

## 52.245-9 Use and Charges.

As prescribed in 45.107(c), insert the following clause:

Use and Charges (Apr 2012)

(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:

*Rental period* means the calendar period during which Government property is made available for nongovernmental purposes.

*Rental time* means the number of hours, to the nearest whole hour, rented property is actually used for nongovernmental 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 (less normal wear and tear).

(b) *Use of Government property*. The Contractor *may* use the Government property without charge in the performance of-

(1) Contracts with the Government that specifically authorize such use without charge;

(2) Subcontracts of any tier under Government prime contracts if the *Contracting Officer* having cognizance of the prime contract-

(i) Approves a subcontract specifically authorizing such use; or

(ii) Otherwise authorizes such use *in writing*; and

(3) Other work, if the *Contracting Officer* specifically authorizes *in writing* use without charge for such work.

(c) Rental. If granted written permission by the *Contracting Officer*, or if it is specifically provided for in the Schedule, the Contractor *may* use the Government property (except material) for a rental fee for work other than that provided in paragraph (b) of this clause. Authorizing such use of the Government property does not waive any rights of the Government to terminate the Contractor's right to use the Government property. The rental fee *shall* be determined in accordance with the following paragraphs.

(d) General.

(1) Rental requests *shall* be submitted to the Administrative *Contracting Officer* (ACO), identify the property for which rental is requested, propose a *rental period*, and compute an estimated rental charge by using the Contractor's best estimate of *rental time* in the formulae described in paragraph (e) of this clause.

(2) The Contractor *shall* not use Government property for nongovernmental purposes, including Independent Research and Development, until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property *shall* be used only on a non-interference basis.

(e) *Rental charge.*-

(1) *Real property and associated fixtures.*

(i) The Contractor *shall* obtain, at its expense, a property appraisal from an independent licensed, accredited, or certified appraiser that computes a monthly, daily, or hourly rental rate for comparable commercial property. The appraisal *may* be used to compute rentals under this clause throughout its effective period or, if an effective period is not stated in the appraisal, for one year following the date the appraisal was performed. The Contractor *shall* submit the appraisal to the ACO at least 30 days prior to the date the property is needed for nongovernmental use. Except as provided in paragraph (e)(1)(iii) of this clause, the ACO *shall* use the appraisal rental rate to determine a reasonable 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 appraisal rental rates *shall* be divided by 720 or 24, respectively, to determine an hourly rental rate.

(iii) When the ACO believes the appraisal rental rate is unreasonable, the ACO *shall* promptly notify the Contractor. The parties *may* agree on an alternative means for computing a reasonable rental charge.

(iv) The Contractor *shall* obtain, at its expense, additional property appraisals in the same manner as provided in paragraph (e)(1)(i) if the effective period has expired and the Contractor desires the continued use of property for nongovernmental use. The Contractor *may* obtain additional appraisals within the effective period of the current appraisal if the market prices decrease substantially.

(2) *Other Government property.* The Contractor *may* elect to compute the rental charge using the appraisal method described in paragraph (e)(1) of this clause subject to the constraints therein or the following formula in which *rental time shall* be expressed in increments of not less than one hour with portions of hours rounded to the next higher hour: The hourly rental charge is calculated by multiplying 2 percent of the *acquisition cost* by the hours of *rental time*, and dividing by 720.

(3) *Alternative methodology.* The Contractor *may* request consideration of an alternative basis for computing the rental charge if it considers the monthly rental rate or a time-based rental unreasonable or impractical.

(f) *Rental payments.*

(1) Rent is due 60 days following completion of the *rental period* or as otherwise specified in the contract. The Contractor *shall* compute the rental due, and furnish records or other supporting data in sufficient detail to permit the ACO to verify the *rental time* and computation. Payment *shall* be made by check payable to the Treasurer of the *United States* and sent to the *contract administration office* identified in this contract, unless otherwise specified by the *Contracting Officer*.

(2) Interest will be charged if payment is not made by the date specified in paragraph (f)(1) of this clause. Interest will accrue at the "Renegotiation Board Interest Rate" (published in the *Federal Register* semiannually on or about January 1 st and July 1 st) for the period in which the rent is due.

(3) 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.

(g) Use revocation. At any time during the *rental period*, the Government *may* revoke nongovernmental use authorization and require the Contractor, at the Contractor's expense, to return the property to the Government, restore the property to its prerenal condition (less normal wear and tear), or both.

(h) *Unauthorized use*. The unauthorized use of Government property can subject a person to fines, imprisonment, or both, under 18 U.S.C. 641.

(End of clause)

**Parent topic:** 52.245 [Reserved]