"Technical Problems with Providing Government Property"

or

"Why is it so hard for us to do this right the first time???

Presented at

The MISSILE DEFENSE AGENCY’S
PROPERTY MANAGEMENT SUMMIT V

by

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THE THEME FOR THIS PROPERTY SUMMIT
“ACHIEVING AND SUSTAINING AUDIT READINESS”

• Interesting topic – in the teaching of Property Management System Analysis for the past 30+ years (or the more appropriate term Property Management System Audit) we have to acknowledge that “AUDITS” are not “leading” indicators – but rather “trailing” indicators....

• In other words, we find out what has happened in the past, and what may be occurring today.

• But through this Audit we hope to make recommendations that will lead not just to change for the sake of change but IMPROVEMENT to the processes and outcomes related to the management of Government Property
• Dr. Inside – having been a Government employee as a Property Professional starting in 1978, and then a Professor of Contract and Property Management, an original member of the FAR rewrite team, and even today working with the various Government agencies, I have been blessed with the opportunity to hear the “concerns” on the Government side of the house – what works, what doesn’t work, problems with forms, problems with computer systems, and the list goes on....

• Dr. Outside – having been a Consultant (Sorry for that horrible word) and Educator for the last few years for numerous contractors performing assessments (read that Audits) I have been blessed with the opportunity to hear the “concerns” on the Industry side of the house – what works, what doesn’t work, problems with forms, problems with computer systems, and THEIR list goes on as well....
Sorta’ a split personality!

- Dr. Inside and Dr. Outside
  - Sorta a Dr. Jekyll and Mr. Hyde syndrome! 😊
TOPICAL OVERVIEW

• Transfer of Property issues
• Records of Government Property
• The Listings of GFP and CAP and taking DELIVERY of CAP
• Proper use of the Government Property Clause(s)
• Disposition/Disposal
I know that a bunch of these have already been covered by the August speakers at this conference (Even though it is only June)...

But, I would like to add my slant to this discussion, share some “OLD” thoughts and provide some comparison to “NEW” constructs and “Ways of doing things!”

So, I would like to do a comparative analysis in a number of areas and try to show/display/provide evidence of:

– Where we were...
– To where we are!
TRANSFERS -- 1978 versus 2016

- So, the first juicy topic – TRANSFERS
- “The Way We Were” regarding transfers of Government Property in 1978
- The days of the ASPR and DAR
  - NO GUIDANCE IN THE REGS!!!
- How was it done? Simple:
  - Print out a list of GP from Contract A
  - Slap on a cover DD 1149
    - List both losing and gaining contracts
    - Contracting Officer (Most times an ACO) signed it
  - Government property was transferred!!!
    - BINGO!!!
1978 versus 2016

• How about the FAR in 1984 regarding TRANSFERS?
  – NOTHING!!! NO GUIDANCE WHATSOEVER!
  – So we kept doing what we did because “it was the way we always had done it in the past!”

• Ahhhhh, but in a 1997 FAR change SOME guidance was added!!!
  – 45.311 Providing Government Property by Transfer.
  – Government Property shall be transferred only if there is a requirement under the gaining contract. Transfers of Government Property, as Government-furnished property, shall be documented by a modification to the gaining contract. A modification or other documentation listing all items of property transferred is required for the losing contract.

  –So, had a little bit more guidance!
1978 versus 2016

• SO, what about TODAY?? 2016
• The TRANSFER of GOVERNMENT PROPERTY
• FAR requirement
  – 45.106 -- Transferring Accountability.
  – Government property shall be transferred from one contract to another only when firm requirements exist under the gaining contract (see 45.102). Such transfers shall be documented by modifications to both gaining and losing contracts. Once transferred, all property shall be considered Government furnished property to the gaining contract.
1978 versus 2016

- Ahhhhhh, but there is MORE!!!
  - THE DFARS!!!
  - 245.103-71 Transferring Government property accountability.
  - Follow the procedures at PGI 245.103-71 for transferring Government property accountability.

- Well, that tells me a lot!?!?!?
  - O.k., so we gotta’ go THERE to see the guidance!
1978 versus 2016

• PGI 245.103-71 Transferring Government property accountability.
  – (1) Use only the Standard Form 30 to execute transfers of Government property accountability between existing contracts. No other forms or documents, such as the DD Form 1149, Requisition and Invoice/Shipping Document, are authorized for the transfer of Government property accountability from one contract to another.
  – (2) Modifications for the transfer of Government property accountability shall:
    • (i) Use the fillable PDF formats prescribed at PGI 245.103-72.
    • (ii) Incorporate FAR clauses 52.245-1, Government Property, and 52.245-9, Use and Charges, and the associated DFARS clauses (see 245.107, Contract clauses) to the extent that the gaining contract lacks the required clauses.
1978 versus 2016

- So, TODAY, there have to be MODS to both LOSING AND GAINING CONTRACTS (FAR REQUIREMENT)
  - Can’t use the DD1149 to AUTHORIZE the TRANSFER
- MUST use the fillable PDF formats prescribed at PGI 245.103-72 and
- MUST ENSURE that the Government Property Clauses are in the Contract, i.e.,
  - FAR 52.245-1 and 52.245-9 and
  - DFARS 252.245-7001 through 7004
WOW!!! THAT IS A LOT MORE STUFF THAN WE USE TO REQUIRE!?!?!
SORRY FOLKS – DEM’S THE RULES!!!
RECORDS... WHERE OUR TROUBLE STARTED!

AND SINCE I AM OLD – I HAVE LOTS OF OLD BOOKS!!!
RECORDS – 1953 versus 2016


Part III—Records To Be Maintained

301. General.

(a) In order satisfactorily to perform work under a Government contract, a contractor must maintain some form of control records for all Government Property, whether furnished to or acquired by a contractor for the account of the Government. It is the Government’s policy to designate and use such records as the official contract records, and not to maintain duplicate property control records, other than those required by paragraph 303, and other than such industrial facility records as may be required by the respective departments. Exceptions to this policy may be authorized by the respective departments in special circumstances, such as where the administrative expense of maintaining Government personnel at the Contractor’s plant or providing frequent official visits to the plant would exceed the cost of maintaining Government records or otherwise not be in the best interest of the Government.

(b) The Contractor’s property control records and procedures shall be reviewed and approved in writing by the Contract Administrator at the inception of the contract. Any necessary corrective action will be required of the Contractor prior to approval.
1978 versus 2016

- It was still pretty bad in 1978!!! ASPR/DAR Section 13

13–803 Records of Government Property. Records of Government property established and maintained by the contractor pursuant to the terms of the contract shall be designated and utilized as the official contract records. Duplicate records shall not be furnished to nor be maintained by the Government personnel other than as provided for in this Regulation. Exceptions to this policy may be authorized by the procuring contracting officer if contract administration is retained by the purchasing office when Government property is furnished to a contractor (i) for repair or servicing and return to the shipping organization, (ii) for use on a Government installation, or (iii) under a contract with a short performance period or involving the Government property having an acquisition cost of $25,000 or less.
1984 versus 2016

• The ORIGINAL FAR PUBLICATION
• Anyone know the exact DATE in 1984 that the Original FAR was Published???

45.105: Records of Government property.
   (a) Contractor records of Government property established and maintained under the terms of the contract are the Government’s official Government property records. Duplicate official records shall not be furnished to or maintained by Government personnel, except as provided in paragraph (b) below.
Simply Put...

- With apologies to Edvard Munch....

AGGGGGGHHHHHHHH!!!
2007 versus 2016

• WITH THE PUBLICATION OF THE FAR REWRITE IN 2007 THIS MISCONCEPTION WAS FINALLY FIXED (?????)
  – Though every once in a while I hear, “But the contractor keeps the Government’s OFFICIAL records!”
• No, No, No, No, No!!!
• The GOVERNMENT keeps the GOVERNMENT’s OFFICIAL RECORDS!!! (Amber Propert was here... ask her!!!)
• CONTRACTORS KEEP STEWARDSHIP RECORDS!!!
  – FAR 52.245-1(a) “Property records” means the records created and maintained by the contractor in support of its STEWARDSHIP responsibilities for the management of Government property.
SO, SINCE WE ARE DOING ALL OF THIS HISTORY STUFF – HOW ABOUT SOME RECORD LINEAGE?
Here is the requirement from USC Title 40 Section 524. “Duties of Executive Agencies,” It states,

“(a) REQUIRED.—Each executive agency shall—
– (1) maintain adequate inventory controls and accountability systems for property under its control;
– (2) continuously survey property under its control to identify excess property;
– (3) promptly report excess property to the Administrator of General Services;
– (4) perform the care and handling of excess property; and
– (5) transfer or dispose of excess property as promptly as possible in accordance with authority delegated and regulations prescribed by the Administrator.

USC Title 40 Section 524

- Therefore, each department has a statutory requirement to maintain
  - adequate inventory controls and
  - accountability systems for property under its control
- GOVERNMENT FOLKS, in providing Government/Contract property to contractors, need to be aware that Government property furnished to a contractor will still be on the Government’s accountable property records.
USC Title 40 Section 524

• QUICK – WHICH FEDERAL AGENCY WAS CREATED BY THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949???
  • The General Services Administration (GSA)
Are we all the same???

• Does every Government Agency do it the same way???
• Nope!
• We have in the audience today:
  – NASA folks. They do it THEIR way!  [Note: THEY have a clean audit opinion. Boo–Hiss!!!]
  – DoD folks. They do it THEIR way!
    • DPAS
    • PBUSE
    • AFEMS
    • And we won’t talk about the Marines....
• And the list goes on....
  – Wait a minute... there is more than one Accountable Property System of Record for DoD?
  – Yup!!!
Let’s Refine the Granularity a little more!

- **Program Managers**
  - DODI 5000.02, Subject: Operation of the Defense Acquisition System
  - In DoDI 5000.02 dated January 7th, 2015, in Enclosure 6 we find the following guidance regarding the Program Manager’s responsibilities towards Government Property.
  - In 2.a.(1)(a)(8) It states that the Program Manager will address:
    - The GOVERNMENT ACCOUNTABLE PROPERTY SYSTEM THAT DOCUMENTS ALL GOVERNMENT OWNED PROPERTY whether it is held and managed by the government, contractor, or third party, in accordance with 40 U.S.C. 524 (And we just saw that!!!).

- **Do we have any Program Managers here today?**
  - I have two questions...?
  - Do you know what APSR you use? and
  - Do you know who your APO(s) is/are?
Let’s Refine the Granularity a little more!

• DoD Activities
  – DODI 5000.64 “Accountability and Management of DoD Equipment and Other Accountable Property”
  – Its purpose, it establishes policy and procedures to comply with title 40 of United States Code and 31 U.S.C 901 (which deals with the appointment of Chief Financial Officers for Government Agencies); and outlines requirements that reflect the accountability perspective of property management, which supports the lifecycle management of items to include the documentation of lifecycle events and transactions.
Each department is required to establish and maintain an “Accountable Property System of Record” (APSR).

The APSR is defined as,

– The Government system used to control and manage accountable property records; a subset of existing organizational processes related to the lifecycle management of property; the system that is integrated with the core financial system.
RECORDS

Just a quick Comparison

• DODI 5000.64 for the **GOVERNMENT Side of the House**
• Enclosure 3
• 6. DATA ELEMENTS. The following data elements, at a minimum, are required of an APSR:
  – a. Name, part number and description (noun, nomenclature), model number, and national stock number (NSN), if known.
  – b. Owner (both the accountable and custodial organization).
  – c. Status (e.g., active or inactive (retired), staged, stored, in-transit, transferred, declared excess, awaiting disposal, disposed of).
  – d. Quantity (e.g., received, fabricated, issued, and on-hand) and unit of measure.
  – e. General ledger classification (e.g., military or general equipment, loaned, or leased, or a means to apply business rules for making such a determination).
  – f. Value at full cost and depreciation information, if applicable; or original acquisition cost if the property does not require capitalization.
  – g. Estimated useful life (years or activity based for capitalized property).
  – h. Unique item identifier (UII) or DoD recognized IUID equivalent, if available and necessary for unique identification.
  – i. Date placed in service.
  – j. Location.
  – k. Current condition. Information on supply condition codes is contained in Appendix 2.5 of Reference (h).
  – l. Posting reference (e.g., receiving report number, contract, purchase order, or other procurement identification number, invoice number).

• FAR 52.245-1(f)(1)(iii) for the **CONTRACTOR Side of the House**
• (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, National Stock Number (if needed for additional item identification tracking and/or disposition) and other data elements as necessary and required in accordance with the terms and conditions of the contract.
  – (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 (if required in accordance with the terms and conditions of the contract).

NORMAL GOVERNMENT ORG CHART! 😊
Relationship between PMs, Contracts, Property and DODI 5000.64

- We **MUST** understand the relationship between the *fiduciary accountable records* that the *Government establishes* and maintains for Government property in its possession and the *stewardship records* that the *contractor establishes* and maintains when Government property is provided under a contract.

And I do not have time to discuss all of the computer systems and programs involved with all of these actions!
LISTINGS OF GFP

• WARNING!!! FROM THE FIELD ON BOTH SIDES!!!
• PROGRAMS HAVE BEEN Requesting Lists of GFP accountable to a contract from DCMA Property Administrators (PA).
  – Uhhhhh, DCMA PAs don’t have those records.
  – The Procuring/Buying Command and the Accountable Property Officer (APO), under DoD 5000.64 is to have those records.
  – The Contractor, under FAR 52.245-1 is to have those records.
  – Make sure that you know the RIGHT PERSON/ENTITY that is required to maintain FIDUCIARY RECORDS and STEWARDSHIP RECORDS!

• AND MAKE SURE THE LISTINGS OF GFP – that SGFP PDF that we fight about all the time provides accurate and complete data (REMEMBER the old saying - GIGO).
  – Note – there is even an “old dog” of a court case that rules if a contractor has to do research regarding data that the GOVERNMENT should have provided – they are entitled to an Equitable Adjustment. Buffington Construction ASBCA 9720, October 30, 1964.

Oh, wait – I meant CAP....
LISTINGS OF CAP

• NASA notwithstanding, today as we speak, CONTRACTORS have the RECORDS for Contractor Acquired Property (CAP).
  – The Program Office doesn’t have these records.
  – The Accountable Property Officer doesn’t have these records.
  – This property – at this moment in time – is NOT in the Accountable Property System of Record (APSR)!

So, wait a minute, how does the Government record this “stuff?”
For DoD – go to the DFARS!!!

• DFARS 245.4 – Title to Government Property
  –DFARS 245.402-71 – Delivery of CAP
    • DFARS PGI 245.402-71
    • (1)(i) When delivery of contractor-acquired property is required, the contracting officer shall direct that the delivery be accomplished by contract line item, except ....

Nothing really here. It Directs you To the PGIs!!!
TAKING DELIVERY OF CAP

- DFARS PGI 245.402-71
  - It continues, (2) Each contract line item of contractor-acquired property shall include the following information:

<table>
<thead>
<tr>
<th>CLIN</th>
<th>Item Description/Nomenclature</th>
<th>Type Designation</th>
<th>NSN</th>
<th>PIN</th>
<th>Quantity</th>
<th>Unit of Measure</th>
<th>Serial Number (UIN)*</th>
<th>Original Unit Acquisition Cost</th>
<th>Date Placed in Service by the Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>x</td>
<td>x</td>
<td>As required</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>If known</td>
<td>x</td>
<td>x</td>
</tr>
</tbody>
</table>

And then a REALLY INTERESTING LINKAGE

*Contractor-acquired property items shall be marked as required by DFARS clause 252.245-7001. DFARS 252.245-7001 discusses GFP and “Serially-Managed Item” – which then takes you to DFARS 211.274 and the PGI which takes you to 252.211-7003, Item Unique Identification and Valuation.
So let me get this straight...

If a contractor acquires CAP and the Government wants to take “DELIVERY” of that CAP...

The Contracting Officer needs to create a LINE ITEM (Making that CAP a Deliverable) which includes all of the data elements...

Which will then be entered through IRAPT/WAWF and if it meets the policy requirements of DFARS 211.274-2 and the Clausal requirements of DFARS 252.211-7003, apply the IUID requirements.

WHY DO ALL THIS? RECORDS!! Plus of course more... Things like FIAR!
SINCE I AM ON THIS KICK ABOUT CAP
LET ME COVER ONE OTHER ISSUE REGARDING CAP!
CLASSIFICATION OF GOVERNMENT PROPERTY

- How should these items be classified under the FAR Part 45 and GP Clause Typology?? You have four (4) Choices –
  - MATERIAL,
  - SPECIAL TOOLING,
  - SPECIAL TEST EQUIPMENT or
  - EQUIPMENT.
FIRST ITEM

PLAIN ORDINARY TV MONITOR BOUGHT AT “BEST BUY” USED IN A CONTRACTOR’S CONFERENCE ROOM FOR A MULTITUDE OF PURPOSES.
SECOND ITEM

TOP OF THE LINE “DELL” DESKTOP COMPUTER PLACED ON AN ENGINEER’S DESK AND USED FOR MULTIPLE PURPOSES INCLUDING E-MAIL, WORD PROCESSING, ETC.

No endorsement of Dell Products is intended!

GP CONSULTANTS LLC
THIRD ITEM

HP COTS OSCILLOSCOPE
USED AS A STAND ALONE UNIT
BY AN ENGINEER
TO CONDUCT MULTIPLE
GENERAL PURPOSE
TESTS

(Even takes it home to use over the weekend).

HP / Agilent 54624A
FOURTH ITEM

TOP OF THE LINE
CROWN FORKLIFT
WITH ALL OF THE BELLS
And WHISTLES.
IT IS A BEAUTY!

No endorsement of Crown Products is intended!
IT DEPENDS!!!
So, from a Property Admin perspective – What are these items?

- NOT REALLY....
- As described – they are all **GENERAL PURPOSE EQUIPMENT**!
- Yes, I know, they can all be repurposed making them for example, special test equipment – but that is NOT how I described them.
- Over the decades, REPEAT DECADES, the Government’s Policy has been for the Contractor to bring ALL PROPERTY NECESSARY for contract performance.
- Over the Decades we have seen statement after statement saying, “DON’T AUTHORIZE THE ACQUISITION OF GENERAL PURPOSE EQUIPMENT.”
PROHIBITION ON GENERAL PURPOSE EQUIPMENT

• 1986 – The GODWIN MEMO (A BIGGEE for GP FOLKS!)
  – Discussed the acquisition of General Plant Equipment
    • A NO-NO!
    • The Government does not want to facilitate the contractor
  – Discussed Unallowable Profit or Fee
    • Referenced GAO and DOD IG reports
    • “… Contractors have received a profit when acquiring equipment for the Government account. Action should be taken to recover any improper profits or fees on open contracts whenever this can be accomplished legally.”
Unallowable Profit or Fee (Continued)

- Fixed in the 2007 FAR Rewrite, under 15.404-4(c).
- Before applying profit or fee factors, the contracting officer shall exclude from the pre-negotiation cost objective amounts the purchase cost of contractor-acquired property that is categorized as equipment, as defined in FAR 45.101, and where such equipment is to be charged directly to the contract.

We even have a legal case and an article about this issue:

PROHIBITION ON GENERAL PURPOSE EQUIPMENT

• 1996 FOUR MEMORANDUMS
  – UNDER SECRETARY OF DEFENSE (ACQUISITION AND TECHNOLOGY)
    • Mr. R. Noel Longuemare
  – DIRECTOR, DEFENSE PROCUREMENT OUSD(A&T)
    • Ms. Eleanor Spector
  – DEFENSE LOGISTICS AGENCY (Defense Contract Management Command)
    • Major Gen. Robert W. Drewes
  Defense Contract Audit Agency
  • Mr. Robert DiMucci
• The major thrust...
  – “... Review identified contractor acquisition and direct charging of
general purpose equipment to be a widespread problem.”
  – My comment – IT IS STILL GOING ON!
  – “The review disclosed that contractors are purchasing general purpose
items such as personal computers, fax machines, camcorders, and
furniture and allocating the acquisition costs as direct costs to cost type
contracts.”
  – “Authorizing contractors to acquire specific general purpose equipment
items is inconsistent with current policy and our management
objectives.”
PROHIBITION ON GENERAL PURPOSE EQUIPMENT

• TODAY!!! Contractors and Contacting Officers... PLEASE!!!
• APPLY THE GOVERNMENT PROPERTY CLAUSE PROPERLY
  – “ENTITLED TO REIMBURSEMENT”
    • Drives us to FAR Part 31
      – REASONABLE
      – Allocable
      – ALLOWABLE
    • Drives us to either Cost Accounting Standards (CAS) or Generally Accepted Accounting Principles (GAAP)
      – CAS 402 deals with consistency
      – Kitchen English – if you buy a like item for use in a like purpose you need to charge in a like fashion –
      – We want contractors to BE CONSISTENT in their charging practices!

1. CONTRACTING OFFICERS – are you aware of this issue???
2. PLEASE DO NOT AUTHORIZE CONTRACTORS TO ACQUIRE GENERAL PURPOSE EQUIPMENT WITHOUT TALKING WITH YOUR PROPERTY FOLKS
   NOTE – NASA has a clause to prevent this!
   NFS 1852.245-80
AND SPEAKING OF USING THE GP CLAUSE(S) PROPERLY...
DoD IS TRACKING THIS!!!

• And I am SURE that some of the DC folks have talked about this …
• And our success rate of incorporating the clauses – Well, it has gotten MUCH BETTER!!!
• Though it ain’t perfect yet! 😊
1978/1984 versus 2016

• O.k., I do not want to talk about Government Property clauses back under the ASPR and DAR – they were ALL OVER THE PLACE – 7-104.24, 7-203.21, There were a bunch of Facilities Clauses. It was utter chaos!

• The 1984 FAR wasn’t much better – there were 19 Government Property clauses. Some of which were really weird. But, at least they were ALL in one location!!! FAR 52.245-X.

  » And we had to try and teach them all!!! 😊
• TODAY

• There are THREE (3) – that’s it – THREE Government Property clauses:

  – 52.245-1 The Super GP clause (Ala Dr. John Wyatt)
  – 52.245-2 FP Contract, For initial provisioning of GFP, applicable on a base or installation! [NO OTHER PURPOSE]
  – 52.245-9 A hold over from the old ASPR/DAR/FAR

    – Has a few technical issues, read that “errors”
    – With the potential that this one – with proper modification of the -1 clause – could really go away!
2016 – USE OF THE GP CLAUSES

• Even with all of the automated Contract Writing Systems – which we know make mistakes – this should be a NO BRAINER!!
  – We could spend DAYS talking about the different “Systems” out there!
• THREE CLAUSES – We should have 100 % accuracy in this metric!
  – See Sherri Mattern and Valeria McConnell’s Clause Matrix – A really nice “Cheat Sheet” for clausal application!
• O.k., and ya gotta know the DFARS clauses as well!
Look, I’ve had toooooo many slides already and you are probably suffering from “Death by PowerPoint” sooooooo...

Here is my FAVORITE DAU SLIDE!!!

And if you need a good chuckle do a Google Search for “Death by PowerPoint” Images!
DISPOSITION/DISPOSAL

• Contracts Folks – you have to plan for disposition/disposal

• 45.102 -- Policy.
  – (a) Contractors are ordinarily required to furnish all property necessary to perform Government contracts.
  – (b) Contracting officers shall provide property to contractors only when it is clearly demonstrated—
    • (1) To be in the Government’s best interest;
    • (2) That the overall benefit to the acquisition significantly outweighs the increased cost of administration, INCLUDING ULTIMATE PROPERTY DISPOSAL;

• Under 52.245-1 – paragraph (j) is the LONGEST SECTION IN THE ENTIRE CLAUSE!!!
Where can the Government incur costs for DISPO???

- UNFUNDED LIABILITIES
  - DEMIL
    - 52.245-1(j)(7)(ii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

- HAZARDOUS WASTES
  - Under RCRA, HW produced under contract, the Government is considered the “generator” of the HW.
  - Dickerson vs Holloway, 685 F.Supp. 1555, 27 ERC 2189, 17 Envtl. L. Rep. 21,076
• Where can the Government incur costs for Dispo???
  – STORAGE
  • 52.245-1(j)(6) - The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.
• And a sneaky one – Ship in Place!
  – What!?!?! No!!! They are only holding it for us until we, the Government, have space at our depot!
    » REALLLLLLLLLLLLLLLY????? And they do that for us because we are nice guys?
• From the DoD Guidebook for Contract Property Administration
  
  – If a contract deliverable item is shipped in place (FOB Origin), the deliverable item would become either GFP (in which case 52.245-1 applies) or “not” (52.245-1 does not apply). If the contracting officer intends the property to be GFP, then 52.245-1 and its associated clauses must be added to the contract (assuming the contract lacks those clauses). If the property is not designated as GFP, then the Government has ostensibly imposed upon the contractor a property storage requirement (a “service”), in which case the contracting officer should ensure the contract includes appropriate terms and conditions relevant to the type, scope and duration of storage. The contract should also include necessary and appropriate funding (storage at no cost is not appropriate), a clear statement that the property is not GFP, and an appropriate liability provision (the Government would not ordinarily assume the risk of property loss (self-insure) for property shipped in-place that is not GFP). NOTE: The contract cannot be closed until shipped in-place items are ultimately shipped to their final destination.

THERE IS NO SUCH THING AS A NO COST STORAGE AGREEMENT!!!
IN CLOSING

• I know that I have covered a WIDE RANGE of topics.
• I knew that they had scheduled me for the last day – and that you were probably INUNDATED with information by the other presenters!
• So, I tried to do something slightly different – giving you some historical comparative information as well as issues presented to me by both sides – Government and Industry.
• With that said...
THANK YOU!

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