

# THE CLASSIFICATION OF GOVERNMENT PROPERTY Under the NEW FAR PART 45 REWRITE

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## INTRODUCTION:

The new Federal Acquisition Regulations (FAR) rewrite, Part 45 – and its associated clauses, have changed the property typology for Government property in the possession of contractors. Don't panic – it is NOT that drastic of a change – rather there has been some refinement and clarification of the classifications of property.

Within the FAR there is a property classification typology. This typology has MANY different applications in the world of Government contracts. It impacts acquisition requirements and allowances, the processes that are applied to that property, the maintenance on that class of property, the process of inventorying that class of property, and disposal requirements, driven by its classification, to mention just a few.

But, before I do that -- a caveat... I am only dealing with the use of these terms in the CONTEXT of Government property in the possession of contractors performing under the FAR. This property classification/typology does **NOT** apply to Government property in the possession of the Government, ala "stuff" used by the Armed Forces or the National Park Service or GSA. This contractually imposed typology does not apply to "stuff" used by Government contractors under the Federal Management Regulations (previously known as the Federal Property Management Regulations) or even some contractors that were specifically exempted by their agencies from the Requirements of FAR Part 45.<sup>1</sup> We need to understand this context before we start this analysis so as to focus our discussion; otherwise we will have tooooo many fights as to how we classify this stuff!

Last caveat – this applies ONLY to the FAR Government Property rules, i.e., FAR Part 45 and the Government Property Clauses, FAR 52.245-1 and -2 dated May 2007.

To have any logical flow we must start at the actual creation of...

## PROPERTY

So, what is property?

The legal dictionaries provide us QUITE a mouthful on this one. Barron's Dictionary of Business Terms defines **property** as,

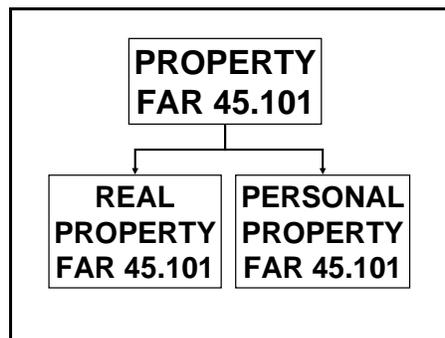
*"Every valuable right or interest that is subject to ownership, has an exchangeable value or adds to one's exclusive right to possess, use, and dispose of a*

*things, as well as the object, benefit, or prerogative that constitutes the subject matter of that right.*<sup>2</sup>

Unfortunately, though that may work well for the legal types the definition is really too abstract for every day usage – at least for me. Black’s Law Dictionary provides that “Property” fits into one of two classifications. *“Property is either real or personal.”*<sup>3</sup> That seems rather simple until you look further at the definition and it provides some TWENTY differing examples of property. These include Absolute Property, common property, community property, general property, intangible property, literary property, mislaid property (Author’s note. I like that one.), mixed property, movable property, private property, public property, qualified property, tangible property and unclaimed property, to name a few from that listing.

I think that the real focus of this for asset managers should be those two defined classifications – real property and personal property. **Real property** is defined as *“Land, and generally whatever is erected upon or a fixed to land. Also rights issuing out of, annexed to, exercisable within or about land.”*<sup>4</sup> I think that all of us can visualize real property. Some of us may own real property in our personal dealings; our house, maybe an acre, maybe a few acres. We might also have some “rights” in land; If you live in a desert area with a stream running through your property you might have “riparian” rights – where you are allowed to use that water or a portion of it. In our business dealings we might have a factory building, or other buildings, or land owned by our company. All of these are considered real property.

**Personal property** is a little more difficult. Black’s again gives us a definition. It reads *“In a broad and general sense, everything that is the subject of ownership, not coming under the denomination of real property.”*<sup>5</sup> English translation – if it is not REAL PROPERTY it is PERSONAL PROPERTY. As asset managers we probably see lots of different types of personal property: desks, chairs, tables, computers, machinery, tools, equipment, etc. This type of personal property is referred to as *“Corporeal”* personal property. We need to bear in mind that personal property can take other forms, forms that we may not deal with as asset managers but nevertheless are personal property. Some examples of personal property that an asset manager may not deal with as property would be money, stocks, bonds, patents and copyrights. These items would be referred to as *“Incorporeal”* personal property. Please note that I do not make up these definitions nor terms such as corporeal or incorporeal – rather they are LEGAL definitions.



## **GOVERNMENT PROPERTY -- WHERE DOES IT COME FROM?**

Our first viewpoint would have to be the Federal Acquisition Regulations (FAR). FAR 45.101 provides us the definition of Government property. It states,

**"Government Property means all property owned or leased to the Government. Government property includes both Government-furnished and Contractor-acquired Property.**

This portion is fairly simple. It is that "stuff" that the Government owns or leases or that the contractor acquires on behalf of the Government. Let's break this definition into FOUR separate components.

"Stuff" the **Government** owns. This would be various items to which the Government has clear **TITLE** – title evidencing the issue of **OWNERSHIP**. The Government **OWNS** that "stuff" and it will make it available to the Contractor for use or consumption in the performance of the contract. We can see this occur under any number of types of contracts and their pricing arrangement and purpose, i.e. fixed price, cost reimbursement, time and materials.

"Stuff" the **Government** **LEASES**. These would be items that the Government leases and then provides/furnishes to the contractor for use (NOT consumption)<sup>6</sup>. The Government is leasing the property, and then furnishing it to a contractor as Government property. "Wait," you say, "the Government doesn't have title to that stuff. How can you say it is Government property?" In this instance it is not so much that the Government has title – quite clearly, it does not. Rather, it wants to contractor to **MANAGE, CONTROL AND PROTECT** that stuff in the same fashion as Government property. Why? Because, the Government has a responsibility to return it to the leasing company. Therefore, the simplest way to treat this action is to require a specified degree of control over the leased asset furnished by the Government. We can see this occur, where the Government leases property and furnishes it to the contractor. An excellent example of this would be GSA leased vehicles, provided to a Government activity and then **FURNISHED** to a contractor.

One point of clarification – Government property **DOES NOT** include "stuff" the **CONTRACTOR** leases – even if the Government pays for it in full or in part. "What," you exclaim, "I don't understand!" When the contractor leases property, even though the Government may pay for that lease, either in part or in full, there is no transfer of title and the Government does not really care what the contractor does with this stuff. The contractor, the lessee, and the leasing company, the lessor, have a **CONTRACTUAL** relationship – and the Government is **NOT** involved with that issue.<sup>7</sup> The leasing company **RETAINS** title to the property – the contractor only has the **USE** of the property for a predetermined period of time, at which point the contractor must return that property to the leasing company.

We see further clarification given by two subsets of the Government Property definition. Those subsets are those of Government-furnished property and Contractor-acquired property. We can find these definitions also in FAR 45.101.

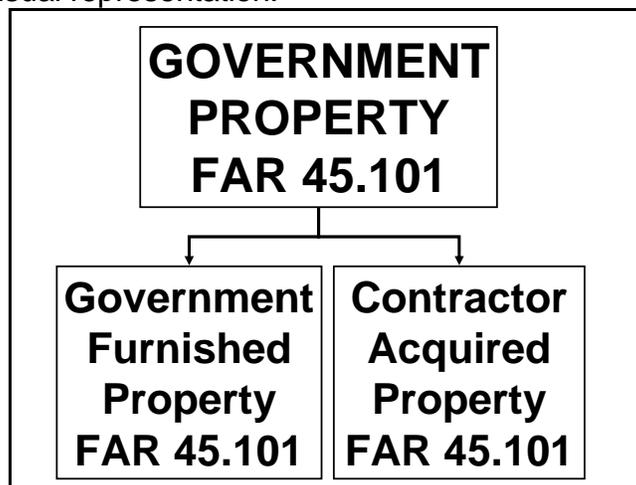
**"Government-furnished property," means property in the possession of, or directly acquired by, the Government and subsequently furnished to the contractor for performance of a contract.**

**"Contractor-acquired property," means property acquired, fabricated, or otherwise provided by the contractor for performing a contract and to which the Government has title.**

With these two definitions we get some further clarifications as to the typology of Government property. Specifically, Government furnished property (GFP) is property that the Government already has in its possession or to which it has title and then "subsequently" provides to the contractor. This might be property from a depot or it might be property created through the "break out" of various parts from a system for a weapons platform. The key point here is that the Government has title and/or possession of that property prior to its delivery to the using contractor.

Contractor acquired property (CAP) is a whole 'nother story. This is property that the contractor either acquires or fabricates, and to which the Government has title. The acquisition of this property is generally accomplished under a cost reimbursement type contract, but there may be other circumstances where CAP occurs under a fixed price contract. The key to understanding this issue is that this "stuff" is purchased by the contractor but the **Government has title** to that property.<sup>8</sup>

So, here is another visual representation:



## **DISCUSSION OF PROPERTY DEFINITIONS**

First, quick review – we saw the legal definitions of property from the law dictionaries. There is a reiteration of a number of these definitions in the FAR – with some adjustments. In the FAR 45.101 we see the following definition:

**"Property, means all tangible property, both real and personal"**

Note that this definition provides us a clarification of property -- TANGIBLE and then two subsets of property – real and personal. Once again, the background for these terms extend from the legal community So, we need to understand these three concepts:

Tangible property  
Real property and  
Personal property.

Black's Law Dictionary defines "**tangible**" as, "Having or possessing physical form. Capable of being touched and seen; perceptible to the touch; tactile; palpable." I feel comfortable with this definition – bottom line I can reach out and touch the item or asset.

The ASTM Voluntary Consensus Standard (VCS) E-2135-06 defines "**tangible property**" as "property having physical existence and hence capable of being valued monetarily. Property other than intangible property." Excellent!!! The ASTM definition, though not verbatim, agrees with the legal definition. But, they do throw ANOTHER term at us – INTANGIBLE PROPERTY!

The ASTM Standard E-2135-06 defines "**Intangible property**" as, — "property that is not itself intrinsically valuable, but that derives its value from what it represents or evidences, for example, goodwill, knowledge derived from study, experience, or instruction, or knowledge of a specific event or situation."

And we'll go one step further -- the ASTM Standard E-2135-06 also defines "**tangible intellectual property**." Tangible intellectual property is "tangible property that is intellectual in nature, including software, technical data, printed information, and legal documents (such as claims, debts, insurance policies, stock certificates, and evidence of indebtedness)."

I believe a note of caution is necessary here. The ASTM definition of Property and the FAR definition of Property DIFFER in this regard. This iteration of the FAR has FINALLY resolved a longstanding issue for Government Property in the possession of the contractor. The change to the definition was NOT meant to change law, legal definitions or even the ASTM standard terminology. Rather, the change in the definition was meant to clarify WHAT the Government expects a contractor to manage under the requirements of the Government property clause(s).

O.k., so the Government considers those items – software, technical data, etc., -- as Government Property since they are tangible under the ASTM definition -- Right?

NO! The FAR definition prevails in the world of Government contracts -- that old legal element of a contract called certainty of terms – and the specificity applied in the FAR. Even moreso, FAR 45.000 entitled “Scope of part” CLEARLY states, “It does not apply to... software and intellectual property (paraphrased).” This question has wandered around the halls of contract property management for decades and the only guidance we had was an old Defense Logistics Agency (The parent organization of the Defense Contract Management Command – now the Defense Contract Management Agency) letter out of Cameron station, Virginia dated 11 March 1991 that stated, “software does not meet the definition of Government property...” From a Government property perspective, this issue has been finally put to rest. Today, as we speak, the Government does **NOT** expect contractors working under Government contracts to manage software and intellectual data as GOVERNMENT PROPERTY under the Government property clause(s)! There are OTHER clauses that address issues of this nature, such as the Patent or Data Rights Clause.

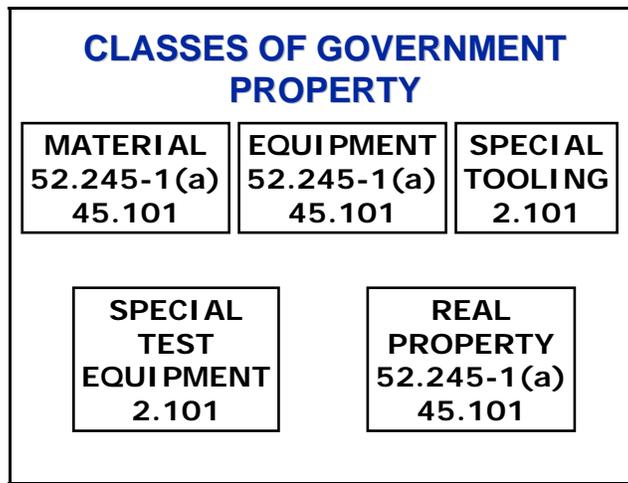
So , to bring closure to this section -- We've already defined Real property therefore there is no need to repeat it again – but I did want to cover Personal Property as defined in the FAR. FAR 2.101 defines personal property as “property of any kind or interest in it except real property, records of the Federal Government, and naval vessels of the following categories:

- (1) Battleships;
- (2) Cruisers;
- (3) Aircraft carriers;
- (4) Destroyers; and
- (5) Submarines.”

O.k., now I am REALLY confused because the FAR definition of Personal Property does NOT match up with the LEGAL definitions – due to its exclusion of the naval items, as well as it now appears to AGREE with the ASTM definition including property of ANY KIND or INTEREST. But, even the ASTM definition does not exclude naval vessels! Please understand that the definitions must be read IN CONTEXT to their various application(s). So long as you understand that point it should be somewhat easier to see the application for Government property in the possession of contractors versus OTHER applications.

### **The CLASSES or CLASSIFICATIONS of Government property.**

Up until this point we have really only discussed the creation of Government Property - not its classification. Let's start looking at how Government Property may be classified. Under the NEW FAR there are five classes or classifications of Government Property; I like to present them in this order - material, special tooling, special test equipment, equipment, and real property. To help with the discussion of the various classifications I will provide the definition and then some examples.



**MATERIAL**

*“Material” means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end-item. Material does not include equipment, special tooling, and special test equipment.” FAR 45.101*

The material definition seems simple enough. There are three key words or actions help us establish the parameters within which we classify property as material. They are:

- Consumed,
- Expended, and
- Incorporated

Some examples of material - nuts, bolts, screws, washers, transistors, resistors, diodes, capacitors, integrated circuits, bar stock, sheet metal, paper, lumber, propellers, batteries, silver, gold, cloth, gas, oil, hydraulic fluids, epoxy, paint, radar system, aircraft engines, bullets - the list is endless and I am sure that each of you could think of your own examples from your own environments. The key concern here is "What is going to happen to that property?" Is it going to be consumed? Is it going to be expended? Will the item be incorporated into a larger unit? What is its purpose, its use? As a transplanted New Yorker from the city, we would call these things “Guzzintas.” They GO INTO something else. They are CONSUMED in producing a deliverable end item. They are INCORPORATED into a deliverable end item. They are EXPENDED in performing a service. Some might cease to exist in their consumption or being expended, i.e., gasoline used in a vehicle. Some might change their identity in their CONSUMPTION, i.e., bar stock (Not the liquor kind but the metal kind!) or sheet metal used in fabricating piece parts. Some might retain their identity but are now performing a task as they are INCORPORATED into the deliverable end item, i.e., nuts, bolts, screws and washers used in producing a vehicle, or rocket, or aircraft. So, many different items can be considered MATERIAL in the performance of a Government contract.



The second classification of Government property...

### **SPECIAL TOOLING**

*“Special tooling” means jigs, dies, fixtures, molds, patterns, taps, gauges, and all components of these items including foundations and similar improvements necessary for installing special test equipment, and which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. Special tooling does not include material, special test equipment, real property, equipment, machine tools, or similar capital items. FAR 2.101*

We have the definition of Special Tooling (ST) and it seems fairly clear yet consider the following scenario. You are a Contractor with a cost reimbursement type contract under which you will be reimbursed for all property that is reasonable, allocable and allowable. You go out to your handy dandy Sears store<sup>9</sup> and buy a set of drill bits. You bring them back to your factory and you're going to charge them to the contract as ST. Yes or No? Of course you're **NOT** going to call them ST. There is nothing at all special about them. They are common hardware. They do not have a limited use. Neither are they of such a specialized nature. But, what if we were to mount that drill bit in a holding fixture so that it became irremovable, plate it with titanium for hardness and then coat it with diamond swarf<sup>10</sup> so that its only function would be drilling the holes through and into the composite wing coating of an F-22. Do we now have an item that is of such a specialized nature that

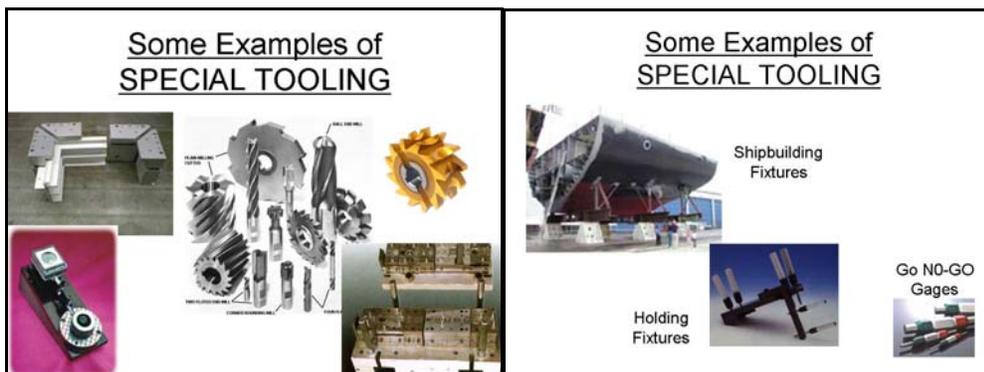
without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services? I would think so.

The definition can be “segregated” into two components: 1. The DESCRIPTORS, i.e., examples to provide the reader with some mental visual pictures and 2. The QUALIFIERS to restrict or limit what can “fit” under the classification. The DESCRIPTORS provided by the definition include “jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items.” These items are generally of a mechanical nature but may take many different forms. These may include things like “go-no go” gages fabricated for very specific measurements. These may include a gigantic holding fixture for the hull construction of a ship in a shipyard. The varieties of ST are mind boggling in nature and infinitely diverse in their characteristics.

The second part of the definition deals with the QUALIFIERS for ST. The definition states “which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services.” Notice that the FIRST restriction is that these items must be of a SPECIALIZED NATURE! They are not ordinary, everyday items – these are SPECIALIZED ITEMS. Also there is an addition to this first statement – that WITHOUT “SUBSTANTIAL” modification or alteration their USE is LIMITED.

This becomes MORE difficult in attempting to define “SUBSTANTIAL MODIFICATION.” Is that driven by cost to modify? Time to modify? Work required to modify? What is meant by the term Substantial Modification?

So it is not just a simple issue of pointing at an item and saying “This is Special Tooling!” Rather there are MULTIPLE elements, multiple CRITERIA that affect the classification of an item as SPECIAL tooling



## **SPECIAL TEST EQUIPMENT (STE)**

If we look at FAR 2.101 we see that STE is defined as,  
*“either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including foundations and similar improvements necessary for installing special test equipment, and standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. Special test equipment does not include material, special tooling, real property, and equipment items used for general purposes or property that with relatively minor expense can be made suitable for general purpose use.”*

This definition is chock full of interesting items! So, let's first look at the descriptors and the qualifiers. The descriptors given include:

single or multipurpose integrated test units, and  
items or assemblies of equipment.

These two segments of the definition provide some guidance as to the components that “go into” the item of STE. First, it MAY consist of or it may include in the STE single or multiple purpose integrated test units. There might be a voltmeter in the STE; there might an oscilloscope in the STE. Second, it might consist of “items or assemblies of equipment.” Well, we need to further define items of “equipment” and “assemblies of equipment.” Equipment is a broader term – and we'll be defining that term later in this paper. But, suffice it to say – the Government ALLOWS the use of equipment as a COMPONENT of STE – where assemblies OF EQUIPMENT form that STE. Now that does NOT mean that a stand alone piece of equipment would be classified as STE.



Let me go a little bit further with the FAR definition. There are areas that are problematic within the definition of STE. What are these problem areas? The first one that comes to mind is that of Equipment. I will ask the question again -- Should we allow equipment as a component of STE? The definition gives us a clear prohibition *"it does not include ...equipment items used for general purposes.* Well, maybe it does! To resolve this dilemma I use the example of an oscilloscope acquired under a cost reimbursement type contract from Sears (No, as stated earlier in this paper I do not own stock in Sears!). Should or would the Government consider this an allowable cost? Well, it depends! Not necessarily. Why? If that oscilloscope were to be used alone, singularly, with no

interconnections making it interdependent, for test purposes it would **NOT** fall into the category of STE. Instead it might be classified as something else and there may be other rules that apply to its acquisition.

But what if I took that oscilloscope and **interconnected** it in such a way that it became **interdependent** with multiple other items of specialized test equipment and **essential** in performing Special Purpose Testing. In all likelihood we now have a piece of STE. If that oscilloscope were interconnected and interdependent IN THE STE, then those general purpose items would be PART of that STE and therefore STE.

Wait a minute! WHY would the Government allow the contractor to use general purpose equipment in fabricating STE?

Because if the Government DID NOT allow the contractor to use the general purpose stuff in fabricating the STE the contractor would go out and design something TRULY UNIQUE and much more COSTLY – instead of using stuff that was generally available and much more economical.

Quite clearly the government does allow the use of equipment in the fabrication or assembly or creation of STE -- so long as it is **interconnected** and **interdependent** so as to become a new functional entity for the performance of special purpose testing - STE.

Now, on to the QUALIFIERS!

1. The unit created **MUST ACCOMPLISH SPECIAL PURPOSE TESTING!**
2. Also, as a qualifier for an item to be classified as STE those general-purpose items must be interconnected and interdependent to form a **NEW FUNCTIONAL ENTITY.**
3. Special test equipment **does not include** ... property that with relatively minor expense can be made suitable for general purpose use.” For this concept you need to also reference FAR 31.205-40 (c).

FAR 31.205-40(c) clearly DISQUALIFIES items as STE if “With relatively minor expense they can be made suitable for general purpose use.” So tell me, what implication does this have? We can’t just ignore it. It is a regulation that affects the ALLOWABILITY of an item. This regulation is contractually binding. We can no more ignore it than we can the prohibition on alcoholic beverages, FAR 31.205-51, because if we can ignore one, we should be able to ignore the other. Contractors need to be very careful in applying this definition and cost principle.

## **EQUIPMENT**

Now, I would like you to think back to the OLD FAR for a moment. Under the OLD FAR we had Facilities – which was subdivided into Plant Equipment and Real Property. Plant Equipment was further subdivided, for Department of Defense purposes, into Industrial Plant Equipment (IPE) and Other Plant Equipment (OPE). Plant Equipment? What if I am NOT performing in a “plant?” What if I am not performing in an Industrial operation

but performing in a service operation? In both cases can I still have Plant Equipment or IPE? The terms were archaic in their usage and implications.

With that said – the emphasis was to use a term that provided greater clarity and applicability to the contemporary world of property.

Both FAR 45.101 and FAR 52.245-1 provide us the definition of Equipment.

*“Equipment” means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use.*

The ASTM Standard E-2135-06 provides us a slightly different definition. It states that *“equipment is non-expendable, tangible moveable property needed for the performance of a task or useful in effecting an obligation.”*

These terms have both denotations and connotations. I would imagine that most of us know what equipment is – at least from our perspective. But this definition is needed to provide us the denotation of the word – its specific DICTIONARY or DEFINED meaning. Therefore, this definition ALSO has descriptors to it.

Equipment is a tangible asset.

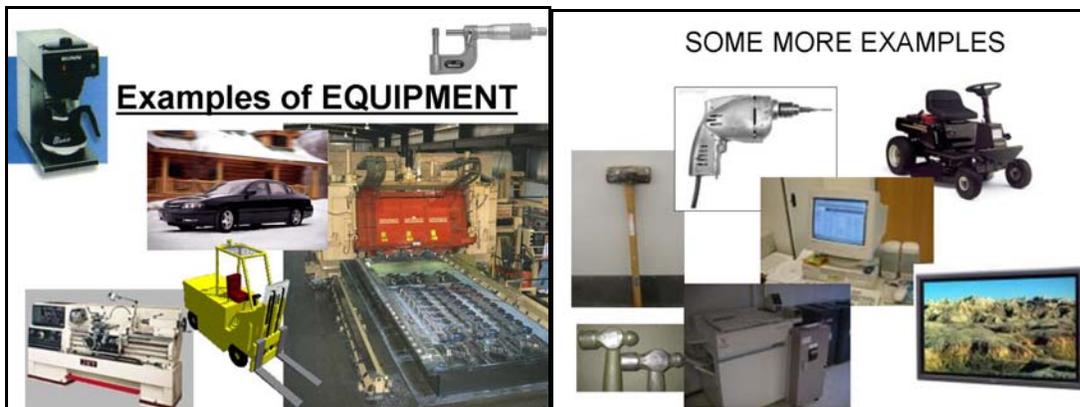
It has substance and form, i.e., it is tangible.

It is functionally complete for its intended purpose.

It is durable, i.e., it lasts for a while versus wearing out instantly. Note the “durability” of an item is not addressed. Is an item durable if it lasts six months, a year, two years, five years, and ten years?

It is non-expendable versus material which IS expendable. You do not consume most equipment.

And lastly, it is needed for contract performance. This last item has applicability in the FAR application, i.e., that a further “qualifier” is added by requiring that equipment is needed for contract performance. Not just needed for anything – but for contract performance.



Equipment, and the furnishing of equipment as Government property has MANY different applications and implications – from the Government policy issues of FAR Part 45 to the Cost Principles of FAR Part 31 to the Cost Accounting Standards and contractor disclosure statements. I am positive that there will be MANY interesting scenarios created surrounding the proper classification and more importantly the proper CHARGING of equipment costs to Government contracts – but that I will leave for another article!

That leaves us with the last classification – REAL PROPERTY!

## **REAL PROPERTY**

And to be perfectly honest with you – I am NOT going to discuss real property. Why? Because the definition is – of all the definitions – is, in my opinion, the simplest to understand. Land, rights in land – meaning mineral rights or riparian rights, ground improvements – sidewalks, utility distribution systems, and buildings! All of these are items that already have a degree of clarity to them.

## **DELETED CLASSES OF GOVERNMENT PROPERTY**

Some folks have asked, “Well what do we do about all of the stuff that we have in our possession today that we have classified under the ‘old’ typology?” Well, it depends! Let’s assume that you have a block change to ALL of your Government contracts – whereby you, as a contractor, are now operating under the NEW FAR. If such was the case a number of the “old” classifications are gone. They no longer exist. Specifically the following classes of property have faded into the sunset:

- Facilities
- Plant Equipment
- Industrial Plant Equipment
- Other Plant Equipment

The above four classes will now most likely be rolled over either into:  
Equipment or  
Real Property – depending upon NEW definitions.

Material, RP, ST and STE have remained the same – so that’s easy.

But what about Agency Peculiar Property (APP)? Where does that go? It depends. Since I do not have all of the specifics for each of your scenarios I can only create an educated guess – so here goes:

For items that previously were classified as APP and that were/are consumable or expendable – these might best fit under Material! Some examples –explosives might fit under material, some nuclear materials might fit under material. For other items that previously were classified as APP and that were of a NON-CONSUMABLE nature – these might best fit under equipment. Some examples, a HUMVEE would now be equipment, an F-16, an M1A2 Tank would be equipment.

My problem with this approach is that we try to “fit” items in a classification. Is there real benefit to this? Maybe it is done just so we can have some order to our sometimes frenetic world. Yes, there are VERY GOOD reasons why we need to classify property – but that ladies and gentlemen will have to wait for future articles!

In this article I have tried to cover the new FAR Government property typology and the classifications embedded within the new regulation – touching upon some of the Voluntary Consensus Standard definitions – providing some comparison of the definitions as well as some help in understanding the new concepts of some of the classes of property. I hope that others will take some time and write some analyses in regard to the definitions in the FAR and the definitions in the ASTM, International E-53 standards. They have been out there for a few years, but I am disappointed that more of our members have not taken the opportunity to engage in some didactic writing. I have heard so many talks about the standards – but talks are ephemeral. Once again my battle cry is in regard to literature. Literature lasts! The spoken word is gone once the vibrations in the air cease.

Ladies and gentlemen – enjoy our world of property management!

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<sup>1</sup> Certain Government agencies are granted statutory exemption to the Federal Acquisition Regulations. In addition, certain agencies have exempted their contractors from these rules, e.g., Department of Energy and its Management and Operations (M&O) contractors..

<sup>2</sup> Barron’s Dictionary of Business Terms, Second edition, Barrons’ Educational Series Inc., Hauppauge, NY, 1994.

<sup>3</sup> Black’s Law dictionary, Sixth Edition, West Publishing, St. Paul, MN. 1990.

<sup>4</sup> Black’s, 1218.

<sup>5</sup> Black’s, 1217.

<sup>6</sup> Property cannot be leased if it is going to be consumed as there is the presumption under a lease that the property will be RETURN to the leasing company or activity. That is another reason why it is important to distinguish between USING and CONSUMING, Utilization and Consumption.

<sup>7</sup> Yes, the Government may REIMBURSE the contractor for the cost of this lease if it is reasonable, allocable and allowable – but that does not, in and of itself, make these leased items, items leased by the contractor, Government property.

<sup>8</sup> In the FAR rewrite process there was a MAJOR discussion of the Title vesting provisions. For the purpose of this article I am only talking about property charged direct. The issue of indirect charged property and its title issues are a whole ‘nother article.

<sup>9</sup> No, this is NOT an endorsement of Sears nor any other vendor. It is ONLY for illustrative purposes.

<sup>10</sup> Swarf – you know... The guy from Star Trek??? O.k., swarf is diamond dust, the only item that can cut a diamond is diamond dust, diamond swarf.