

Electronic Asset Take-Back Guidance

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Purpose

This guidance addresses the inclusion of provisions in contracts or leases for manufacturer or reseller take-back of used electronic assets.

Background

This take-back guidance was developed in collaboration with the member agencies of the Federal Electronic Stewardship Working Group (FESWG), drawing on their collective experience and expertise. The General Services Administration (GSA) reviewed this document for consistency with applicable federal property management laws and policy. Please contact Bob Holcombe, GSA, for further information or with questions.

What is a Take-Back Program?

A take-back program returns an electronic asset¹ used by a Federal agency to the entity from which it was procured or leased. While electronic asset manufacturers might offer take-back programs, the term “take-back” as used in this guidance refers to take-back requirements included in contracts or leases with electronic asset resellers or manufacturers. Note that electronic assets can be functional or non-functional when taken back; however, the asset must be of low value so that agencies can apply their abandonment/destruction authority to the disposal of these assets back to the reseller or manufacturer, instead of offering the items to other government agencies or to state and local donees in accordance with the normal Federal disposal process.

Electronic asset take-back programs reduce asset management costs for Federal agencies by giving the responsibility for end-of-life management to the reseller or manufacturer, allowing a cradle-to-cradle life cycle approach to managing electronics. However, Federal contracts and leases often leave the responsibility to manage electronic assets in a *sustainable* and *secure* manner to the discretion of the reseller or manufacturer, despite Federal mandates requiring agencies to ensure responsible end-of-life management. Through the use of a well-crafted take-back provision, Federal agencies can require manufacturers or resellers to take back used electronics at the end of the product life cycle and ensure responsible reuse or recycling of products that can be harmful if disposed of irresponsibly. The purpose of this guidance is to help Federal agencies ensure that these assets are handled in a secure and environmentally sustainable manner while also saving money through the effective use of electronic asset take-back programs. As used in this guidance, the term “contract” includes leases.

Note that under Federal regulation, any asset owned by the government must go through the

¹ Under proposed revisions to the Federal Management Regulation, “Federal Electronic Asset (FEA)” means an electronic asset that is classified within certain designated classes or categories of electronic personal property. The classifications of assets defined as FEA under Part 102-36 of the FMR are listed in FMR Bulletin B-34 or succeeding Bulletins. (FMR Bulletins are located at gsa.gov/fmrbulletins). FEA does not include items retained by the agency solely for the item’s historical significance, items installed in facilities as related property, or items installed in larger assets, such as vehicles and aircraft.

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prescribed disposal process. If the item meets the criteria for abandonment/destruction, the asset does not go through this Federal disposal process, and the agency may make the decision to dispose of the asset under these take-back provisions, or dispose of the asset through any other route authorized by policy, such as sending assets to certified recyclers.

The abandonment/destruction authority is found in 41 CFR 102-36. Essentially it allows an agency to dispose of assets where the cost of care and handling exceeds the estimated proceeds (value) of the asset. In other words, the government should not expend a lot of resources maintaining and managing assets of little value.

What are Other Disposal Options for Electronic Assets?

To provide a complete picture of the options available for Federal agencies disposing of electronic assets, the following are the additional disposal authorities and disposal routes:

Exchange/Sale. Federal agencies may use this authority to sell or exchange electronic assets to another entity in order to obtain exchange credits or sales proceeds toward the acquisition of similar replacement property. The exchange/sale program has some of the same characteristics as take-back programs (in that assets may flow back to the reseller or manufacturer) but is used for the purpose of obtaining needed replacement assets. In addition to eliminating end-of-life management costs for the un-needed electronic assets, exchange/sale transactions also reduce the costs of obtaining new electronics.

The provisions for exchange/sale transactions are found at 41 CFR Part 102-39. The exchange/sale program is different from a take-back program described above in that:

- a) The assets are exchanged or sold to a recipient solely for the purpose of obtaining replacement property, not simply to dispose of an asset that is no longer needed.
- b) The recipient usually does not have any contractual ties to the Federal agency regarding the disposal of the asset from the time of the initial asset acquisition by the government; the recipient can be a reseller, vendor, manufacturer, or, if sold, any qualified private entity.
- c) An exchange/sale acquisition usually involves higher-value items (because of the resources needed to manage the transaction), and these transactions are usually part of an overall agency acquisition strategy.
- d) Electronic assets in an exchange/sale transaction are NOT, by definition, excess to the needs of an agency. They may be functional or non-functional assets, but the functions of the asset are still needed.

Disposal of Excess through the General Services Administration (GSA). When items are no longer needed, and therefore not eligible for exchange/sale, and not disposed of under the agency's abandonment/destruction authority, such assets are excess, and should be reported to GSA under the normal Federal disposal process. The assets will be screened for re-use by other Federal agencies, state and local donees, or offered for public sale. Disposal through this route gives the greatest potential for continued re-use of the assets. Current policy is only to report FEA to GSA if the assets are condition coded to be in condition "N (new)," or "U (used)." FEA in other condition codes must be disposed of to a certified recycler, as

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described in the FMR Bulletin.

Other Abandonment/Destruction Options. When an agency makes the determination that an asset should be disposed of under its abandonment/destruction authority, and is not disposed of under a take-back program, there are two other general disposal routes:

- a) Disposal to a certified recycler: The Federal policy promulgated by GSA states that non-functional FEA should only be disposed of to a third party-certified recycler under the abandonment/destruction authority. The take-back program is one avenue for disposal. If there is no take back provision, the non-functional FEA should be disposed of through a certified recycler, such as those linked at the end of this document, or such as Federal Prison Industries/UNICOR.

A subset of this type of disposal, typically used more often to dispose of small quantities of FEA, is where an entity allows for the drop-off or mail-in of electronic assets. The U.S. Postal Service's Blue Earth service is an example of this type of disposal option. The recipient typically does not provide cash or other consideration (such as credits or other items of value), although something of minimal value may be provided to the agency as an incentive for recycling. The recipient agrees to accept the asset for refurbishing or recycling and may realize a gain due to the value of the asset, its components, or its materials. This transaction meets the definition of "disposal" using the abandonment/destruction authority.

- b) Non-functional FEA that have reached their end of life can be disposed of as scrap. Under Public Law 112-74, Section 706, this property may be sold by the agency, with the proceeds used to further agency recycling programs. (Note that the proceeds can also be used for acquisition, waste reduction and waste prevention programs, other Federal agency environmental management programs, or "other employee programs as authorized by law or as deemed appropriate by the head of the Federal agency".) This authority is given directly to the agency and is not managed nor regulated by GSA.

Ensuring Environmentally Sustainable Management in Product Take-Back Programs.

Inappropriate end-of-life management of electronic assets can lead to serious public health and environmental impacts. Many electronic products contain hazardous materials, which if improperly handled, can harm recycling worker health and/or damage the environment.

Regardless of the type of disposal option chosen for disposing of non-functional FEA, Federal agencies should ensure that the program uses electronic asset refurbishers and recyclers who are third-party certified as being in conformance with environmentally responsible electronics recycling standards (see below for a list of standards). This includes ensuring that a reseller or manufacturer take-back program is either reusing the asset or is refurbishing or recycling non-usable assets through third-party certified electronics refurbishers and recyclers. For the sale of scrap, this includes only selling to third-party certified refurbishers and recyclers.

Ensuring that non-functional electronic assets ultimately go to third-party certified recyclers or refurbishers helps Federal agencies ensure that they are being good stewards of the environment

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and public health, as well as meeting requirements for environmentally sound end-of-life management of electronic assets.

Why Use a Take-Back Program?

There are important benefits to electronic take-back programs, including:

- Cost savings from eliminating the expense of disposing of electronic assets in an environmentally sound manner.
- Waste and materials reduction through the use of responsible, third-party certified electronics refurbishers or recyclers.

Where Should Take-Back Provisions Be Included?

Take-back related provisions should be inserted in the Scope of Work for leased or purchased electronic equipment, where appropriate.

Following is sample language on electronic asset take-back, derived from provisions that have been successfully incorporated into prior acquisitions:

The Contractor shall assess the remaining value of purchased equipment at the end of its useful life based on its current value. The Government may return the equipment to the Contractor and use the assessed value to offset the purchase price of a new device.

As part of the proposal, the Contractor shall clearly identify its approach to device end-of-life management. Unless approved by the Government as a management option, electronic assets shall not be disposed of in a landfill or by incineration.

For any equipment removed by the Contractor and scheduled to be refurbished or recycled, the Contractor is required to demonstrate as part of its management plan that those actions will be handled by a refurbisher or recycler that is third-party certified to one of the known electronics recycling certification programs that is used in the United States, the Responsible Recycling Standard (R2) or the E-Stewards Standard.

Note: While this sample contract language references the Responsible Recycling (R2) and e-Stewards standards, there may be other standards approved for use for Federal disposal options in the future. Currently, however, R2 and e-Stewards certification programs are the only certifications recognized in GSA's Bulletin FMR B-34, Disposal of Federal Electronic Assets.

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How Should Transportation Costs be Addressed?

Federal contractors handle the return shipping costs differently. Some resellers or manufacturers pay for any shipping costs to return equipment either for remaining value or disposition. Others require the Government to pay all return shipping costs. The shipping costs in relation to the purchase price should be part of the price evaluation.

An additional consideration is the use of shippers that are members of the U.S. Environmental Protection Agency's SmartWay Transport Partnership, which recognizes sustainable shipping practices. Use of SmartWay Transport Partners promotes the reduction of shipping-associated greenhouse gas emissions.

How is Remaining Value Determined?

The take-back value of electronic assets is based on market conditions and is established at the time the Government-owned electronics are turned-in. The value is determined based on the type/model of equipment. Information on the process for evaluating the equipment may be requested in the task order.

What are Additional Considerations?

- *Clearly define roles and responsibilities* - In addition to shipping costs, consider the time and resources needed to prepare electronic assets for return shipping. This might include consolidating equipment, palletizing, and/or shrink wrapping, and moving equipment to a dock or pick up location. Consider clearly outlining these roles and responsibilities in the contract.
- *Ensure assets are reused to the greatest extent practicable* – Evaluate all options for disposal and re-use of assets, including disposal through GSA, using the asset in an exchange/sale transaction, or in a take-back plan to get the greatest use out of the equipment.
- *Asset Accountability and Management* – Include the appropriate clauses in the contract (such as the clauses at FAR Part 52), to ensure that the Government's property is properly accounted for and managed.
- *Data security and sanitization* – Consider the methods for ensuring that data is not released outside the assigned controlled areas. Require contractors to follow agency media sanitation policies or guidelines. Consider following and citing provisions contained in NIST Publication 800-88. FMR 102-35 directs agencies to remove agency and Federal markings from assets leaving the control of the agency.
- *Before executing, follow rules clearly* - Consider rules or requirements for returning assets. Does the contractor's receiving dock have specific hours? Are certain transportation carriers encouraged or prohibited?
- *Take-back data collection and reports* - Address reporting in the contract, including the information needed to report on returned equipment, who should be responsible for collecting the data, and how often the information is required.

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Typically the reseller or manufacturer will require the Federal agency to complete a purchased equipment take-back request form or a similar document that is agreeable to both the agency and the take-back entity. This document is used by the Federal agency to document the disposal of its electronic assets and may be used by the take-back entity to document the transfer of ownership of the assets. The decision as to which take-back option to select should be directed toward the choice providing the best value to the Government.

More information on the Responsible Recycling (R2) and e-Stewards standards and certification programs can be found at the following web sites:

- <http://www.sustainableelectronics.org/find-a-recycler>
- <http://e-stewards.org/find-a-recycler/>
- <http://www.epa.gov/epawaste/conservation/materials/recycling/certmap.htm>