

(c) The licensee of an earth station which is authorized to conduct temporary fixed operations in bands shared co-equally with terrestrial fixed stations shall provide the following information to the Director of the Columbia Operations Center at P.O. Box 250, Columbia, Maryland 21045 (phone number 301-725-3474 and fax number 301-206-2896) and to the licensees of all terrestrial facilities lying within the coordination contour of the proposed temporary fixed earth station site before beginning transmissions:

\* \* \* \* \*

27. A new § 25.280 is added to read as follows:

**§ 25.280 Inclined orbit operations.**

Satellite operators may commence operation in incline orbit mode without obtaining prior Commission authorization provided that the Commission is notified by letter within 30 days after commencement. The notification shall include:

- (a) The date of commencement of included orbit operation;
- (b) The initial inclination;
- (3) The rate of change in inclination per year; and
- (4) The expected end-of-life of the satellite accounting for inclined orbit operation.

28. Section 25.308 is redesignated as § 25.281.

29. Subpart E is removed and reserved.

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**DEPARTMENT OF DEFENSE**

**48 CFR Part 52**

**Federal Acquisition Regulation; Use and Charges Clause Class Deviation**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of proposed class deviation.

**SUMMARY:** The Department of Defense (DoD) is proposing a class deviation from the Federal Acquisition Regulation (FAR) that simplifies the method of determining rental charges for government property. The proposed class deviation will allow defense contractors to propose rental charges for the commercial use of government property and real property while revisions to the FAR are being drafted.

**DATES:** Comments on the proposed class deviation should be submitted in writing at the address shown below on or before November 6, 1995 to be

considered in the formulation of the final class deviation.

**ADDRESSES:** Interested parties should submit written comments to: Ms. Angelena Moy, MPI, Room 3E144, Pentagon, Washington, DC 20301-3000. FAX (703) 695-7596.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena Moy, telephone (703) 695-1099.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On September 16, 1994 (59 FR 47583) the Director of Defense Procurement announced an initiative to rewrite FAR Part 45, Government Property, to make it easier to understand and to minimize the burdens imposed on contractors and the Government. The Director of Defense Procurement is providing a forum for an exchange of ideas and information with government and industry personnel by holding public meetings, soliciting public comments, and publishing notices of public meetings in the **Federal Register**. Interested parties were invited to provide written suggestions or comments in the notice of public hearing dated September 16, 1994 (59 FR 47583). Twenty-two commentators provided approximately 500 comments, including a recommendation that simplifying the procedures for computing rental charges for government property would reduce administrative burdens and provide cost savings.

In order to expedite implementation of simplified government property rental procedures, DoD is proposing a class deviation from current FAR methods of determining rental charges for commercial use of government property. The proposed class deviation was included in discussions during the public hearings that have been held on the rewrite of FAR Part 45. DoD proposes to deviate from the clause at FAR 52.245-9 as follows:

**Part 52—Solicitation Provisions and Contract Clauses**

**52.245-9 Use and Charges**

- Deviation authorizes DoD to use the following clause in lieu of the clause at 52.245-9. This clause requires contractors, for real property and associated fixtures, to obtain certified property appraisals that compute a monthly, daily, or hourly rental rate for comparable commercial property. Rental charges would be determined by multiplying the rental time by an appraisal rental rate expressed as a rate per hour. For other government property, rental charges will be the

smaller of two percent of the property's acquisition cost multiplied by the ratio of rental time to time available for use, or by the method described for real property and associated fixtures.

**Use and Charges (APR 1984) (Deviation)**

(a) *Deviations.*

As used in this clause—

*Acquisition cost* means the acquisition cost recorded in the contractor's property control system or, in the absence of such record, the value attributed by the Government to a government property item for purposes of determining a reasonable rental charge.

*Government property* means property owned, licensed, or leased by the Government.

*Real property* means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or equipment.

*Rental period* means the calendar period during which government property is made available for commercial purposes.

*Rental time* means the number of hours, to the nearest whole hour, rented property is actually used for commercial purposes. It includes time to set up the property for such purposes, perform required maintenance, and restore the property to its condition prior to rental.

*Time available for use* means the number of hours, to the nearest whole hour, in the rental period.

(b) *General.* (1) Rental requests must be submitted to the administrative Contracting Officer, identify the property desired, propose a rental period, and calculate an estimated rental charge.

(2) The Contractor shall not use government property for commercial purposes until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property may be used only on a non-interference basis.

(3) Notwithstanding any other provision of this contract, the Contractor is responsible for any loss, theft, or destruction of, or damage to, government property during its use for commercial purposes.

(c) *Estimated rental charge.* The estimated rental charge submitted with the Contractor's rental request shall be computed by substituting the Contractor's best estimate of the time the property might be used for commercial purposes for rental time in the formulae described in paragraph (d) of this clause.

(d) *Final rental charge*—(1) *Real property and associated fixtures*—(i) The Contractor shall obtain, at its expense, a property appraisal from an independent licensed or certified appraiser that computes a monthly, daily, or hourly rental rate for comparable commercial property no more than one year prior to the date the property is desired for commercial use and submit the appraisal to the administrative Contracting Officer at least 30 days prior to that date. Except as provided in paragraph (d)(1)(iv) of this clause, the administrative Contracting Officer shall use

the appraisal rental rate to determine an equitable rental charge.

(ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily rental rates shall be divided by 720 or 24, respectively, to determine an hourly rental rate.

(iii) The Contractor may request consideration of an alternate basis for computing the rental charge if it considers a time based rental unreasonable or impractical.

(iv) When the administrative Contracting Officer has reason to believe the appraisal rental rate is not reasonable, he or she shall promptly notify the Contractor and provide his or her rationale. The parties may agree on an alternate means for computing a reasonable rental charge.

(2) *Other government property.* The final rental charge shall be the smaller of—

(i) Two percent (2%) of the property's acquisition cost multiplied by the ratio of rental time to time available for use where

time shall be expressed in increments not less than one hour; or,

(ii) A rental charge based upon the appraisal method described in paragraph (d)(1) of this clause subject to the constraints of that paragraph.

(e) *Rental payments.* (1) Rent is due at the time and place specified by the Contracting Officer. If a time is not specified, the rental is due 60 days following completion of the rental period. The Contractor shall calculate the rental due, and furnish records or other supporting data in sufficient detail to permit the administrative Contracting Officer to verify the rental time.

(2) Interest will be charged if payment is not made by the specified payment date or, in the absence of a specified date, the sixty-first day following completion of the rental period. Interest will accrue at the "Renegotiation Board Interest Rate" (published in the Federal Register semiannually on or about January 1st and July 1st) for the period in which the rent is due.

(3) At any time during the rental period, the Government may revoke commercial use authorization and require the Contractor, at the Contractor's expense, to return the property to the Government, restore the property to its pre-rental condition, or both.

(f) The Government's acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor's unauthorized use of government property or any other failure to perform this contract according to its terms.

(End of clause)

#### **List of Subjects in 48 CFR Part 52**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

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