OFFICE OF SPONSORED PROGRAMS
IMPLEMENTATION OF DEAR 970.5241-1, PROPERTY

1. PURPOSE

When performing subcontracts for U.S. Department of Energy ("DOE") National Laboratories, Boise State University ("BSU") is regularly required to comply with 48 CFR § 970.5245-1 (Dec 2000) Alternate I (Dec 2000) (referred to herein as the "DEAR Property Clause"). The DEAR Property Clause generally provides that all Equipment and Supplies (defined below) acquired by the BSU during the performance of subcontracts are government property. This is inconsistent with the property requirements that generally apply to the BSU’s federally-funded awards. Consequently, the Office of Sponsored Programs ("OSP") has developed this procedure to comply with the DEAR Property Clause requirements and to provide clarity to campus.

2. GENERAL IMPLEMENTATION APPROACH

2.1. Pursuant to 48 CFR § 52.216-7 (Jun 2013) Alternate II, BSU is required to follow the cost principles set forth in Subpart E to 2 CFR Part 200 ("Uniform Guidance Cost Principles") when performing contracts and subcontracts based on the Federal Acquisition Regulation ("FAR").

2.2. Because BSU is required to follow the Uniform Guidance Cost Principles, it has adopted the definitions of “Equipment,” “Supplies” and “Computing devices” set forth in 2 CFR §§ 200.33, 200.94 and 200.20, respectively. These definitions are as follows:

2.2.1. Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000. See also §§200.12 Capital assets, 200.20 Computing devices, 200.48 General purpose equipment, 200.58 Information technology systems, 200.89 Special purpose equipment, and 200.94 Supplies.

2.2.2. Supplies means all tangible personal property other than those described in §200.33 Equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or $5,000, regardless of the length of its useful life. See also §§200.20 Computing devices and 200.33 Equipment.

2.2.3. Computing devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or “peripherals”) for printing, transmitting and receiving, or storing electronic

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1 E.g., Idaho National Laboratory, which is operated by Battelle Energy Alliance, LLC ("BEA").
2 Effective June 24, 2015, the University and BEA entered into Blanket Master Contract No. 00154754 ("BMC"), which contains the DEAR Property Clause included as Exhibit A to this process (see also BMC at page 13 of 15). This clause is provided as an example. Subcontracts from other DOE National Laboratories may include different versions of the DEAR Property Clause, but the content will be quite similar.
3 See, e.g., BMC at page 12 of 15.
information. See also §§200.94 Supplies and 200.58 Information technology systems.

2.3. As described in OSP’s *Basics of Charging Costs to a Sponsored Project*, BSU and its OSP take seriously and monitor the allowable, allocable and reasonable cost requirements in the Uniform Guidance Cost Principles, including during the Proposal Preparation, Award Acceptance, Award Management and Award Closeout stages of the Sponsored Project Life Cycle. For example, OSP Pre-Award Services evaluates the amount and type of Equipment and Supplies to be acquired when developing budgets for proposal submissions, and OSP Post-Award Services evaluates the amount and type of Equipment and Supplies actually purchased during award performance. The purpose of this oversight is to ensure that all costs incurred by BSU are allowable, allocable and reasonable. The result of this effort is that the government and its prime contractors are protected from potential stockpiling of Equipment and Supplies.

3. EQUIPMENT

3.1. BSU manages Equipment in accordance with its standard processes for Equipment acquired with federal funds or furnished by the federal government. These processes include, but are not limited to, those set forth in 2 CFR § 200.313 (Equipment) and BSU Policy # 6270 (Control of University Equipment and Materials). Where the DEAR Property Clause conflicts with BSU’s standard processes, BSU implements the requirements of the DEAR Property Clause. BSU recognizes that Equipment is generally considered government property under the DEAR Property Clause.

4. SUPPLIES

4.1. BSU manages Supplies in accordance with its standard processes for Supplies acquired with federal funds or furnished by the federal government. These processes include, but are not limited to, those set forth in 2 CFR § 200.314 (Supplies). Where the DEAR Property Clause conflicts with BSU’s standard processes, BSU implements the requirements of the DEAR Property Clause. BSU recognizes that Supplies are generally considered government property under the DEAR Property Clause.

4.2. BSU Principal Investigators (“PIs”) or appropriate designees are responsible for maintaining accurate inventories of Supplies acquired during the performance of their sponsored projects. PIs or their designees are required to use the Supplies Inventory Tracker for DEAR 970.5241-1 Compliance or another compliant inventory management methodology. OSP reserves the right to audit PIs’ implemented inventory management approaches for compliance.

4.3. As described in the *Basics of Charging Costs to a Sponsored Project*, BSU may allocate Supplies to sponsored projects using various allocation methodologies.4

4.4. All Supplies purchased by BSU under federally-funded awards must be consistent with applicable Scopes of Work, the Uniform Guidance Cost Principles and the *Basics of Charging Costs to a Sponsored Project* — meaning that purchases must always be consistent with the work being performed and be allowable, allocable and reasonable.

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BSU treats Supplies as consumables that are intended to be used in their entirety during the performance of specific projects, and PIs are ultimately responsible for managing this expectation. Based on the framework described in this section and elsewhere in this document, Supplies are “consumed” — and no longer tracked as inventory or government property — when their exterior packaging (if applicable) is opened and the Supplies are first used in furtherance of the federally-funded projects for which they were acquired.

4.5. Notwithstanding the foregoing, when Computing devices are acquired as Supplies under awards containing the DEAR Property Clause (not recommended by OSP), BSU reports the Computing devices, including their hard drives, to its sponsors in the accountings required by Paragraph (d) of the DEAR Property Clause.
EXHIBIT A
DEAR PROPERTY CLAUSE


(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 contracting officer, 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 contracting officer 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 contracting officer, 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 contracting officer, as shall indicate its ownership by the Government.

(d) Disposition. 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 contracting officer 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 contracting officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the contracting officer 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 contracting officer may direct. Upon completion of the work or the termination of this contract, the contractor shall render an accounting, as prescribed
by the contracting officer, 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 contracting officer, 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)

(i) 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:

(A) Willful misconduct or lack of good faith on the part of the contractor's managerial personnel;

(B) Failure of the contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the contracting officer to safeguard such property under paragraph (e) of this clause; or

(C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.
(ii) If, after an initial review of the facts, the contracting officer 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:

(i) 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 contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) 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 contracting officer 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 contracting officer 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 contracting officer. The contractor shall take no action prejudicial to the right of the Government to recover thereby, 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.

(i) 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 contracting officer 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 contracting officer may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for:

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) Employee personal responsibility and accountability for Government-owned property;

(C) Full integration with the contractor's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.

(iii) 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.

(i) Unless otherwise directed by the contracting officer, the contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.

(ii) 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.

Alternate I (DEC 2000), As prescribed in 48 CFR 970.4501-1(b), when the award is to a nonprofit contractor, replace paragraph (j) of the basic clause with the following paragraph (j):

(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 all or substantially all of:

(1) The contractor's business; or
(2) The contractor's operations at any one facility or separate location at which this contract is being performed; or
(3) The contractor's Government property system and/or a Major System Acquisition or Major Project as defined in DOE Order 4700.1 (Version in effect on effective date of contract).