

Contract Property Management Fundamentals for Beginners

Presented at the

2011 NPMA NES

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CAVEAT

These are the opinions of Dr. Doug Goetz.

They do not represent:

DOD

DAU

DCMA

NPMA

They are the culmination

Of over 30 years of

EXPERIENCE

EDUCATION

PRESENTATIONS

And WRITING!

Or anyone else's opinion!

Based on solid

Research and Application!



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AN OPENING THOUGHT

Over the past year I have had the opportunity to work with the “other” side, i.e., contractors versus my “past” work, i.e., Government.

With that said, from my observations we have sorta’ lost our way – on both sides -- and therefore, it is time to use Vince Lombardi’s Quote and Concept...

“This is a Football!” – Back to Basics!

In only four words, Lombardi communicated his point: We’re going to start with the basics and make sure we’re executing all the fundamentals.

Well, for us – **“THIS IS GOVERNMENT PROPERTY!”**



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A SECOND OPENING THOUGHT

This presentation is at the topical theoretical construct level .

To actually LEARN EVERYTHING about Government Property in the possession of contractors (Contract Property) we would need MONTHS even YEARS of study (Hmmmmm, sorta sounds like it should be a DEGREE PROGRAM!)



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A Starting Point

STATUTE

- Office of Federal Procurement Policy Act of 1974

ASPR

Federal Acquisition Regulation

First Published Apr. 1, 1984

Supplements

- DFARS
- NFS
- DEARS
- EPAARS
- Etc.

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A Starting Point

- **So if you are dealing with US Government Contracts you will generally be dealing with the Federal Acquisition Regulation (FAR).**
- **The FAR provides Guidance, Direction and Requirements to the Government and Contractor in numerous areas:**
 - Acquisition planning
 - Contracting Methods and Contract Types
 - Contracting Requirements and even
 - **GOVERNMENT PROPERTY!!!**

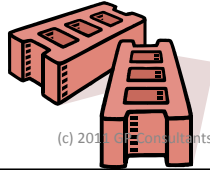
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THE FAR

- So, one of the **FOUNDATIONAL** building blocks to GOVERNMENT PROPERTY is the FAR.
- It is not just enough to “know” that the FAR exists... you must have the **KNOWLEDGE** and **COMPREHENSION** of its concepts to be able to **APPLY** these concepts.
 - EDUCATIONALLY moving through BLOOM’s TAXONOMY



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When dealing with a CONTRACT

- You need to understand the construction of a CONTRACT and the LEGAL ELEMENTS of a Contract:
 - LEGAL CAPACITY
 - MUTUAL ASSENT
 - CONSIDERATION
 - CERTAINTY OF TERMS
 - LAWFUL PURPOSE
- AND YOU NEED TO BE ABLE TO READ THE CONTRACT!!!



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» AND... Know where to FIND THINGS in the contract!!!

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So, WHAT is PROPERTY?

- When dealing with Government Property under the FAR, there are some very SPECIFIC DEFINITIONS:

- Property
- Government Property
 - Government Furnished Property
 - Contractor Acquired Property
- Classes of Property
 - Material, Special Test Equipment, Special Tooling, Equipment and Real Property



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If you deal with GP you
Need to have the knowledge
And comprehension of these
Definitions – and their
Underlying APPLICATION.
Why they exist?
Differing controls?
Options for different “handling.”

PROPERTY

- FAR 45.101
 - Means all tangible property, both real and personal.
 - Let’s Break this down – Property comes from a legal definition. The Government has tweaked this to fit ITS needs, i.e., to exclude INTANGIBLE property
 - So first – it is all TANGIBLE property, and then it has two subdivisions:
 - Personal Property – See Next slide
 - Real Property – We’ll define this later.



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Definition - PERSONAL PROPERTY

- FAR 2.101
- “Personal property” means property of any kind or interest in it

except

- real property,
- records of the Federal Government, and
- naval vessels of the following categories:
 - Battleships;
 - Cruisers;
 - Aircraft carriers;
 - Destroyers; and
 - Submarines.



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Definitions 45.101

GOVERNMENT PROPERTY (GP): **ALL PROPERTY OWNED OR LEASED** **BY THE GOVERNMENT.**

GP includes both Government-furnished property and contractor-acquired property: (GFP and CAP.)

Government property includes material, equipment, special tooling, special test equipment, and real property.

Government property **DOES NOT** include

INTELLECTUAL PROPERTY AND SOFTWARE.



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ORIGINS OF GOVERNMENT PROPERTY

- **CONTRACTOR ACQUIRED
PROPERTY 45.101 & 52.245-1 (a)**

**PROPERTY ACQUIRED,
FABRICATED, OR
OTHERWISE PROVIDED BY
THE CONTRACTOR FOR
PERFORMING A CONTRACT
AND TO WHICH THE
GOVERNMENT HAS TITLE**



CAP

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- **GOVERNMENT FURNISHED
PROPERTY 45.101 & 52.245-1(a)**

**PROPERTY IN THE POSSESSION OF, OR
DIRECTLY ACQUIRED BY, THE
GOVERNMENT AND SUBSEQUENTLY
FURNISHED TO THE CONTRACTOR
FOR PERFORMANCE OF A CONTRACT.**

Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification.

Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost contract when accepted by the Government for continued use under the contract.

GFP

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CLASSIFICATIONS of GOVERNMENT PROPERTY

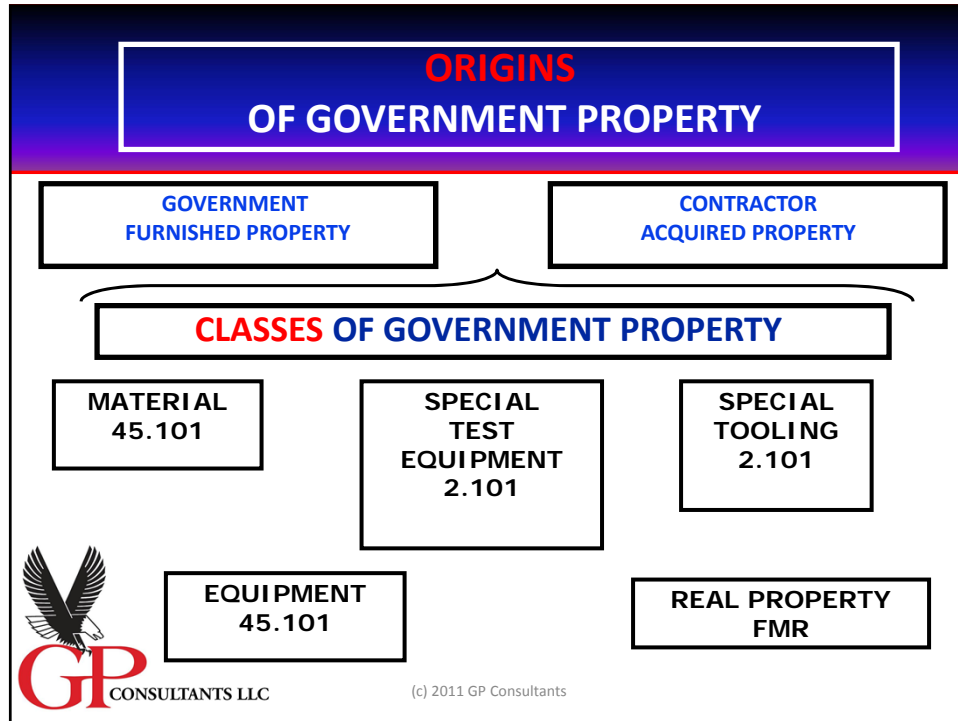
- MATERIAL – 45.101
- SPECIAL TOOLING - 2.101
- SPECIAL TEST EQUIPMENT - 2.101
- REAL PROPERTY – FMR
- EQUIPMENT – 45.101

**AS A GENERAL RULE OF THUMB –
EACH CLASS/CLASSIFICATION OF PROPERTY HAS ITS
OWN QUALIFIERS AND DESCRIPTORS**




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FOUNDATIONAL ELEMENTS

- **FAR POLICY and APPLICATION**
 - Both Government and Contractor folks needs to read, and understand the purposes and intent of FAR Part 45 (As well as OTHER FAR PARTS).
 - FAR 45.1 General
 - FAR 45.2 Solicitation and Evaluation Procedures
 - FAR 45.3 Authorizing the Use and Rental of Government Property
 - FAR 45.4 Title to Government Property
 - FAR 45.5 Support Government Property Administration
 - FAR 45.6 Reporting, Reutilization, and Disposal



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FOUNDATIONAL ELEMENTS

- **FAR POLICY and APPLICATION**

- O.k., so you know the topical headings... but do you know what is contained in those sections
- Have you engaged in detailed analysis of those FAR Subparts?
 - Both Government and Contractor employees need to engage in



EXEGESIS!



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FOUNDATIONAL ELEMENTS

- **COMMENTARY:**

- Though the words appear to be simple and understandable... do you really, Really, REALLY, KNOW that they mean and how to apply them.
 - FOR EXAMPLE:
 - From FAR Subpart 45.4 -- Can you "**EXPLAIN**" (Bloom's Taxonomy Level II) the concept of **TITLE** and then "**APPLY**" " it (Bloom's Taxonomy Level III) in the real world.
 - If not, your education is, in the words of the FAR, "inadequate" and you would need a **CORRECTIVE ACTION PLAN!** ☺
 - » O.k., that was meant to be humorous!



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FOUNDATIONAL CLAUSES

- **Government Property Clauses:**
 - 52.245-1
 - Plus its alternates
 - 52.245-2
 - 52.245-9
 - [PLUS, a **PLETHORA of OTHER CLAUSES** that effect and impact and interact with Government Property and its MANAGEMENT – some positively, some negatively]
 - I'll talk about those later!



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FOUNDATIONAL CLAUSES

- **And, depending upon which AGENCY you work for or with:**
 - **You must know those Agency's Clauses:**
 - DoD FAR Supplement (DFARS)
 - NASA FAR Supplement (NFS)
 - DOE FAR Supplement (DEARS)
 - Etc.



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REQUIREMENTS OF THE GP CLAUSE (FAR 52.245-1)

- (a) Definitions
- (b) Property Management
- (c) Use of Government Property
- (d) Government-Furnished Property
- (e) Title to Government Property
- (f) Contractor Plans and Systems
- (g) System Analysis
- (h) Contractor Liability for GP
- (i) Equitable Adjustment
- (j) Contractor Inventory Disposal
- (k) Abandonment of GP
- (l) Communication
- (m) Overseas Contracts



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GP CLAUSE FAR 52.245-1

(a) DEFINITIONS

The GP Clause provides lots of definitions for application to ensure "Certainty of Terms."

These defined terms include:

- Acquisition Cost
- Cannibalize
- CAP
- Contractor Inventory
- Contractor Managerial Personnel
- Demilitarization
- GP
- GFP
- Precious Metals
- Property Administrator
- Property Record
- Sensitive Property
- Surplus Property



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GP CLAUSE FAR 52.245-1

(b) PROPERTY MANAGEMENT

Establishes the requirement that you have a

“**SYSTEM**” for managing GP – including:

- Written Policies and Procedures to address the PROCESSES and OUTCOMES set forth in this clause.
 - A LIFE CYCLE APPROACH
 - From an item’s acquisition through receipt through he records maintained through use, consumption, storage, movement, physical inventory... All the way through its ultimate disposition.



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GP CLAUSE FAR 52.245-1

(b) PROPERTY MANAGEMENT

- Consistent with the application of:

- Voluntary Consensus Standards
- Industry Leading Practices

- This “SYSTEM” Includes GP you provided and is in the possession of your **SUBCONTRACTORS!**

- Requires the “flow down” of the GP requirements.



[International
Organization for
Standardization
\(ISO\)](#)



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GP CLAUSE FAR 52.245-1

(c) USE OF GP

- There are authorizations...

You can use this GP on this instant contract!

You can use this GP on other contracts – as authorized by the Contracting Officer (Including Commercial Work)!



- But, there are RESTRICTIONS...



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– You CANNOT use it on OTHER WORK... unless you ask “Mother May I?”

FAILURE TO APPLY THIS PROPERLY MAY RESULT IN PENALTIES – FINE, IMPRISONMENT Or BOTH! 18 USC 641

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UTILIZATION/REUTILIZATION

- Property Management within the corporate setting has proven over and over again to be a Bottom Line, profit enhancing area
 - McFarland, 2007, NPMA's Property Professional
- In other words – MANAGING the USE of Property, including GP, can add to the “Bottom Line.”

– Value Based Asset Management

- Increase asset utilization by 200%
- Reduce total costs by 50%
- Reduce project cycle time by 10%
- Improve human resource utilization redirected to real value added effort
- 2003 - 2006 Over \$12 Million in cost savings to the company



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Companies can ignore it – but only at their own risk!

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GP CLAUSE FAR 52.245-1

(d) GOVERNMENT FURNISHED PROPERTY

- The Government Makes some “Promises” about the GP it FURNISHES (GFP)
- It guarantees that it will be:
 - Suitable for Use
 - Delivered on a Timely basis
- And if the Government FAILS to keep those promises...
 - You MAY be entitled to an Equitable Adjustment
 - But you need to REPORT that issue to the Government in a timely fashion!



Potential to effect your ability to perform or produce, as well as potential profit!

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GP CLAUSE FAR 52.245-1

(e) TITLE TO GOVERNMENT PROPERTY

TWO CONCERNS:

TITLE UNDER FIXED PRICE CONTRACTS

TITLE UNDER COST REIMBURSEMENT TYPE CONTRACTS!



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GP CLAUSE FAR 52.245-1

(e) TITLE TO GOVERNMENT PROPERTY UNDER FIXED PRICE CONTRACTS

- The Government takes title **ONLY** to those items specified as a **DELIVERABLE END ITEM**, i.e., called out in the contract as a **CLIN**
 - As a point of reference think about **YOU** buying a washer or dryer or refrigerator at Sears or Home Depot or Lowe's, etc.



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GP CLAUSE FAR 52.245-1

(e) TITLE TO GOVERNMENT PROPERTY UNDER COST REIMBURSEMENT TYPE CONTRACTS

- The Government claims title to **ALL** Property!
- But it must meet certain "Conditions!"
 - It must be **REASONABLE**
 - It must be **ALLOCABLE**
 - And it must be **ALLOWABLE**
 - (Sorry, alcoholic beverages are **NOT** allowable!)



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(e) TITLE TO GOVERNMENT PROPERTY UNDER COST REIMBURSEMENT TYPE CONTRACTS

- In addition – there are a few “technical” issues:
 - It must be charged as a “Direct” item of cost
and
 - It must be charged in accordance with your
DISCLOSURE STATEMENT

- CASB-DS1 Form

- CASB-DS2 Form for Educational Institutes

} Have you
Even seen
This form?



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(e) TITLE TO GOVERNMENT PROPERTY UNDER COST REIMBURSEMENT TYPE CONTRACTS

- Lastly, in regard to title – there are specific
POINTS IN TIME or ACTIONS where title
transfers:
 - Upon Vendor’s Delivery
 - Upon Issuance from stores/stockrooms
 - Upon Commencement of Processing
 - Which ever comes first!



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(e) TITLE TO GOVERNMENT PROPERTY UNDER COST REIMBURSEMENT TYPE CONTRACTS

- MISAPPLICATION may cause:
 - **DISALLOWANCE of the REIMBURSEMENT OF COST as well as**
 - **Closer DCAA Scrutiny of your charging practices!**



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GP CLAUSE FAR 52.245-1

(f) CONTRACTOR PLANS AND SYSTEMS

- This paragraph of the clause provides the details regarding the **LIFE CYCLE PROCESS**. Listing the Processes and Outcomes in very broad, general terms as well as providing **SPECIFICITY** where the Government has a special or mandatory requirement.




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GP CLAUSE FAR 52.245-1


(f) CONTRACTOR PLANS AND SYSTEMS

These processes and outcome are:

- Acquisition
- Receipt (&ID)
- Records
- Physical inventory
- Subcontractor control
- Reports
- Relief of stewardship responsibility
- Utilizing (With the processes of Use, Consume, Store & Move embedded)
- Maintenance
- Property closeout



– Plus one or two others that are applicable from other parts of the GP clause, e.g., Disposition.




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GP CLAUSE FAR 52.245-1

(f) CONTRACTOR PLANS AND SYSTEMS

- The simplest way to explain the contractor’s responsibilities...
 - You are required to address EACH of these PROCESSES to ensure the APPROPRIATE OUTCOMES regarding the GP in your possession as well as that in the possession of your subcontractors.
 - The Government will **AUDIT** you to these processes, outcomes and Standards!



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GP CLAUSE FAR 52.245-1

(f) CONTRACTOR PLANS AND SYSTEMS

Let's look at one of these requirements
– RECORDS!

(f)(1)(iii) Records of GP. The Contractor **SHALL** create and maintain records of all Government property accountable to the contract, including GFP & CAP.

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



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GP CLAUSE FAR 52.245-1

- (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.



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(f) CONTRACTOR PLANS AND SYSTEMS

FAILURE TO MAINTAIN AN ADEQUATE AND COMPLIANT PROPERTY MANAGEMENT SYSTEM, i.e., having the contractor's PMS rated **INADEQUATE**, may result in the Government **"withdrawing its assumption of risk."**

At that point the contractor becomes **LIABLE**

and **RESPONSIBLE** for **ALL** Loss, theft, damage or destruction!



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GP CLAUSE FAR 52.245-1

(g) SYSTEM ANALYSIS

- Simple English – the Government has the right to **AUDIT** the contractor to ensure that the contractor is properly caring for and using ITS Property!
- **AND... there is another requirement...**
 - Contractor is required to do their **OWN internal Audits, or Reviews or Assessments.**
 - And disclose the results to the Government.



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LIABILITY for LTDD of GP

- TWO FORMS OF LIABILITY
 - FULL RISK OF LOSS
 - LIMITED RISK OF LOSS



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SIMPLY PUT... LTD&D HAPPENS!!!



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9-6-2003 05

FULL RISK OF LOSS

- **FIXED PRICE Contract**
 - (What we use to call a **COMPETITIVE** contract)
 - (52.245-1 Alternate I)
 - “The contractor assumes the risk of and shall be responsible for ANY loss, damage, destruction, or theft of Government property upon its delivery to the contractor as Government-furnished property. However, the contractor is **NOT** responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.”



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FULL RISK OF LOSS

- **IN ENGLISH...**
CONTRACTOR IS LIABLE FOR
“ANY”
LOSS DAMAGE OR DESTRUCTION
EXCEPT FOR:
 - REASONABLE WEAR AND TEAR OR
 - REASONABLE AND PROPER CONSUMPTION



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LIMITED RISK OF LOSS

52.245-1 (h)

Used with CR, T&M and
Labor Hour Contracts as
well as FP Negotiated
Contracts

And here is a perfect example of the various twists and turns
With various agencies:

DOD issued a DEVIATION dated Feb 12, 2010

<http://www.acq.osd.mil/dpap/policy/policyvault/USA000633-10-DPAP.pdf>

Where even under a FIXED PRICE Competitive Contract the CO shall insert
the LIMITED RISK OF LOSS Provision!!!

CAREFUL – There is a change of application a'comin'!!!



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LIMITED RISK OF LOSS

52.245-1 (h)

- Unless otherwise provided in the contract, the contractor shall

NOT

be liable for loss, damage,
destruction or theft to the
Government property EXCEPT...



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LIMITED RISK OF LOSS

52.245-1 (h)

- EXCEPT... THE CONTRACTOR **SHALL BE LIABLE** when one of the following applies:
 - 1. The Risk is Covered by INSURANCE
 - 2. WILLFUL MISCONDUCT, LACK OF GOOD FAITH ON THE PART OF MANAGERIAL PERSONNEL
 - 3. WITHDRAWAL of the Government's Assumption of Risk



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LIMITED RISK OF LOSS

52.245-1 (h)

- If the Government WITHDRAWS its Assumption of Risk – Contractor becomes fully liable for ALL LOSS, THEFT, DAMAGE or DESTRUCTION.



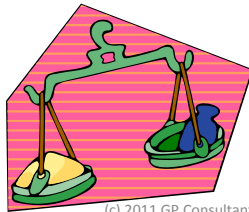
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(i) EQUITABLE ADJUSTMENT

- If the Government fails to meet its obligations in regard to GP – rather than have you “SUE” the Government, it provides for a remedy, i.e.,
 - The Right to an “Equitable Adjustment.”



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GP CLAUSE FAR 52.245-1

(j) CONTRACTOR INVENTORY DISPOSAL

- The disposal of GP is driven by LAW!
 - The Federal Property and Administrative Services Act of 1949, as Revised
- Therefore the rules are detailed and Complex!
 - Contractor Requirements set forth in the GP Clause
 - Government’s Requirements set forth in FAR Subpart 45.6 and other regulatory locations.



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(j) CONTRACTOR INVENTORY DISPOSAL

- Requires the preparation of **Inventory Disposal Schedules (SF1428)** or an electronic Equivalent either manually or through
 - Plant Clearance Automated Reutilization Screening System (PCARSS)
- Requires the contractor to comply with the directions of a Plant Clearance Officer to effect disposition.



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(j) CONTRACTOR INVENTORY DISPOSAL

- These disposal requirements/directions may include:
 - Ship back to the Government or other location
 - Sell – either by formal or informal sales
 - Scrap
 - Donate
- Even special Instructions for DEMIL or Hazardous Wastes



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GP CLAUSE FAR 52.245-1

(k) ABANDONMENT OF GP

(1) The Government **SHALL NOT ABANDON SENSITIVE** Government property or termination inventory without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, **MAY ABANDON ANY NONSENSITIVE GOVERNMENT PROPERTY** in place, at which time **all obligations of the Government** regarding such property **shall cease**.

[Essentially the Government WALKS AWAY from the GP]



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BUT THAT AIN'T ALL!!!



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COMMERCIAL PRACTICES

- In today’s environment it is **INSUFFICIENT** to know **JUST** the regulatory material.
- Both parties – Government and Industry must, **Must, MUST** know:
 - Voluntary Consensus Standards,
 - Industry Leading Practices and now,
 - Customary Commercial Practices

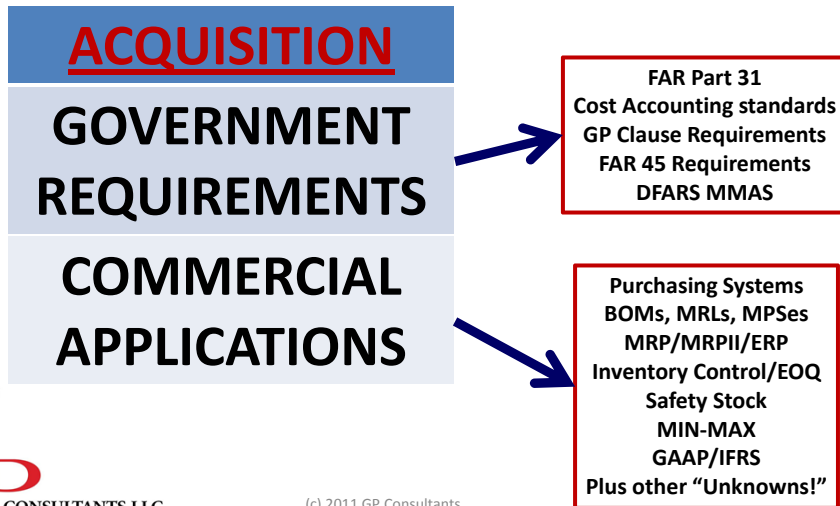
Let Me show you!



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Think about One Process?




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EXTRAPOLATE THAT TO ALL OF THE PROCESSES!

ACQ	RECEIVING	ID	RECORDS	PHY. INV.	ETC., ETC., ETC.
GOV'T RQMTS	GOV'T RQMTS	GOV'T RQMTS	GOV'T RQMTS	GOV'T RQMTS	“
COMM RQMTS	COMM RQMTS	COMM RQMTS	COMM RQMTS	COMM RQMTS	“

You get the idea!!!
 It is **INADEQUATE** to just know the TOP LEVEL Government Requirement...
 It is **IMPERATIVE** that you engage in LIFE LONG LEARNING and study the UNDERLYING FOUNDATIONAL ELEMENTS of the Subject Matter of our PROFESSION!!!
 And you can't do that in one or two or three or even FOUR courses!!!




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YOU!!!

So, let's get this straight!

1. If you are a Government Employee -- The Government AIN'T GONNA' DO THIS FOR YOU!
No Money, not enough internal courses!
2. If you are a Contractor Employee – your Employer AIN'T GONNA' DO THIS FOR YOU!
No Money, not enough time!
3. You are a PROPERTY PROFESSIONAL – YOU are gonna' have to do it FOR YOURSELF!!!



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MY OBJECTIVE

- To provide you a **TOPICAL OVERVIEW** for you to **STUDY** and **LEARN** from the Literature out there:
 - NPMA Archives
 - NPMA Property Professional
 - Government Documents
 - Other Literature Bases
 - If you think someone is going to hand you the answers in this environment – you'll wait a **LONG TIME**
 - It is time for **YOU** to take **RESPONSIBILITY** for your **OWN FUTURE!**



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TWO CHALLENGING THOUGHTS

"There are known knowns.

These are things we know that we know. There are known unknowns.

That is to say, there are things that we know we don't know.

But there are also unknown unknowns. There are things we don't know we don't know."

Donald Rumsfeld

- Just because **YOU** don't know something **DOESN'T** mean it is **UNIMPORTANT!**



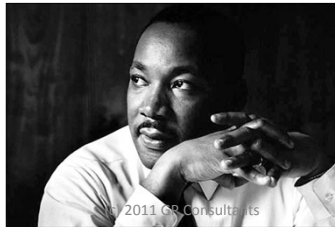
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Just because **YOU** haven't **DEALT** with something that you don't **KNOW** doesn't mean it is **UNIMPORTANT!**

A CHALLENGING THOUGHT by Martin Luther King, Jr.

“Rarely do we find men who willingly engage in hard, solid thinking. There is an almost universal quest for easy answers and half-baked solutions. Nothing pains some people more than having to think.”



THANK YOU!

Dr. Douglas N. Goetz, CPPM, CF

OLD DAU PROFESSOR

Recently Retired – now Rehired.

President of the newly incorporated GP Consultants.

Hopefully a Good NPMA Instructor.

Chief cook and bottle washer at Home, responsible for all “honey do” requirements – though my wife HAS told me to stay out of HER house!



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