

Relief of Responsibility "In a Nutshell"

BY KENNETH L. DAVIS, CPPS, *Bay Area Chapter*

While serving as a Supply Sergeant in the Army National Guard giving relief of property responsibility for lost or damaged government property as governed by Army Regulation 735-11 was almost totally unheard of. Instead, you could either elect to pay for it through payroll deduction, in cash, or request the commander to conduct a formal investigation called a "Report of Survey" to determine if the accountable person should be held pecuniary liable. Frankly, it was a good thing that a local commander could grant 10 percent depreciation. To make sure the soldiers recognized their property responsibility I provided the following statement on a sign that hung over my desk. It read "Property is not lost, it will be found on your paycheck." Simple, but effective. The only protection the soldier/officer had was that the Army would only hold him liable for up to two months basic pay. Many commanders found this provision very appealing at change of command time where the reports of survey would often exceed thousands of dollars caused by poor property management by someone to whom the commander was directly responsible, unless he could pin someone else with property issue receipts. With few exceptions, property responsibility came from the fact that the soldier had signed for it, and thus he was automatically responsible for the care, protection, preservation and maintenance of all government property in his possession.

Frankly, I was shocked when I became a Government Property Administrator (GPA) to find that in the wonderful world of government procurement, a contractor could be relieved of this same responsibility in most all situations, as long as the contractor maintained an approved property control system, and based on contractual flowdown of the contract terms and conditions, did not portray any evidence of willful misconduct or a lack of good faith on the part of his managerial personnel.

But what if the contractor fails to report losses or damage to government property when it occurs, fails to take appropriate action to correct the root cause, or fails to maintain an acceptable property control system that is supposed to assure losses and damages will either not occur or at least will be held to a minimum? Well, in this case perhaps the government can hold the contractor

Property is not lost, it will be found on your paycheck

liable. How, you ask? Try finding the property control system unsatisfactory in a related functional area and the contractor non-responsive. This could lead the way to property system withdrawal or disapproval.

Okay, maybe that's a bit of a stretch so let's go back and look at how a contractor should be managing loss, damage, or destruction (LDD) when it occurs. First, having good process procedures in place and adhered to by the workforce helps ensure government property will be controlled, protected, preserved and maintained. Second, with-

in these processes there is a means or mechanism that detects early identification and reporting of an LDD occurrence to the customer as provided under the expressed terms of the contract.

Timeliness in reporting and the content of the report are two key considerations. FAR 45.504 requires the contractor to promptly investigate and report all cases of loss, damage or destruction of government property to the GPA. During the initial review of the contractor's property control system for approval, the GPA should have assured that the contractor's system provides for:

- a. Internal reporting of any LDD to the responsible contractor property control organization.
- b. Investigation of such LDD is performed in accordance with the Government Property Clauses and 45.504.
- c. Prompt reporting by the responsible contractor organization to the PA, in accordance with FAR 45.504(b) and FAR 45.508-2.
- d. And, if additional reporting requirements are imposed by other agencies such as those relative to precious metals, explosives, firearms, controlled substances or hazardous materials, that they have also been included.

What if the relative government property clause in your contract is FAR 52.245-29(g)? Simple. You are at risk for any LDD, so just make your check payable to the U.S. Treasury in the amount of the LDD. If you are fortunate, you might be able to negotiate a settlement at a lesser cost. Hopefully your contract instead contains one of the following GP provisions where the government assumes the risk, i.e. FAR 52.245-2 with an alternate I (g) (Limited Risk), FAR 52.245-5 (g) or FAR 52.245-8 (b), all

of which provide for relief of responsibility.

And so we finally reached the reporting point and now we need to understand what the GPA needs from the contractor in terms of reporting. Remember, the information you provide is used to formulate the findings, the analysis of the contractual provisions and final determination. Fortunately these same elements of information are outlined in the GPA bible, DoD 4161.2-M, "Manual for the Performance of Contract Property Administration." It suggests the following information should be requested from the contractor, where applicable, for each case of LDD of government property:

1. Date of the incident surrounding the LDD.
2. Description of property involved, including NSN or applicable part number or ID number.
3. Contract number.
4. Acquisition cost.
5. Full narrative of the incident, location, etc. (the who, what, where, when and how).
6. Root cause and corrective action taken or to be taken to prevent recurrence.
7. Estimated scrap proceeds (when applicable).
8. Repair direct labor and material cost (when applicable).
9. Estimated cost to replace (when applicable).
10. Copies of supporting documentation.
11. The specific contract provision under which relief of responsibility is sought.
12. Date of report.
13. Statement explaining that no insurance costs or other means of covering the LDD of government property were charged to the contract (when applicable).
14. Statement saying that, "in the event the contractor was or will be reimbursed or compensated for LDD of government property; e.g., reimbursement by a subcontractor, the government shall receive equitable reimbursement."

Keep in mind that FAR 45.502(b) states "...contractor shall furnish all necessary data to substantiate any request for relief of responsibility..." So, having now assured the accuracy of your internal investigation, expeditiously forward it to your GPA or in the case of a subcontract, to your prime contractor. If you are acting as a subcontractor and a Delegation for Supporting Property Administration has been received by your DCMC GPA, sending a courtesy copy to them would be appropriate since the prime GPA will usually want a recommendation for relief of responsibility from the supporting GPA.

Once a letter granting relief of responsibility has been received, the contractor must assure it is posted to the appropriate record and filed in the official contract file. The FAR does not dictate reporting requirements based on property values alone, however, recent change to the FAR allows certain property valued at less than \$1500.00 to be reported at the end of the contract. If you

need to replace it at additional cost to the contract, it will be necessary to contact the Administrative Contracting Officer (ACO) for additional funding. I would expect that they will want details leading up to the need and a recommendation from the GPA may be needed before the ACO would release added funding.

Another argument often heard is the reporting of losses valued less than a dollar, yet the FAR places no threshold on required reporting. I recommend that a contractor wishing to set reporting thresholds negotiate with its DCMC PA or if necessary with its ACO. Otherwise, relief or responsibility is governed by FAR 45.503 and is based on:

- A. Reasonable and proper consumption of property in the performance of the contract as determined by the property administrator.
- B. Retention by the contractor, with the approval of the Contracting Officer, of property for which the government has received consideration.
- C. The authorized sale of property, provided the proceeds are received by or credited to the government.
- D. Shipment from the contractor's plant, under government instructions, except when shipment is to a subcontractor or other location of the contractor; or
- E. A determination by the contracting officer of the contractor's liability for any property that is lost, damaged, destroyed or consumed in excess of that normally anticipated in a manufacturing or processing operation if
 1. The determination is furnished to the contractor in writing.
 2. The government is reimbursed where required by the determination, and
 3. Property rendered unserviceable by damage is property disposed of, and the determination is cross-referenced to the shipping or other documents evidencing disposal.

As you know, the times they are a changing. FAR rewrites, streamlining initiatives, block changes, downsizing, restructuring, and acquisition reform are all designed to get a bigger bang for the government buck. Saving money starts with having a satisfactory property control system which assures all property will be adequately controlled, protected, preserved and maintained. By having provisions for relief of responsibility folded into the terms and conditions of the contract we cover events that are beyond the control of the contractor. If a contractor establishes and maintains an adequate property control system, relief of responsibility will be a seldom used portion of the contract and should result in cost avoidance. ◆

Kenneth L. Davis is assigned to DCMC San Francisco in residency at United Defense LP, San Jose, CA serving in both the capacity of Property Administrator and Plant Clearance Officer.

The views expressed herein are those of the author and do not necessarily reflect the views of DLA, DCMC San Francisco or the Department of Defense.