administration phase are:

- Issuing contract modifications;
- Monitoring contract deliverables;
- Assuring that subcontracting policies and requirements are followed; and
- Reviewing the contractor's invoices for payment.
- Closing completed contracts.

3.10.1.2 Policy

The terms and conditions of the contract will be the guidance in performing these tasks.

3.10.2 Subcontracting Policies

3.10.2.1 Applicability

This applies to contracts with the exception of real property and utilities, where a prime contractor may need to subcontract a portion of the work.

3.10.2.2 Policy

The CO must consider requiring "Consent to Subcontracts" when the subcontract work is complex, the dollar value is substantial, or the Government's interest is not adequately protected by competition and the type of prime contract or subcontract.

The CO must consider conducting a Contractor Purchasing System Review for each contractor whose sales to the Government, using other than simplified purchases procedures, are expected to exceed \$10 million during the next 12 months.

To the maximum extent practicable, the contractor must incorporate, and require its subcontractors at all tiers to incorporate commercial items or non-developmental items as components of items to be supplied under contract.

3.10.3 Government Property Revised 1/2015

3.10.3.1 Applicability Revised 10/2018

~~Government property administration guidance and procedures applies to all contracts awarded by the FAA with requirements for providing Government property to contractors, contractors' use and management of Government property, reporting, redistributing, and disposing of contractor inventory. It does not apply to providing property under any statutory leasing authority.~~

~~(a) This part prescribes policies and procedures for providing Government property to contractors; contractors' management and use of Government property; and reporting, redistributing, and disposing of contractor inventory.~~

~~(b) It does not apply to—~~

~~(1) Government property provided under any statutory leasing authority, except as to non-Government use of property;~~

~~(2) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance based payments;~~

~~(3) Disposal of real property;~~

~~(4) Software and intellectual property; or~~

~~(5) Government property that is incidental to the place of performance, when the contract requires contractor personnel to be located on a Government site or installation, and when the property used by the contractor within the location remains accountable to the Government. Items considered to be incidental to the place of performance include, for example, office space, desks, chairs, telephones, computers, and fax machines.~~

3.10.3.2 Policy Revised 10/2018

~~Contractors are ordinarily required to furnish all property necessary to perform Government contracts. However, when contractors possess Government property, the FAA must:~~

- ~~Delegate property administration authority to the property administrator;~~
- ~~Eliminate, to the maximum practical extent, any competitive advantage that might arise from using such property;~~
- ~~Require contractors to use Government property, to the maximum practical extent, in performing Government contracts;~~
- ~~Permit the property to be used only when authorized;~~
- ~~Charge appropriate rentals when the property is authorized for use on other than a rent-free basis;~~
- ~~Require the contractor to establish and maintain a property control system in accordance with contract terms and conditions;~~
- ~~Require contractors to review and provide justification for retaining Government property not currently in use;~~
- ~~Ensure maximum practical reutilization of contractor inventory with the Government;~~
- ~~Require contractors to be responsible and accountable for Government property in their possession and control; and~~
- ~~Require the contractor to keep official Government property records.~~

~~Contractor records are the Government's official Government property records unless the Contracting Officer has authorized an exception.~~

(a) Contractors are ordinarily required to furnish all property necessary to perform Government contracts.

(b) Contracting officers will provide property to contractors only when it is clearly demonstrated—

(1) To be in the Government's best interest;

(2) That the overall benefit to the acquisition significantly outweighs the increased cost of administration, including ultimate property disposal;

(3) That providing the property does not substantially increase the Government's assumption of risk; and

(4) That Government requirements cannot otherwise be met.

(c) The contractor's inability or unwillingness to supply its own resources is not sufficient reason for the furnishing or acquisition of property.

(d) Exception. Property provided under contracts for repair, maintenance, overhaul or modification is not subject to the requirements of paragraph (b) of this section.

(e) Government property, other than foundations and similar improvements necessary for installing special tooling, special test equipment or equipment, will not be installed or constructed on contractor-owned real property in such fashion as to become nonseverable, unless the Head of the Contracting Activity determines that such installation or construction is necessary and in the Government's interest.

3.10.3.2.1 General. Added 10/2018

(a) Contracting Officers will—

(1) Allow and encourage contractors to use voluntary consensus standards and industry-leading practices and standards to manage Government property in their possession;

(2) Eliminate to the maximum practical extent any competitive advantage a prospective contractor may have by using Government property;

(3) Ensure maximum practical reutilization of contractor inventory for government purposes;

(4) Require contractors to use Government property already in their possession to the maximum extent practical in performing Government contracts;

(5) Charge appropriate rentals when the property is authorized for use on other than a rent-free basis; and

(6) Require contractors to justify retaining Government property not needed for contract performance and to declare property as excess when no longer needed for contract performance.

(b) The FAA will not generally require to establish property management systems that are separate from a contractor's established procedures, practices, and systems used to account for and manage contractor-owned property.

3.10.3.2.2 Responsibility and Liability for Government Property Added 10/2018

(a) Generally, contractors are not held liable for loss of Government property under the following types of contracts:

(1) Cost-reimbursement contracts;

(2) Time-and-material contracts;

(3) Labor-hour contracts; and

- (4) Fixed-price contracts awarded on the basis of submission of certified cost or pricing data.
- (b) The contracting officer may revoke the Government's assumption of risk when the property administrator determines that the contractor's property management practices are noncompliant with contract requirements.
- (c) A prime contractor that provides Government property to a subcontractor will not be relieved of any responsibility to the Government that the prime contractor may have under the terms of the prime contract.
- (d) With respect to loss of Government property, the contracting officer, in consultation with the property administrator, will determine—
- (1) The extent, if any, of contractor liability based upon the amount of damages corresponding to the associated property loss; and
 - (2) The appropriate form and method of Government recovery (may include repair, replacement, or other restitution).

3.10.3.2.3 Contractors' Property Management System Compliance Added 10/2018

- (a) The contract property administrator will conduct an analysis of the contractor's property management policies, procedures, practices, and systems. This analysis will be accomplished as frequently as conditions warrant, in accordance with FAA-procedures.
- (b) The property administrator will notify the contractor in writing when the contractor's property management system does not comply with contractual requirements, will request prompt correction of deficiencies, and will request from the contractor a corrective action plan, including a schedule for correction of the deficiencies. If the contractor does not correct the deficiencies in accordance with the schedule, the contracting officer will notify the contractor, in writing, that failure to take the required corrective action(s) may result in—
- (1) Revocation of the Government's assumption of risk for loss of Government property; and/or
 - (2) The exercise of other rights or remedies available to the contracting officer.
- (c) If the contractor fails to take the required corrective action(s) in response to the notification provided by the contracting officer in accordance with paragraph (b) of this section, the contracting officer will notify the contractor in writing of any Government decision to apply the remedies described in paragraphs (b)(1) and (b)(2) of this section.
- (d) When the property administrator determines that a reported case of loss of Government property is a risk assumed by the Government, the property administrator will notify the contractor in writing that it is granted relief of stewardship responsibility and liability. Where the property administrator determines that the risk of loss of Government property is not assumed by the Government, the property administrator will request that the contracting officer hold the contractor responsible and liable.

3.10.3.2.4 Transferring Accountability. Added 10/2018

Government property will be transferred from one contract to another only when firm requirements exist under the gaining contract (see 3.10.3.2). Such transfers will be documented by modifications to both gaining and losing contracts. Once transferred, all property will be considered Government-furnished property to the gaining contract. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the contractor as contractor-acquired property that is subsequently transferred to another contract with the same contractor.

3.10.4 Quality Assurance

3.10.4.1 Applicability

Quality Assurance policy and guidelines are applicable to all acquisitions for systems, equipment, material, and services.

3.10.4.2 Policy Revised 10/2011

For all acquisitions, FAA will:

- Ensure appropriate quality assurance requirements are included;
- Require contractors to act on contractual quality assurance commitments;
- Ensure Government quality and reliability needs are met; and
- Accept only products that meet agreed to requirements.

Additionally, for NAS system acquisitions:

- Require the contractor to report the status of requirements linked to critical performance requirements at specified regular intervals;
- Coordinate with the Quality Assurance Office to ensure appropriate quality assurance requirements are incorporated; and
- Delegate in-plant quality assurance and acceptance authority to the Quality Reliability Officer or other Government agent.

3.10.5 Product Improvement/Technology Enhancement

3.10.5.1 Applicability

Product Improvement/Technology Enhancement guidance and procedures apply to all FAA procurements, agreements, real property, utilities, and commercial and simplified purchase method.

3.10.5.2 Policy

The FAA encourages contractors to submit Product Improvement/Technology Enhancement proposals for review at any time during the performance of a contract. The ability to continuously exchange, upgrade, modify, or add new features to equipment and software in response to increased air traffic activity and/or new advancements in technology and methodology is essential. Contractor proposals which are particularly innovative and address savings for the FAA may be given appropriate consideration in the negotiation.

3.10.6 Termination of Contracts

3.10.6.1 Applicability

This section applies to all FAA contracts, with the exception of real property and utilities.

3.10.6.2 Policy

The termination clauses or other contract clauses authorize contracting officers to terminate contracts for convenience, or for default, and to enter into settlement agreements.

The CO must terminate contracts, whether for default or convenience, when it is in the FAA's interest. The CO may effect a no-cost settlement instead of issuing a termination when (1) it is known that the contractor will accept one, (2) Government property was not furnished, and (3) there are no outstanding payments, debts due the Government, or other contractor obligations.

When the price of the undelivered balance is less than the cost of effecting a termination, the contract should not normally be terminated for convenience but should be permitted to run to completion.

3.10.7 Extraordinary Contractual Actions

3.10.7.1 Applicability

This section is applicable when the FAA intends to enter into, amend, or modify contracts in order to facilitate the national defense under the extraordinary emergency authority granted by Public Law 85-804 (referred to in this section as the "Act") as amended, and Executive Order 10789 (referred to in this section as the "Executive Order").

3.10.7.2 Policy

The FAA may authorize extraordinary contract relief pursuant to Public Law 85-804. Authority to provide such relief is retained by the DOT Secretary for indemnification requests, and by the FAA Administrator or designee for all other requests.

3.10.8 First Article Approval and Testing

First article testing and approval involves evaluating a contractor's initial, preproduction, or sample model or lot. FAA may utilize first article testing and approval to ensure that a contractor can furnish a product that conforms to all contract requirements for acceptance.

3.10.9 Closeout of Completed Contracts

The CO must close physically complete contracts and agreements in accordance with FAST Procurement Guidance. Closeout activities must include completion and signing of the Contract Closeout Checklist and a Contract Completion Statement.