



SUBCONTRACTOR MANAGEMENT

A PROCESS REQUIREMENT
For the MANAGEMENT OF GOVERNMENT PROPERTY
Presented by Dr. Douglas N. Goetz
CPPM, CF, MIAM

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SOME LEGAL THOUGHTS

So, before we get tooooo
involved – we gotta’
address a
LEGAL ISSUE!!!



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SUBCONTRACTOR CONTROL

Let’s talk about “LAW” for a moment, that being
the Prime Contractor and Government
Relationship

- A Relationship is created through the Contract!
- This relationship is called **“PRIVITY OF CONTRACT.”**







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PRIVITY

- So, what exactly is **PRIVITY**?
- Definition of PRIVITY (Black's Law Dictionary)
- **Privity of contract is that connection or relationship which exists between two or more contracting parties.** It is essential to the maintenance of an action on any contract that there should subsist a privity between the plaintiff and defendant in respect of the matter sued on.



<http://thelawdictionary.org/privity/>




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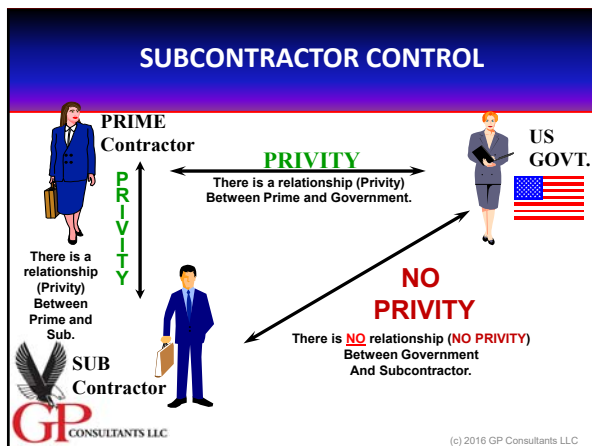
PRIVITY

- **Another definition:**
 - Under the legal doctrine of privity of contract, **only the parties to a contract owe duties to one another** and realize any benefits under the contract. The contracting parties also have the ability to sue one another for breach of contract. While the contracting parties have rights and responsibilities, **third parties typically do not enjoy any rights or have any obligations.**

<http://www.wisegeek.org/what-is-privity-of-contract.htm>





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SUBCONTRACTOR CONTROL

- So, just to reinforce , in 99 44/100% of the cases the **GOVERNMENT has NO contractual relationship, i.e., PRIVITY, with the Prime Contractor's SUBCONTRACTORS!!!**

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So, who is responsible for SUBCONTRACTORS?

That is what we are here to discuss!!!




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SUBCONTRACTOR CONTROL

IS A CONTRACTUAL REQUIREMENT?

FAR 52.245-1(b) "Property management"

(1) **The Contractor shall have a system to manage (control, use, preserve, protect, repair and maintain) government property in its possession.**

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, disposition, or via a completed investigation, evaluation, and final determination for lost, damaged, destroyed, or stolen property. **This requirement applies to all Government property under the contractor's accountability, stewardship, possession or control, INCLUDING ITS VENDORS OR SUBCONTRACTORS (see (f)(1)(v)).**



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SUBCONTRACTOR CONTROL

IS A CONTRACTUAL REQUIREMENT?

FAR 52.245-1(b) "Property management"

(3) The Contractor shall include the **REQUIREMENTS** of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.


**FLOW DOWN
REQUIREMENT**




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SUBCONTRACTOR CONTROL

- FIRST ISSUE...
- Do you "flow down" the GP Clause VERBATIM?
- **NO!!!**
- You are to flow down the "REQUIREMENTS" of the clause!
- If you "flowed down" the clause verbatim there could be enormous problems with contract/subcontract interpretation!!!



So, check
Your Ts&Cs
If you use
A Boilerplate!



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SUBCONTRACTOR CONTROL

IS A CONTRACTUAL PROCESS REQUIREMENT:

FAR 52.245-1(f)(1) "Contractor Plans and Systems"

Contractors shall develop property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:...

- Paragraph (f) calls out of the **OUTCOMES** driven by the **PROCESSES** of the Property Management System!
- **The GP Clause, in paragraph (f) addresses SUBCONTRACTOR CONTROL!**




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SUBCONTRACTOR CONTROL

IS A CONTRACTUAL PROCESS REQUIREMENT:

FAR 52.245-1(f)(1) "Contractor Plans and Systems"

(v) Subcontractor control.

(A) The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure APPROPRIATE flow down of contract terms and conditions, e.g., limited liability for loss, damage, destruction or theft of Government property.



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SUBCONTRACTOR CONTROL

IS A CONTRACTUAL REQUIREMENT:

FAR 52.245-1(f)(1) "Contractor Plans and Systems"

(v) Subcontractor control.

(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.



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SUBCONTRACTOR CONTROL

- It is the CONTRACTOR'S responsibility to establish how the **OUTCOMES** will be ensured through the **PROCESS**, i.e., the methods and methodologies, to accomplish this process in accordance with & using:

- ILPs and
- VCSes and
- CCPs!



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SUBCONTRACTOR CONTROL

- There are **TWO VOLUNTARY CONSENSUS STANDARDS** that may be applied to this process:
 - **ASTM E2936-13, Standard Guide for Contractor Self Assessment for U.S. Government Property Management Systems.**
 - **ASTM E3015 – 15, Standard Guide for Management of Customer-Owned Property Assets in Possession of Supplier, Contractor or Subcontractor.**

– Note – many OTHER ASTM VCSes come into play for OTHER outcomes and processes!






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PRIME/SUBCONTRACTOR RESPONSIBILITIES


So, we have seen **DIRECTION TO THE CONTRACTOR...**
*“The **PRIME CONTRACTOR** is **responsible and accountable for SUBCONTRACTOR surveillance and all GP in their possession or control....”***
 FAR 52.245-1(b)

Which reinforces the requirement that it is the **PRIME’S RESPONSIBILITY** to **OVERSEE** its **SUBS!**

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THINGS THAT SHOULD BE ADDRESSED IN A SUBCONTRACT WITH GP




←

PRIME'S OPINION OF P.O.

→

SUB'S OPINION OF P.O.




Sorry, small attempt at humor...

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PRIME/SUBCONTRACTOR REQUIREMENTS

SUBCONTRACT/P.O. REQUIRED INFO!!

- Flow down of GP requirements - **FAR 52.245-1(b)(3)**
 - We discussed this earlier...
 - Since “the Contractor *shall* include *the* **REQUIREMENTS** of this **CLAUSE** in all subcontracts under which Government property is acquired or furnished for subcontract performance,” ... the subcontractor is bound by **ALL APPLICABLE REQUIREMENTS** of the clause!!!




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PRIME/SUBCONTRACTOR REQUIREMENTS

INFORMATION REQUIRED TO BE SPECIFIED IN THE SUBCONTRACT/P.O!!!

- Clearly **identify** the Government Property to be provided:
 - Items to be **Furnished** as **GP**
 - Items **allowed** to be **Acquired** (Generally under CR SubKs) as **CAP** (Generally implicit, i.e., in accordance with the GP Clause though some Primes **LIMIT** what may be acquired).
 - BE CAREFUL ABOUT DIRECTING THE ACQUISITION OF SPECIFIC TYPES OR ITEMS OF PROPERTY



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PRIME/SUBCONTRACTOR REQUIREMENTS

MORE SUBCONTRACT/P.O. REQUIRED INFO!!

- Some flow down requirements:
 - Physical Inventory Requirements
 - Reporting Requirements
 - Any Agency Specific, e.g., NASA 1018, etc.

WARNING:
 Make sure these Items are Discussed in **YOUR PMS** and The Ts & Cs of **SUBCONTRACTS**



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PRIME/SUBCONTRACTOR REQUIREMENTS

MORE SUBCONTRACT/P.O. **REQUIRED** INFO!!

- Some more flow down requirements: **WARNING: Make sure these items are Discussed in YOUR PMS and The Ts & Cs of SUBCONTRACTS!**
 - Disposition Instructions
 - Inventory Schedule Requirements
 - Timeframes for reporting/submission
 - 52.245-1(j)(9) Subcontractor inventory disposal schedules. The **Contractor shall require its Subcontractors to submit inventory disposal schedules to the Contractor** in accordance with the requirements of paragraph (j)(3) of this clause.



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PRIME/SUBCONTRACTOR REQUIREMENTS FOR LIABILITY

- **LIABILITY FLOWDOWN TO SUBs IS ESPECIALLY CRITICAL!**
 - There are primarily two forms of **LIABILITY** for the Loss, Theft, Damage or Destruction of Government Property applied in the PRIME's Contract. Either:
 - LIMITED RISK OF LOSS (FAR 52.245-1)
 - FULL RISK OF LOSS (FAR 52.245-1(ALT. I))
- **LOSS REPORTING REQUIREMENTS**
 - What will be reported: When, How, To Whom, Timeframe?



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PRIME/SUBCONTRACTOR REQUIREMENTS FOR LIABILITY

- **WHY?**
- **BECAUSE LOSS, THEFT, DAMAGE AND DESTRUCTION HAPPENS TO THE BEST OF US!**



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PRIME/SUBCONTRACTOR REQUIREMENTS FOR LIABILITY

- **TWO IMPORTANT NOTES!!!**
 - (f)(1) vii) **Relief of stewardship responsibility and liability.** The Contractor shall have a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Government property, **including losses that occur at subcontractor or alternate site locations.**
 - **POLICY NOTE -- (FAR 45.104(c))** A prime contractor that provides Government property to a subcontractor shall not be relieved of any responsibility to the Government that the prime contractor may have under the terms of the prime contract.



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PRIME/SUBCONTRACTOR REQUIREMENTS FOR LIABILITY

- Prime Contractor's must pay particular attention to **WHICH LIABILITY PROVISION** they **FLOW DOWN** to their Subcontractors!
- This is determined by:
 - PRICING Arrangement of Prime Contract
 - PRICING Arrangement of Sub-Contractor



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PRIME/SUBCONTRACTOR REQUIREMENTS FOR LIABILITY

FIXED PRICE (COMPETITIVE)
PRIME CONTRACT/CONTRACTOR
WITH **NO**
Requirement for a Cert of Current Cost and Pricing Data)
WITH GOVERNMENT PROPERTY CLAUSE
OF FAR 52.245-1 (Alternate I)
FULL RISK OF LOSS

REGARDLESS OF THE PRICING ARRANGEMENT
OF THE SUBCONTRACT
PRIME WOULD AUTOMATICALLY
FLOW DOWN THE
FULL RISK OF LOSS
TO ITS
SUBCONTRACTORS AND VENDORS
WHEN
GP IS PROVIDED TO SUB
GP REQUIREMENTS.

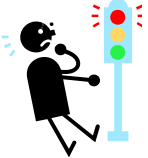

Let's make
This simple.
If you, the **Prime**,
Have a Prime
Contract with
The **FULL risk of
Loss** Provision,
You will **flow
Down** the same
To your Subs!



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PRIME/ SUBCONTRACTOR REQUIREMENTS

- It is the Prime Contractor's **RESPONSIBILITY** to clearly spell out **HOW** all of this will be done in its Property Management System...
- And Include all of the **DATA (Record Keeping), MANAGEMENT and REPORTING REQUIREMENTS!**



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PRIME/SUBCONTRACTOR RESPONSIBILITIES

SOME THOUGHTS FOR THE PA AND THE CONTRACTOR...

The **PRIME CONTRACTOR shall assure** FAR 52.245-1(f)(1)(v):

1. Subcontracts are **PROPERLY** administered
 - Who is the **RESPONSIBLE** person within the office/company?
2. Reviews are **PERIODICALLY** performed to determine subcontractor's property management system
 - What is the **FREQUENCY** of surveillance (Define Periodic)?
 - What is the **METHOD** of surveillance?
 - How is the surveillance **DOCUMENTED**?
 - Are **CORRECTIVE ACTION(s)** needed?
 - Are subcontractor deficiencies **RESOLVED**?



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PRIME'S OVERSIGHT OF SUBCONTRACTORS

IS A CONTRACTUAL REQUIREMENT:

FAR 52.245-1(f)(1) "Contractor Plans and Systems"
Contractors shall develop property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:...

(v) Subcontractor control.
(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.

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PRIME'S OVERSIGHT OF SUBCONTRACTORS

- This means that the Prime needs to establish a **SYSTEM to ASSESS or AUDIT** its Subcontractors – and **DOCUMENT** that process in their Property Management System Procedures.
- A **RISK MANAGEMENT** Approach should be used to determine the **LEVEL of SURVEILLANCE**.
- The **ACTUAL** Surveillance may take many forms.



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PRIME'S OVERSIGHT OF SUBCONTRACTORS

- Some thoughts about **SURVEILLANCE**. Two Suggestions:
 - 1. **APPLY A RISK MANAGEMENT STRATEGY** and
 - 2. **DETERMINE and APPLY A METHODOLOGY OR METHODOLOGIES!**



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PRIME'S OVERSIGHT OF SUBCONTRACTORS

- **FOR EXAMPLE -- DCMA INSTRUCTION 124 has a RISK MANAGEMENT CONSTRUCT THAT CAN BE APPLIED**
 - So, let's talk about **RISK RATINGS FIRST!**



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THREE RISK LEVELS

- IN DCMA INSTRUCTION 124 THREE (3) Risk Ratings are provided:
 - HIGH
 - MODERATE and
 - LOW



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ASSESSING OR DETERMINING RISK PRIOR TO AN AUDIT

- ... the PA shall assign risk ratings (high, moderate, or low) based on the following criteria:
 - 3.13.5.1. **High Risk.** High Risk means the contractor's system has **significant deficiencies** as determined by the Contracting Officer. High Risk also means the contractor has undocumented, inconsistent, or chaotic contractor processes and practices; findings of fraud, waste and abuse; safety or national security concerns; or cost, schedule or performance issues. High Risk contractors include those with a pattern of questionable or non-existent procedures and those with poor internal controls.



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ASSESSING OR DETERMINING RISK PRIOR TO AN AUDIT

- 3.13.5.2. **Moderate Risk.** Moderate Risk means that, although the contractor's property management system is in an approved status, new or changing conditions pose a degree of uncertainty or potential threat to future performance.
 - **Moderate Risk** contractors can include inexperienced contractors furnished with or acquiring property for the first time; i.e., new contractors (see paragraph 3.6); contractors without fully developed procedures and systems; contractors who have deployed or who are in the process of deploying a new property management system, or those with new management teams. Moderate Risk contractors can include newly assigned and formerly High Risk contractors who have completed all corrective actions, but do not yet meet low risk criteria.



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ASSESSING OR DETERMINING RISK PRIOR TO AN AUDIT

- **3.13.5.3. Low Risk.**
 - **Low Risk** means the contractor's auditable processes are consistent with contract terms and conditions, are embedded within the organization, and supported throughout all levels of management. Low risk can also mean the contractor focuses continually on improving its processes through both incremental and technological improvements; the system is well-managed, effective and efficient; processes produce consistently positive results; cost, schedule, performance or other contractual requirements are not in danger of being compromised, there are adequate internal controls in place, and no known significant deficiencies. New and newly assigned contractors should not be rated low risk until a satisfactory track record is established.



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ASSESSING OR DETERMINING RISK PRIOR TO AN AUDIT

- **WAIT DOUG... I'm a contractor. May I use those risk Ratings???**
 - SURE!
 - WHY NOT?!?!?
 - If they are good enough for the Government as a "standard" why should they not be good enough for the Contractor?
 - Or, you could use the ASTM STANDARD on SELF ASSESSMENT which provides RISK RATING GUIDELINE THAT IS EQUIVALENT TO THE DCMA THOUGHTS!
 - ASTM E2936-13 (WWW.ASTM.ORG)



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PRIME'S OVERSIGHT OF SUBCONTRACTORS

- **WHAT METHODOLOGY AND FREQUENCY OF AUDIT SHOULD WE USE?**
- **IT DEPENDS!!!**
- **DCMA has TWO PRIMARY methods of performing their Property Management System Analyses (PMSA):**
 - STANDARD PMSA and
 - LIMITED PMSA



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PRIME'S OVERSIGHT OF SUBCONTRACTORS

- **STANDARD PMSA**

- Standard PMSAs require entrance and exit conferences, detailed tests and formal examination/evaluation of a contractor's property management system. ...Standard PMSAs, which involve plant visits and detailed testing and formal examination and evaluation of contractor processes....
- Standard PMSAs involve plant visits and detailed testing and formal examination and evaluation of contractor processes.
- DCMA provides extensive guidance on the proper testing of the system in its instruction, i.e., population definition, sampling etc!



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PRIME'S OVERSIGHT OF SUBCONTRACTORS

- **LIMITED PMSA**

- 3.7.3.2. Limited PMSAs. Unlike Standard PMSAs, which involve plant visits and detailed testing and formal examination and evaluation of contractor processes, **Limited PMSAs or "desk audits" rely on contractor responses to a series of questions covering each required element of a contractor's property management system. Limited PMSAs or "desk audits" permit less formal testing methods and techniques** including detailed on-site testing of select processes, contractor responses to a series of questions covering each required element of a contractor's property management system, and interviews of contractor personnel among other methods as appropriate, depending on the risk level, amount and value of property, etc.



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PRIME'S OVERSIGHT OF SUBCONTRACTORS

- **ARE THERE OTHER FORMS OF SURVEILLANCE THAT A CONTRACTOR COULD USE?**

- Contact by Letter, requesting verification that GP is still there and accountable
- Telephone Interview with company rep covering specific topics
- Visual Verification by Prime's Representative
 - E.g., Using a Quality Assurance Rep who goes to the facility
- PERFORMANCE of a FULL AUDIT in accordance with Generally Accepted Audit Standards (GAAS)
- PERFORMANCE of an AUDIT as set forth in ASTM E2936-13, "Standard Guide for Contractor Self Assessment for U.S. Government Property"
- Or any other methodology with a known degree of reliability and validity



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PRIME'S OVERSIGHT OF SUBCONTRACTORS

- DCMA Frequency of PMSA

- 3.8.1. **High Risk**. Perform a Standard PMSA at least **annually** until such time as the contractor improves to at least a moderate risk level and the PA determines the status of the contractor's system justifies a reduced level of oversight.
- 3.8.2. **Moderate Risk**. Perform a Standard or Limited PMSA as frequently as conditions warrant, but at least **once every 2 years**.
- 3.8.3. **Low Risk**. Perform a Standard or Limited PMSA as frequently as conditions warrant, but at least **once every 3 years**.



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PRIME'S OVERSIGHT OF SUBCONTRACTORS

- ONCE AGAIN – COULD A CONTRACTOR REPLICATE DCMA's FREQUENCY of PERFORMING A PMSA ON ITS SUBCONTRACTORS?

- Again – WHY NOT?!?!?
- If it is Good Enough for the Government... You get the idea! ☺

- **And we can go one step further – BACK TO THE ASTM SELF ASSESSMENT STANDARD – E2936-13 SAY THE SAME EXACT THING!!!**



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IMPORTANT POINT HERE...



WHY TRY AND RECREATE THE WHEEL WHEN ESTABLISHED STANDARDS AND PROTOCOLS EXIST???



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PRIME'S OVERSIGHT OF SUBCONTRACTORS


- **WHATEVER/WHICHEVER** form(s) of surveillance you decide to use it should be **CLEARLY DOCUMENTED** in the Property MANAGEMENT SYSTEM PROCEDURES!!!

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SOME OTHER RESOURCES


- Aerospace Industries Association (AIA) created a guide for Self Assessment (Audit) entitled, "Guideline for Contractor Self-Assessment for Government Property Management"
- http://www.aia-aerospace.org/assets/Contractor_Self_Assessment_V_1_0_1.pdf
 - Note: I do not know how much longer this document will be available at this location due to a reorganization of AIA and its priorities.
 - It was available on February 26th, 2016 last time I checked the Link!



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PRIME'S OVERSIGHT OF SUBCONTRACTORS

- **SO – TWO CLOSING THOUGHTS:**
 - If the Subcontractor's Management of Government Property is **LACKING** or **INADEQUATE** – then the Prime is responsible in requiring the Subcontractor to prepare a **Corrective Action Plan!**
 - AND**
 - **REVIEW** or **AUDIT RESULTS** need to be made available to the Government Property Administrator.



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SUBCONTRACTOR CONTROL

- **We have seen:**
 - We discussed the Legal Concept of **PRIVITY**
 - The **PRIME CONTRACTOR's RESPONSIBILITIES** in regard to **MANAGING** their **SUBs!**
 - We looked at the **CLAUSAL REQUIREMENTS** for:
 - **FLOWDOWN** of the GP Clause requirements including
 - Liability, Physical Inventories, Disposal, etc
 - **PERFORMANCE** of **AUDITS** on Subcontractors



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SUBCONTRACTOR CONTROL

- **O.k., STOP AND BREATHE FOR A MINUTE...**
- **CAUSE THERE IS A LITTLE BIT MORE!!!**
- **LAGNIAPPE!!!**



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SUBCONTRACTOR CONTROL

- I would like to look at a **NUMBER** of specific flow down requirements in a little more detail! We have seen the requirement(s) of 52.245-1(b) –
 - (2) The Contractor's responsibility extends from the initial acquisition and blah, blah blah... including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).



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SUBCONTRACTOR CONTROL

- We saw the requirement of FAR 52.245-1(b):
 - (3) The Contractor shall include **THE REQUIREMENTS** of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.



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SUBCONTRACTOR CONTROL

- And we saw the **PROCESS** requirements under FAR 52.245-1(f)(1)(v)
 - SUBCONTRACTOR CONTROL



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SUBCONTRACTOR CONTROL

- So, we should all be pretty clear on **THOSE** two requirements!
- Right?
 - But, let's look at a few **OTHER REQUIREMENTS!!!**



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SUBCONTRACTOR CONTROL

- **52.245-1(g)**

- The issue of **ACCESS!!!**

- (1) ... This access includes all site locations and, **with the Contractor's consent, all subcontractor premises.**



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SUBCONTRACTOR CONTROL

- **52.245-1(g)**

- (4) The Contractor shall ensure Government access to subcontractor premises, and all Government property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.



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SUBCONTRACTOR CONTROL

- **52.245-9 –**

- **IN MY OPINION -- A BIG BOO-BOO!!!**

- **b) Use of Government property. The Contractor may use the Government property without charge in the performance of—**

- (1) Contracts with the Government that specifically authorize such use without charge;

- (2) **Subcontracts of any tier under Government prime contracts if the Contracting Officer having cognizance of the prime contract—**

- (i) Approves a subcontract specifically authorizing such use; or
 - (ii) Otherwise authorizes such use in writing; and

- (3) Other work, if the Contracting Officer specifically authorizes in writing use without charge for such work.



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SUBCONTRACTOR CONTROL

- HOW ABOUT FAR 52.244-2???
- REQUIREMENTS BEFORE PLACING A SUBCONTRACT!!
 - ADVANCE APPROVAL IF CONTRACTOR HAS A DISAPPROVED PURCHASING SYSTEM
 - NOTIFICATION IF PO is:
 - OVER A \$ THRESHOLD
 - Or % OF COST



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SUBCONTRACTOR CONTROL

- And let me go to the DFARS for just a moment!
- **DFARS 252.211-7003 Item Unique Identification and Valuation**
 - (g) Subcontracts. If the Contractor acquires by subcontract, any item(s) for which item unique identification is required in accordance with paragraph (c)(1) of this clause, **the Contractor shall include this clause, including this paragraph (g), in the applicable subcontract(s), including subcontracts for commercial items.**



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SUBCONTRACTOR CONTROL

- **DFARS 252.211-7007, Reporting of Government-Furnished Property.**
 - (e) When Government-furnished property is in the possession of **SUBCONTRACTORS**, Contractors shall ensure that **REPORTING** is accomplished using the data elements required in paragraph (d) of this clause.
 - (g) Procedures for **UPDATING** the IUID Registry
 - (1) The Contractor shall update the Registry ... of items that are–
 - (ii) Delivered or shipped... **EXCEPT WHEN SHIPMENT IS TO A SUBCONTRACTOR....**



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SUBCONTRACTOR CONTROL

- DFARS 252.244-7001 Contract Purchasing System Administration
 - (c) System Criteria
 - (2) Ensure that all applicable purchase orders and subcontracts **contain all flowdown clauses....**
 - (13) Ensure **proper type of contract selection** and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;
 - (16) Notify the Government of the award of all subcontracts that contain the FAR and DFARS **flowdown clauses that allow for Government audit of those subcontracts**, and ensure the performance of audits of those subcontracts;
 - (19) Establish and maintain policies and procedures to ensure purchase orders and **subcontracts contain mandatory and applicable flowdown clauses**, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract,



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SUBCONTRACTOR CONTROL

- **NONE OF THE DFARS GP CLAUSES (252.245-7001 through 7004) discuss SUBCONTRACTS or SUBCONTRACTORS**
EXCEPT:
 - 252.245-7004 Reporting, Reutilization and Disposal. And then it is only for the Terms and Conditions regarding Sales Contracts
 - (j)(9)(i) and (ii) for DEMILITARIZATION!



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ON THAT NOTE...



THANK YOU!!!

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**SUPPLEMENTAL
MATERIAL ON
SUBCONTRACTOR
LIABILITY**

FIRST FAR APPLICATION

FIXED PRICE (COMPETITIVE/SEALED BID)

PRIME CONTRACT/CONTRACTOR

WITH **NO**

Requirement for a Cert of Current Cost and Pricing Data)

WITH GOVERNMENT PROPERTY CLAUSE

Of FAR 52.245-1 (Alternate I)

FULL RISK OF LOSS



REGARDLESS OF THE PRICING ARRANGEMENT

OF THE SUBCONTRACT

PRIME WOULD AUTOMATICALLY

FLOW DOWN THE

FULL RISK OF LOSS

TO ITS

SUBCONTRACTORS AND VENDORS

WHEN

GP IS PROVIDED TO SUB

+

GP MANAGEMENT REQUIREMENTS.

Why is it simple? If Prime has **Full** risk of loss –

Sub should have **Full** Risk of Loss!

NOTE: If Prime flows down LIMITED Risk of Loss to its sub

-- A RARITY -- it does NOT effect the liability of the prime.

The Prime is still liable.

SECOND FAR APPLICATION

1. **COST REIMBURSEMENT NEGOTIATED** or
2. **FIXED PRICE NEGOTIATED**
PRIME CONTRACT/CONTRACTOR
EXCEEDING \$700,000
(Requiring a Cert of Current Cost and Pricing Data)
AND FAR 52.215-12*
AND
PRIME HAS GOVERNMENT PROPERTY CLAUSE
Of FAR 52.245-1
LIMITED RISK OF LOSS

Automatically Flow Down the

Limited Risk of Loss

GP Provision

COST REIMBURSEMENT
SUBCONTRACTOR
Being awarded a
NEGOTIATED subcontract
Exceeding \$700,000
AND
Containing 52.215-12*
AND
Providing Government
Property +
GP MANAGEMENT
REQUIREMENTS

FIXED PRICE
SUBCONTRACTOR
Being awarded a
NEGOTIATED subcontract
Exceeding \$700,000
AND
Containing 52.215-12*
AND
Providing Government
Property +
GP MANAGEMENT
REQUIREMENTS

* **NOTE:** There are exceptions at 15.403-1 where this clause is NOT required.

THIRD FAR APPLICATION

1. **COST REIMBURSEMENT NEGOTIATED** or
2. **FIXED PRICE NEGOTIATED**
PRIME CONTRACT/CONTRACTOR
EXCEEDING \$700,000
(Requiring a Cert of Current Cost and Pricing Data)
AND FAR 52.215-12* or
AND (For all above)
WITH GOVERNMENT PROPERTY CLAUSE
Of FAR 52.245-1
LIMITED RISK OF LOSS

Flow Down
The **FULL Risk of Loss**
GP Provision to a

FIXED PRICE
SUBCONTRACTOR
Being awarded a
COMPETITIVE/SEALED BID subcontract
Regardless of \$ Value
AND
Providing Government Property +
GP MANAGEMENT REQUIREMENTS

* **NOTE:** There are exceptions at 15.403-1 where this clause is **NOT** required.

FOURTH FAR APPLICATION

1. COST REIMBURSEMENT NEGOTIATED
PRIME CONTRACT/CONTRACTOR **UNDER \$700,000**
(**NOT** Requiring a Cert of Current Cost and Pricing Data)
AND WITH GOVERNMENT PROPERTY CLAUSE
Of FAR 52.245-1
LIMITED RISK OF LOSS

In Awarding a **FIXED PRICE COMPETITIVE/SEALED BID**
Contract
PRIME **WOULD** FLOW DOWN **FULL RISK OF LOSS**
TO ITS SUBs and VENDORS WHEN GP
IS PROVIDED TO SUB
+ GP MANAGEMENT REQUIREMENTS.

In Awarding a **FIXED PRICE NEGOTIATED** Contract,
PRIME **MAY*** FLOW DOWN **LIMITED RISK OF LOSS**
TO ITS SUBs and VENDORS WHEN GP
IS PROVIDED TO SUB
+ GP MANAGEMENT REQUIREMENTS
NOTE: FAR 31.2 Incorporated by Reference

In Awarding a **COST REIMBURSEMENT NEGOTIATED**
Contract,
PRIME **MAY*** FLOW DOWN **LIMITED RISK OF LOSS**
TO ITS SUBs and VENDORS WHEN GP
IS PROVIDED TO SUB
+ GP MANAGEMENT REQUIREMENTS
NOTE: FAR 31.2 Incorporated by Reference

* Prime **MAY** flow down Limited Risk Of Loss if... Prime requires sub to exclude insurance for GP. See 31.205-19 for allowability of Insurance costs. If Subktr is unable/unwilling to exclude insurance then Prime would flow down full!

FIFTH APPLICATION FOR DOD ONLY

1. FIXED PRICE NEGOTIATED

PRIME CONTRACT/CONTRACTOR

**(NOT REQUIRING a Cert of Current Cost and Pricing Data
UNDER \$700,000)**

SEE DFARS 245.107 for Policy

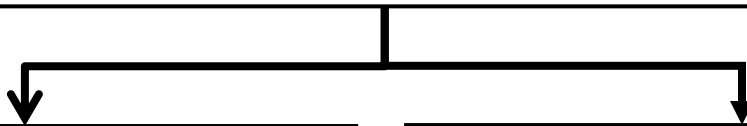
[(6) For negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data for which Government property is provided, use the clause at FAR 52.245-1, Government Property, without its Alternate I.]

AND

WITH GOVERNMENT PROPERTY CLAUSE

Of FAR 52.245-1

LIMITED RISK OF LOSS



In Awarding a
FIXED PRICE **COMPETITIVE/**
SEALED BID

Contract, PRIME **WOULD**
FLOW DOWN THE
FULL RISK OF LOSS

TO ITS

SUBs and VENDORS

WHEN

GP IS PROVIDED TO SUB

+

GP MANAGEMENT
REQUIREMENTS.

In Awarding a
FIXED PRICE **NEGOTIATED**

Contract, PRIME **MAY***

FLOW DOWN

LIMITED RISK OF LOSS

TO ITS

SUBs and VENDORS

WHEN

GP IS PROVIDED TO SUB

+

GP MANAGEMENT
REQUIREMENTS

* Prime **MAY** flow down Limited Risk Of Loss if... Prime requires sub to exclude insurance for GP. See 31.205-19 for allowability of Insurance costs. If Subktr is unable/unwilling to exclude insurance then Prime would flow down full!