



## ACQUISITION AND TITLE TO GOVERNMENT PROPERTY UNDER GOVERNMENT CONTRACTS

Presented by:  
Dr. Douglas N. Goetz, CPPM, CF  
GP Consultants LLC

(c) 2012 GP Consultants LLC

---

---

---

---

---

---


---

---

## PRELUDE

- Think about your life – and your acquisitions  
– Buying a Washer, Dryer, Refrigerator, etc....




More saving. More doing.



(c) 2012 GP Consultants LLC

---

---

---

---

---

---


---

---

## This Presentation

- WHAT** may a contractor acquire?
- To **WHAT** does the **Government take title**?
- When** does the **Government take title**?
- Are there restrictions on what the Contractor may acquire – to which the Government takes title?

So, there are lots of questions – with lots of answers!!!



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---

---

## THE PROCESS OF ACQUISITION

- It is a **CONTRACTUAL** requirement that contractors have a **PROCESS** for managing the **ACQUISITION** of PROPERTY that **IS** or **BECOMES** GOVERNMENT PROPERTY
  - Government Property Clause
    - FAR 52.245-1(f)




(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---


---

---

---

## FOCUS ON TWO AREAS

- ACQUISITION OF GOVERNMENT **FURNISHED** PROPERTY (GFP) BY THE CONTRACTOR (Brief Overview)
- ACQUISITION OF CONTRACTOR **ACQUIRED** PROPERTY (CAP) BY THE CONTRACTOR (Greater Emphasis)



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---



---

---

---

## ACQUISITION OF GFP

- TITLE TO **GFP** ALWAYS VESTS IN THE GOVERNMENT
  - FAR 45.401
  - FAR 52.245-1

(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---

---

---

---

**NOW ON TO THE GOOD STUFF!!!**  
**CAP...**  
**TITLE TO CAP**




(c) 2012 GP Consultants LLC

---

---

---

---

---



---

---

---

**TITLE TO CAP**

- Hey, it's simple – I have a cost reimbursement type contract – everything I buy is Government Property!
- The Government has title!!!
- Right???
- Uhhhhh, NOT SO FAST!!!
- There are LOTS of Variables we have to address! So let's discuss this!

(c) 2012 GP Consultants LLC

---

---

---

---

---



---

---

---

**CONTRACTOR ACQUIRED PROPERTY (CAP)**

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

(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---

---


## CONTRACTOR ACQUIRED PROPERTY (CAP)

- TYPES OF CONTRACTS
- TWO BROAD PRICING ARRANGEMENT

**FIXED  
PRICE**

**COST  
REIMB.**

- PLUS LOTS OF VARIANTS



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---

---

---

---

## CONTRACTOR ACQUIRED PROPERTY (CAP)

- TITLE TO PROPERTY UNDER FIXED PRICE CONTRACTS
- QUICK... Remember at the start of this presentation I asked you about Home Depot, Lowe's, Sears and JC Penney!
- Under a FP Contract what do YOU the BUYER own?!?!?!?



THE  
DELIVERABLE  
END  
ITEM!!!



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---

---

---

---

## CONTRACTOR ACQUIRED PROPERTY (CAP)

- 45.402 -- Title to Contractor-Acquired Property.
  - (a) Under fixed price type contracts, the contractor retains title to all property acquired by the contractor for use on the contract, **except** for property identified as a **deliverable end item**... If a deliverable item is to be retained by the contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.




**Government  
Policy  
Statement**

(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---


---

---

---

## CONTRACTOR ACQUIRED PROPERTY (CAP)

- **Let's look at the CLAUSAL Requirement!!!**
- **FAR 52.245-1(e)**
- **TITLE TO PROPERTY UNDER FIXED PRICE CONTRACTS**
  - If there is a **CLIN** directing the contractor to acquire **PROPERTY, FOR THE GOVERNMENT, as a DIRECT ITEM OF COST**
  - TITLE VESTS in the GOVERNMENT upon:
    - VENDOR'S DELIVERY
  - TITLE to all other material vests in the GOVERNMENT
    - Issuance of Material
    - Commencement of Processing of Material or its use
    - Reimbursement of the cost,
    - Whichever comes first!



**WARNING: THERE MUST BE A CR CLIN FOR THIS TO APPLY!**

(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---

---

---


---

---

---

## CONTRACTOR ACQUIRED PROPERTY (CAP)

- **IF YOU WERE TO DO A REAL TECHNICAL ANALYSIS OF THIS PROVISION – IT IS WRONG!!!**
- **It gives the appearance that the Government can take title to property under a FP Contract under a FP CLIN BEFORE it has been inspected and accepted. In some cases that would be a physical impossibility!!!**
- **It appears that when the FAR was originally written (Apr 1<sup>st</sup>, 1984) they copied the language of the DAR/ASPR but left out the EXPLANATION, i.e., that it was a REIMBURSABLE PROVISION/CLIN.**
- **GSA and the FAR Council are in the process of “fixing” this clausal error**



**So, the POLICY of FAR 45.402 is correct. The language of the CURRENT GP Clause is INCORRECT!!!**

(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---

---

---


---

---

---

## GP CLAUSE (APRIL 2012) TITLE PARAGRAPH COMPLETE

- (e) Title to Government property.
  - (1) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), is subject to the provisions of this clause. The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
  - (2) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.
  - (3) Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts.
    - (i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.
    - (ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—
      - (A) Issuance of the property for use in contract performance;
      - (B) Commencement of processing of the property for use in contract performance; or
      - (C) Reimbursement of the cost of the property by the Government, whichever occurs first.
  - (3) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (e)(3)(iii) (collectively referred to as "Government property"), are subject to the provisions of this clause.



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---

---

---

---


---

---

## GP CLAUSE (APRIL 2012)

*Exclusionary Statements*

- (e) *Title to Government property.*
  - (1) **All Government-furnished property** and **ALL PROPERTY ACQUIRED BY THE CONTRACTOR**, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), is subject to the provisions of this clause. The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
  - (2) **Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.**



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---


---

---

---

## GP CLAUSE (APRIL 2012) CLARIFIED TITLE!!!

- (e) *Title to Government property.*
  - (3) **Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts.**
    - (i) Title to **all property** purchased by the Contractor for which the Contractor is **entitled to be reimbursed as a direct item of cost** under this contract shall pass to and vest in the Government upon the **vendor's delivery** of such property.
    - (ii) Title to **all other property**, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—
      - (A) **issuance** of the property for use in contract performance;
      - (B) **commencement of processing** of the property for use in contract performance; or
      - (C) **reimbursement** of the cost of the property by the Government, whichever occurs first.
    - (iii) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (e)(3)(iii) (collectively referred to as "Government property"), are subject to the provisions of this clause.



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---


---

---

---

## GP CLAUSE (APRIL 2012) CLARIFIED TITLE!!!

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



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---


---

---

---

## CONTRACTOR ACQUIRED PROPERTY (CAP)

- FAR 52.245-1(e)
- TITLE TO PROPERTY UNDER **COST REIMBURSEMENT CONTRACTS**
  - TITLE to **ALL PROPERTY** purchased by the contractor for which the contractor is
    - **ENTITLED** to be **REIMBURSED** as a
    - **DIRECT ITEM OF COST** shall pass to and
    - **VEST IN THE GOVERNMENT** upon
    - **VENDOR'S DELIVERY**
  - PLUS OTHER TIMES on the next slide



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---

---

---

---

## CONTRACTOR ACQUIRED PROPERTY (CAP)

- TITLE TO PROPERTY UNDER **COST REIMBURSEMENT CONTRACTS**
  - TITLE to **ALL OTHER PROPERTY**
  - The cost of which is reimbursable to the contract, shall pass to and vest in the **GOVERNMENT** upon -
    - Issuance of Material
    - Commencement of Processing of Material or its use
    - Reimbursement of the cost,
    - Whichever comes first!



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---

---

---



---

## CONTRACTOR ACQUIRED PROPERTY (CAP)

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

}

FAR PART 31

(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---

---

---

---

## REASONABLE

- FAR 31.201-3

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



REASONABLY  
PRUDENT PERSON

COMPETITIVE  
BUSINESS



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---

---

---

---

## REASONABLE

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



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---

---

---

---

## ALLOCABLE

- FAR 31.201-4

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



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---

---


---

---



## ALLOWABLE

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


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

(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---


---

---

---

## COST ACCOUNTING STANDARDS

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



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---


---

---

---

## COST ACCOUNTING STANDARDS

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



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---


---


---

---

## COST ACCOUNTING STANDARDS

- **COST ACCOUNTING STANDARDS AFFECT THE WAY CONTRACTORS CHARGE THE GOVERNMENT FOR PROPERTY**
  - For example – whether or not contractors may direct charge us for “GENERAL PURPOSE EQUIPMENT”
- **CAS 402 – CONSISTENCY**
  - Kitchen English...
    - BUY Like Item,
    - USE for Like Purpose,
    - THEN KTR MUST CHARGE in Like FASHION





(c) 2012 GP Consultants LLC

[http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/FARapndx1.htm#P1185\\_222409](http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/FARapndx1.htm#P1185_222409)

---

---

---

---

---

---

---


---


---

---

## COST ACCOUNTING STANDARDS

- **One needs to have ACCESS TO and READ and UNDERSTAND the contractor’s Disclosure Statement in order to deal PROPERLY with PROPERTY!**
  - CASB-DS-1 FORM
  - [http://www.whitehouse.gov/OMB/procurement/casb\\_ds-1.pdf](http://www.whitehouse.gov/OMB/procurement/casb_ds-1.pdf)
  - [http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/FARapndx1.htm#P332\\_70916](http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/FARapndx1.htm#P332_70916)





(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---


---

---

---

## CONTRACTOR ACQUIRED PROPERTY (CAP)

- **ACQUISITION** may take many different forms and may use many different processes:
  - Acquisition/Purchase items from a vendor/subcontractor
  - Fabricating items in-house
  - Issuing items from contractor-owned stores/stock and stockrooms
  - Transfer
  - Reutilization
  - Lease (**CAREFUL WITH THIS ONE – more later!**)



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---


---

---

---

## CONTRACTOR ACQUIRED PROPERTY (CAP)

- **PURCHASE** from Vendor
  - Contractor issues a P.O. or Subcontract to a vendor or supplier
- **ISSUANCE** from Stock
  - Contractor may already have an item in his/her stockroom and may issue it and use it on the contract.



(c) 2012 GP Consultants LLC

---

---

---

---

---




---

---

---

## CONTRACTOR ACQUIRED PROPERTY (CAP)

- **FABRICATED** PROPERTY
  - Though not specifically called out as such the GOVERNMENT takes title to property that is FABRICATED under cost reimbursement type contracts
    - E.g., parts machined from raw materials
    - Special tooling fabricated in the contractor's tool shop.

(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---

---

## CONTRACTOR ACQUIRED PROPERTY (CAP)

- **TRANSFER** of Property
  - Contractor may use a system to move property, generally material of the CAP Variety, from one contract to another **WITH ITS ASSOCIATED COSTS**, i.e., generally crediting the losing contract and debiting the gaining contract.
    - The Material Management Accounting System referred to as the MMAS
      - DFARS 242.72 and
      - DFARS 252.242-7004




(c) 2012 GP Consultants LLC

---

---

---

---

---


---

---

---

## CONTRACTOR ACQUIRED PROPERTY (CAP)

- **LEASING** OF PROPERTY
  - If a contractor **LEASES** property (Even under a Cost Reimbursement contract) it **DOES NOT** become **Government Property**.
    - If the **CONTRACTOR** leases property, that property is bound by the terms and conditions of the Lease – and the “LESSOR” still retains title to it!
    - If the **GOVERNMENT** leases the property, then the Government TASKS the Contractor to MANAGE that property as GFP – because the contractor has an obligation to return it to the Government, and the Government has an obligation to return it to the LESSOR.



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---


---

---

---

## CONTRACTOR ACQUIRED PROPERTY (CAP)

- ALL ACQUISITIONS **MUST** BE SUPPORTED BY A VALID NEED OR REQUIREMENT. Some Examples:
  - Engineering Requirements in **R&D**
  - Bill of Material (BOM), Material requirements list (MRL), Drawings or Blueprints in a **Production** setting
  - Contractual Unit requirements in an **O&M or Services** setting
- When a contractor acquires an item or items there must be **supporting documentation** for that item/asset and its **NEED/REQUIREMENT** in and for performing the contractually required work.
  - See Records Requirements under:
    - FAR 52.245-1(f) and
    - FAR 4.7 – Contractor Records Retention



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---

---

---

---

## APPROVALS

- **DOES THE CONTRACTOR REQUIRE APPROVAL PRIOR TO ACQUIRING PROPERTY FOR THE GOVERNMENT?**
  - GENERALLY NO!
  - BUT SOMETIMES MAYBE!




(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---


---

---

---

## APPROVALS

- **FAR 52.244-2 SUBCONTRACTS CLAUSE**
  - If the contractor **DOES NOT** have an **approved Purchasing System**, consent to subcontractor is **required for ANY SUBCONTRACT** that
    - Is Cost Reimbursement
    - Is FP and exceeds the Simplified Acquisition Threshold or 5% of the total cost of the contract.
      - FAR 52.244-2(c)
  - Or any items specified in the contract
    - FAR 52.244-(3)


(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---



---

---

---

## So What does all of this mean? A Quick Summary!

- **OVERARCHING RULE:**
  - GFP is always **TITLED** to the **GOVERNMENT!**
- **FP Contracts:**
  - Contractor has **TITLE** to all Property it acquires **EXCEPT...**
    - GFP
    - If listed as a Deliverable End Item/CLIN



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---



---

---

---

## So What does all of this mean? A Quick Summary!

- **CR Type Contracts:**
  - **GOVERNMENT** has **TITLE** to **ALL** Property the contractor acquires **IF:**
    - IT IS:
      - REASONABLE
      - ALLOCABLE and
      - ALLOWABLE and
    - IT IS CHARGED as a **DIRECT ITEM OF COST**
    - **IN ACCORDANCE WITH THE CONTRACTOR'S DISCLOSURE STATEMENT.**



(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---

---

---

---

**LAGNIAPPE!**




(c) 2012 GP Consultants LLC

---

---

---

---

---



---

---

---

**Government  
Property Administrator's ACTIONS**

- If PA finds items that he/she believes are not allowable, the PA shall notify the ACO and request review by the ACO and the COGNIZANT DCAA Auditor for compliance with the contractor's Disclosure statement and CAS applicability.
- PA may also recommend to the ACO **DISALLOWANCE** of the **REIMBURSEMENT OF THE COST** for the item.

(c) 2012 GP Consultants LLC

---

---

---

---

---

---

---



---

**Thank you!**

**Dr. Douglas N. Goetz, CPPM, CF**  
**INTERMITTENT DAU PROFESSOR**  
 Hopefully a Good Instructor.  
 Chief cook and bottle washer at Home, responsible for all "honey do" requirements  
 – though upon my retirement my wife told me to stay out of HER house!

233 N. Maple Ave  
 Fairborn, OH 45324  
[GPCONSULTANTS@ATT.NET](mailto:GPCONSULTANTS@ATT.NET)  
[WWW.GOVERNMENT-PROPERTY.COM](http://WWW.GOVERNMENT-PROPERTY.COM)

1-937-754-1811  
 1-937-878-6680


---

---

---

---

---

---

---

---