

# **Final Rule Subjects Additional DoD Contractors to Property Business System Determinations**

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On April 30, 2019, the Department of Defense (DoD) published a DoD Federal Acquisition Regulation (FAR) Supplement (DFARS) [final rule](#), which removes a long-time exception to the use of FAR clause 52.245-1 (Government property) in Government contracts. The exception involves purchase orders<sup>1</sup> issued for the repair of Government property.

The final rule published on April 30, 2019 removes that exception for DoD contracts. FAR clause 52.245-1 is now required in all DoD purchase orders for repair, notwithstanding the total unit acquisition value of repair items. In removing the exception, the final rule subjects a new population of defense contractors to DoD business system requirements, to include the need for contracting officer business system determinations.

## **Background.**

Based on an [Interim Rule](#) published in the Federal Register on May 18, 2011, DoD Contracting Officers are required to determine the acceptability of a contractor's business system, approve or disapprove the system, and pursue correction of any deficiencies. The following contractor business systems were affected: Accounting, Purchasing, Material Management and Accounting, Estimating, Earned Value Management, and Property Management.

## **Discussion.**

Government property business system requirements for DoD contractors are linked to the use of FAR clause 52.245-1 in DoD contracts. As set forth in FAR 45.107(1), contracts and solicitations with Government furnished property (GFP) and all cost-reimbursement contracts and solicitations must contain FAR clause 52.245-1. DoD policy at DFARS 245.107(5) requires that contracts and solicitations containing 52.245-1 must also contain the DFARS Government property business system clause 252.245-7003 (Contractor Property Management System Administration)

In other words, for DoD contracts, where 52.245-1 exists, DFARS 252.245-7003 must also exist—and its associated business system requirements, therefore, will apply.

However, FAR 45.107(d) contained a long-standing exception for inserting 52.245-1 in certain contracts, namely, purchase orders for repair (where the total unit acquisition value of repair items exceeds the DoD simplified acquisition threshold and provided no other GFP [non-repairs] is involved). Accordingly, contractors awarded these purchase orders were not subject to business system requirements.

The final rule published on April 30, 2019 changed all of that. FAR clause 52.245-1 is now required in all DoD purchase orders for repair, notwithstanding the total unit acquisition value of repair items. By extension, DFARS clause 252.245-7003 is also now required, requiring contracting officer determinations on contractor systems that were heretofore exempt.

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<sup>1</sup> Purchase orders are identified as P, M, W, or V in the ninth position of the Procurement Instrument Identification Number ("PIIN").

**Conclusion.**

According to data included in the Federal Register Notice, DoD awarded 735 purchase orders involving the repair of Government property (at or below the simplified acquisition threshold) to 530 unique vendors (contractors), of which 328 (approximately 56%) were small businesses. The April 2019 Federal Register Notice does not indicate how many of these contractors were already subject to property business system requirements. But clearly, the DoD final rule will subject a number of contractors—in all likelihood small businesses—to a property management system analysis and associated contracting officer's property business system determination. But these is more to the story...

DFARS 245.107 also requires the following DFARS clauses be included in DoD contracts with 52.245-1:

- 252.245-7001, Tagging, Labeling, and Marking of Government-Furnished Property
- 252.245-7002, Reporting Loss of Government Property
- 252.245-7004, Reporting, Reutilization, and Disposal
- 252.211-7007, Reporting of Government-Furnished Property

Some of the requirements contained in these clauses do indeed strengthen the accountability and management of the Department's assets, as they were envisioned. But to a new contractor, each clause presents its own specific and unique implementation challenge. Some contractors will no doubt find this a challenging period of adjustment, especially smaller firms not previously subject to business system approvals. The Government also will need to adjust its missions and roles in order to determine the type and scope of oversight needed to ensure contractor compliance. Property administrators, whether they be assigned to Army, Navy, USAF, or Defense Contract Management Agency, will have new workload to consider.

Tom Ruckdaschel is an independent consultant specializing in Federal Government Contract Property Requirements & Related DoD Business Systems. Tom has over 35 years' experience in property management and was a major contributor to the FAR Government property rewrite and related DoD FAR supplement rules