

Applications of Voluntary Consensus Standards and Industry Leading Practices within the Requirements of the Federal Acquisition Regulation Government Property Clause – 52.245-1.

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The recently published Federal Acquisition Regulation (FAR) Government Property Clause, FAR 52.245-1, opened a brave new world of requirements and applications through the allowance of the use of Voluntary Consensus Standards and Industry Leading Practices. Where prior to this issuance, the FAR was, by its very nature, a forceful prescriptive document, the new regulation takes on, to coin a phrase, a “kinder and gentler” tone.

Definitely this new contractual requirement – or maybe a better perspective would be to call it an “allowance” opens the door to a myriad of new applications. So, in this paper I would like to explore a little bit of the contractual side of the requirement, a little bit of the voluntary consensus applications, a little bit of the industry leading practice applications, and lastly some discussion of contract law – as we must remember that we are dealing with a contract – a legal vehicle to accomplish a task.

With that said let’s have at it!

Standards

Standards have been with us for ages!!! Look at your desk and you will probably see a calendar. Is that a standard? Yup. Is your company ISO certified? Well, ISO stands for, in the anglicized vernacular The International Organization for Standardization. Do you use a telephone? Well, that started with the International Telegraph Union formed in 1865 by 20 nations meeting in Paris to address the use of the TELEGRAPH. Now they deal with wireless, radio broadcasting and a host of other issues – and their standards.¹

“During the Civil War the U.S. government recognized the military and economic advantages to having a standardized track gauge. The government worked with the railroads to promote use of the most common railroad gauge in the U.S. at the time which measured 4 feet, 8 ½ inches, a track size that originated in England. This gauge was mandated for use in the Transcontinental Railroad in 1864 and by 1886 had become the U.S. standard.”²

“After the Industrial Revolution, occupational injury also became a major issue and workers approached any nineteenth century machinery with a legitimate degree of fear.

¹ History of Standards, Institute of Transportation Engineers, ITE Journal, March 2005

² Through History with Standards. ANSI,
http://www.ansi.org/consumer_affairs/history_standards.aspx?menuid=5

The American Society of Mechanical Engineers (ASME), one of the first voluntary standardizing bodies, was established in 1880 when, according to their records, over 50,000 fatalities a year were being caused by explosions in pressures systems on land and at sea.”³

What is a standard would be a good question to begin with. “Some standards are developed by tradition and custom; others come about because those interested in a specific area decide to develop a standard. Many different types of standards exist. In order of increasing scope, they are:

Company standards. Many companies set product or service standards to reduce development, inventory, and support costs. While these standards have rather limited scope, it is not uncommon to see a company standard grow to be accepted as an industry standard and, sometimes, turned into a consensus standard. The Hayes AT command set for modems and the dbase (now xBase) database file formats are two such examples.

Industry standards. Not only do industry standards grow from company standards that achieve great popularity in the marketplace, sometimes an industry sets out to develop a standard to enable a product class to come forth. The currently evolving effort of the electronics industry to standardize the format of high-definition television (HDTV) is one such example.

And Voluntary consensus standards.”⁴

We’ll discuss Voluntary Consensus Standards in great detail later in this paper
Bottom line – standards have been with us a LONG time – so much so that we sometimes don’t even realize that we are using them on a daily basis.

The United States Federal Government and the Requirements for USE of VCSes.

In a Congressionally mandated report issued in 2002 by the Department of Commerce’s National Institute of Standards and Technology (NIST) it was reported that federal agencies are greatly increasing their use of private sector standards in its regulations and procurements.⁵ Examples of this action included:

- The Environmental Protection Agency used voluntary consensus standards in 77 percent of its 585 final rule makings during FY 2000, an increase of 42 percent over 1999.
- The Department of Defense completed its review (begun in 1994) of all 40,000 military specifications (known as MilSpecs) for potential replacement by voluntary

³ Standards, History of Standards, <http://www.standards.org.au/cat.asp?catid=3>

⁴ Mark I. Marper, Journal of Business Ethics. Dordrecht: Nov 1998. Vol 17, Iss.15;Pg 1701. “An ethical issue in voluntary-consensus-standards development: A decision-science view

⁵ The *Fourth Annual Report on Federal Agency Use of Voluntary Consensus Standards* (NISTIR 6846) which can be obtained at <http://ts.nist.gov/Standards/Conformity/toolkit.cfm#ann-rpts>.

consensus standards. For new requirements, it instituted a stringent system to determine whether a voluntary consensus standard would be more appropriate.

- NASA and the Department of Defense launched their Single Process Initiative, intended to identify and apply common standards for contractor-supplied equipment used by both agencies.
- NIST published the federal government's first-ever conformity assessment guidelines to help agencies improve their management and coordination of testing, inspection, certification and other activities to determine whether products or services meet regulatory or procurement requirements.
- The Department of Energy (DOE) has gone so far as to publish guidance in the form of the DOE Technical Standards Program Procedures, DOE-TSPP-3, entitled Use of Voluntary Consensus standards and Interaction with Standards Development Organizations.⁶

Well, the question then is what precipitated this “change of heart.” Three items immediately jump to the forefront:

Law/Statute

An Office of Management and Budget Circular and

The Federal Acquisition Regulation

Law

Public Law 104-113, entitled the “National Technology Transfer and Advancement Act of 1995” amended the Stevenson-Wydler Technology Innovation Act of 1980 to include the following requirement.

(1) In general.--Except as provided in paragraph (3) of this subsection, all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.

(2) Consultation; participation.--In carrying out paragraph (1) of this subsection, Federal agencies and departments shall consult with voluntary, private sector, consensus standards bodies and shall, when such participation is in the public interest and is compatible with agency and departmental missions, authorities, priorities, and budget resources, participate with such bodies in the development of technical standards.

So here we see more than a decade ago direction to and a requirement for the Federal Government to start using VCSes. In point of fact, the law issues direction that Federal agencies “SHALL” participate with VCS bodies. Interesting note to Federal Government employees – you have your statutory marching orders.

The Office of Management and Budget

On February 19th, 1998 the Office of Management and Budget (OMB) published OMB circular A-119, entitled “Federal Participation in the Development and Use of Voluntary

⁶ <http://hss.energy.gov/nuclearsafety/techstds/overview/tspp03-c4.pdf>

Consensus Standards and in Conformity Assessment Activities.”⁷ This OMB circular was technically an implementation of the National Technology Transfer and Advancement Act of 1995 mentioned earlier. The OMB Circular states as its purpose, “This Circular directs agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical.” It is through this Circular that we see the direction to implement what the law directed.

Well, how does this impact the Government procurement process and more importantly how Government property in the possession of contractors is managed?

The Federal Acquisition Regulation.

The Federal Acquisition Regulation (FAR) is the acquisition document binding upon all Federal Agencies (Unless exempted from the requirement. And yes, there are a few Federal Agencies that do NOT follow the FAR.). FAR Part 11 entitled Selecting and Developing Requirements Documents contains guidance and direction to the Procurement officials their responsibilities regarding the use of VCSes. FAR 11.101, Order of Precedence for Requirements Documents states in paragraph (c), In accordance with OMB Circular A-119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,” agencies must use voluntary consensus standards, when they exist, in lieu of Government-unique standards, except where inconsistent with law or otherwise impractical. The private sector manages and administers voluntary consensus standards. Such standards are not mandated by law (e.g., industry standards such as ISO 9000).

So, we can see that the Use of VCSes is not something new or even radical. Rather it is a natural evolution of Government’s procurement and acquisition requirements – even in its directions regarding the management of Government property.

Contractual Requirements for the USE of VCSes and ILPs

So far we have seen the requirements for the Federal Government to use VCSes as required by Law, OMB Circular and the FAR. So, how does the Government impose this requirement onto the contractor? Well, we need to look at the FAR as it applies to contractors – even more importantly as it applies to contractors and the management of Government property in their possession.

FAR Part 45

FAR Part 45 (The 2007 Version) is policy BINDING upon the Federal Government. It is NOT binding upon contractors. Yet, the policies established in the FAR part DO impact and effect contractors. FAR Part 45 addresses the contractual expectation that contractors will use VCSes.

⁷ A discussion of this OMB circular may be found at <http://ts.nist.gov/Standards/Conformity/upload/fr-omba119.pdf> and the actual circular may be found at <http://www.whitehouse.gov/omb/circulars/a119/a119.html>.

45.103 General.

(a) Agencies shall:

(1) Allow and encourage contractors to use voluntary consensus standards (see FAR 11.101(c)) and industry-leading practices and standards to manage Government property in their possession.

Here we see the Government's OFFICIAL policy in regard to the contractor's use of VCSes. We have an imperative statement followed by a "supporting" statement. Agencies shall... Quite clearly shall is an imperative. It is NOT an option. The second part has added emphasis. Shall... allow and encourage. WOW! This is no simple guidance, this is guidance chock full of direction. First, the Government "Shall allow" the use of VCSes and Industry Leading Practices (ILPs). Second, it is insufficient to just ALLOW their use – agencies are to ENCOURAGE their use in the management of Government property.

One has to understand that FAR Part 45 (2007 Version – unpublished at time of submission) is not contractually binding upon the contractor. How then are CONTRACTORS required to use/apply VCSes and ILPs? The Government property clause!

FAR 52.245-1 – Government Property

The Government property clause is a mandatory clause when Government property is to be provided to the contractor, with very few exceptions to its use.⁸ The policy for the use of this clause is found at FAR 45.107.

45.107 Contract clauses.

(a)(1) Except as provided in (d) of this section, the contracting officer shall insert the clause at 52.245-1, Government Property, in-

(i) All cost reimbursement, time-and-material, and labor hour type solicitations and contracts; and

(ii) Fixed-price solicitations and contracts when the Government will provide Government property.

(iii) Contracts or modifications awarded under FAR Part 12 procedures where Government property that exceeds the simplified acquisition threshold, as defined in FAR Part 2.101, is furnished or where the contractor is directed to acquire property for use under the contract that is titled in the Government.

We again see an imperative statement regarding the use of this clause. It is not a suggestion. It is not a permissive "May" statement. It is an order, a clear direction that the Contracting Officer insert this clause where specified in the policy. With the

⁸ Though there has been some debate as to the Government property clauses under the old FAR being mandatory clauses – the one DoD ruling we have in this regard is from an ASBCA case - ASBCA No. 30756, 1989 WL 47610 (A.S.B.C.A.), ASBCA No. 30,756, 89-2 BCA 21,789, ASBCA, Appeals of--Hart's Food Service, Inc., d/b/a Delta Food Service. Under Contract No. DADA11-83-C-0047

inclusion of the clause at FAR 52.245-1 we now have a contractual requirement BINDING upon the contractor. It is through this clause that we see the tasking of the contractor to use VCSes or ILPs.

The Government property clause at FAR 52.245-1 states:

(b) Property management.

*(1) The Contractor shall have a system to manage (control, use, preserve, protect, repair and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective control of Government property, **consistent with voluntary consensus standards and/or industry-leading practices and standards for Government property management** (Emphasis added) except where inconsistent with law or regulation.*

So we can clearly see the relationship and flow that extends from the

LAW →
to OMB Circular →
to FAR Acquisition Policy →
to FAR Government Property Policy →
to FAR Clausal Requirement binding upon the contractor.

Discussion of Voluntary Consensus Standards (VCS)

“Wait a minute Doug, what is a VCS? You keep rambling about VCSes – but I really don’t know what they are.”

O.k., so what is a VCS?

We must again go back to a seminal document – OMB Circular A-119. It provides us a definition of a Voluntary consensus Standard. It states,

For purposes of this policy, "voluntary consensus standards" are standards developed or adopted by voluntary consensus standards bodies, both domestic and international. These standards include provisions requiring that owners of relevant intellectual property have agreed to make that intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties. For purposes of this Circular, "technical standards that are developed or adopted by voluntary consensus standard bodies" is an equivalent term.

So, a VCS is not just anything – rather it is a very specific thing! Let me present an example. The National Property Management Association (NPMA) has produced some excellent texts on property management. Therefore, I should be able to take those texts, extract the concepts specified in the text, and I have a VCS – right?

Wrong!

Because the NPMA is not a VCS Body.

Whoa, what is a VCS Body?

Well, we need to go to the same location as before for this term's definition – the OMB Circular!

OMB Circular A-119 states,

(1) "Voluntary consensus standards bodies" are domestic or international organizations which plan, develop, establish, or coordinate voluntary consensus standards using agreed-upon procedures. For purposes of this Circular, "voluntary, private sector, consensus standards bodies," as cited in Act, is an equivalent term. The Act and the Circular encourage the participation of federal representatives in these bodies to increase the likelihood that the standards they develop will meet both public and private sector needs. A voluntary consensus standards body is defined by the following attributes:

(i) Openness.

(ii) Balance of interest.

(iii) Due process.

(vi) An appeals process.

(v) Consensus, which is defined as general agreement, but not necessarily unanimity, and includes a process for attempting to resolve objections by interested parties, as long as all comments have been fairly considered, each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus body members are given an opportunity to change their votes after reviewing the comments

If you would like to see a listing of Voluntary Consensus Standard bodies these can be found at <http://www.ses-standards.org/displaycommon.cfm?an=1&subarticlenbr=45> and www.dsp.dla.mil

With that said, where can we find a goodly number of VCSes regarding property and property management? The ASTM International site – WWW.ASTM.ORG. ASTM International was originally known as the American Society for Testing and Materials and was formed over a century ago.⁹ The National Property Management Association teamed with ASTM International to endeavor to create property and asset management VCSes. The ASTM International's *Standardization News* has carried a number of articles dealing with this endeavor – and its successes.¹⁰ Within the ASTM International exists the E-53 committee for Property and Asset management standards development. Further information regarding this committee, its membership, its charter and opportunities for involvement can be found at the ASTM E-53 page at

⁹ From the ASTM International Web page, under the heading of About ASTM International <http://www.astm.org/cgi-bin/SoftCart.exe/ABOUT/aboutASTM.html?L+mystore+xphf8807+1175106864>

¹⁰ Marsha Campbell, John O'Shaughnessy and Lyle Hesterman (All NPMA members) have all had articles published in the Standardization News regarding the issue of property management standards. These can be found by searching the Standardization News Archives at the ASTM Website.

<http://www.astm.org/cgi-bin/SoftCart.exe/COMMIT/COMMITTEE/E53.htm?L+mystore+oqah7571>.

Here is a listing of the E53 Property Management standards that were published as of the date this paper was written [March 2007]:

- E2132-01 Standard Practice for Physical Inventory of Durable, Moveable Property
- E2221-02 Standard Practice for Administrative Control of Property
- E2279-03 Standard Practice for Establishing the Guiding Principles of Property Management
- E2497-06 Standard Practice for Calculation of Equipment Movement Velocity (EMV)
- E2499-06 Standard Practice for Classification of Equipment Physical Location Information
- E2219-02 Standard Practice for Valuation and Management of Moveable, Durable Property
- E2220-02 Standard Practice for Establishing the Full Valuation of the Loss/Overage Population Identified During the Inventory of Moveable, Durable Property
- E2378-05 Standard Practice for the Recognition of Impaired or Retired Personal Property
- E2453-05 Standard Practice for Determining the Life-Cycle Cost of Ownership of Personal Property
- E2131-01 Standard Practice for Assessing Loss, Damage, or Destruction of Property
- E2306-03 Standard Practice for Utilization and Disposal of Personal Property
- E2379-04 Standard Practice for Property Management for Career Development and Training
- E2452-05e1 Standard Practice for Equipment Management Process Maturity (EMPM) Model
- E2495-07 Standard Practice for Prioritizing Asset Resources in Acquisition, Utilization, and Disposition
- E2135-06 Standard Terminology for Property and Asset Management

Note – though I have taken the educational approach of listing the ASTM E-53 property management standards as a Federal Government Employee I cannot “endorse” any product. Therefore, the appearance of these VCS Body standards or any other VCS Body’s standards does not constitute an official endorsement by the United States Federal Government, the Department of Defense or the Defense Acquisition University.

Even though I have sung the praises of ASTM International and the E-53 committee and the NPMA in its cooperation on developing VCSes it is important to note that at this time ASTM International has not published VCSes on all of the contractually required processes. And in point of fact, there may be other VCS Bodies far more qualified to address certain processes and their outcomes, e.g., VCSes on Maintenance of

equipment. There is a WEALTH of information regarding this process available from other VCS Bodies. More on this later.

Discussion of Industry Leading Practices (ILP)

Great – so we know what a VCS is – but what is an Industry Leading Practice (ILP)? Now, this is an interesting one. Before we can analyze the term Industry Leading Practice it would be helpful to DEFINE it. To do that I would like to break it down into smaller components; Leading Practices and even Best Practices.

Doing the ubiquitous Google search for “Best Practice” realized over 58 MILLION hits.
“Leading practice” realized over 1 million hits.
“Industry leading practices” realized over 14 thousand hits.

Yet, when I added the extra search term of Definition to the aforementioned Google searches of “Industry Leading Practice” and “Leading Practice” though there were thousands of “hits” – none of them provided something as simple as a definition. Most of these were ADVERTISEMENTS for companies that self proclaimed that they used leading practices

The search for a definition of “Best Practice” was much more fruitful. Try these on for size:

- A technique or methodology that, through experience and research, has proven to reliably lead to a desired result.
www.tjiss.net/glossary_b.html
- The winning strategies, approaches, and processes that produce superior performance in an organization. A best practice is a by-product of a successful end-result.
www.portfoliostep.com/390.1TerminologyDefinitions.htm
- An activity or procedure that has produced outstanding results in another situation and could be adapted to improve effectiveness, efficiency, ecology, and/or innovativeness in another situation.
www.ichnet.org/glossary.htm
- Recommendations regarding processes or techniques for the use or implementation of products or services.
www.msdnaa.net/curriculum/glossary.aspx
- A way or method of accomplishing a business function or process that is considered to be superior to all other known methods.
www.gaproject.org/methods/resglossary.html
- programs, initiatives or activities which are considered leading edge, or exceptional models for others to follow.
www.sbed.gov.bc.ca/SportBranch/Glossary.htm
- Examples of field-based activities, operational procedures or capacity building approaches that are successful and sustainable in social and environmental

terms and can be readily adopted by other individuals or organizations.

www.compass-malawi.com/cglossary.htm

- Processes and activities that have been shown in practice to be the most effective.
it.csumb.edu/departments/data/glossary.html
- The procedures and policies that allow a business to outperform all other in a particular business process.
www.crfonline.org/orc/glossary/b.html

Now, I couldn't leave out Wikipedia – some folks view that as an authoritative document. I find it enjoyable – but it does not achieve the rank and stature of more scientific research based forums.¹¹ Wikipedia defines “Best Practice” as “a management idea which asserts that there is a technique, method, process, activity, incentive or reward that is more effective at delivering a particular outcome than any other technique, method, process, etc. The idea is that with proper processes, checks, and testing, a desired outcome can be delivered with fewer problems and unforeseen complications.”¹² It is interesting to note that Wikipedia does not have a definition for “Leading practice” or “Industry Leading Practice.”¹³

Tom Ruckdaschel even lends his hand at defining these terms in a recent presentation. He provides the following definitions:

Leading Practice: “Strategies and processes that are both quantifiably and qualitatively demonstrated to be top performing.”

Best Practices: “The marriage of applied behaviors and knowledge – that have been demonstrated and validated to yield a competitive advantage for organizations that employ them.”¹⁴

Lastly, the Department of Defense Property Manual Team took a shot at this term and provided the following conceptualizations:

- Industry leading practices (ILP) are generally accepted processes, including best practices, that have been proven throughout related businesses, to be managerially and economically effective, efficient, and successful at meeting particular objectives of a contractor's management system, and where specified, in compliance with the required Government Outcomes. The ILP should be based on empirical research, evidence and literature pertaining to that business practice, product or system as a “leading” practice. In order for a process to become an ILP, it should be widely used. Generally, there should be supporting historical data from an accepted source, e.g., trade publications, literature, etc.,

¹¹ It is interesting to note that Wikipedia is trying to elevate its resource to a more scholarly perspective. **“This article or section does not adequately cite its references or sources.** Please help [improve this article](#) by adding citations to [reliable sources](#). Wikipedia even provides a guide to citing resources. Hmmmm, I think I have mentioned this once or twice in regard to our NPMA literature..

¹² Wikipedia citation http://en.wikipedia.org/wiki/Best_practices

¹³ Here's your chance – why not try your hand at writing a definition for Wikipedia.

¹⁴ Tom Ruckdaschel, presentation at the National Property Management Association's Western Region Seminar held in February 2004. http://westernregion.npma.org/files/Ruckdaschel_Trends_WRS04.pps

to support that process as being repeatable, efficient, measurable, and verifiable.¹⁵

One of my friends, a property professional, said to me in regard to Industry Leading Practices that, “We don’t want to make it TOO hard.” My response, “I don’t want to make it hard at all – I just want to make sure it works!”

So how is one to know what is a best practice?

There are numerous “clearinghouses” for Best Practices. These include but are not limited to:

Best Manufacturing Practices - <http://www.bmpcoe.org/>

Best Practices Institute - <https://bestpracticeinstitute.org/>

Department of Energy Best Practices Clearinghouse -

<http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Business/Best+Practices+Clearinghouse?OpenDocument> (Note – the site appears to be inactive as there have been no updates since the late 1990s)

Best Practices - <http://www3.best-in-class.com/Database>

Government Accountability Office Best Practices –

<http://www.gao.gov/docsearch/featured/bp.html>

KnowNet - <http://knownet.hhs.gov/log/best.htm>¹⁶

The Benchmarking Network - <http://www.benchmarkingnetwork.com>

The above list is certainly not an exhaustive listing – these are just a few sites.

Essentially to determine whether or not a process is an INDUSTRY LEADING PRACTICE you are going to look for substantiation. It is not just good enough to say, “Well, this is the way we’ve always done it!” Rather one should be looking for EVIDENCE of efficacy – are there metrics that support the process, are there economies that have been realized without decrease in quality or an increase in risk, is there literature to support your position, are there reports.

Yes, there is a challenge to this requirement. Yet everyone agrees that “Industry Leading Practice” is a good thing. The problem is – we all define it differently – some more stringently, some less stringently.

Lastly, where do you get an ILP? Well, they are EVERYWHERE! Literature, books, trade journals, magazines – The Property Professional, Government publications, they’re everywhere. We’ll cover this later under each of the individual processes.

One Mo’ Issue...

¹⁵ Unpublished version of DoD 4161.2-M

¹⁶ KnowNet is an excellent source of information for ALL of the Processes. I cannot list every reference to each process but I would recommend that you access KNOWNET for Technical information regarding each of the processes. KnowNet is found at <http://www.knownet.hhs.gov/default.htm>.

Someone said to me, “That’s great! Then once we get all of our VCSes and ILPs in place – our system is set! Right?”

Welllllll, not exactly.

In the creation of this new rule our intent was to move away from static, stagnant processes and look for continuous improvement of the those processes – using whatever methods to ensure that this happens. Again, the Government is looking for continuous improvement. If we were looking for the old way of doing things, then we could have left the “Approved/Disapproved” process in place – as that has a connotation of finality, a connotation of stagnancy. So the Government wants the contractor to be constantly refining its processes for the management of Government property using tools such as Lean, Six Sigma, and Theory of Constraints,

Government Property Clause Processes and VCSes and ILPs

Great! We have seen the evolution of VCSes from law to regulation to contractual requirement. We have some working definitions of ILPs. What exactly does the Government property clause call out as a PROCESS and OUTCOME that would require the application of a VCS, or where no VCS exists requires the use of ILPs? Under FAR 52.245-1(f) we have a paragraph entitled “Contractor plans and systems.” Within this paragraph we have the delineating of thirteen processes with their respective outcomes. These are:

- Acquisition of Property (1)
- Receiving of Government property (2)
 - Identification of property (Embedded) (3)
- Records of Government property (4)
- Physical Inventory (5)
- Subcontractor Control (6)
- Reports (7)
- Utilization of Government property
 - Utilize (8)
 - Consume (Embedded) (9)
 - Move (Embedded) (10)
 - Store (Embedded) (11)
- Maintenance (12)
- Property Closeout (13)

A small point of contention for you to consider. Are these the only “processes” and outcomes set forth in the clause? Well, not exactly. Let me point out the first startling revelation. Within paragraph (f) of the clause there is no process of disposition of property or, in this case, contractor inventory.¹⁷ Well, in point of fact this process IS called out. Where? Under Far 52.245-1(j) and (k). Two whole sections of the clause are reserved for disposal actions which DO prescribe SPECIFIC actions to effect the disposal of Contractor Inventory. As such, there is the expectation that contractors will

¹⁷ Contractor Inventory is the statutory term for Government furnished property, contractor acquired property and termination inventory under the Federal Property and Administrative Services Act of 1949 as revised.

have a process in their Property Management System to achieve these outcomes. So, now we are up to fourteen processes.

Disposition of Government property (14)

How about Liability - Is that called out as a process? Well, half and half. Yes, we find it discussed under the “Contractor plans and systems” section of the clause from three perspectives:

1. As an outcome under “Reports (f)(1)(vi).
2. As a clarificatory statement under “Relief of stewardship Responsibility” (f)(1)(vii), and
3. As a requirement under “Contractor Liability for Government property” (h) – and Alternate I.

So, contractors should be prepared to address liability from a PROCESS and outcome standpoint and perspective.

So, now we are up to fifteen processes.

Contractor Liability for Government property (15)

We’re still not done yet. What about an overall perspective? In other words not just looking at the individual processes but their action “en toto” – is THAT overall perspective subject to review as a process and outcome? The answer quite simply is yes. We can see quite clearly that the clause requires under paragraph (b) the establishment of a system to manage Government property – which embraces ALL of the aforementioned processes and outcomes. Therefore, upon close examination of the clause we find that there are really SIXTEEN Processes with their applicable outcomes.

Property Management (16)

Upon close examination of the clause I would hope that you can visualize this form and structure – and then I ask you to look at your CURRENT Property Control System under the “old” FAR Requirement. Does it look familiar? I am assuming that if you have been performing Contract Property Management for any period of time you will recognize this schema.

APPLICATION OF VCSes and ILPs.

Great, so we have of this information. Now what? Well, the simplest answer is we need to see how to apply all of this information. So, let’s walk through the Processes delineated in the Government property clause, FAR 52.245-1 and see how VCSes and ILPs fit into this new paradigm. Here we can start dealing with the interrelationship between VCS and the GP Clause!

An OVERARCHING VCS – Guiding Principles

One of the most interesting and far reaching VCS is E2279-03 Standard Practice for Establishing the Guiding Principles of Property Management. It provides a broad, overarching application to ALL of the processes called out in the GP Clause. It is the umbrella covering the Property Management System and as such property professionals should read through this VCS and understand its implications. Now, with that said, it does not specifically delineate the processes in a form that we are use to seeing. Rather, it has a tripartite division broadly structured as

Management of Property,
Utilization of Property and
Disposal of Property.

In light of the GP clause's process requirements this typology appears to be rather parsimonious, even in light of the other ASTM International VCSes already published – with more to come. Never the less, if you read deeply enough and work through some assumptions and expectations from an experiential perspective you WILL find the processes – some boldly stated, other implied.

Property Management – There are a number of ASTM VCSes that address the “management” of Government property. It would be wise and prudent to address this Process first. Here are the four VCSes that could relate and be applicable under the process of property management.

- E2279-03 Standard Practice for Establishing the Guiding Principles of Property Management
- E2135-06 Standard Terminology for Property and Asset Management
- E2452-05e1 Standard Practice for Equipment Management Process Maturity (EMPM) Model
- E2379-04 Standard Practice for Property Management for Career Development and Training

As stated earlier in this article E2279-03 provides some excellent overarching principles and requirements for “good” property management. As stated this one is an overarching document. It does NOT provide you the specifics as to any one process but calls out those areas that are critical to good property management regardless of environment. How should this be used? In preparing a property management system (PMS), one should review and compare this document with the structural outline of the activity's written procedures.¹⁸

¹⁸ Where under the old FAR Part 45.5 we required a contractor to have a property control system (PCS) there was a deliberate and conscious decision to up the ante and call this item what is truly is – a property management system (PMS).

E2135-06 provides standard definitions. I am disappointed that there is not total conformity between this VCS and the FAR, as some of the definitions differ between the two documents. That may be due to the specific environment within which the definitions exist – a contractual environment versus a generic environment applicable to all. Definitions within the contractor’s PMS should use the terms and conditions set forth in the contract or contractual references. Why? Well, we’ll talk about “order of precedence” later in this paper.

E2452-05e1 – The Equipment Management Process Maturity (EMPM) Model is an excellent tool to apply in concert with the contractor’s requirement to perform its own internal audits of its PMS. Contractors should find this an extremely useful tool in determining the stature of their PMS.

E2379-04 – I really enjoyed this VCS (Though I did have to laugh while reading it). Great care has been taken to address property and asset management in the other ASTM VCSes. Yet this one extracts that Air Force Institute of Technology and the Defense Acquisition University contract property curriculum model verbatim. Thank you! We must be doing something right with our competency based education model!?!?¹⁹ Seriously, though the FAR does not require that a contractor’s personnel be trained in property management (Frightening – isn’t it) would it be improper for a Government Property Administrator in completing the performance of a Property Management System Audit, to address the lack of training, oops, education? One of those Hmmmmm, questions!

Acquisition of Property

- E2453-05 Standard Practice for Determining the Life-Cycle Cost of Ownership of Personal Property
- E2495-07 Standard Practice for Prioritizing Asset Resources in Acquisition, Utilization, and Disposition

We have two ASTM VCSes that have some yet limited applicability in regard to the Government’s required process and its outcomes. Though these VCSes provide a top down view of the life cycle cost of an asset and establish formulae for computing that cost these standards do not address the concerns of the Government in regard to a contractor acquiring property for use in performing a contract. They speak nothing of cost principles, direct or indirect charging, reasonableness, allocability or allowability, cost accounting standards nor disclosure statements – all key elements to the acquisition process for Government property.

Here is where the use of ILPs comes into play. Since there is no VCS – the contractor is required to use ILPs. Well, where are the ILPS for this process? Everywhere!

¹⁹ I would hope that the ASTM Committee members would address the training and educational requirements of property managers as a whole versus only the contract property workforce.

First, and this applies to EVERY instance where the ILP would kick in versus the VCS – GO TO THE NPMA MANUALS AND COMMERCIAL LITERATURE and SEE WHAT THEY SAY!!! One more time with feeling—

GO TO THE NPMA MANUALS AND SEE WHAT THEY SAY!!!
GO TO THE COMMERCIAL LITERATURE AND SEE WHAT THEY SAY!!!

There is EXTENSIVE literature on the acquisition requirements imposed upon Government contractors. A number of other professional associations immediately come to mind. [Note: I am trying to play the honest broker here. Yes, I am going to talk about other professional associations. No disregard is meant to the NPMA. It is just that we have to recognize that there are other professions/professional associations that know more about certain topics than we do.]

The first is the Institute for Supply Management (ISM), formerly known as the National Association of Purchasing Management, the premiere professional association regarding purchasing and acquisition (<http://www.ism.ws/>). In point of fact you probably see their research numbers on numerous television shows. The Government uses their data for various economic indicators. They have TONS of literature dealing with the COMMERCIAL acquisition processes and concerns.

The next is the National Contract Management Association (NCMA) (<http://www.ncmahq.org/>). Where ISM concentrates on commercial acquisition, the NCMA focuses on Government acquisition. Do they have literature – books -- that discuss this process? Yup, but for those you will have to attend my OTHER presentation.

Lastly, I would refer you to the literature that addresses issues relating to acquisition issues under Government contracts. There are large quantities of textbooks, a plethora, out there that address this issue: Cost Principles, Cost Accounting Standards, types of purchasing, etc.

Receiving of Government property – There is no ASTM VCS addressing the process of receiving. Yes, it is embedded with a general overarching VCS, but there is no individually titled VCS – Yet – and I do believe that it is a yet, as I am sure that this and other VCSes will emerge over the coming days, weeks, months and years.

Again, what's the first rule regarding ILPs?

GO TO THE NPMA MANUALS AND SEE WHAT THEY SAY!!!
GO TO THE COMMERCIAL LITERATURE AND SEE WHAT THEY SAY!!!

This is one of the WEAKEST areas – and really is in DIRE need of a VCS. There is lots of literature out there – but all of it is experiential. “We do this, we do that.” But there is very little support to these processes. Even within the Government we have become incestuous – stealing from other agencies. The National Institute of Health on its Webpage has a nice, neat discussion of the receiving process at <http://www1.od.nih.gov/oma/manualchapters/acquisitions/26101-25-2-3/>. The best

sources of information that I have found regarding the receiving process have been in commercial texts on either warehousing or manufacturing.

A secondary concept is embedded within the receiving process is identified in the clause. That requirement is the handling of discrepancies incident to shipment. For Government furnished property there is a well defined process – the Report of Discrepancy process or ROD. For Contractor-acquired property the process is less well defined but, never the less, has literature discussing it in the commercial world. No one wants to pay for the wrong property – even on the individual level.

If we want to look to our own association's members I would refer you to a wonderful little description of an inspection process as part of a receiving process. You can find this at http://www.ornl.gov/sci/tpm/pkgspec_recinsp.shtml. For Radioactive materials they have another receiving process. This can be found at http://www.ornl.gov/sci/tpm/documents/directives/TPM-R-2-Rev_1-Rec.pdf.

Lastly, in regard to other sources of information check out the KnowNet Site and their receiving module found at <http://www.knownet.hhs.gov/log/propmanDR/PPMLAI/UnitFour/Phase3/PPMassignme.htm>. They provide not only a very nice discussion of the process but a decision tree as well as a nice little process model. Good information to use in establishing one's Property Management System to comply with the FAR Government property clause.

Identification of property – There is no ASTM VCS addressing the process of Identification. While the old FAR requirement was explicit the new FAR leaves that process to the contractor to manage through either VCSes or ILP. Well, what is the ILP in the area of identification? Walk out to the Vendors' exhibit and see ALL of the variety of identification means and methods. Tags, metal tags, bar codes, 2 D Matrix, RFID – our cup runneth over with opportunities. But which one is good, better, best?

There are VCSes for identification that were found through research. My favorite is from a "Loss Prevention Standard" from Great Britain (<http://www.brecertification.co.uk/pdf/LPS1225-3.1.pdf>) and though its application is for establishing the traceability of an asset to its legal owner via a secure database (Hmmm, sounds like a UID process) it does provide a general outline for identification. Yet, in my opinion, it does not go far enough in its discussion.

The International Association of Information Technology Asset Managers, Inc., (IAITAM) (<http://www.iaitam.org/>), another professional association that NPMA has an agreement with, has as part of its "Best Practice Blueprint (BP²) a process specification entitled Asset Identification. Might be interesting to analyze this item as to its applicability as an ILP.

The literature base on Radio Frequency Identification (RFID) is massive. It is one of those technologies that has taken on a life of its own. EPCglobal is another Voluntary consensus standard body for the development of industry-driven standards for the Electronic Product Code™ (EPC) to support the use of Radio Frequency Identification (RFID) in today's environment.²⁰ And while RFID has its place in many environments that does not mean that it can solve EVERY identification problem. So, the challenge is to find a variety of forms of identification – Markers, labels, Bar codes,

²⁰ <http://www.epcglobalinc.org/home/>

RFID – and the next generation of emerging technologies – and apply those in our Property and Asset Management environments.

[Note – See also my article on the Property Manager’s Bookshelf published in the 2007 NPMA NES Proceedings.]

Records of Government property – There is no ASTM VCS addressing the process of Records. Yet, In point of fact, virtually EVERY ASTM International VCS has a requirement or requirements that impacts and effects the recordkeeping process. So, even though there is no VCS entitled RECORDS – every single VCS listed earlier in this article has a record keeping component to it! You just need to cull them out of the documents – starting with the Guiding Principles through each and every one of them.

There is an ISO VCS numbered 15489, 2001 that deals with efficient and systematic control of the creation, receipt, maintenance, use and disposition of records, including the processes for capturing and maintaining evidence of and information about business activities and transactions in the form of records. Though this VCS does NOT tell you what data needs to be on a record – and please note that records are not just paper but may and can be digital information – it does address the issues of creating records, classifying records, storing records, retaining records. All of which are FAR requirements, not in the FAR Government Property clause – but required by FAR Part 4.7 and its related clauses found at FAR 52.214-26 or 52.215-2.

In addition to the old standard of paper records – Paper records? Does anyone STILL have their records of Government property on paper? -- e-records are becoming an inseparable component of our daily lives. In this regard the National Institute of Standards and Technology (NIST) is currently working on standards for e-records. As such this may become another VCS that would be applicable under this process. They are not alone, Here is a brief list of some organizations that are working on e-record standards:

- [ARMA International](#), the Association of Records Managers and Administrators, offers resources for assessing the state of your e-records systems on its RIM E-Assessment Web page. ARMA's online bookstore also sells a wide range of publications addressing record information management (RIM) and electronic records management, including *Requirements for Managing Electronic Messages as Records (ANSI/ARMA 9-2004)*, *Retention Management for Records and Information (ANSI/ARMA 8-2005)*, *RIM Fundamentals Series I* and *Vital Records Programs: Identifying, Managing and Recovering Business-Critical Records (ANSI/AIIM 5-2003)*.
- [The Association for Information and Image Management \(AIIM\)](#) focuses on records management from an enterprise content management (ECM) perspective. Resources include the ECM Toolkit and the book *Information Nation: Seven Keys to Information Management Compliance*.
- The U.S. government specification [DOD 5015.2, Design Criteria Standard for Electronic Records Management Software Applications](#), addresses the procurement of records management systems by certifying vendors of records management software against U.S. Department of Defense specifications.

- The Sedona Conference has produced several documents on records management, including ["The Sedona Guidelines: Best Practice Guidelines & Commentary for Managing Information & Records in the Electronic Age."](#) which is available for download.

O.k., now back to records and the data required fro Government property. My one concern -- To what level of specificity should these records provide as a standards requirement? Simple answer – it depends! From a FAR perspective, the Government property clause provides you the “basic Information” required for EVERY ITEM OF GP, regardless of dollar value. So, the record keeping requirement is sorta’ black and white. Here is the FAR GP Clause, 52.2.45-1, Record Requirement:

(iii) Records of Government Property. The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property.

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

- (1) The name, part number and description, manufacturer, model number, and National Stock Number (if needed for additional item identification tracking and/or disposition).**
- (2) Quantity received (or fabricated), issued, and balance-on-hand.**
- (3) Unit acquisition cost.**
- (4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).**
- (5) Unit of measure.**
- (6) Accountable contract number or equivalent code designation.**
- (7) Location.**
- (8) Disposition.**
- (9) Posting reference and date of transaction.**
- (10) Date placed in service.**

In other words to comply with the requirements of other processes one would need to apply the VCS to each process.

Which leads us to the next process called out be the clause.

Physical Inventory

There are two primary standards that effect process of conducting a physical inventory:

- E2132-01 Standard Practice for Physical Inventory of Durable, Moveable Property
- E2221-02 Standard Practice for Administrative Control of Property

Here we have the clearest and most directly related of the VCSes in regard to their relationship to the clausal processes. Contractors should have no problem

implementing and applying these VCSes to their existing Property Control, or now Property Management Systems (PMS).

Yet even with these VCS one must be careful as to contradictory Contractual Language/direction. Numerous agencies in their policies, procedures and contractual requirements impose very specific physical inventory requirements that differ from those specified in the above referenced VCS. For example, the Department of Energy (DOE) allows the use of the above ASTM International VCS for its agency in its internal application as well as by its contractors, specifically DOE O 580.1. Yet it is VERY prescriptive in regard to specific timeframes for certain classes of property. In addition, DOE states that the “ASTM International standard does not apply to DOE High Risk or sensitive property, which requires 100% accountability.”²¹ Lest I be accused of casting stones while living in a glass house – the Department of Defense and its services are no better in this regard!

Subcontractor Control

There is no ASTM VCS addressing the process of subcontractor control. So, what is the battle cry?

GO TO THE NPMA MANUALS AND SEE WHAT THEY SAY!!!
GO TO THE COMMERCIAL LITERATURE AND SEE WHAT THEY SAY!!!

There is a wealth of literature that exists in regard to subcontractor control/management and as such we need to go the ILP route. In a search on Google there were over 1 million hits. You and I know that all of those DO NOT provide the information that we need – rather we need to approach this search with a jaundiced eye. Not every web site will provide “good” information. Rather you need to test the mettle of each site and its information. In other words – read the literature!

Reports

Once again, there is no ASTM VCS addressing the process of subcontractor control.

So, what is the battle cry?

GO TO THE NPMA MANUALS AND SEE WHAT THEY SAY!!!
GO TO THE COMMERCIAL LITERATURE AND SEE WHAT THEY SAY!!!

The FAR Clause is quite prescriptive in regard to the reports that a contractor is required to provide. What it is lacking is the PROCESS that is to be utilized for doing all of the activities associated with these reports. The Processes? Yes, the processes! In other words – to ask just a few questions:

How do you collect the data to prepare the report?

From whom do you collect the data?

How do you ensure the data are correct?

²¹ This was extracted from DOE O 580.1, Department of Energy Personal Property Management Program. Found at <http://www.directives.doe.gov/pdfs/doe/doetext/neword/580/o5801.pdf>

In what form/format are the data to be reported?
What are the timeframes for:
 Data collection?
 Data reporting?
When do you have to report the data?

Utilize or Utilization

There are a number of standards that impact utilization:

- E2495-06 Standard Practice for Asset Utility
- E2495-07 Standard Practice for Prioritizing Asset Resources in Acquisition, Utilization, and Disposition
- E2279-03 Standard Practice for Establishing the Guiding Principles of Property Management

Unfortunately, they are all rather weak in regard to what the Government is looking for in the process set forth in the Government property clause. The first two are applicable in a commercial environment in determining the “utility” of an asset to the entity. But this is not exactly what the Government is looking for or at. Rather the Government is concerned with the actual USE of that property:

1. Is it being used for and on the authorized contract?
2. Is it being used for other authorized purposes?
3. Is it being used sufficiently – in other words for a sufficient amount of time to justify retention versus declaring the item excess?

Now, E2279-03 Standard Practice for Establishing the Guiding Principles of Property Management, this VCS has a whole section on the process – the Utilization of Property – and it does provide some “guidelines” – but the contractor would be wise and prudent to ensure to “flesh out” the specifics required for this process. So, what does this mean?

GO TO THE NPMA MANUALS AND SEE WHAT THEY SAY!!!
GO TO THE COMMERCIAL LITERATURE AND SEE WHAT THEY SAY!!!

Where else would you look? The commercial literature as you apply ILPs to this process. I found it absolutely amazing that in my research virtually ALL of the literature relating to this process was driven by the Government requirements either in the FPMR/FMR or the FAR. Wow! Is this to say that the commercial world cares NAUGHT that their resources are sitting on the floor not being used? If such is the case imagine what an impact – a value added impact we can be to the commercial world with this one small area. Now, that may be where E-2495-06 and 2495-07 could/would be most critical.

Consume

I am getting a little tired of saying this but, once again, there is no ASTM VCS addressing the process of subcontractor control.

So, what is the battle cry?

GO TO THE NPMA MANUALS AND SEE WHAT THEY SAY!!!
GO TO THE COMMERCIAL LITERATURE AND SEE WHAT THEY
SAY!!!

There is extensive commercial literature regarding this topic – in point of fact a professional association has developed based upon this one topic, The American Production and Inventory Control Society (APICS).²² They have expanded even further to address a greater area of coverage by adding that they are the association for operations management -- A much broader perspective.

In fact, APICS has extensive textbooks on this topic – my favorite being “The Production and Inventory Management Handbook,” edited by James Greene. Oops, wrong session – for that information, you’ll have to attend my other presentation. Talk to any of your inventory control people or production folks and they would be glad to regal you with all of their knowledge and empirical formulas for determining proper consumption, and scrap rates, and ordering practices.

Move

We have a number of VCSes that impact movement of Government property – though not covering the total gamut that the FAR requires. These are:

- E2497-06 Standard Practice for Calculation of Equipment Movement Velocity (EMV) and to some extent even
- E2499-06 Standard Practice for Classification of Equipment Physical Location Information

The Government’s concern is in regard to the physical movement – with proper authorization and protection. Neither of these two VCSes address the processes that are involved with actual physical movement of assets. As such – well, you know the routine. Go to the Literature to discover the applicable ILPs!

Store

There is no ASTM VCS addressing the process of storage. Therefore, the battle cry is:

GO TO THE NPMA MANUALS AND SEE WHAT THEY SAY!!!
GO TO THE COMMERCIAL LITERATURE AND SEE WHAT THEY
SAY!!!

Small point of commentary here -- In researching this article it surprised me as to how much we did not know. Wait, I know that we know a lot about these processes – from

²² <http://www.apics.org/default.htm>

experience. But as a researcher I could find VERY LITTLE EMPIRICAL EVIDENCE surrounding or addressing this and a number of the other processes. Once again, the greatest source of information comes from commercial texts on warehousing. Again, I encourage you to look at the Property Manager's Bookshelf article in this conference proceeding.

One other resource I found that was most interesting was a professional association called WERC – the Warehousing Education and Research Council.²³ Their web site has extensive material on warehousing and related aspects – storage, movement, material handling equipment, etc. It is a site that I would recommend that you explore for information regarding this process.

Maintenance

Ahhhh, maintenance. A very unique area and one that the average contract property person on either side of the house generally has very little knowledge about! But, there are VCSes in regard to maintenance. No, not ASTM International VCSes, but other VCSes from other VCS bodies.

ISO – remember the earlier reference in the anglicized vernacular -- The International Organization for Standardization. Well, ISO has dozens of VCSes regarding Maintenance. Depending upon your contracting environment one might be applicable to your processes.²⁴

Another VCS from an association that some of the more mechanically minded may be aware of is the Society of Automotive Engineers (SAE) International. The reference for this VCS is JA1011 Evaluation Criteria for Reliability Centered Maintenance (RCM) Processes. It is available on the SAE Website at <http://www.sae.org/servlets/index>. Reliability Centered Maintenance is one of the current maintenance paradigm in use today and you companies may already be using this VCS for their maintenance work.

The National Science Foundation (www.nsf.org) in concert with ANSI has published numerous standards on the maintenance of food equipment. If you are performing a service contract on a base or installation these might prove helpful for the maintenance of equipment found in a DFAC, uh, I meant dining facility. Yup, they do not call them “mess halls” any longer – they are now dining facilities or DFACs.

Maintenance is a process that has a wealth of literature from the commercial marketplace. Extensive books have been written discussing the maintenance process that I am sure your companies quality assurance or maintenance groups are familiar with. This is again where ILPs come into play – and the research needed to support one's contention that what they are doing is an ILP.

Property Closeout

Property closeout is the LAST thing on most people's mind – until it comes time to close out a contract – and then you have twenty managers yelling at you to get that property

²³ <http://www.werc.org/>

²⁴ <http://www.iso.org/iso/en/ISOOnline.frontpage>

out of here!!! And contractors, don't feel that you are alone – the Government folks, Property Administrators and Plant Clearance Officers, are often chided by their contracts people and managers as well in this regard.

There are a number of ASTM VCSes related to Property closeout. These include:

- E2378-05 Standard Practice for the Recognition of Impaired or Retired Personal Property
- E2132-01 Standard Practice for Physical Inventory of Durable, Moveable Property
- E2221-02 Standard Practice for Administrative Control of Property
- E2131-01 Standard Practice for Assessing Loss, Damage, or Destruction of Property
- E2220-02 Standard Practice for Establishing the Full Valuation of the Loss/Overage Population Identified During the Inventory of Moveable, Durable Property

Unfortunately one of these has limited applicability for Government property in the possession of a contractor – as it primarily addresses the issue of the impact of depreciation on the administrative control of said property versus the concern that the FAR recognizes. The other VCSes relate to actions subsumed under Property Closeout, i.e., final physical inventory, reporting of loss, damage, destruction or theft.

Specifically, the FAR requires that a process is established and action be taken to do the above listed items as well as other actions. Yet, there is no VCS to address the actual process.

I haven't said it for awhile -- So again, what do you do?

GO TO THE NPMA MANUALS AND SEE WHAT THEY SAY!!!
GO TO THE COMMERCIAL LITERATURE AND SEE WHAT THEY
SAY!!!

Liability for Loss, Damage, Destruction or Theft of Government property.

We also have the process of Contractor Liability for Government property. There are two ASTM international VCSes that apply here:

- E2131-01 Standard Practice for Assessing Loss, Damage, or Destruction of Property
- E2220-02 Standard Practice for Establishing the Full Valuation of the Loss/Overage Population Identified During the Inventory of Moveable, Durable Property

The first VCS provides a very nice process and standard to follow in regard to handling loss, damage or destruction of property! Though in its next iteration it does require updating to address the concept of theft. The second VCS applies the financial aspects of that loss or overage of property and its potential impact on other ASTM International VCSes, i.e., E2219.

The drawback to E2131-01 is that though it provides a very nice process in reporting and computing loss ratios – it really does not tell the reader how to assess the VALUATION of that loss for liability purposes. That is understandable – as that aspect of our work is governed by Law and Regulation – not a VCS. The GP clause of FAR 52.245-1 and its alternate provides clear direction to the contractor in regard to their LIABILITY for such loss – sometimes regardless of the VCS’ analysis.²⁵ Contractors and Government employees need to be extremely careful not to confuse the two issues. The VCS may impact the contractor’s risk assessment as well as its compliance/non-compliance rating – but it does not effect the contractual requirements governing liability. Nor does it effect the quantum that may be demanded by the Government for the loss of property as that also is driven by Law and court decisions.²⁶

Disposition of Government property

Two ASTM International VCSes address the issue of disposition of property.

- E2306-03 Standard Practice for Utilization and Disposal of Personal Property
- E2495-07 Standard Practice for Prioritizing Asset Resources in Acquisition, Utilization, and Disposition

E2306-03 nicely addresses the overarching concepts in very broad general terms – and contractors would do well to follow its guidance. But, contractors will have to tailor their Property Management System’s procedures to reflect not only these overarching disposal concepts but the FAR Clausal requirements as well. Interestingly enough the disposition of Government property is driven by Statute – the Federal Property Administrative Services (FPAS) Act of 1949, as amended, codified in the Code of Federal Regulations (CFR) as amended in scattered sections of 40 U.S.C. and 41 U.S.C. Therefore, they may be statutory requirements that, though the FPAS is cited in the VCS, clarification is not provided within the VCS as to how the law interacts with this standard described.

Contract Law as it applies to VCSes and ILPs

Most of the ASTM International VCSes address the issue of law and specifically state that they do not apply when law states otherwise. Wise and prudent advice. But other restrictions have to be addressed as well. For example, what if your contract requires that you do “X?” And the VCS says, do “Y!”

Which should you use?

²⁵ Liability for the loss, damage, destruction or theft of Government property is governed by the clausal requirements of FAR 52.245-1, with the limited risk of loss provision and FAR 52.245-1 (Alt. I) with the full risk of loss provision.

²⁶ The ASBCA case for Dynalectron has been the standard for assessing liability for lost, damaged, destroyed or stolen Government property since the early 1980s and has not be overturned in subsequent court decisions.

Well, unless otherwise specified in the contract you should use the terms and conditions of the contract. Why? Because of a small issue called “Order of Precedence.” There are two FAR clauses that address this requirement:

FAR 52.214-29 Order of Precedence—Sealed Bidding.

And

FAR 52.215-8 Order of Precedence—Uniform Contract Format.

Both of these clauses specify the order of precedence, in other words which item applies over the other, which requirement tops the other requirement. A real world example that we are seeing already is where certain services within the Department of Defense are incorporating their own supplemental clauses based upon their activity’s perspective. For example the Army and Navy have specific clauses that mandate certain time frames for the performance of physical inventories contrary to the guidance provided in the E 2132 Physical Inventory standard. The Department of Energy also has requirements that address the various VCSes – and then turn around and say they do not apply.²⁷ So which one must you comply with? Well, though the VCS is good, the clausal requirement trumps the VCS.

Contractors generally – no, really contractors will ALWAYS have an order of precedence provision within their subcontracts, purchase orders or the boilerplate terms and conditions used within their purchasing documents.²⁸ Contractors need to be very careful when preparing their solicitation to be aware of any terms and conditions of the contract that might impair their ability to apply the selected VCSes. Government property professionals need also be aware of this concept to ensure compliance once the contract is signed.

Some suggestions in using VCSes and ILPs within a Contractor’s Property Management System:

1. Review your existing Property Management System (PMS) for application of VCSes. [Note – the new FAR does NOT require that you throw out your old system and start from scratch. You may find that your PMS is already using ILPs or that it already has processes that match the VCSes that you selected.]
2. When citing a VCS please cite the VCS Body that publishes the VCS, the VCS Number and the DATE of the VCS being used. Remember how in contracts you use the clause that was in force and effect on the date of the contract. Well, one has to be sure that one is using the VCS intended to be used by the Contractor – as VCSes DO CHANGE.
3. VCSes should be made available to the Cognizant Property Administrator for use within their Property Management System Audit.

²⁷ <http://www.directives.doe.gov/pdfs/doe/doetext/neword/580/o5801.html>. Review the paragraph on L,D & D

²⁸ If you search the Web for subcontract terms and conditions you will find many of the larger Defense contractors actually POST their Subcontract Terms and Conditions (Ts&Cs) with this concept included. For example see the Northrop Grumman Ts&Cs at <https://oasis.northgrum.com/contract/isaterms/T-4.pdf>.

4. Supporting Documentation or evidence for the use of an ILP should be made available to the cognizant PA to support a determination of adequacy /compliance.
5. Ensure that when using VCSes that your PMS also complies with any contract or statutory requirements. [Remember Precedence.]

SUMMARY

What I have tried to do in this article was to provide you an understanding of the concept of “standards.” We looked at the relationship between the United States Federal Government and the requirement to USE voluntary consensus standards (VCS), the law that drove this action, the implementation of that requirement through the Office of Management and Budget and its application through the Federal Acquisition Regulation. I covered the contractual requirements for the use of VCSes as it applies to Government property in the possession of defense contractors comparing the “old” FAR Part 45 with the proposed/new FAR 52.245-1. I provided a discussion of a VCS, a VCS Body and our, the NPMA’s, relationship with the ASTM International and provided a listing of the property related VCSes that were published at the time of the writing of this paper. Industry Leading Practices were researched and defined from multiple perspectives. And then we got to the meat of the issue – the relationship between the Government Property clauses, VCSes and ILPs. I provided you an analysis of the process requirements set forth in the FAR GP Clause and their structure – and then we walked you through each of the processes and their relationship to the ASTM International VCSes and other pertinent applicable VCSes from other VCS bodies and provided commentary as to applicability, strengths and weaknesses of the VCSes covered. Lastly, I covered the issue of contract law as it applies to the application of VCSes and ILPs – and the concept of order of precedence.

Ladies and gentlemen, we have a journey ahead of us. A journey of intellectual growth based upon our chosen profession. I wish you well on that journey and the learning that will take place.

Respectfully submitted,
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