UTILIZATION OF GOVERNMENT PROPERTY

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THE REAL TITLE

• UTILIZATION OF GOVERNMENT PROPERTY...THE FORGOTTEN PROCESS AND OUTCOME!
UTILIZATION OF GP

• So, I know that we are supposed to keep records of Utilization of GP.
• First off – to what does that apply?
• ALL GOVERNMENT PROPERTY???
  • Not really
  • Material is not Utilized – it is consumed!
• So that leaves us:
  • Equipment
  • Special Test Equipment
  • Special Tooling
  • NOTE – We’ll skip real property as the Government generally DOES NOT “Furnish” Real Property. THAT is a topic for another discussion.

So, an Overview of things I would like to discuss!

• Why?
• HISTORICAL REQUIREMENTS
  • Really Old Stuff
  • Old Stuff
• CONTEMPORARY REQUIREMENTS
• LITERATURE
WHY is UTILIZATION IMPORTANT?

• BECAUSE IT ADDS VALUE!
• We take for granted the ACTUAL NEED (And every engineer tells use that they need EVERY piece of Equipment regardless of condition or actual need) for much of the equipment that we have in our possession or control – regardless of whether we are Government or Industry.

2016 Fall Education Seminar

WHY is UTILIZATION IMPORTANT?

• More Importantly, we have EMPIRICAL EVIDENCE that tracking, MANAGING the UTILIZATION of PROPERTY (Regardless of whether it is Government owned or Contractor owned)...
• A series of Three Articles by Mr. Bob McFarland:
  • Value Based Asset Management -- Documented Evidence of Property Management Value
  • The Property Professional, Volume 20, Issue 3
  • The Property Professional, Volume 20, Issue 4
  • The Property Professional, Volume 21, Issue 1

WWW.NPMA.ORG
WHY is UTILIZATION IMPORTANT?

• The EMPIRICAL EVIDENCE that tracking, MANAGING the UTILIZATION of PROPERTY at his company/employer... The total cost savings/cost avoidance over a six year period:

$22,558,788

So, don’t believe me – read the articles and analyze the data!!!

So, let’s see how this plays out!!!
REALLY OLD STUFF!!!

• ASPR/DAR Appendix B
• The CONTRACTUAL DOCUMENT BINDING UPON CONTRACTORS BEFORE THE FAR

GOVERNMENT PROPERTY IN POSSESSION OF CONTRACTORS

B–603 Utilization of Government Property. The contractor’s procedures shall be in writing and adequate (i) to assure that Government property will be utilized only for those purposes authorized in the contract, and that any required approvals are obtained, and (ii) to provide a basis for determining and allocating rental charges.

Ahhhhhh, but there is more!!!

REALLY OLD STUFF!!!

• MORE ASPR/DAR Appendix B

B–603.1 Utilization of Industrial Plant Equipment. The procedures applicable to IPE shall, as a minimum:

(i) establish a minimum level of utilization below which an analysis of need shall be made and retention justified, except for inactive approved plant equipment packages. The utilization level may be established for individual items or families of items depending upon circumstances of use;

(ii) provide for recording authorized and actual use consistent with the utilization levels established under (i) above;

(iii) require periodic analyses of production needs for IPE and of future utilization based upon known requirements; and

(iv) have firm provisions for immediately reporting to the contracting officer all IPE items for which retention is not justified.
REALLY OLD STUFF!!!

• ASPR SUPPLEMENT # 3
• The Property Administrator’s Guidance BEFORE the DoD Property Manual 4161.2-M rescinded and replaced by the unnumbered DoD Guidebook.

PROPERTY ADMINISTRATION

Part 7—Contractor Utilization of Government IPE

S3-701 Utilization Surveys.
(a) Responsibility for assuring that the contractor has effective procedures to evaluate Industrial Plant Equipment (IPE) utilization rests with the property administrator. However, when necessary, the contract administration office shall provide specialists qualified to perform the technical portion of utilization surveys to assist the property administrator in determining the adequacy of the contractor’s IPE procedures.

REALLY OLD STUFF!!!

• ASPR SUPPLEMENT # 3
• Hmmmmmm?? So a different career field “Normally” did the review of this Category/Function now called an “Outcome” related to a Process under 52.245-1(f).
• This career field was the “Production Specialist” – a GS 1150 Series individual.
  • (2) furnishing technical information, assistance, and advice concerning facilities, machinery, methods, materials and standards for industrial production (which may include exploration, extraction, refining, manufacturing and processing operations);
  • (4) conducting surveys of industrial plants to evaluate capacity and potential for production of specific commodities;
  • (5) planning, evaluating, and maintaining technical surveillance over Government production operations, either in contractor plants or in Government-operated plants;
REALLY OLD STUFF!!!

• ASPR SUPPLEMENT # 3

(b) Upon assignment of an initial contract under which Government-owned IPE is to be provided to a contractor, the property administrator shall require the contractor, in accordance with ASPR B-403 or C-403, to establish procedures and techniques for controlling the utilization of Government-owned IPE. The property administrator, with the assistance of technical specialists, if necessary, shall evaluate the procedures established by the contractor for effective utilization of IPE. A record of the evaluation shall be prepared and become a part of the property administration file. If the procedures are determined inadequate, the record shall identify the deficiencies and the corrective actions necessary. In the event the deficiencies are not corrected by the contractor, the property administrator shall promptly refer the matter to the administrative contracting officer.

Sorta’ the same stuff we do today – except it is done by the Property Administrator.

WHOA!!! What the heck is all of that stuff???
REALLY OLD STUFF!!

• ASPR SUPPLEMENT # 3 has more .. But I didn’t want to bore you!

(d) Special surveys shall be conducted when a significant change occurs in the contractor’s production schedules. Examples of such changes are termina-
tions, completion of contracts or major adjustments in programs. Special surveys
may be limited to a given department, activity, or division of a contractor’s opera-
tion.

(e) In the absence of adequate justification for retention, Government-owned
IPE will be identified and reported in accordance with Section XXIV. Items
which are part of inactive approved Plant Equipment Packages (PEP) are exempt
from utilization surveys. Active PEP/PEP items become subject to utilization
surveys. The contract administration office shall ascertain periodically whether
existing PEP authorizations are current.

(f) Recommendations for contractor action to correct or improve controls
shall be discussed by the property administrator with contractor management per-
nalled to reach agreement as to corrective action. When action by the contractor
is recommended, follow-up shall be maintained to assure that appropriate action
is taken. In event satisfactory resolution cannot be reached, the matter shall be
referred to the ACO.

S3-701

ARMED SERVICES PROCUREMENT REGULATION

OLD STUFF!!!

• OLD FAR (PRE-2007) Government Property Clauses
  • FAR 52.245-2 for Fixed Price Contracts and
  • FAR 52.245-5 for Cost Reimbursement Contracts

• (d) Use of Government property. The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

[PRETTY STANDARD STUFF – even today!!]
OLD STUFF!!!

• FAR PART 45 – 1984 Version
  • Of Which FAR 45.5 was contractually binding upon the contractor via an incorporation be reference.

• 45.509-2 Use of Government property.
  • (a) The contractor's procedures shall be in writing and adequate 
    (1) to assure that Government property will be used only for those purposes 
    authorized in the contract and that any required approvals will be obtained, and 
    (2) to provide a basis for determining and allocating rental charges.

OLD STUFF!!!

• 45.509-2 Use of Government property.
  • (b) With respect to plant equipment with an acquisition value of $5,000 or more, the procedures, 
    as a minimum, shall—
    • (1) Establish a minimum level of use below which an analysis of need shall be made and retention justified, 
      except for inactive plants and equipment retained for mobilization (the use level may be established for individual 
      items or families of items, depending upon circumstances of use);
    • (2) Provide for RECORDING AUTHORIZED AND ACTUAL USE consistent with the established use levels;
    • (3) Require periodic analyses of production needs for plant equipment utilization based upon known requirements; 
     and
    • (4) Provide for prompt reporting to the contracting officer of all plant equipment for which retention is not justified.
Some Unpublished Stuff!

• FROM THE UNPUBLISHED REPLACEMENT TO DOD 4161.2-M

• USE OF GOVERNMENT PROPERTY
  • General. It is a contractual requirement and an industry leading practice that contractors establish and maintain procedures and processes to insure that Government property will be used only for purposes authorized in the contract and that the degree of utilization justifies retention. FAR 52.245-1(f)(1)(vii) requires contractors to establish processes that insure Government property is used only as authorized by the contract or the CO. Government property shall be used only for authorized purposes.
  • Contractual Authorization. Government property is generally authorized for use on the contract under which it is accountable. Unless the contract provides authorization for contractors to use Government property contractors are not authorized to use such Government property for any use, Government or commercial. Contractors wishing to use such property for Government or commercial purposes must obtain written approval from the CO having cognizance over the property prior to any usage.
  • Unauthorized Use of Government Property. It is the PA's responsibility to advise the CO of any known unauthorized use of Government property. When there is unauthorized use of Government property the PA will recommend to the Contracting Officer the action set forth in FAR 52.245-9. In the event the contractor uses Government property without authorization, the contractor may be subject to fines, imprisonment, or both, under 18 U.S.C. 641.
  • Contractors, through their self-audit process, may disclose unauthorized use of Government property. In such instances the PA shall ensure that this information is provided to the contracting officer for the appropriate action as described above.

Some Unpublished Stuff!

• FROM THE UNPUBLISHED REPLACEMENT TO DOD 4161.2-M

• Identification of Excess Government Property
  • Contractors must have processes to identify Government property that is excess to contractual requirements. Such processes are necessary to be compliant with the requirements of FAR 52.245-1(f)(1)(vii). Government property that has no current usage or activity should be periodically reviewed to initiate disposal action or to justify continued retention. This process must be responsive to contract modifications, completion, and terminations, as well as reduced production rates, reduced demand rates, and engineering changes.
  • The PA shall insure that the contractor's Property Management System defines processes and establishes time frames for the review and determination of excess Government property. The PA must be aware of contract changes that will likely result in excess Government property. The PA must ensure that either the property is promptly declared as excess or that justification is obtained in writing from the CO for continued retention unless otherwise contractually prescribed.
Some Unpublished Stuff!

FROM THE UNPUBLISHED REPLACEMENT TO DOD 4161.2-M

Identification of Excess Government Property.

The nature of use of Government property applies differently to various property classification and categories. Materials that are incorporated within end items or are otherwise expended during use are considered as "consumed" when they lose their identity or are no longer usable for their intended purposes. Equipment, Real Property, Special Tooling, and Special Test Equipment are "utilized" rather than "consumed" as they are not normally expended in use. Both concepts are involved with the disclosure of excess, i.e., material that is no longer needed for consumption may be excess, and ST, STE and Equipment no longer needed for use may be excess.

Rental of Government Property. In addition to ensuring that Government property is being utilized for the purposes authorized by the contract, the contractor’s Property Management System must provide a basis for determining and allocating rental charges to comply with the requirements at FAR 52.245-9, where applicable. It is the responsibility of the ACO to ensure the collection of any rent due the Government from the contractor in accordance with the Uses and Charges Clause at FAR 52.245-9. In this connection, the ACO may call upon the PA and/or other technical specialists to verify the adequacy of the contractor’s rental charge computation pursuant to the FAR clause. Upon request of the ACO, the PA and/or other technical specialists shall prepare and furnish a statement to the ACO on the adequacy of the contractor’s rental computation.

TESTING UTILIZATION

The Government Property clause at FAR 52.245-1, under paragraph (f) entitled “Contractor plans and systems” has merged four processes under the one heading. It states, “The Contractor shall plan, consume, move, and store Government Property only as authorized under this contract.” This need to be aware that even though it has one heading there are in fact four separate and distinct processes subject to audit – due to the fact that underlying populations are dissimilar processes with different populations and different criteria subject to review. The guide will address each sub-process independently.

Testing Utilization of Government property. (h) It is a contractual requirement for contractors to establish processes for determining and ensuring the proper use of Government property, recording that use, computing any rental amounts due, and determining if any of that Government property is excess or in a state of lack of use. Contractors are required to design, develop and implement a property management system (PMS) to manage government property under their stewardship. The PA is responsible to ensure the contractor uses Government property in accordance with FAR 52.245-1(c) and (f)(1)(viii) and the contractor’s Property Management System. The basic objective is to determine the contractor is using the Government property for the authorized purposes and the utilization process applies only to non-consumable types of Government property, i.e. Equipment, Special Tooling (ST), Special Test Equipment (STE), and Real Property (when the contractor has been made accountable for the Real Property).

The population should be selected from all utilization records, either manual or automated, excluding material, and stratified by property type with common utilization characteristics. The PA should use sound judgment in determining the populations selected for testing the utilization process. If the contractor uses the same process for tracking the utilization of Equipment, STE and ST it would be appropriate to use the records of all Equipment, ST and STE as the population of utilization. If a different process is used to track the utilization of the various classes of Government property then separate populations should be used for this test rather than combining all Equipment, ST and STE together. The PA should be particularly concerned with any unauthorized use, use in excess of allowable time on non-Government work, proper recording of actual use, and failure to maintain any required utilization records.
Some Unpublished Stuff!

- FROM THE UNPUBLISHED REPLACEMENT TO DOD 4161.2-M
  - FROM THE PROCESS CHAPTER
  - TESTING UTILIZATION
  - The contractor shall use Equipment, STE, ST and Real Property for authorized purposes only, and have a system to determine if this property is excess to the contractor’s needs or requirements as required by FAR 52.245-1(f)(3)(viii)(A). There must be a contractual requirement or justification for retention for each item in the possession of the contractor. PAs should be aware that the utilization levels of these items may be affected by the purpose of the contract, i.e., overhaul and maintenance (O&M), production, research and development (R&D), etc. Unused items are available for, continuous versus final acceptance, and lastly the reason the property was provided, e.g., as a model or for configuration standards.
  - Vehicles and Related Equipment. PAs should conduct reviews as part of the Property Management System Audit based on special contract provisions. Some items should be maintained, and Government-owned vehicles are utilized in accordance with contractual requirements. See DoD 4500.36 for further guidance on Government Acquisition, and Use of Motor Vehicles (March 2007) specifically Chapter II for further guidance on Government Acquisition.
  - The PA shall review the activities of the PAs to identify idle or underutilized Government property. Where the Government property does not reflect current or recent use, the PA shall request the contractor to provide justification that the Government property is required for planned or “in process” continuing contract efforts. If not justified for retention, inactive Government property should be declared excess.
  - The PA should review contractor processes for responding to contract completions, terminations, modifications, and engineering changes. PAs should identify property no longer required for contract performance. If the Government property must be retained, the contractor shall provide justification for retention. In between contract closeout and expectation, anticipation or award of a follow-on contract the contractor may be authorized by the CO to retain the Government property pending award of the follow-on contract. In such instances, the authorization must be in writing to the accountable contract and the accountable contract cannot be closed for property or contract administration until the Government property is either transferred to the follow-on contract or disposition is directed by a Plant Clearance Officer (PCO) and completed by the contractor.

LOTS OF INTERESTING STUFF!!!
GOVERNMENT POLICY FAR PART 45

Subpart 45.3 – Authorizing the Use and Rental of Government Property

This subpart prescribes policies and procedures for contractor use and rental of Government property.

(a) Government property shall normally be provided on a rent-free basis in performance of the contract under which it is accountable or otherwise authorized.

(b) Rental charges, to the extent authorized, do not apply to Government property that is left in place or installed on contractor-owned property for mobilization or future Government production purposes; however, rental charges shall apply to that portion of property or its capacity used for nongovernment commercial purposes or otherwise authorized for use.

(c) The contracting officer cognizant of the Government property may authorize the rent-free use of property in the possession of nonprofit organizations when used for research, development, or educational work and—

(1) The use of the property is in the national interest;
(2) The property will not be used for the direct benefit of a profit-making organization; and
(3) The Government receives some direct benefit, such as rights to use the results of the work without charge, from its use.

(d) In exchange for consideration as determined by the contracting officer(s), the contractor may use Government property under fixed-price contracts other than the contract to which it is accountable. When, after contract award, a contractor requests the use of Government property, the contracting officer shall obtain a fair rental or other adequate consideration if use is authorized.

(e) The cognizant contracting officer(s) may authorize the use of Government property on a rent-free basis on a cost type Government contract other than the contract to which it is accountable.

(f) In exchange for consideration as determined by the cognizant contracting officer, the contractor may use Government property for commercial use. Prior approval of the Head of the Contracting Activity is required where non-Government use is expected to exceed 25 percent of the total use of Government and commercial work performed.
THE CURRENT STUFF

- Subpart 45.2 -- Solicitation and Evaluation Procedures
  - 45.201 -- Solicitation.
  (c) The solicitation shall describe the evaluation procedures to be followed, including rental charges or equivalents and other costs or savings to be evaluated, and shall require all offerors to submit the following information with their offers—
    (1) A list or description of all Government property that the offeror or its subcontractors propose to use on a rent-free basis. The list shall identify the accountable contract under which the property is held and the authorization for its use (from the contracting officer having cognizance of the property);
    (2) The dates during which the property will be available for use (including the first, last, and all intervening months) and, for any property that will be used concurrently in performing two or more contracts, the amounts of the respective uses in sufficient detail to support prorating the rent;
    (3) The amount of rent that would otherwise be charged in accordance with FAR 52.245-9, Use and Charges

THE CURRENT STUFF

- A RHETORICAL QUESTION…
- WITHOUT KEEPING RECORDS OF ACTUAL TIME USED – HOW COULD YOU COMPUTE AND PROVIDE THE REQUIRED DATA?
• So, for these policy statements there is an implicit requirement that the Contractor establish and maintain RECORDS of the ACTUAL use of the Government Property in order for the Government to determine the actual rental due – where directed!

THE CURRENT STUFF

• The Government Property Clause
  • FAR 52.245-1
    • (b) Property management.
    • (1) The Contractor shall have a system of internal controls to manage (control, use, preserve, protect, repair and maintain) Government property in its possession.
THE CURRENT STUFF

The Government Property Clause
FAR 52.245-1

(c) Use of Government property.
(1) The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer.

THE CURRENT STUFF

The Government Property Clause
FAR 52.245-1

(f) Contractor plans and systems.
(1) Contractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:
   (viii) Utilizing Government property.
   (A) The Contractor shall UTILIZE, consume, move, and store Government Property only as authorized under this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.
THE CURRENT STUFF

• The Use and Charges Clause 52.245-9

(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.

THE CURRENT STUFF

(h) Unauthorized use. The unauthorized use of Government property can subject a person to fines, imprisonment, or both under 18 U.S.C. 641

Title 18 > Part I > Chapter 31 > § 641

§ 641. Public money, property or records

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof, or Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted— Shall be fined under this title or imprisoned not more than ten years, or both...
THE CURRENT STUFF

• AND THERE IS MORE IN THE DFARS AT:
  • DFARS 245.3 – Authorizing the Use and Rental of Government Property
  • Which discusses relationships with Foreign Governments and
  • Some Statutory requirements for handling “Nonrecurring Costs of ST and STE…”
    • A Contracting Officer’s responsibility!

THE CURRENT STUFF

• GUIDEBOOK FOR CONTRACT PROPERTY ADMINISTRATION
  • DATED December 2014
  • 6.0. UTILIZATION
  • The FAR outcome of UTILIZATION involves ensuring the contractor uses Government property only as authorized by the contract. The contractor is also required to promptly report Government property excess to contract requirements (contractor inventory as defined in FAR 45.101 and FAR 52.245-1)
  • To test for compliance, the PA shall examine the contractor’s controls and procedures and perform sufficient testing to ensure the contractor utilizes Government property only as authorized by the contract (see FAR 52.245-1 (c)), FAR 52.245-9, and DFARS 252.251-7001).
  • The PA may accomplish this using the same samples taken for review of equipment, special tooling, and special test equipment for other processes.
THE CURRENT STUFF

• AND IF YOU ARE DEALING WITH OTHER AGENCIES, e.g., NASA, DOE, FAA, etc., YOU HAD BETTER READ THEIR REQUIREMENTS FOR UTILIZATION!!!

UTILIZATION OF GP

• “But I issued it out to the lab – that shows I am using it!”
  • Doug – “Uhhhhhh, really???”
  • How do I KNOW that you are using on an AUTHORIZED CONTRACT?
  • How do I KNOW HOW MUCH it is being used?
    • Or should I assume 24/7/365?
    • What about commercial use?
  • How do I know it is STILL being used?
  • What EVIDENCE is available to show its use???
UTILIZATION OF GP

• Some thoughts about tracking UTILIZATION:
  • FOR EQUIPMENT – Various types of equipment have “Counters” or “Meters” that specifically require a job to be entered BEFORE an asset may/can be used.
    • Computer Numerical Control (CNC) Machines are a perfect example of this type of setup
  • COMPUTERS – there are numerous software management systems (SMS Programs) that can track the use of desktop and laptop computers connected through a network – for the actual usage (Down to the keystroke!).
  • VEHICLES – Current technologies allow the tracking of usage on a vehicle (Though a user log may still be required.)
    • See DOD Manual 4500.36 for NTV requirements

• Some thoughts about tracking UTILIZATION:
  • FOR SPECIAL TEST EQUIPMENT
    • If it is of a variety driven by a computer – an automated log may be built into its programming to record:
      • Job #
      • Amount of Time Used
    • Otherwise manual records may be required
UTILIZATION OF GP

• Some thoughts about tracking UTILIZATION:
  • FOR SPECIAL TOOLING (ST)
  • Not only will you have the “Tool Crib” record(s) showing the issuance of the ST from the tool crib but...
  • What records are you going to maintain at the USING LOCATION to show/prove that it was used:
    • At that location
    • For that Authorized Job
    • For what amount of time?

Some interesting sites!!!

• http://www.aemp.org/the-road-to-better-equipment-utilization/
• http://www.mercury-assoc.com/resources/documents/rightsizing-your-fleet.pdf
• https://prezi.com/4io7wbeg0z2h/equipment-utilization/
• https://www.munirent.co/blog/2015/4-ways-to-improve-tracking-of-heavy-equipment-utilization
• http://www.pacifictimesheet.com/equipment-tracking
UTILIZATION OF GP

• Over the past few years UTILIZATION RECORDS have been given short shrift – receiving only a cursory review as to the contract that the property was accountable to – and very little attention as to the ACTUAL USAGE of that Government property.

• The issue of EXCESS has to be addressed – and without utilization records, PROPER Utilization records – Government property that is excess may NOT be properly disclosed.

UTILIZATION OF GP

• Some takeways...

  1. Contractors – review your Property Management System Procedures to ensure discussion of USE/UTILIZATION of ST, STE and Equipment

  2. Review the records involved
     A. Project on which used
     B. When used and Amount of time used for each project
        i. To support retention requirements
        ii. To support non-excess statements/determinations
        iii. To support calculations of rent due, when applicable
SOME THOUGHT PROVOKING QUESTIONS???

• DOES YOUR COMPANY PROVIDE YOU A CELLPHONE?
• IS IT CHARGED TO A GOVERNMENT CONTRACT?
• WHO HAS TITLE TO THAT CELLPHONE?
• DO YOU TRACK ITS UTILIZATION?
• HAS THERE EVER BEEN ANY UNAUTHORIZED USE?
• HOW DO YOU KNOW?

AND ONE LAST THOUGHT…

• MATERIAL IS CONSUMED!

And you need to track CONSUMPTION
and the concern with EXCESS!!!
THANK YOU!

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