

ASSET MANAGEMENT BEST PRACTICES AND IMPLEMENTING ISO 55000 AND ASTM STANDARDS



NOVEMBER 13-15
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**TITLE to PROPERTY,
MANAGEMENT CONTROLS
and things that make you go – Huh?**



Dr. Douglas N. Goetz, CPPM, CF
President, GP Consultants LLC




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**TITLE TO PROPERTY,
MANAGEMENT CONTROLS
and Things that make you go – Huh?**

- **Topics to be covered:**
 - TITLE to Government Property and Other “stuff”
 - Levels of Property Management Control
 - The “Huh?” Stuff!!!



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TITLE

- **Who owns what, when, how and why?**
 - **Should be a simple question – the Government owns all that stuff!**
 - **Really?**
- **Our First Step – let’s look at some of the TITLE concepts that we need to understand under the heading of GOVERNMENT PROPERTY!**



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CONTRACTOR ACQUIRED PROPERTY (CAP)

- **TITLE TO CAP IS DRIVEN BY MULTIPLE FACTORS:**
 - TYPE OF CONTRACT
 - COST PRINCIPLES
 - COST ACCOUNTING STANDARDS
 - CONTRACTOR’S ACCOUNTING POLICIES AND PROCEDURES




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CONTRACTOR ACQUIRED PROPERTY (CAP)

- TYPES OF CONTRACTS
- TWO BROAD PRICING ARRANGEMENT

FIXED PRICE

COST REIMB.

- PLUS LOTS OF VARIANTS

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CONTRACTOR ACQUIRED PROPERTY (CAP)

- **45.402 -- Title to Contractor-Acquired Property.**
 - (a) Title vests in the Government for all property acquired or fabricated by the contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed-price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the **contractor retains title to all property acquired by the contractor for use on the contract**, except for property identified as a deliverable end item.



**GOVERNMENT
POLICY
STATEMENT**

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CONTRACTOR ACQUIRED PROPERTY (CAP)

- **45.402 -- Title to CAP.**
 - (a) If a deliverable item is to be retained by the contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

GOVERNMENT
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CONTRACTOR ACQUIRED PROPERTY (CAP)

- **45.402 -- Title to CAP.**
 - (b) Under cost type and time-and material contracts, the **Government acquires title to all property to which the contractor is entitled to reimbursement,** in accordance with paragraph (e)(3) of clause 52.245-1.

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STATEMENT



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**O.K., so that is what the
 POLICY says...
 What about the
 Government Property
 Clause???**

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**GOVERNMENT PROPERTY
 Under the GP Clause**

- FAR 52.245-1
- Paragraph (e) states:
 - (e) Title to Government property.
 - (1) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as “Government property”), is subject to the provisions of this clause. The Government shall retain title to all Government-furnished property....

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- FAR 52.245-1
 - (e) Title to Government property.
 - (2) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

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- FAR 52.245-1
 - (e) Title to Government property.
 - (3) Title under **Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts.**
 - (i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

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■ FAR 52.245-1

- (e) Title to Government property.
 - (3) Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts.
 - (ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—
 - (A) issuance of the property for use in contract performance;
 - (B) Commencement of processing of the property for use in contract performance; or
 - (C) Reimbursement of the cost of the property by the Government, whichever occurs first.

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■ FAR 52.245-1

- (e) Title to Government property.
 - (3) Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts.
 - (iii) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (e)(3)(iii) (collectively referred to as “Government property”), are subject to the provisions of this clause.

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- What does **ENTITLED** to be **REIMBURSED** mean???
- Cost must be:
 - REASONABLE
 - ALLOCABLE and
 - ALLOWABLE

FAR PART 31



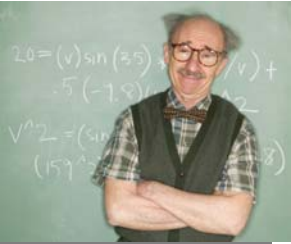
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- FAR 31.201-3
 - (a) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business.

REASONABLY
PRUDENT PERSON

COMPETITIVE
BUSINESS



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- **Reasonableness can be determined by the Terms and conditions of the Contract**
 - Items specifically called out to be acquired
- **Reasonableness can be determined by reviewing drawings, blueprints, bills of material, or other documents showing:**
 - Need of the item
 - Quantity needed
- **Contract requirements**



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- **FAR 31.201-4**
 - A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship.



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- **FAR 31.201-2**
 - (a) A cost is allowable only when the cost complies with all of the following requirements:
 - (1) Reasonableness.
 - (2) Allocability.
 - (3) **Standards promulgated by the CAS Board, if applicable; otherwise, generally accepted accounting principles** and practices appropriate to the circumstances.
 - (4) Terms of the contract.
 - (5) Any limitations set forth in this subpart.

QUICK – are alcoholic beverages “allowable?”
 FAR 31.205-51. Costs of alcoholic beverages are unallowable.

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COST ACCOUNTING STANDARDS

- **DEFINITION**
 - The set of **RULES** on cost accounting for Government contracts which were promulgated by the Cost Accounting standards Board
 - Government Contracts Guidebook
 - Arnavas and Ruberry
 - <http://www.whitehouse.gov/OMB/procurement/casb.html>

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COST ACCOUNTING STANDARDS

- **30.101 Cost Accounting Standards.**
 - (a) Public Law 100-679 (41 U.S.C. 422) requires certain contractors and subcontractors to comply with Cost Accounting Standards (CAS) and to disclose in writing and follow consistently their cost accounting practices.
- **30.201-4 Contract clauses.**
 - (a) Cost accounting standards.
 - (1) The contracting officer shall insert the clause at FAR 52.230-2, Cost Accounting Standards, in negotiated contracts

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COST ACCOUNTING STANDARDS

- **COST ACCOUNTING STANDARDS AFFECT THE WAY CONTRACTORS CHARGE THE GOVERNMENT FOR PROPERTY**
 - For example – whether or not contractors may direct charge us for “GENERAL PURPOSE EQUIPMENT”
- **CAS 402 – CONSISTENCY**
 - Kitchen English...
 - BUY Like Item,
 - USE for Like Purpose,
 - THEN KTR MUST CHARGE in Like FASHION
 - http://farsite.hill.af.mil/reqhtml/reqs/far2afmcfars/farfars/far/FARapndx1.htm#P1185_222409



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COST ACCOUNTING STANDARDS

- One needs to have ACCESS TO and READ and UNDERSTAND the contractor's Disclosure Statement in order to deal **PROPERLY** with **PROPERTY!**
 - CASB-DS-1 FORM
 - http://www.whitehouse.gov/OMB/procurement/casb_ds-1.pdf
 - http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/FAR/pndx1.htm#P332_70916



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SO WHAT???

- **ALL** of this previously discussed “stuff” is **PURE GOVERNMENT PROPERTY**
 - As such it must be **MANAGED** in accordance with the **GOVERNMENT PROPERTY CLAUSE FAR 52.245-1**
 - Property Management System (b), Processes under Para. (f), Liability (h), Disposal (j), etc.

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So let's make some "Baskets."

**"PURE"
GOVERNMENT
Property,
GP CLAUSE
52.245-1,
MANAGED
Under the
Contractor's
PMS**

But are there other
Forms of TITLE???



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The Government Policy at 45.4 and the GP Clause at 52.245-1 made reference to...

FINANCING PROVISIONS

HUH???

What???

WHAT'S THAT???

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PROGRESS AND PERFORMANCE BASED PAYMENTS

- So, TITLE is TITLE.
- If the Government has TITLE to property – it is GOVERNMENT PROPERTY... Right???
- Welllllllll, it ain't necessarily so!







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PROGRESS AND PERFORMANCE BASED PAYMENTS

- What the heck are PROGRESS PAYMENTS?
- A form of financing – similar to what you have when you take out a car loan or a mortgage....


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PROGRESS AND PERFORMANCE BASED PAYMENTS

- FAR 52.232-16 and 52.232-32
- TITLE – Paragraph (d)
 - (1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

HUH???

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PROGRESS AND PERFORMANCE BASED PAYMENTS

- TITLE – Paragraph (d)
- (2) “Property,” as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.
 - (i) Parts, materials, inventories, and work in process;
 - (ii) Special tooling and special test equipment to which the Government is to acquire title;
 - (iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (ii) above; and
 - (iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

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- So, since the Government has/claims TITLE under the Progress Payments Clause or the Performance Payments Clause – that stuff is GOVERNMENT Property – Right???

▪WRONG!!!

- IT IS NOT PURE GOVERNMENT PROPERTY!
- IT IS NOT COVERED BY THE GOVERNMENT PROPERTY CLAUSE!


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- How is the Contractor supposed to MANAGE Progress Payments Inventory?
 - 52.232-16 (f) Control of costs and property. The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.
- However they want!
- MAY they include PPI under their PMS?
 - Yes, so long as it can be clearly identified as PPI versus GP! It needs to be “FENCED!”

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- From a **GOVERNMENT** perspective... is PPI included in the Property Management System Analysis?
 - NO!
 - If it were, what AUDIT STANDARD would you use???



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- From a **GOVERNMENT PERSPECTIVE...** At contract completion - is any remaining PPI supposed to be submitted through SF1428/PCARSS?
 - **NO!!!**
 - (d)(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, **TITLE SHALL VEST IN THE CONTRACTOR** for all property (or the proceeds thereof) not --
 - (i) Delivered to, and accepted by, the Government under this contract; or
 - (ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.


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- When **MAY** the Government Property Administrator or Plant Clearance Officer get involved with PPI?
 - When requested by the Contracting Officer due to:
 - ADVERSE FINANCIAL CONDITIONS
 - BANKRUPTCY
 - TERMINATION
- In other words, when things go **WRONG!!!**



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- SO, we have our **FIRST AND SECOND BASKET**

<p>“PURE” GOVERNMENT Property, GP CLAUSE 52.245-1, MANAGED Under the Contractor’s PMS</p>	<p>PROGRESS & PERFORMANCE BASED PAYMENTS INVENTORY 52.232-16 52.232-32, Yes, Government Claims TITLE – But, it is only a PROTECTIONARY TITLE. PPI NEED NOT BE MANAGED UNDER THE CONTRACTOR’S PMS</p>	<p>THE Property PROFESSIONAL MUST be able to distinguish between “PURE” Government Property, and Property to which the Government has TITLE by way of financing!</p>
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**So, let's play with your brains
for a moment!**

- **If the Contractor has both:**
 - “PURE” Government property – of the Contractor Acquired Property (CAP) Variety of the Material Classification AND
 - The Contractor has Progress Payments Inventory which includes MATERIAL ...
- **What/Which “System” must they MANAGE all of THAT stuff Under???**

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**THE MATERIAL
MANAGEMENT ACCOUNTING
SYSTEM!
(MMAS)
DFARS 252.242-7004
(If they are required to have an MMAS
SYSTEM)**

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GP
 Of the CAP variety
 Of the MATERIAL
 Classification
 MANAGED UNDER
 THE PMS

MMAS
 REQUIRES
 THAT BOTH
 OF THESE
 "TYPES" of
 Property are
 managed
 under the
 MMAS

PPI
 Of the MATERIAL
 Classification
 MANAGED
 HOWEVER

And the MMAS also includes the
 CONTRACTOR'S MATERIAL!!!

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- **Let's Talk about one other VARIATION of MATERIAL**
- **WORK IN PROCESS or WIP**
- **FAR 45.501 Pre-2007 Version – NOTE: There is no definition of WIP in the POST 2007 GP FAR Part or Clauses.**
 - "Work-in-process," as used in this subpart, means **MATERIAL** that has been released to manufacturing, engineering, design or other services under the contract and includes undelivered manufactured parts, assemblies, and products, either complete or incomplete.
- **Does WIP still exist? Sure it does. The phrase is used numerous times throughout the FAR – but not defined!**

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- So, how are contractors supposed to manage WIP?
- For DoD there is NO EXPLICIT requirement in the GP CLAUSE!
- In point of fact, it sorta drops off the radar for a while in the “Property Management Process.”

```

    graph LR
      A[ACQUISITION] --> B[RECEIVING]
      B --> C[RECORDS]
      C --> D[ISSUANCE]
      D --> E[WIP]
      E --> F[DELIVERABLE END ITEMS]
  
```

So what about WIP and:
 PHYSICAL INVENTORIES?
 LOSS?
 CONSUMPTION?

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YOUR TURN – ANSWER THE QUESTIONS!!!

- Is WIP included in the Performance of a Physical Inventory of Government Property under a 52.245-1 Property Management System?
- Is a loss of WIP reportable under DFARS 252.245-7002?
- Does the PA include WIP as part of a Consumption Analysis?
- FIRST SMARMY ANSWER...

IT DEPENDS!!!

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YOUR TURN – ANSWER THE QUESTIONS!!!

- **Is WIP included in the Performance of a Physical Inventory of Government Property under a 52.245-1 Property Management System?**
 - Historical Perspective:
 - FAR45.508 Physical inventories.
 - The contractor shall periodically physically inventory all Government property (except materials issued from stock for manufacturing, research, design, or other services required by the contract)
 - WHICH MATCHES THE DEFINITION OF????

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YOUR TURN – ANSWER THE QUESTIONS!!!

- **Is a loss of WIP reportable under DFARS 252.245-7002?**

IT DEPENDS!!!

- **If it is Government Property... YES!**
 - DFARS 252.245-7002 DOES NOT Differentiate
- **If it is Property Payments Inventory... FAR 52.232-16, it is NOT reported under 252.245-7002 – but it IS REPORTABLE under 52.232-16**
 - e) Risk of loss. Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is lost.

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YOUR TURN – ANSWER THE QUESTIONS!!!

- Does the PA include WIP as part of a Consumption Analysis?

ONE MORE TIME!!!

- IT DEPENDS!!!
- It depends upon HOW you perform your consumption analysis:
 - At Contract Completion
 - Delivered end Items during contract performance
 - An Issuance of Material

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MY WORDS


to advance



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ONE MORE CONUNDRUM

- **Under a Fixed Price Contract with Progress Payments – an Item is a Deliverable (Listed as a CLIN)**
- **Upon Inspection and Acceptance on a DD 250 – what type of Property is it???**
 - Government Property
 - Progress Payments?
 - Who cares – heck with the Government, we got paid!
 - Darned if I know?



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ONE MORE CONUNDRUM

- **TECHNICALLY** it is considered “Property of the Government.” See the use of the phrase at FAR 52.246-23. It is **NOT** Government Property in the Possession of the Contractor....
- Huh? Wait – the Government **HAS TITLE** to that Property ... so it is Government Property! Yes, and No!
- Really – and under what **CONTRACT** is it **ACCOUNTABLE** to the **CONTRACTOR**?
- If that “Property of the Government is **LOST** or **DAMAGED**... Who is **Liable**?



 > NOTE – It depends! 

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- **WRAP UP!!!**
- It is **CRITICAL** that the Property Professional be able to technically discern the **TITLE** Issues surrounding:
 - Government Property versus
 - Progress Payments Inventory
 - Overlapping Systems (PMS versus MMAS)
 - WIP
 - Construct of Deliverable End items being Property of the Government but not Government property Accountable under a contract.


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Thank you!

Dr. Douglas N. Goetz, CPPM, CF
President, GP CONSULTANTS LLC
Hopefully a Good Instructor.
GPCONSULTANTS@ATT.NET
WWW.GOVERNMENT-PROPERTY.COM
1-937-306-8372



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