

# Herding Cats I: Disposal of DoD Real Property and Contractor Inventory in Contingency Operations

Captain Lyndsey MD Olson\*

*“The drawdown of U.S. forces in Iraq risks enormous waste, which could range from completion of work that may not need to be done, to poorly controlled handling and disposition of U.S. government property.”<sup>1</sup>*

## I. Introduction

During his 2010 State of the Union address, President Obama stated, “I promised that I would end this war, and that is what I am doing as President. We will have all of our combat troops out of Iraq by the end of August [2010].”<sup>2</sup> Additionally, all U.S. forces<sup>3</sup> will be completely withdrawn from Iraq by 31 December 2011.<sup>4</sup> The drawdown of forces includes retrograde<sup>5</sup> of over 3.3 million pieces of equipment

---

\* Judge Advocate, Minnesota Army National Guard. Presently assigned as Student, 58th Judge Advocate Officer Graduate Course, The Judge Advocate General’s School, U.S. Army, Charlottesville, Va. This article was submitted in partial completion of the Master of Laws requirements of the 58th Judge Advocate Officer Graduate Course.

<sup>1</sup> COMM’N ON WARTIME CONTRACTING IN IRAQ AND AFGHANISTAN, AT WHAT COST? CONTINGENCY CONTRACTING IN IRAQ AND AFGHANISTAN 46 (June 2009) [hereinafter AT WHAT COST?].

<sup>2</sup> President Barack Obama, State of the Union Address (Jan. 27, 2010), available at <http://www.whitehouse.gov/the-press-office/remarks-president-state-union-address>.

<sup>3</sup> United States forces includes “the entity comprising the members of the United States Armed Forces, their associated civilian component, and all property, equipment, and materiel of the United States Armed Forces present in the territory of Iraq.” Agreement on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities During Their Temporary Presence in Iraq, U.S.–Iraq, Nov. 17, 2008, available at [http://www.usf-iraq.com/images/CGs\\_Messages/security\\_agreement.pdf](http://www.usf-iraq.com/images/CGs_Messages/security_agreement.pdf) [hereinafter Iraq Security Agreement].

<sup>4</sup> *Id.* at 24.

<sup>5</sup> Under Field Manual 3.0, retrograde is a defensive maneuver involving moving away from the enemy. U.S. DEP’T OF THE ARMY, FIELD MANUAL 3.0, OPERATIONS para. 3-59 (Feb. 2008) [hereinafter FM 3.0]. The DoD has used this term in concert with “reposture operations” which is a non-doctrinal term defined by MNF–I as “the realignment of forces, basing and resources to adjust to changes in the operating environment”. MNF–I FRAGO 08-22, ANNEX E, LOGISTICS REPOSTURE GUIDANCE (28 May 2008). Part of the DoD’s reposturing plan is redeployment. A related term to redeployment is retrograde. The terms for retrograde personnel, movement, and operation are not being used in the doctrinal sense.

As of May 2008 there was no agreed upon definition for retrograde as it applies to reposture planning. However, according to some of the proposed definitions, the term generally refers to the evacuation of materiel and equipment from Iraq. Moreover, [GAO] analysis of DoD documents indicates that the terms “retrograde” and “redeployment” are often used interchangeably.”

U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-08-930, REPORT OPERATION IRAQI FREEDOM 7 (2008) [hereinafter GAO-08-930].

and the transfer of 378 bases.<sup>6</sup> One of several tangible signs that drawdown, or retrograding, in Iraq had begun was the transfer of Forward Operating Base (FOB) Rustamiyah on 31 March 2009. At the FOB Rustamiyah transfer ceremony, Major General Daniel Bolger, commander of Multi-National Division–Baghdad (MND–B), stated, “All this today was made possible by American, Coalition and Iraqi Soldiers and Police who fought for and protected this ground so it would be ready to transition today. We should never forget that.”<sup>7</sup> Behind the scenes, a property disposal team and its legal advisors accomplished the transition. Working on the cusp of the base closure movement in Iraq, the team struggled to understand multiple sets of guidance on property disposition.<sup>8</sup> For example, several window-mounted air conditioners, removed from housing units and sent to different bases, were later recalled and reinstalled into the original housing units for transfer to the Government of Iraq (GOI), due to lack of consistent guidance.<sup>9</sup> The Rustamiyah closure highlighted several challenges facing U.S. Forces–Iraq (USF–I)<sup>10</sup> in its disposal and base closure efforts.<sup>11</sup>

In response to the challenges highlighted by the Rustamiyah closure, USF–I took steps to unify effort, clarify guidance, coordinate, and monitor the retrograde of property from Iraq.<sup>12</sup> In conjunction with increased coordination and communication, these efforts resulted in the closure of eighty-three bases Iraq-wide.<sup>13</sup> Nonetheless, due to the complexity of issues surrounding property disposal,<sup>14</sup> USF–I

---

<sup>6</sup> WILLIAM M. SOLIS, PRELIMINARY OBSERVATIONS ON DOD PLANNING FOR THE DRAWDOWN OF U.S. FORCES FROM IRAQ, STATEMENT BEFORE COMMISSION ON WARTIME CONTRACTING IN IRAQ AND AFGHANISTAN 5–6 (2009).

<sup>7</sup> Staff Sergeant Mark Burell, *Coalition Forces Transfer FOB Rustamiyah Back to Iraqis*, Apr. 2, 2009, <http://www.army.mil/-news/2009/04/02/19173-coalition-forces-transfer-fob-rustamiyah-back-to-iraqis>.

<sup>8</sup> AT WHAT COST, *supra* note 1, at 50.

<sup>9</sup> *Id.*

<sup>10</sup> Multi-National Force–Iraq became U.S. Forces–Iraq on 1 January 2010. See <http://www.usf-iraq.com> (last visited Mar. 5, 2010).

<sup>11</sup> *Id.*

<sup>12</sup> SOLIS, *supra* note 6, at 5–6. The Lean Six Sigma office of the Office of the Secretary of Defense conducted projects on logistics optimization. *Id.* In addition, the DoD created the U.S. Army Central Support Element–Iraq (USARCENTSE–I), with a mission to integrate initiatives and guidance from MNF–I, MNC–I, U.S. Army Central (ARCENT), Headquarters, Department of the Army (HQDA), and Army Materiel Command (AMC). *Id.* at 6. The DA also created a Responsible Reset Task Force (RRTF), lead by AMC, to provide disposition instructions for retrograde of Army equipment. *Id.* at 7.

<sup>13</sup> SOLIS, *supra* note 6, at 8. This number is as of September 2009. *Id.*

<sup>14</sup> Disposal is “the process of redistributing, transferring, donating, selling, demilitarizing, destroying or other “end of life cycle” activities, and is the final stage before the property leaves DoD’s control.” VALERIE BAILEY

faces significant obstacles and challenges for the remaining 295 base closures in Iraq scheduled through 31 December 2011.<sup>15</sup>

Property disposal issues persist despite DoD's endeavors to unify its effort and clarify guidance and communication.<sup>16</sup> For example, in May 2009, USF-I sought to transfer the Ibn Sina Hospital to the GOI. The MNF-I's intent was to transfer the hospital as a fully functional medical facility, including various items of existing, essential equipment. Unfortunately, the Army was unable to identify a legal transfer authority for one hundred critical items.<sup>17</sup> In a Government Accountability Office (GAO) study that included examination of the Ibn Sina Hospital transfer, the GAO found that "clarification of authorities to be used for transferring [property] to the GOI will help facilitate decisions on which [property] will be transferred, and will assist in ensuring that DOD will meet its stated timelines [for drawdown]."<sup>18</sup> The failure of the Ibn Sina Hospital transfer indicates that USF-I is still determining the proper disposal authorities and how to apply them in specific circumstances.

The purpose of this primer is to provide judge advocates with the statutory authority, policies, and implementing guidance on real property and "contractor inventory<sup>19</sup> disposal" in contingency operations. This primer focuses on Iraq as a current example to give context to the legal concepts, but the legal authorities discussed in this primer are applicable to future property disposal in Afghanistan and other contingency operations. Section II will classify property found in contingency operations, and then review the legal authorities, policy, instructions, and guidance on disposal of excess<sup>20</sup> real property and "contractor inventory disposal."<sup>21</sup> Part III will address general legal authorities for real property disposal in contingency operations, as well as theater-specific real property disposal authority in Iraq and methods for real property disposal in Afghanistan. Section

IV will discuss contractor-managed, government-owned property and how to identify, classify, and dispose of contractor inventory.

## II. Classification of Property and Legal Authorities for Property Disposal in Contingency Operations

The U.S. Constitution provides Congress with the power to determine the disposal of all U.S. Government (USG) property.<sup>22</sup> Article IV, Section 3, Clause 2 of the Constitution states that Congress shall, "dispose of and make all needful rules and regulations respecting territory or other property belonging to the United States."<sup>23</sup> Congress subsequently codified the process for USG property disposal in title 40, subtitle I, Public Buildings, Property and Works, of the U.S. Code (U.S.C.).<sup>24</sup>

### A. General Disposal Authorities for DoD Foreign Property

The controlling statutory authority for disposal of DoD property is subtitle I of title 40.<sup>25</sup> Title 40 codifies the authority of the USG to procure property and services, use available property, dispose of surplus property,<sup>26</sup> and establish record keeping requirements for government property.<sup>27</sup> Title 40 broadly defines property as any government interest in property, with a few enumerated exclusions.<sup>28</sup>

Title 40 also establishes the General Services Administration (GSA) as the basic property acquisition and disposal agency for the USG.<sup>29</sup> In 1972, GSA delegated its authority for disposal of DoD property worldwide (both real and personal) to the Secretary of Defense.<sup>30</sup> The Secretary of Defense re-delegated the disposal authority for personal

---

GRASSO, CONG. RESEARCH SERV. REPORT, DEFENSE SURPLUS EQUIPMENT DISPOSAL: BACKGROUND INFORMATION, RS20549, at CRS-2 (2007).

<sup>15</sup>SOLIS, *supra* note 6, at 8.

<sup>16</sup>*Id.* at 18.

<sup>17</sup>*Id.*

<sup>18</sup>*Id.*

<sup>19</sup> Contractor inventory is contractor-managed government-owned property that is excess to the contract. GEN. SERVS. ADMIN. ET AL., FEDERAL ACQUISITION REG. pt. 45.101 (Jan. 2010) [hereinafter FAR]. *See also* discussion *infra* Part IV.

<sup>20</sup> Property becomes excess when the head of the agency controlling the property determines it is not required to meet the agency's needs or responsibilities. This term is not interchangeable with surplus property. 40 U.S.C. § 102(3) (2006).

<sup>21</sup> This article will only address disposal of DoD personal property in the context of "contractor inventory disposal." For a detailed discussion on disposal of DoD personal property, see Major Kathryn M. Navin, *Herding Cats II: Disposal of DoD Personal Property*, ARMY LAW., Apr. 2010, at 25.

<sup>22</sup> U.S. CONST. art IV, § 3, cl. 2.

<sup>23</sup> *Id.*

<sup>24</sup> *See generally* 40 U.S.C. §§ 101–1308 (2006).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* § 102 (title 40 defines surplus property as property that is not needed by any branch of the USG).

<sup>27</sup> *See generally* 40 U.S.C. §§ 101–1308 (2006). The Federal Property and Administrative Services Act of 1949 is substantially recodified by subtitle I of title 40, with the exception of title III of the Act, which remains codified at 41 U.S.C. §§ 251–266. *See* 40 U.S.C. § 111. *See also* H.R. REP. NO. 107-479, Pub. L. No. 107-217 (codified as amended at 40 U.S.C. §§ 101–1308 (2006)) (discussing the recodification of existing law to consolidate related provisions).

<sup>28</sup> 40 U.S.C. § 102(9). Exceptions to the term "property" include public domain, national forests and parks, minerals in land or land reserved for disposition under land mining laws, land withdrawn or reserved from the public domain, naval battleships, cruisers, aircraft carriers, destroyers, or submarines, and records of the Government. *Id.*

<sup>29</sup> *Id.* § 301.

<sup>30</sup> GRASSO, *supra* note 14, at 2.

property to the Defense Logistics Agency (DLA), which subsequently re-delegated the disposal authority to one of its subordinate elements, the Defense Reutilization and Marketing Service (DRMS).<sup>31</sup> Title 40 requires that executive agencies dispose of property in accordance with delegated authority.<sup>32</sup> Further, agencies will reassign property to another need within the agency, transfer excess to other federal agencies, and obtain excess from other federal agencies when possible.<sup>33</sup>

Normally, government property must be surplus for disposal outside of the USG.<sup>34</sup> Chapter 7 of title 40, however, allows disposal of “foreign excess property” (excess to an agency, but not surplus to the government).<sup>35</sup>

Excess property located in foreign countries has far less potential for general Government use than property physically located within the borders of the United States. In our government, the armed services are the only substantial users of property in foreign countries. Further, the costs of transporting foreign excess property back to the United States and rehabilitating it would, in most cases, equal or exceed its value for use by civilian agency here, and, most importantly, the disposal of foreign excess property to foreign governments has proved in the past, and should continue to prove in the future, an effective instrument for aiding our foreign policy.<sup>36</sup>

“Foreign excess property” is excess property (both real and personal) located in foreign countries, including property that is part of contingency operations.<sup>37</sup> Chapter 7 specifically authorizes disposal of “foreign excess property”

using authority distinct and separate from DRMS property disposal authority.<sup>38</sup>

Chapter 7 grants “foreign excess property” disposal authority to the head of each executive agency.<sup>39</sup> Thus, title 40, chapter 7 grants the authority to dispose of “foreign excess property” belonging to the DoD, to the Secretary of Defense.<sup>40</sup> The Secretary of Defense may dispose of “foreign excess property” “in a manner that conforms to the foreign policy of the United States”<sup>41</sup> and following policy guidance prescribed by the President.<sup>42</sup>

Section 7 authorizes several means of disposal. When return of foreign excess property to the United States is in the interest of the USG, the property may also be returned to the United States for handling as “excess”<sup>43</sup> or “surplus”<sup>44</sup> property.<sup>45</sup> Authorized methods of disposal for “foreign excess property” also include sale, exchange, lease, or transfer.<sup>46</sup> Further, the Secretary of Defense may exchange foreign property for foreign currency or credit, or substantial benefits.<sup>47</sup> Additionally, DoD may donate medical materials to foreign countries without cost to the donee under certain

<sup>38</sup> 40 U.S.C. §§ 701–705; *see also supra* note 29. *See generally* Navin, *supra* note 21.

<sup>39</sup> *Id.* §701(b).

<sup>40</sup> *Id.* § 701. The Secretary of Defense may delegate and re-delegate this authority. *Id.* § 701(b)(3).

<sup>41</sup> *Id.* § 701(b)(2)(B).

<sup>42</sup> *Id.* § 701(b)(2)(A). The President has issued one Executive Order prescribing USG real property policy, which states in relevant part,

It is the policy of the United States to promote the efficient and economical use of America’s real property assets and to assure management accountability for implementing Federal real property management reforms. Based on this policy, executive branch departments and agencies shall recognize the importance of real property resources through increased management attention, the establishment of clear goals and objectives, improved policies and levels of accountability, and other appropriate action.

Exec. Order No. 13,325, 3 C.F.R. 5897, sec. 1 (2004). This policy does not supersede any existing authority under law. *Id.* sec. 2.b.

<sup>43</sup> 40 U.S.C. § 102(3). Excess property is property in the control of a federal agency that no longer meets the needs of the agency. *Id.*

<sup>44</sup> *Id.* § 102(10). Surplus property is property determined by GSA not to meet requirements of any federal agencies. *Id.*

<sup>45</sup> *Id.* § 702 (a). *See also* GENERAL SERVICES ADMINISTRATION FEDERAL MANAGEMENT REGULATION—FOREIGN EXCESS PROPERTY § 102-36.380–400 (Aug. 18, 1997).

<sup>46</sup> 40 U.S.C. § 704(b)(1). Disposal under this section is for cash, credit, or other property as determined by the Secretary of Defense. *Id.*

<sup>47</sup> *Id.* § 704(b)(2). *See, e.g.,* Memorandum from Deputy Under Secretary of Defense for Logistics and Materiel Readiness, to Chairman of the Joint Chiefs of Staff and Commanding General, Multi-National Forces–Iraq, subject: Authority to Transfer U.S. Property in Iraq (6 June 2008) (interpreting substantial benefits as intangible mission benefits).

<sup>31</sup> 40 U.S.C. § 121(d); *see also id.* § 501(a)(2).

<sup>32</sup> *Id.* § 524(a)(5).

<sup>33</sup> *Id.* § 524(b).

<sup>34</sup> *See* 40 U.S.C. §§ 545, 524; *see also* U.S. DEP’T OF DEF., INSTR. 4160.14, DEFENSE REUTILIZATION AND MARKETING SERVICE (11 Sept. 2009) [hereinafter DoDI 4160.114]. The four priority levels for disposal, in order are (1) Reutilization: property is requisitioned through DRMS to another DoD component; (2) Transfer: property turned in to DRMS that is no longer needed by DoD, but can be used by another USG agency and thus, transferred to that agency; (3) Donation: property that is not needed by any part of the USG, DRMS may donate the property to approved state governments and organizations; (4) Sales: if no Federal or State government need for the property exists, DRMS may sell property through government auction to U.S. persons or entities. *Id.* at S2C5-4. *See generally* Navin, *supra* note 21;

<sup>35</sup> *See* 40 U.S.C. §§ 701–05.

<sup>36</sup> To The Secretary of the Navy, B-13826442, 42 Comp. Gen. 21 (1962).

<sup>37</sup> 40 U.S.C. § 102(6).

conditions.<sup>48</sup> The Department of Defense may abandon or destroy property if it is unable to dispose of by any other authorized method.<sup>49</sup>

The authorities to dispose of property under title 40 are generally in addition to other affirmative legal authorities.<sup>50</sup> Furthermore, nothing in subtitle I affects the authority of an executive agency to conduct other authorized programs for resale, stabilization, transfer to foreign governments, or foreign aid, relief, or rehabilitation.<sup>51</sup> Nonetheless, any agency conducting these programs must endeavor to conduct its operations with the requirements in subtitle I to the maximum extent practicable.<sup>52</sup> Ensuring compliance to authorized statutory “foreign excess property” disposal methods begins with classification of property.

## B. Classification of DoD Property in Contingency Operations

Classifying property is the first step in determining how to dispose of property, because the property classification determines the disposal process.<sup>53</sup> Incorrectly identifying or imprecisely defining property quickly leads to confusion and the use of erroneous disposal processes.

In general, two broad classifications of DoD property exist: “real property”<sup>54</sup> and “personal property.”<sup>55</sup> Real property includes land, structures and facilities, “improvements,”<sup>56</sup> “fixtures,”<sup>57</sup> and “related personal

property.”<sup>58</sup> Personal property is either “military-type property”<sup>59</sup> or “non-standard equipment.”<sup>60</sup> Contractor-managed, government-owned property is a subcategory of both military-type property and non-standard equipment managed pursuant to a contract.<sup>61</sup> Contractor-managed, government-owned property includes both contractor-acquired property and government-furnished property.<sup>62</sup> The property classification matrix at appendix B provides an overview of the various property categories and describes how each category relates to a broader picture of government property disposal.<sup>63</sup>

## III. Disposal of Real Property in Overseas Contingency Operations

Generally, the DoD does not purchase foreign land for its use.<sup>64</sup> “No military department may acquire real property not owned by the United States unless the acquisition is expressly authorized by law.”<sup>65</sup> Real property is any interest in land, together with the improvements, structures, and fixtures on the land.<sup>66</sup> Real property also includes U.S.-owned structures and facilities affixed to the land, even when the United States does not own the land itself.<sup>67</sup> Additionally, until separated, plants and other natural

---

<sup>48</sup> 40 U.S.C. § 703. The USG medical material donation must be for use in a foreign country but otherwise eligible for transfer under title 40, chapter 5. Donation must be made to a non-profit or health organization that is qualified to receive such supplies under section 214(b) or 607 of the Foreign Assistance Act of 1961, and without cost to donee. *Id.* § 703(c).

<sup>49</sup> *Id.* § 52; *see also id.* § 701(b)(3).

<sup>50</sup> *Id.* § 113(a).

<sup>51</sup> *Id.* § 113(e)(2).

<sup>52</sup> *Id.*

<sup>53</sup> *See* Navin, *supra* note 21 (discussing disposal of USG personal property).

<sup>54</sup> *See* real property definition *infra* Part II.D.

<sup>55</sup> Personal property is “property of any kind or any interest except real property and records of the Federal Government” U.S. DEP’T OF DEF., DoD 4160.21-M, DEFENSE MATERIEL DISPOSITION MANUAL, at xxix (19 Aug. 1997) [hereinafter DoD 4160.21-M]. Title 40 does not define the term “personal property.” *See generally* 40 U.S.C. § 102. It is a regulatory term from U.S. General Services Administration (GSA), used by DoD to distinguish real property from personal property. DoD 4160.21-M, *supra*, at xxiii, xxx.

<sup>56</sup> An improvement is an addition or betterment to land amounting to more than repair or replacement and costing labor or capital. U.S. DEP’T OF THE ARMY, REG. 408-80, MANAGEMENT OF TITLE AND GRANTING USE OF REAL PROPERTY glossary (10 Oct. 1997).

<sup>57</sup> A fixture is an item that was personal property affixed to, or is otherwise adapted to, real property, which loses its character as personal property and becomes a part of the real property. 35A AM. JUR. 2D *Fixtures* § 1 (2010).

---

<sup>58</sup> Related personal property is an integral part of real property specially adapted to the real property, the removal of which would significantly diminish the economic value of the real property. 41 C.F.R. § 102.71-20 (2005).

<sup>59</sup> Personal property of the types that are unique and peculiar to DoD and that have limited commercial application. DoD 4160.21-M-1, *supra* note 55, app. 2.

<sup>60</sup> Non-standard equipment are commercially procured items requiring property book accounting. Chief Warrant Officer David A. Dickson, *Centralization of Cataloging Procedures for Non-Standard Material*, 38 ARMY LOGISTICIAN, Issue No. 1, Jan./Feb. 2006.

<sup>61</sup> *See* discussion *infra* Part III.

<sup>62</sup> *See id.*

<sup>63</sup> *See infra* app. B (Property Classification Matrix).

<sup>64</sup> Title 10 U.S.C. § 2675 (2006).

<sup>65</sup> U.S. DEP’T OF ARMY, REG. 405-10, ACQUISITION OF REAL PROPERTY AND INTERESTS THEREIN para. 1-3 (17 May 1970) [hereinafter AR 405-10]. Because AR 405-10 has not been updated since 1970, it does not correctly cite the DoD directives that it implements. *Id.* para. 1-1. DoD Directives 4165.12 and 4165.16 are no longer in effect. DoD Directive 4165.6 was superceded by DoD Directive 4165.06 in 2004. U.S. DEP’T OF DEF., DIR. 4165.06, REAL PROPERTY (13 Oct. 2004) [hereinafter DoDD 4165.06], available at <http://www.dtic.mil/whs/directives/corres/dir.html>.

<sup>66</sup> 41 C.F.R. § 102.71-20 (2005); *see also* DoD 4160.21-M, *supra* note 55, at xxx. Real property is also included by negative definition. 40 U.S.C. § 102(9) (2006). The exclusions from the general property definition in title 40 match the real property exclusions in 41 C.F.R. § 102.71-20. 41 C.F.R. § 102.71-20(1)(i-iv). Crops are also excluded from the definition of real property if designated by a government agency for severance or removal from the land. 41 C.F.R. § 102.71-2(1)(v). *See infra* app. A.

<sup>67</sup> *Id.* § 102.71-20(2)

resources remain a part of the land.<sup>68</sup> Thus, real property acquired overseas during contingency operations usually includes installed building equipment,<sup>69</sup> improvements to the land, fixtures, and related personal property. Department of Defense foreign real property that is no longer required for current or planned defense requirements is disposed of.<sup>70</sup> Any foreign excess real property (FERP) of the DoD in a contingency operation is disposed of under the title 40 authority for FERP.<sup>71</sup> Authorities under this title generally require sale, exchange, lease, or transfer of the property for monetary or other substantial benefit.<sup>72</sup>

Authority for use of foreign land for military purposes may be through lease or consent of a foreign government, which normally takes the form of an international agreement.<sup>73</sup> Principal authority for use of real property in contingency operations resides in the lease authority of title 10, section 2675.<sup>74</sup> This succinct statute allows the secretary of a military department to lease real property in foreign countries needed for military purposes;<sup>75</sup> such leases may be for a period of up to ten years.<sup>76</sup> No matter what the authority for *use* of foreign land, the *disposal* authority for FERP remains the same.<sup>77</sup>

The Secretary of Defense's title 40 authority to dispose of foreign excess property also applies to all FERP.<sup>78</sup> When

---

<sup>68</sup> See *id.* § 102.71-20(1)(v)(2) and (3). Examples include crops, timber, gravel, sand, and stone. *Id.*

<sup>69</sup> Installed building equipment is "equipment and furnishings required to make the facility usable and attached as a permanent part of the structure." U.S. DEP'T OF ARMY, REG. 405-90, DISPOSAL OF REAL ESTATE glossary, sec. II (10 May 1985) [hereinafter AR 405-90].

<sup>70</sup> DoDD 4165.06, *supra* note 65, para. 4.5.

<sup>71</sup> See *supra* Part II.

<sup>72</sup> 40 U.S.C. 704(b) (2006).

<sup>73</sup> See 10 U.S.C. § 2675 (2006). See generally R. CHUCK MASON, CONG. RESEARCH SERV. REPORT, STATUS OF FORCES AGREEMENT (SOFA): WHAT IS IT, AND HOW HAS IT BEEN UTILIZED?, RL34531, at 1 (June 18, 2009).

<sup>74</sup> Telephone Interview with Mr. Dominic Frinzi, Attorney, Headquarters, U.S. Army Corps of Eng'rs (USACE), Office of the Chief Counsel, to author (Nov. 15, 2009) [hereinafter Telephone Interview USACE].

<sup>75</sup> 10 U.S.C. § 2675(a).

<sup>76</sup> *Id.* § 2675(b). Note that a reading of AR 405-10, para. 3-3, should not be read as a limitation on the statutory ten-year limit since this regulation predates the addition of the ten-year limit to 10 U.S.C. § 2675(b). Phone Interview USACE, *supra* note 74.

<sup>77</sup> See *supra* Part II. With the exception of contractor inventory installed into structures not owned by the USG and, in certain circumstances, relocatable buildings, real property is not disposed of using disposal mechanisms for personal property. See *infra* Part IV.

<sup>78</sup> 40 U.S.C. §121(d). This primer addresses only real property disposal in contingency operations. Base closure law for permanent basing is beyond the scope of this primer. Permanent basing is "associated with long-term strategic force stationing . . . [and] is dictated by the guidance published by the Secretary of Defense in the Global Defense Posture (GDP). U.S. CENTRAL COMMAND, REG. 415-1, CONSTRUCTION AND BASE CAMP DEVELOPMENT IN THE USCENTCOM AREA OF RESPONSIBILITY (AOR)

DoD ceases contingency operations in the area and no longer needs the property for use, the property becomes excess by definition.<sup>79</sup> The Secretary of Defense delegated responsibility for DoD excess real property disposal to the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD (AT&L)).<sup>80</sup> Department of Defense policy states that "acquisition, management, and disposal of real property within DoD is a function of the Military Departments acting on behalf of the Department of Defense, subject to such specific exceptions established by law or direction of the [Secretary of Defense]."<sup>81</sup> Foreign excess real property is one of these specific exceptions. The Secretary of Defense specifically delegates real property disposal authority vested in DoD under federal statutes, national defense authorization acts, DoD appropriation acts, and executive orders to the USD (AT&L).<sup>82</sup> No further re-delegation from the USD (AT&L) exists.<sup>83</sup> The administrative function of FERP disposal, which belongs to the military departments, should not be confused with the legal authority to *authorize* FERP disposal, which belongs to the USD (AT&L).

Army Regulation (AR) 405-90 discusses disposal of foreign real estate under the control of the Department of the Army.<sup>84</sup> The Department of the Army, Office of the Chief of Engineers, approves recommendations to declare Army real property excess.<sup>85</sup> However, the USD (AT&L) retains authority to dispose of property, absent specific further delegation.<sup>86</sup> The Army Chief of Engineers supervises disposal of real estate in foreign countries, issues instructions, and approves major command (ACOM) regulations.<sup>87</sup> Methods of disposal authorized under AR 405-90 by the ACOM include transfer to another military department, transfer to other federal agencies, sale,

---

"THE SAND BOOK" paras. 3-1, 3-2 (17 Dec. 2007) [hereinafter USCENTCOM REG. 415-1].

<sup>79</sup> See *supra* note 19. Property becomes excess when the head of the agency controlling the property determines it is not required to meet the agency's needs or responsibilities. This term is not interchangeable with surplus property. 40 U.S.C. § 102(3).

<sup>80</sup> DoDD 4165.06, *supra* note 65, para. 5.1.

<sup>81</sup> *Id.* para. 4.1.

<sup>82</sup> *Id.* para. 5.1.3

<sup>83</sup> Telephone Interview with Mr. Robert K. Uhrich, Assoc. Dir. for Real Estate, Basing Directorate, Office of the Deputy Under Sec'y of Def. (Installations and Env't), and Ms. Nicole Bayert, DoD Assoc. Gen. Counsel (Installations and Env't) (Mar. 2, 2010) [hereinafter Uhrich & Bayert Telephone Interview].

<sup>84</sup> U.S. DEP'T OF ARMY, REG. 405-90, DISPOSAL OF REAL PROPERTY ch. 7 (10 May 1985) [hereinafter AR 405-90].

<sup>85</sup> *Id.* para. 2-1.

<sup>86</sup> *Id.* The Department of the Army Chief of Engineers is responsible for the developing installations' structures for mobilization and contingency missions. *Id.*

<sup>87</sup> *Id.* para. 7-2.

abandonment, or donation to non-profit organizations.<sup>88</sup> The military requires a specific delegation of authority from the USD (AT&L) to dispose of FERP on foreign land, similar to the foreign excess personal property (FEPP) authority.<sup>89</sup>

#### A. Disposal of FERP in Iraq: The Security Agreement and FERP Disposal Authority in Iraq

The Department of Defense views the bilateral security agreement (SA) between the United States and the Republic of Iraq, which took effect 1 January 2009, as the governing authority for the disposal of real property.<sup>90</sup> The SA provides that “Iraq owns all buildings, non-relocatable structures, and assemblies connected to the soil that exist on agreed facilities and areas,<sup>91</sup> including those that are used, constructed, altered, or improved by the United States Forces.”<sup>92</sup> The Office of Installations and Environment (I&E) states that FERP delegation of authority is not needed for Iraq because the SA vests ownership of the real property located in Iraq to the GOL.<sup>93</sup>

The DoD approach to foreign real property disposal is a novel interpretation of status of forces agreement (SOFA) authority.<sup>94</sup> Under the U.S. Constitution, the Constitution

itself, U.S. statutes, and treaties are considered the “supreme law of the land.”<sup>95</sup> The President of the United States has enumerated authority to make treaties, with the consent of two-thirds of the U.S. Senate.<sup>96</sup> Conversely, Congress has the enumerated authority to dispose of U.S. property.<sup>97</sup> Under Constitutional authority, Congress delegated the authority to dispose of foreign excess property to the Secretary of Defense.<sup>98</sup> The Secretary of Defense delegated the authority for disposal of FERP to the USD (AT&L).<sup>99</sup> A SOFA is an executive agreement generally establishing a framework for the presence of U.S. armed forces in a foreign country.<sup>100</sup> Although, the SA with Iraq contains some provisions common in SOFAs, it is not a SOFA.<sup>101</sup> The only SOFA that is also a treaty is the NATO SOFA,<sup>102</sup> and Iraq is not a NATO country.<sup>103</sup>

There appears to be confusion between the legality of an international agreement, and a legal international agreement’s authority as U.S. law in relation to Constitutional and statutory authority. Under the U.S. Constitution, the United States may become a party to an international agreement by two procedures.<sup>104</sup> The first is by treaty; the second is by an international agreement other than a treaty.<sup>105</sup> “[T]he Administration did not submit the [SA] to the Senate for its advice and consent as a treaty, or request statutory authorization for the agreements by Congress.”<sup>106</sup> Thus, the SA is clearly not a treaty. The Administration’s argument for not submitting the SA to Congress seems to have been that “because Congress authorized the President to engage in military operations in Iraq pursuant to appropriations measures, it impliedly authorized the President to enter [into] short-term agreements with Iraq which facilitate these operations.”<sup>107</sup> This implied authorization, if valid, would allow the President to enter into a legal international agreement pursuant to that authority.<sup>108</sup> The President may also enter into international agreements on subjects within his Constitutional authority,

<sup>88</sup> *Id.* para. 7-5.

<sup>89</sup> DoDD 4165.06, *supra* note 65, para. 5.1.3.3. *See also* Navin, *supra* note 21, at 33 (providing detailed FEPP process and authority).

<sup>90</sup> Uhrich & Bayert Telephone Interview, *supra* note 83.

<sup>91</sup> Iraq Security Agreement, *supra* note 3. Mr. Ryan Crocker, U.S. Ambassador to Iraq, signed this agreement under the authority of the President of the United States. *Id.* at 18. The SA defines “agreed facilities and areas” as “Iraqi facilities and areas owned by the Government of Iraq that are in use by the United States Forces during the period in which this Agreement is in force.” *Id.*

<sup>92</sup> *Id.* at 4.

<sup>93</sup> E-mail from Robert K. Uhrich, Assoc. Dir. for Real Estate, Basing Directorate, Office of the Deputy Under Sec’y of Def. (Installations and Env’t), to Major Jose Cora, Professor of Contract and Fiscal Law, The Judge Advocate Gen.’s Legal Ctr & Sch., U.S. Army (Feb. 19, 2010 09:12 EST) (on file with author). “Accordingly, the real property is already owned by Iraq. There is no U.S. real property interest to dispose.” *Id.* Further, the USD (AT&L) notes that DoD’s policy on realignment of DoD sites overseas does not apply to foreign real property held in a contingency operation. *Id.* *See also* U.S. DEP’T OF DEF., INSTR. 4165.69, REALIGNMENT OF DOD SITES Overseas (6 Apr. 2005) [hereinafter DoDI 4165.69]. Instead, disposal of FERP “shall be accomplished in accordance with relevant U.S. law, regulations, and international law, including relevant international agreements, applicable property leases, DoD policy, and specific annexes (e.g. Environmental) incorporated into operations plans, operations orders, or similar operational directives.” *Id.* para. 2.3. Counsel for DoD (E&I) reiterates this, stating, “Status of Forces Agreements (SOFA) and leases dictate disposal of foreign real property under the control of the DoD. Under Secretary of Defense (AT&L) does not have discretion to dispose of this property since its disposal is governed by SOFAs.” *Supra* note 93. So, although delegated authority to dispose of FERP by the Secretary of Defense, the USD (AT&L) has not been using this authority for real property disposal in Iraq due to a misunderstanding of the SA’s authority.

<sup>94</sup> MASON, *supra* note 73, at 1..

<sup>95</sup> U.S. CONST. art. VI.

<sup>96</sup> *Id.* art. II, § 2.

<sup>97</sup> *Id.* art. IV, § 3.

<sup>98</sup> 40 U.S.C. §701(a) (2006).

<sup>99</sup> DoDD 4165.06, *supra* note 65, para. 5.1.3.3.

<sup>100</sup> MASON, *supra* note 73, at 1.

<sup>101</sup> *Id.* at 16. *See generally* Trevor A. Rush, *Don’t Call It a SOFA! An Overview of the U.S.-Iraq Security Agreement*, ARMY LAW., May 2009, at 34, 34.

<sup>102</sup> *See* MASON, *supra* note 73, at 2.

<sup>103</sup> *Id.* at 21.

<sup>104</sup> U.S. DEP’T OF STATE, 11 FOREIGN AFFAIRS MANUAL 2, pt. 720 (2006).

<sup>105</sup> *Id.*

<sup>106</sup> *See* MASON, *supra* note 73, at 16.

<sup>107</sup> *Id.* at 17.

<sup>108</sup> *Id.* at 3.

“so long as the agreement is not inconsistent with legislation enacted by Congress in the exercise of its Constitutional authority.”<sup>109</sup> Therefore, the SA is a legal international agreement, but it does not have the authority of U.S. law.<sup>110</sup> Further, because property disposal is a constitutionally enumerated congressional authority, an executive agreement concluded by the President cannot delegate disposal authority directly to USF–I, bypassing statutory disposal authority.<sup>111</sup>

Fortunately, disposal of FERP can be easily accomplished through a FERP delegation memo signed by the USD (AT&L), similar to the FEPP delegation memos stemming from the same statutory authority.<sup>112</sup> A sample memo is included at appendix D. Taking the simple step of authorizing FERP delegation legitimizes the DoD’s FERP disposal process.

#### B. Disposal of FERP in Afghanistan: The Future

Eventually, as in Iraq, DoD will face drawdown and base closure in Afghanistan. Currently, the Chief of Real Estate, Afghanistan Engineer District (AED), executes leases in Afghanistan subject to the availability of funds for the leases.<sup>113</sup> The authority to acquire property is derived from the 10 U.S.C. § 2675 lease authority.<sup>114</sup> Within this authority are lesser interests, such as licenses and other land use agreements.<sup>115</sup> The three means AED is using to acquire property in the Islamic Republic of Afghanistan (IRoA) are leases directly with the IRoA; permits (or licenses) with the forces of the NATO country in control of land made available to ISAF, through an agreement between ISAF and the IRoA; and direct leases with private land owners.<sup>116</sup> A fraction of the land occupied by U.S. bases has been leased from the IRoA; however, a larger share of the land used by U.S. bases has been leased from private individuals.<sup>117</sup>

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> See 40 U.S.C. 701(b) (2006) (stating that the head of an executive agency having excess property will dispose of foreign excess property, using Presidential policy and foreign policy as guidance). See also Todd F. Gaziano, *The Use and Abuse of Presidential Orders and Other Presidential Directives*, 5 TEX. REV. L. & POL. 267, 272 (2001) (discussing the constitutional separation of powers).

<sup>112</sup> See *supra* Part II.

<sup>113</sup> Telephone Interview with Mr. Dominic Frinzi, Attorney, Headquarters U.S. Army Corps of Eng’rs Office of Chief Counsel to author (Jan. 29, 2010) [hereinafter Frinzi Interview].

<sup>114</sup> E-mail from Mr. Dominic Frinzi, Attorney, Headquarters U.S. Army Corps of Eng’rs Office of Chief Counsel to author (Apr. 15, 2010 09:44 EST) (on file with author) [hereinafter Frinzi e-mail].

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Frinzi Interview, *supra* note 113.

Complicating the tracking of leases is the lack of a centralized accountability system for property ownership.<sup>118</sup>

In anticipation of the eventual withdrawal of U.S. forces from the country, the Chief of Real Estate for AED should begin working with the USD (AT&L) now to coordinate USG property disposal authority that may be implicated in the language of these leases. Some of these leases state that the United States may abandon improvements, structures, or fixtures on the land; or the United States may make monetary arrangements<sup>119</sup> with private landowners for disposition of USG real property on leased land.<sup>120</sup> The section 2675 lease authority of title 10 does not provide an authority to direct disposal of FERP. Lease provisions directing disposal to foreign governments or individuals still require a FERP delegation from the USD (AT&L) to validate the method of disposal pursuant to title 40 statutory authority.<sup>121</sup>

The delegation for disposal of FERP must also supplement any international agreement made with IRoA regarding real property disposal. The United States currently has a SOFA with IRoA; however, this SOFA is not a treaty, and neither it nor any supplementary agreement short of a treaty can supplant the title 40 statutory disposal authority.<sup>122</sup> The draft memo at appendix D serves as an example for delegation.

#### IV. Contractor Inventory—“White Property”

By 2008, there was approximately \$3.5 billion in “contractor-managed, government-owned” property in Iraq.<sup>123</sup> Based on Army reports, the Government

<sup>118</sup> *Id.* The AED has been split into two districts—Afghanistan Engineer District North or South (AEN or AES) whose Chief of Real Estate is authorized to execute leases (as well as other land use agreements) pursuant to 10 U.S.C. § 2675, which are necessary to support military contingency operations in the AEN/AES and Central Command Area of Responsibility. The AED accounts for property ownership by private individuals in several ways in accordance with local tribal custom which may use the IRoA court system to adjudicate land ownership, or local councils of elders known as *jirga* or *shura*. *Id.* Valid ownership documents may include documents indicating, gift, sale or transfer that is validated by the IRoA or shura; official purchase documents from an authorized government department; officially registered tax documents; water rights documents; or customary documents prepared before 1975 that are properly witnessed and submitted to a government department before 1978. Frinzi Interview, *supra* note 113.

<sup>119</sup> Monetary arrangements are used to compensate for damage done to the property by U.S. Forces. Frinzi E-mail, *supra* note 114. For example, payment to a farmer for lost crops due to grading the land and constructing improvements. *Id.* The improvements would still need to be disposed of as foreign excess property. *Id.*

<sup>120</sup> Frinzi Interview, *supra* note 113.

<sup>121</sup> See *supra* Part II.

<sup>122</sup> See *supra* Part II.A.

<sup>123</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-08-930, REPORT OPERATION IRAQI FREEDOM 22 (2008) [hereinafter GAO-08-930].

Accountability Office (GAO) estimates that eighty-five percent of contractor inventory will be transferred, sold, or destroyed in Iraq.<sup>124</sup> “Contractor-managed government-owned property” “incorporate[s] all items which the contractor manages expressly to perform under the contract,”<sup>125</sup> including “government-furnished property”<sup>126</sup> and “contractor-acquired property.”<sup>127</sup> This property is also frequently referred to as “white property.”<sup>128</sup> “Contractor inventory” is contractor-managed, government-owned property that is excess to the full performance of the contract.<sup>129</sup> Contractor inventory requires the contractor to identify,<sup>130</sup> classify,<sup>131</sup> and return the excess property to the Government.<sup>132</sup> Upon return, the USG may dispose of the

property under one of the statutory disposal processes, based on the property classification.

#### A. Identifying and Classifying Contractor Inventory

Disposal of contractor inventory must begin with an examination of the contract for which the property was furnished or acquired. The Performance Work Statement<sup>133</sup> should list the specific, government-furnished property needed for the contract, as well as specific categories of contractor-acquired property reimbursed by the Government.<sup>134</sup> Next, the contract should be identified as either a firm, fixed-price contract<sup>135</sup> or a cost-reimbursement contract.<sup>136</sup> Identification is important because title to contractor-acquired property may vest differently, or not at all, depending on the contract type.<sup>137</sup>

Under firm fixed-price contracts, title to contractor-acquired property only passes to the Government “if the contract contains a provision directing the contractor to purchase material for which the Government will reimburse the contractor as a direct item cost under the contract.”<sup>138</sup> In cost-reimbursement contracts, “title to all property purchased by the contractor, for which the contractor is entitled to be reimbursed under the contract, passes to the Government.”<sup>139</sup> In all types of contracts, the Government retains title to government-furnished property until it is “properly disposed of under law or regulation.”<sup>140</sup> Incorporation or attachment of government-furnished property to any property not owned by the Government does not affect government title.<sup>141</sup> Generally, personal property affixed to real property loses its identity as personal property, becoming part of the real property.<sup>142</sup> However, government-furnished property attached to real property does not lose its identity as personal property, nor can it

<sup>124</sup> *Id.* at 27.

<sup>125</sup> *Id.* at 25.

<sup>126</sup> Government-furnished property is USG-purchased property that is furnished to a contractor for the performance of the contract. FAR 45.101. Government-furnished property also includes property leased by the USG that is furnished to the contractor for use. *Id.*

<sup>127</sup> Contractor-acquired property is property to which the USG has title that is purchased, fabricated, or otherwise provided by the contractor for performing a contract. *Id.*

<sup>128</sup> The term “white property” is non-doctrinal and there is no standard definition. For example, The Report to Congress for the National Defense Authorization Act 2010, section 1234 defined “white property” as all commercial items. See REPORT ON THE TRANSFER OF DEFENSE ARTICLES AND THE PROVISION OF DEFENSE SERVICES TO THE MILITARIES AND SECURITY FORCES OF IRAQ AND AFGHANISTAN, REPORT TO CONGRESS 7 (Apr. 2010). In contrast, the Commission on Wartime Contracting has used the term to reference contractor-managed government-owned property. See AT WHAT COST?, *supra* note 1, at 46. Consequently, only doctrinal terms will be used for clarity.

<sup>129</sup> *Id.* As defined by the FAR, contractor inventory means

- (1) Any property acquired by and in the possession of a contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract; (2) Any property that the Government is obligated or has the option to take over under any type of contract, e.g. as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work for the convenience, or at the option of the Government; and (3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

*Id.*

<sup>130</sup> *Id.* 52.245-1(f)(iii) requires the contractor to create and maintain records of all Government property under the contract. The SF 1424 Inventory Disposal Report identifies property excess to the contract. *Id.* 45.605. This report also identifies lost, stolen, damaged destroyed or otherwise unaccounted for property. *Id.*

<sup>131</sup> See discussion *infra* Part III.A.

<sup>132</sup> FAR, *supra* note 19, 52.245-1(j) (“Except as otherwise provided for in [the] contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer.”). The Plant Clearance Officer is the Contract Officer’s representative appointed in accordance with agency procedure to manage the screening, redistribution and disposal of contractor inventory for a particular contract. *Id.* 2.101. The term disposal as used in the FAR is not congruent with statutory disposal

authority. Contractor disposal discussed in the FAR merely means, return of contractor inventory to the USG. See *id.* 45.603, 45.604.

<sup>133</sup> See *id.* 37.602. As an alternative, a contract may contain a Statement of Work instead of a Performance Work Statement.

<sup>134</sup> PowerPoint Presentation, Bridget Stengel, Logistics Civil Augmentation Program (LOGCAP), Feb. 25, 2010 [hereinafter LOGCAP Presentation]. In certain contracts, specific property may be listed by type, location, and even serial number. *Id.*

<sup>135</sup> See generally FAR, *supra* note 19, subpt. 16.2 (providing detailed information on firm-fixed price contracts).

<sup>136</sup> See *supra* note 84.

<sup>137</sup> FAR, *supra* note 19, 52.245-1(e)(2).

<sup>138</sup> *Id.* 52.245-1(e)(2)(iii). See *id.* 52.245-1(e)(2) (discussing when title vests for Government property under a firm-fixed price contract).

<sup>139</sup> *Id.* 52.245-1(e)(3)(i). See *id.* 52.245-1(e)(3) (discussing when title vests for Government property under const-reimbursement contracts).

<sup>140</sup> *Id.* 45.401

<sup>141</sup> *Id.* 52.245-1(e)(1).

<sup>142</sup> See *supra* note 71.

become a fixture.<sup>143</sup> This distinction is critical for properly categorizing contractor inventory and identifying legal authority for disposal.

Contractor inventory of the Logistics Civilian Augmentation Program (LOGCAP) accounts for ninety-six percent of the contract inventory in Iraq and Afghanistan.<sup>144</sup> The LOGCAP—an Indefinite Delivery Indefinite Quantity (ID/IQ),<sup>145</sup> cost-reimbursement<sup>146</sup> contract—provides selected services<sup>147</sup> performed by contractors that augment Army forces during wartime or contingency operations.<sup>148</sup> Historically, LOGCAP has supported contingency operations in Somalia, Bosnia, Haiti, East Timor, and Panama, among others.<sup>149</sup> As of 2008, contracts in Iraq comprised seventy-nine percent of LOGCAP, totaling over \$6 billion dollars.<sup>150</sup> \$3.37 billion of the \$3.5 billion in contractor-managed government-owned property in Iraq is property under LOGCAP III and IV task orders.<sup>151</sup> As with other government property, proper disposal of contractor inventory depends first on proper classification of the property.<sup>152</sup>

---

<sup>143</sup> FAR, *supra* note 19, 52.245-1(e)(1).

<sup>144</sup> LOGCAP Presentation, *supra* note 133.

<sup>145</sup> The ID/IQ contracts allow the Government to order supplies or services on an “as needed” basis during a specific timeframe, without stating a specific quantities or times for delivery in the contract. FAR, *supra* note 19, pt. 16, 16.504 (a). The ID/IQs are used when the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services required during the contract period, when a reoccurring need is identified. *Id.* pt. 16, 16.504 (b).

<sup>146</sup> Cost-reimbursement contracts are discussed in FAR 16.3. “Cost-reimbursement contracts provide for payment of allowable incurred costs,” as provided for by contract. *Id.* 16.301-1. The LOGCAP frequently uses cost plus award fee task and delivery orders, 16.305, and cost plus fixed-fee task and delivery orders, *id.* 16.306, for LOGCAP task orders. See LOGCAP Presentation, *supra* note 133.

<sup>147</sup> Examples of service categories generally provided include engineering services, sustainment services, CLASS I-V operations, maintenance, HAZMAT, and air field services. LOGCAP Presentation, *supra* note 133.

<sup>148</sup> *Id.* The first LOGCAP contract ran from 1992–1996. The LOGCAP II ran from 1997–2001. The LOGCAP III, awarded to Kellogg, Brown and Root (KBR), was in effect from 2001–2007. In 2007, the Army moved to LOGCAP IV, which was awarded to three contractors—KBR, DynCorp and Fluor—with requirements competed as task orders. *Id.* Planning and support for LOGCAP III and IV was awarded in a single ID/IQ to Serco, Inc. *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> GAO-08-930, *supra* note 123, at 22. Task orders are used to place an order for specific services from the existing ID/IQ contract. FAR, *supra* note 19, 2-101. Under LOGCAP III, 160 task orders were awarded for contingency operations worldwide. Under LOGCAP IV, there are eleven active task orders in Iraq and three pending. LOGCAP Presentation, *supra* note 129. A small percentage of contractor inventory in Iraq is from sources other than LOGCAP. This inventory falls under contracts in four main categories: Air Force Contract Augmentation Program, programs under DoD’s Joint Contracting Command-Iraq/Afghanistan, programs run by the Gulf Region Division of the Army Corps of Engineers, and programs run by other government agencies. GAO-08-930, *supra* note 123, at 26.

<sup>152</sup> See *supra* Part II.A.

A contractor must account for all government property in its possession<sup>153</sup> and must determine what items are contractor inventory.<sup>154</sup> The contractor must prepare a Contractor Inventory Disposal Schedule on Standard Form (SF) 1428, which is attached with instructions at appendix G.<sup>155</sup> This schedule lists the contractor-acquired property and government-furnished property that is no longer required for performance of the contract.<sup>156</sup> The contractor must also conduct a joint inventory with the Government to ensure the accuracy of the report.<sup>157</sup> The contracting officer’s government representative, whom the Federal Acquisition Regulation (FAR) refers to as the “Plant Clearance Officer,”<sup>158</sup> must review and accept the SF 1428 or must return it for correction within ten days of receipt from the contractor.<sup>159</sup> The contractor must investigate missing or damaged property and report those losses to the Government.<sup>160</sup> If the SF 1428 is accepted, the Government must complete an Inventory Verification Survey on SF 1423 to verify and document the results of the Government’s inspection of the contractor inventory.<sup>161</sup> The SF 1423 is located at appendix E. Once properly accounted for, all contractor inventory under the contract must be properly classified for disposal.

Contractor inventory can be classified using appendix B, the Property Classification Matrix, in conjunction with appendix A’s definitions.<sup>162</sup> Classification of contractor inventory in conjunction with its identification is important for three main reasons. First, the contracting officer may require the contractor to demilitarize property prior to shipment or disposal.<sup>163</sup> Second, early classification of items available for disposal under applicable FEPP authority can avoid needless transportation costs and duplicated efforts. Third, to avoid improper disposal, any government-furnished property attached to real property must be classified as personal property.<sup>164</sup> Upon proper identification and classification of contractor inventory, the Government may consider methods for disposal.

---

<sup>153</sup> FAR, *supra* note 19, 52.245-1(f).

<sup>154</sup> *Id.* 52.245-1(f)(x).

<sup>155</sup> *Id.* 52.245-1(j)(3); see also *id.* 45.602-1.

<sup>156</sup> *Id.* 52.245-1(j)(3).

<sup>157</sup> *Id.* 52.245-1(f)(iv).

<sup>158</sup> The plant clearance officer is the contract officer’s representative appointed in accordance with agency procedure to manage the screening, redistribution, and disposal of contractor inventory for a particular contract. *Id.* 2.101.

<sup>159</sup> *Id.* 45.602-1(a).

<sup>160</sup> *Id.* 52.245-1(f)(vi) and (x).

<sup>161</sup> *Id.* 45.602-1(b)(1).

<sup>162</sup> See *infra* apps. A, B.

<sup>163</sup> FAR, *supra* note 19, 52.245-1(j)(8).

<sup>164</sup> *Id.* 52.245-1(e)(1).

## B. Methods of Disposal for Contractor Inventory

Upon return of contractor inventory to the management of the Government, several options exist for its disposal or transfer.<sup>165</sup> Contractors may not direct disposal of contractor inventory.<sup>166</sup> “Except as otherwise provided for in [the] contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer.”<sup>167</sup> The term “disposal” as used in the FAR is not congruent with title 40 statutory disposal authority. Contractor disposal discussed in the FAR merely means return of contractor inventory to the USG.<sup>168</sup>

In general, contractor inventory is disposed of using DRMS,<sup>169</sup> delegated FEPP authority,<sup>170</sup> or other specific authority.<sup>171</sup> Under both DRMS and the FAR, reuse within the agency and transfer to another USG agency are DoD’s highest priorities for property.<sup>172</sup> Reuse and transfer are normally limited to a localized area due to transportation cost for property located outside the continental United States (OCONUS).<sup>173</sup> A primary consideration for contractor inventory is whether another contract in theater needs the property.<sup>174</sup> The Government may authorize

<sup>165</sup> See generally Navin, *supra* note 21.

<sup>166</sup> FAR, *supra* note 19, 52.245-1(j).

<sup>167</sup> *Id.*

<sup>168</sup> See *id.* 45.603, 45.604.

<sup>169</sup> See *supra* Part II.B.

<sup>170</sup> See *supra* Part II.C.

<sup>171</sup> See *supra* Part II.

<sup>172</sup> See *supra* Part II. B. See also DoDI 4160.14, *supra* note 34.

Plant clearance officers shall initiate reutilization actions using the highest priority method appropriate for the property. Authorized methods, listed in descending order from highest to lowest priority, are—

(a) Reuse within the agency (see 45.603 for circumstances under which excess personal property may be abandoned, destroyed, or donated);

(b) Transfer of educationally useful equipment, with GSA approval, to other Federal agencies that have expressed a need for the property;

(c) Transfer of educationally useful equipment to schools and nonprofit organizations (see Executive Order 12999, Educational Technology: Ensuring Opportunity For All Children In The Next Century, April 17, 1996), and 15 U.S.C. 3710(i);

(d) Reuse within the Federal Government; and

(e) Donation to an eligible donee designated by GSA.

FAR, *supra* note 19, 45.602-2

<sup>173</sup> GAO-08-930, *supra* note 123, at 27

<sup>174</sup> LOGCAP Presentation, *supra* note 133. Specifically for LOGCAP contracts, which have very broad performance work statements, it is likely that the same property is needed for performance of a LOGCAP contract. *Id.* Under FAR contract provisions, the contractor may also request to

contractor use of the property on another government contract or direct movement of the property to other contractors in theater.<sup>175</sup> Upon disposal of property identified on the SF 1428 Inventory Disposal Schedule, the Government must prepare an SF 1424 Inventory Disposal Report, located at appendix F, which “must identify any lost, stolen, damaged, destroyed, or otherwise unaccounted for property, and any changes in quantity or value of the property made by the contractor after submission of the initial inventory disposal schedule.”<sup>176</sup> Even though contractor inventory begins as property subject to contract, disposal requires adherence to specific statutory authority, as does disposal of real property.

## V. Conclusion

Adequate law and policy exist to facilitate foreign property disposal in contingency operations. Despite this, challenges still exist within USF-I’s condensed property disposal timeline. This primer has identified the controlling legal authorities for proper identification and disposal of FERP and contractor inventory. Identifying the proper legal authorities for disposal provides a framework for the classification of real property and contractor inventory for disposal. The DoD should use the statutory authority delegated to the USD (AT&L) to legalize implementation of the SA’s foreign property disposal provisions. Doing so would involve the drafting of a delegation memo to USF-I for the disposal of FERP as part of FOB closure. Using existing legal authorities for foreign property disposal, and establishing appropriate disposal processes and accountability, conserves U.S. property resources and assists in conducting future operations.

purchase contractor inventory or attempt to return it to the vendor for fair market value. FAR, *supra* note 19, 52.245-1(j)(2). Use of these options results in removal of the property from the inventory disposal schedule. *Id.* 45.602-1.

<sup>175</sup> FAR, *supra* note 19, 34.601-1(c)(1)(iii).

<sup>176</sup> *Id.* 45.605. The report shall be addressed to the administrative contracting officer or, for termination inventory, to the termination contracting officer, with a copy furnished to the property administrator. *Id.*

## Appendix A

### Definitions

Contingency Operation: A military operation that

(1) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10, chapter 15 of Title 10, or any other provision of law during a war or during a national emergency declared by the President or Congress.

Contractor Acquired Property: Property acquired, fabricated, or otherwise provided by the contractor for performing a contract and to which the Government has title.

(FAR Part 45.101)

Contractor Inventory:

- (1) Any property acquired by and in the possession of a contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;
- (2) Any property that the Government is obligated or has the option to take over under any type of contract, e.g., as a result either of any changes in the specifications or plans thereafter or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option for the Government; and
- (3) Government furnished property that exceeds the amounts needed to complete full performance under the entire contract. (FAR Part 45.101).

Contractor Managed Government Owned Property: A non-doctrinal term used to incorporate all items which the contractor manages expressly to perform under the contract, including items given to the contractor by the Government (government-furnished property), or acquired or fabricated by the contractor to which the Government holds title. (U.S. Government Accountability Office, GAO-08-930, Operation Iraqi Freedom: Actions Needed to Enhance DOD Planning for Reposturing of U.S. Forces from Iraq (2008)).

Defense Article: Generally includes, (1) any weapon, weapons system, munition, aircraft, vessel, boat, or other implement of war; (2) any property, installation, commodity, material, equipment, supply, or goods used for the purposes of furnishing military assistance; (3) any machinery, facility, tool, material, supply, or other item necessary for the manufacture, production, processing, re-pair, servicing storage, construction, transportation, operation, or use of any article listed in this subsection; or (4) any component or part of any article listed in this sub-section. (Section 644(d) of the Foreign Assistance Act of 1961).

Excess Defense Article: The quantity of defense articles—other than construction equipment, including tractors, scrapers, loaders, graders, bulldozers, dump trucks, generators, and compressors—owned by the USG and not procured in anticipation of military assistance or sales requirements, or pursuant to a military assistance or sales order, which is in excess of the Approved Force Acquisition Objective and Approved Force Retention Stock of all Department of Defense Components at the time such articles are dropped from inventory by the supplying agency for delivery to countries or international organizations. (Section 644(g) of the Foreign Assistance Act of 1961).

Excess Property: Property under the control of a federal agency that the head of the agency determines is not required to meet the agency's needs or responsibilities. This term is not interchangeable with surplus property. (40 U.S.C. § 102(3)).

Foreign Excess Property: Excess property that is not located in the United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, Palau, or the Virgin Islands.

(40 U.S.C. § 102(6)).

Foreign Excess Personal Property (FEPP): Any U.S.-owned excess personal property located outside the United States, American Samoa, Guam, Puerto Rico, Trust Territory of the Pacific Islands, and the Virgin Islands. (DoD 4160.21-M-1, xxi).

Foreign Excess Real Property (FERP): Any U.S.-owned excess real property located outside the United States, American Samoa, Guam, Puerto Rico, Trust Territory of the Pacific Islands, and the Virgin Islands.

Government-Furnished Property: Property in the possession of, or directly acquired by, the Government and subsequently furnished to a contractor for performance of a contract. (FAR Part 45.101). There are two types of government-furnished property: equipment and material.

- (1) Government-Furnished Equipment: Consists of equipment, special tooling, or special test equipment that is provided to a contractor for use on a government contract that does not lose its identity or become a component part of another article when put into use. (FAR Part 45.101).
- (2) Government-Furnished Material: Property provided by the Government for the performance of a contract that is consumed or expended by the contractor during the performance of a contract, such as component parts of a higher assembly or items that lose their individual identity through incorporation into an end item.

Government Property: All property owned or leased by the Government, including both government-furnished property and contractor-acquired property. (FAR Part 45.101).

Fixture: An item that was personal property affixed to or is otherwise adapted to real property that loses its character as personal property and becomes a part of the real property. (35A Am. Jur. 2d Fixtures § 1(2010)).

Major Defense Equipment: Any item of significant military equipment on the United States Munitions List having a nonrecurring research and development cost of more than \$50,000,000 or a total production cost of more than \$200,000,000. (22 U.S.C. 2794(6). *See also infra* Appendix F).

Military-Type Property (also referred to as "Green Property"): Personal property of the types that are unique and peculiar to DoD and that have limited commercial application. (DoD 4160.21-M-1, Appendix 2)

Non-Standard Equipment: A commercially procured item requiring property book accounting. (Chief Warrant Officer (W-5) David A. Dickson, Centralization of Cataloging Procedures for Non-Standard Material, PB 700-06-01, Army Logician, Vol. 38, Issue 1, Jan./Feb. 2006).

Property: Any Government interest in property, except the public domain; national forest or park lands; land for public land mining or mineral leasing; land withdrawn from public domain not suitable for return to public domain due to changes in character; records of the government; naval battleships, cruisers, aircraft carriers, destroyers, or submarines.

Personal Property: Property of any kind or any interest except real property and records of the Federal Government (DoD 4160.21-M, at xxix).

Real Property:

- (1) Any interest in land, together with the improvements, structures, and fixtures located thereon (including prefabricated movable structures, such as Butler-type storage warehouses and Quonset huts, and house trailers with or without undercarriages), and appurtenances thereto, under the control of any Federal agency, except (i) The public domain; (ii) Lands reserved or dedicated for national forest or national park purposes; (iii) Minerals in lands or portions of lands withdrawn or reserved from the public domain that the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws; (iv) Lands withdrawn or reserved from the public domain but not including lands or portions of lands so withdrawn or reserved that the Secretary of the Interior, with the concurrence of the Administrator of General Services, determines are not suitable for return to the public domain for disposition under the general public land laws because such lands are substantially changed in character by improvements or otherwise; and (v) Crops when designated by such agency for disposition by severance and removal from the land.
- (2) Improvements of any kind, structures, and fixtures under the control of any Federal agency when designated by such agency for disposition without the underlying land (including such as may be located on the public domain, on lands withdrawn or reserved from the public domain, on lands reserved or dedicated for national forest or national park

purposes, or on lands that are not owned by the United States) excluding, however, prefabricated movable structures, such as Butler-type storage warehouses and Quonset huts, and house trailers (with or without undercarriages).

- (3) Standing timber and embedded gravel, sand, or stone under the control of any Federal agency, whether designated by such agency for disposition with the land or by severance and removal from the land, excluding timber felled, and gravel, sand, or stone excavated by or for the Government prior to disposition. (Public Contracts and Property Management, 41 C.F.R. § 102-71-20).

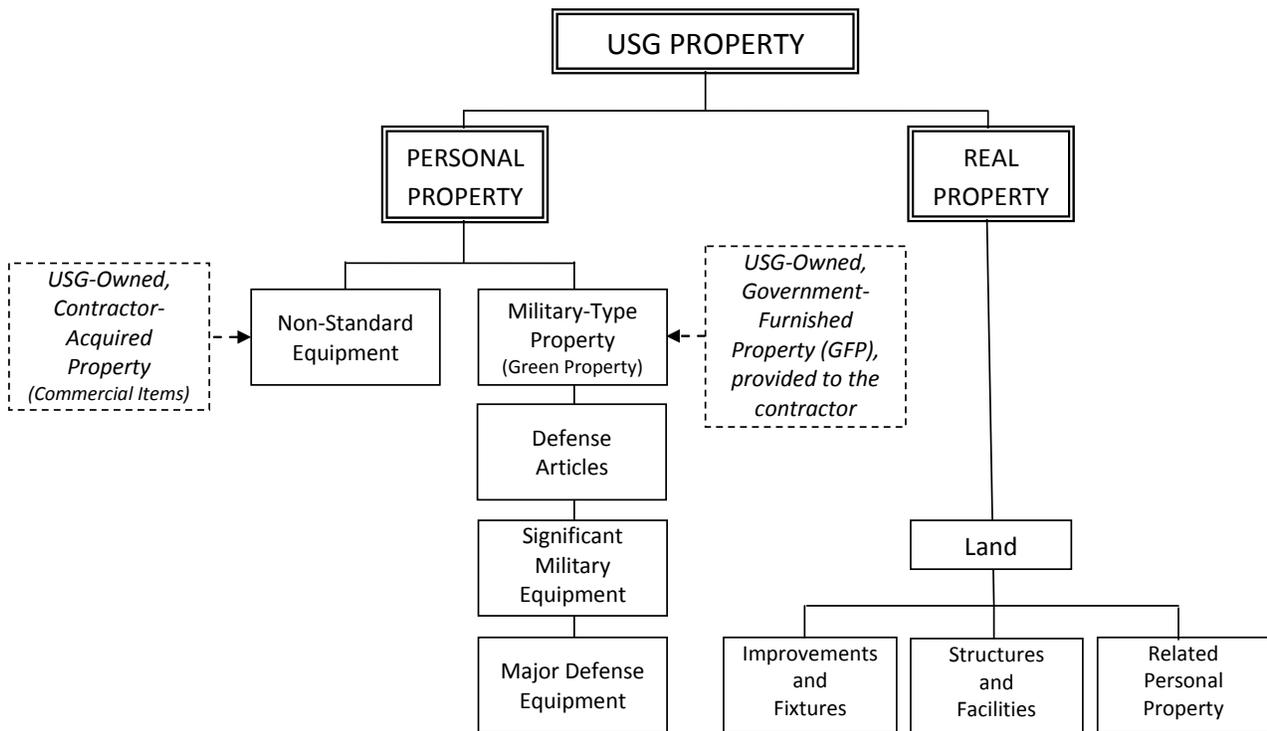
Related Personal Property: Any personal property that is an integral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property and the removal of which would significantly diminish the economic value of the real property (normally common use items, including but not limited to general-purpose furniture, utensils, office machines, office supplies, or general-purpose vehicles, are not considered to be related personal property). (Public Contracts and Property Management, 41 C.F.R. § 102-71-20).

Significant Military Equipment (SME): Those articles for which special export controls are warranted because of their capacity for substantial military utility or capability. Significant military equipment are those items preceded by an asterisk on the United States Munitions List. (ITAR § 120.7).

Surplus Property: Excess property that the Administrator of General Services determines is not required to meet the needs or responsibilities of all federal agencies. 40 U.S.C. § 102(10).

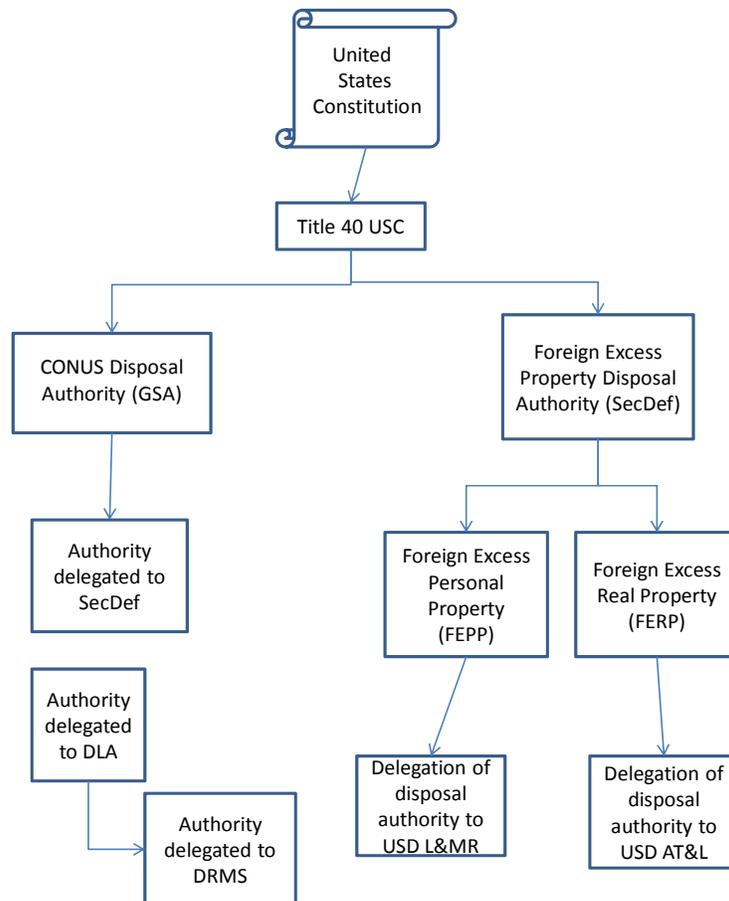
## Appendix B

### Property Classification Framework



## Appendix C

### Property Disposal Authority Framework



**Appendix D**

**FERP Delegation Example Memorandum**

OFFICE SYMBOL

Date

MEMORANDUM FOR CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
COMMANDING GENERAL, U.S. FORCES-IRAQ

SUBJECT: Authority to Transfer U.S. Real Property in Iraq

I hereby approve transfers of foreign excess real property (FERP) with an acquisition value of up to \$\_\_\_\_\_ to any Iraqi Government entity approved by the Department of State in exchange for substantial benefits. Specifically, the USD (AT&L) has found that authorizing the transfers described herein will streamline the retrograde process through coordinating transfer of FERP authority with existing personal property transfer authorities during FOB closures. Authorizing such transfers implements the real property transfer provisions of the Iraqi Security Agreement per 40 U.S.C. § 701(b)(2)(B). Further, authorizing these transfers will substantially benefit the Government's interest in fostering favorable relations between the United States and Iraq at the federal, provincial, and local levels by enhancing institutional development at all levels of the Iraqi government.

Any transfer under this memorandum must be accomplished through a memorandum of understanding or similar document that identifies, at a minimum, the structures and facilities, improvements, fixtures, and related personal property to be transferred, and their estimated acquisition value, as well as ultimate use and disposition.

Use of the authority granted in this memorandum is subject to the conditions specified:

USF-I shall retain a list of items and recipients for property transferred under this authority and a copy shall be provided to \_\_\_\_\_.

Government-furnished equipment which is attached to real property cannot transfer as part of the transfer of real property. Any such property must be identified prior to transfer and included as part of any contractor inventory in accordance with the requirements of FAR 52-245-1. Coordination with appropriate personal property disposal authorities is required to maximize efficiency of all real property transfers.

I hereby determine, for the reasons set out above, that it is in the interest of the United States that FERP identified in this memorandum be exchanged for substantial benefits, in accordance with 40 U.S.C. § 704(b)(2)(B).

If the acquisition value of the property recommended to be transferred exceeds \$\_\_\_\_\_, but is otherwise qualified for transfer, a formal request for exception to policy can be submitted separately to the the USD (AT&L) for approval. The request must include the date, quantity, item description, original acquisition value, property value at the time of proposed transfer, transferring unit and recipient.

The POC for this memorandum is \_\_\_\_\_.

[Insert Signature Block for the USD (AT&L)]

Appendix E

SF 1423 Inventory Verification Survey

INVENTORY VERIFICATION SURVEY (See NARS 49.602-1(D)(1)(B))				DATE			
<b>SECTION I - GENERAL</b>							
1. FROM (Include ZIP Code)			2. TO (Include ZIP Code)				
3. CONTRACT NUMBER AND TYPE			4. CONTRACTOR(S) OR CONTROLLER				
5A. SCHEDULES OF INVENTORY TO BE INSPECTED AND VERIFIED			5B. PLANT CLEARANCE CASE NUMBER/DOWNTIME NUMBER				
REFERENCE NUMBER	PAGE						
	START NO.	END NO.	AMOUNT (\$)				
<b>SECTION II - TECHNICAL VERIFICATION</b>							
6. IS PROPERTY LISTED ON THE INVENTORY DISPOSAL SCHEDULES ON HAND AND IN THE QUANTITIES INDICATED?		YES	NO	7. ARE THE WEIGHTS OF THE ITEMS APPROXIMATELY CORRECT? <small>IF WEIGHTS ARE NOT GIVEN, GIVE ESTIMATE OF WEIGHT BY BASIC MATERIAL CONTENT.</small>		YES	NO
7. IS THE PROPERTY CORRECTLY DESCRIBED ON THE INVENTORY RESPONSE SHEETS?				8. DO THE ITEMS APPEAR TO HAVE COMMERCIAL VALUE OTHER THAN SCRAP?			
8. IS THE PROPERTY SEGREGATED OR ADEQUATELY PROTECTED?				9. DID CONTRACTORS MAKE REASONABLE EFFORTS TO RETURN THE PROPERTY?			
9. IS THE PROPERTY PROPERLY TAGGED?				10. DO ANY ITEMS REQUIRE DEMILITARIZATION OR SPECIAL PACKAGING (explosive items)?			
10. ARE THE CONDITION CODES ACCURATE?				11. ARE COMMON ITEMS INCLUDED ON THE INVENTORY DISPOSAL SCHEDULES?			
11. IS THE PROPERTY CLASSIFICATION CORRECTLY IDENTIFIED?							
<b>SECTION III - TERMINATION INVENTORY</b>							
COMPLETION OF THIS SECTION <input type="checkbox"/> IS <input type="checkbox"/> IS NOT REQUIRED (If requester, check one)							
12. DID WORK STOP PROMPTLY UPON RECEIPT OF THE TERMINATION ORDER?		YES	NO	13a. DOES THE INVENTORY INCLUDE ALL ITEMS AS LISTED ON SPECIFIC LINE ITEM ENTRIES. OBTAIN FROM CONTRACTOR ESTIMATE COST OF BLUING, REPAIRS OR SPECIFIC LINE ITEM BASIS.		YES	NO
13a. MAKE UP MISSING: _____				13b. HAVE COMPLETED ARTICLES BEEN INSPECTED AS TO QUALITY AND COMPLIANCE TO SPECIFICATIONS?			
13b. DO THE QUANTITIES OF MATERIAL EXCEED THE AMOUNTS THAT WOULD HAVE BEEN REQUIRED TO COMPLETE THE TERMINATION PORTION OF THE CONTRACT?				13c. DO THE COMPLETED ITEMS APPEARED CONFORM TO CONTRACT SPECIFICATIONS?			
13c. CAN THE ITEMS OF TERMINATION INVENTORY BE USED ON THE CONTINUING PORTION OF THE CONTRACT?				13d. DO OTHER THAN COMPLETED ITEMS CONFORM WITH TECHNICAL REQUIREMENTS OF THE CONTRACT OR ORDER?			
14. ARE ALL ITEMS AND AMOUNTS ALLOCABLE TO THE TERMINATION PORTION OF THIS CONTRACT OR ORDER?				14. DID WORK IN PROCESS, IS THE PERCENTAGE OF COMPLETION ACCURATE?			
15. REQUESTING OFFICE REMARKS: <i>(When the answer to any question is placed in a block containing an asterisk (*) detailed comments of the verifier shall be included on the reverse of this form and identified by section and item number.)</i>							
16. SIGNATURE OF REQUESTER							
<b>INVENTORY VERIFICATION</b>							
The above information is based on a physical verification of inventory listed under item 5.							
17. NAME AND TITLE				18. SIGNATURE OF VERIFIER		19. DATE	
APPROVED FOR PUBLIC REPRODUCTION <small>Revisions (dates) not available</small>				STANDARD FORM 1423 REV. 5/2/80-81 <small>Prescribed by GSA FPMR (41 CFR) 101-11.6</small>			



## Appendix G

### SF 1428 Inventory Disposal Schedule

#### INSTRUCTIONS

The Contractor shall submit all schedules to the Plant Clearance Officer.

**Manual submissions.** Prepare a separate schedule for items in each property classification (block 17) and a separate schedule for scrap. Submit an original and 2 copies of each scrap schedule and continuation sheet (SF 1429). For other schedules, an original and 7 copies are required.

**Electronic submissions.** Group all items of the same property classification. Submit separate schedules for scrap.

#### General instructions.

**BLOCKS 1, 2 & 4.** Self-explanatory.

**BLOCK 3 - PRIME CONTRACT NO.** (For contract modifications and BOAs). If the property applies solely to one contract modification indicate the modification number after the contract number. For task orders and orders under basic ordering agreements, enter the contract number or BOA number followed by the order number under which the property is accountable.

**BLOCK 5 - CONTRACT TYPE.** Use one of the following codes:

J - Fixed-Price  
O - Other  
S - Cost-Reimbursement  
Y - Time-and-Material  
Z - Labor-Hour  
9 - Task Order Contracts and Orders under Basic Ordering Agreements (BOAs)

**BLOCKS 6 - 8.** Self-explanatory.

**BLOCKS 9a and 10a - GAGE CODE.** Enter the Commercial and Government Entity code when applicable.

**BLOCKS 9b-d, 10b-d, and 11a-13.** Self-explanatory.

**BLOCK 14 - ITEM DESCRIPTION.** Describe each item in sufficient detail to permit the Government to determine its appropriate disposition. Scrap may be described as a lot including metal content, estimated weight and estimated acquisition cost. For all other property, provide the information required by FAR 52.245-1 (f)(1)(iii). List the national stock number (NSN) first. For the following, also provide:

**Special tooling and special test equipment.** Identify each part number with which the item is used.  
**Computers, components thereof, peripheral and related equipment.** The manufacturer's name, model and serial number, and date manufactured.  
**Work in process.** The estimated percentage of completion.  
**Precious metals.** The metal type and estimated weight.  
**Hazardous material or property contaminated with hazardous material.** The type of hazardous material.

**Metals in mill product form.** The form, shape, treatments, hardness, temper, specification (commercial or Government), and dimensions (thickness, width, and length).

**BLOCK 15 - GOVERNMENT FURNISHED/CONTRACTOR ACQUIRED.** Per line item, enter one of the following:

GF - Government furnished  
CA - Contractor acquired

**BLOCK 16 - DML CODE.** (Demilitarization code). If applicable, enter the code specified in DoD 4160.21-M-1.

**BLOCK 17 - PROPERTY CLASSIFICATION.** Use one of the following classifications for each line item:

EQ - Equipment  
M - Material  
STE - Special test equipment  
ST - Special tooling

In addition, when applicable, list one of the following sub classifications for each line item below the property classification:

COM - Computers, peripherals, etc.  
AAE - Arms, ammunition and explosives  
PM - Precious metals  
HAZ - Hazardous materials  
ME - Metals in mill product form  
WIP - Work in process  
CL - Classified

**BLOCK 18.** Self-Explanatory.

**BLOCK 19 - CONDITION CODE.** Assign one of the following codes to each item:

**Code 1.** Property which is in new condition or unused condition and can be used immediately without modifications or repairs.  
**Code 4.** Property which shows some wear, but can be used without significant repair.  
**Code 7.** Property which is unusable in its current condition but can be economically repaired.  
**Code X.** Property which has value in excess of its basic material content, but repair or rehabilitation is impractical and/or uneconomical.  
**Code 9.** Property has no value except for its basic material content.

**BLOCKS 20 - 22.** Self-explanatory.

**BLOCK 23 - CONTRACTOR'S OFFER.** The Contractor's offer to purchase the item if it survives screening.

STANDARD FORM 1428 (REV. 6/2007) BACK

## Appendix H

### Contractor Inventory Disposal Framework

