


**NCMA WORLD CONGRESS 2012**  
JULY 29-AUGUST 1 • BOSTON

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- ★ EFFICIENCY,
- ★ ACCOUNTABILITY,
- ★ TRANSPARENCY...

**SUPPORTING TODAY'S DIRECTION  
FOR CONTRACT MANAGEMENT**






## **Breakout Session # B10**

**Name: Dr. Douglas N. Goetz  
GP Consultants LLC**

**Date: July 30, 2012**

**Time: 2:30 – 3:45 PM**



# GOVERNMENT PROPERTY MANAGEMENT FOR CONTRACTING PROFESSIONALS

Dr. Douglas N. Goetz, CPPM, CF  
GP Consultants LLC  
Intermittent Professor of Contracts  
Defense Acquisition University



## TOPICAL OUTLINE

- CURRENT INITIATIVES REGARDING GOVERNMENT PROPERTY
- OVERVIEW OF GOVERNMENT PROPERTY
- FAR Part 45 and Part 52
  - Policy requirements of FAR Part 45
  - The Government Property Clauses
- Contracting Officer Requirements
  - Pre-award Responsibilities
  - Post-award Responsibilities
- Some DOs and DON'Ts from a Contracting Perspective



## CURRENT INITIATIVES

- Item Unique Identifiers (IUID)
  - DoD's initiative to account for all GP (Financial)
    - Chief Financial Officer Act of 1990
- FAR/DFARS Updates (2007/2010/2012)
  - FAR 45/52.245-1 Update issued 3 March 2012
    - <http://www.gpo.gov/fdsys/pkg/FR-2012-03-02/pdf/2012-4499.pdf>
  - DOD PGIs
- Government Property Management as a Contractor Business Systems
  - DFARS 242.70
  - DFARS 252.245-7003



## GOVERNMENT PROPERTY

- FAR Part 45 Sets forth Policy and Procedures for Providing Government Property (GP)
  - Definitions peculiar to GP – 45.101
  - Policy on Providing – 45.102
  - Contractor PMS Compliance – 45.105
  - Contract Clauses for GP – 45.107
  - Solicitation & Evaluation Procedures re: GP – 45.2
  - Use and Rental of GP – 45.3
  - Title to GP – 45.4
  - Support Property Administration for GP – 45.5
  - Reporting, Reutilization and Disposal of GP – 45.6



# GOVERNMENT PROPERTY

- The GP Clauses – 2007 FAR Rewrite Reduced Clauses

from **19 to 3**

- 52.245-1 GP Clause

- ALT I: FP for competitive contracts (Full Risk of Loss)
- ALT II: CR for the conduct of basic or applied research at nonprofit institutions of higher education or nonprofit organizations for scientific research.

- 52.245-2 GP Installation Operation Services

- 52.245-9 Use and Charges



## SO WHAT?!?!?

- If contracting actions are done improperly at the beginning of the contract – they will haunt and potentially hurt us through out the performance of the contract.
- Contracting Professionals play a **CRITICAL ROLE** in the management of Government property in the possession of Contractors.



# CONTRACTING OFFICER RESPONSIBILITIES PRE-AWARD



## DETERMINATION TO PROVIDE GP

- Overarching Policy – 45.102
  - Contractors are ordinarily required to furnish ALL PROPERTY Necessary to perform Government contracts

**SO WHY IS THERE OVER \$150 BILLION worth of GP  
in the hands of DEFENSE contractors?**

**That we know???**



## DETERMINATION TO PROVIDE GP

- FAR 45.102
- (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;
  - (3) That providing the property does not substantially increase the Government's assumption of risk; and
  - (4) That Government requirements cannot otherwise be met.



## CO DETERMINATION TO PROVIDE GP

Providing Government Furnished Property must be a conscious deliberate well thought out ACQUISITION PLANNING

Decision!

If not -- there are Natural Consequences.



## INCLUSION OF GFP LISTINGS in the Solicitation

- OK, so the CO has decided (In a moment of insanity) to provide GFP
  - **GFP LISTINGS**, including the following Data:
    - (1) The name, part number and description, manufacturer, model number, and National Stock Number (if needed for additional item identification tracking and/or disposition);
    - (2) Quantity/unit of measure;
    - (3) Unit acquisition cost;
    - (4) Unique-Item Identifier or equivalent (if available and necessary for individual item tracking); and
    - (5) A statement as to whether the property is to be furnished in an “as-is” condition and instructions for physical inspection.



## A JEOPARDY TYPE QUESTION

WHAT ARE TWO FORMS OF  
GOVERNMENT FURNISHED PROPERTY  
MOST FREQUENTLY REFERRED TO BY  
CONTRACTING PROFESSIONALS?



NOTE: There are Prizes  
Awarded for Correct  
Answers!



## DFARS PGI GUIDANCE

- IT GETS WORSE – The PGIs have ARRIVED!!!
- PGI 245.201-71 GFP attachments to solicitations and awards.
  - When GFP is anticipated, include two separate attachments in solicitations and awards to specify the required GFP item identification data elements. Complete the following attachment formats for all items of GFP anticipated to be provided to a contractor.
    - (1) *First Attachment.* A listing of the Government property to be offered in all solicitations where GFP is anticipated, including when major end items are being provided under a modification or upgrade contract; or when reparable are being provided under a repair, modification, or overhaul contract.



## DFARS PGI GUIDANCE

- Pursuant to the Government property clause herein, the Government shall furnish to the contractor the item(s) of property listed below as GFP, for use in performance of this contract.

GFP Part A - Individual Serialized Items List

(A) Item Number	(B) Type Designation	(C) PIN	(D) MFR CAGE	(E) Quantity and Unit of Measure	(F) Nomenclature and Description	(G) Part/ Model and NSN Number	(H) Serial Number (UII)	(I) AS IS: Yes/No	(J) Unit Acq Cost*	(K) Tag, Label or Permanent Marking Inst**
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\*Not Required if the item has a UII and has been registered in the DoD IUID Registry.

\*\* The requiring activity should determine if GFP will be marked with a UII. Marking and registration of those items shall be accomplished in accordance with DFARS clause 252.211-7003.

GFP Part B - Non-Serialized Items Listed by NSN and Quantity

(A) Item Number	(B) Type Designation	(C) PIN	(D) MFR CAGE	(E) Quantity and Unit of Measure	(F) Nomenclature and Description	(G) NSN Number	(H) Part/ Model Number	(I) AS IS: Yes/No	(J) Unit Acq Cost*	(K) Tag, Label or Permanent Marking Inst**
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\*Not Required if the item has a UII and has been registered in the DoD IUID Registry.

\*\* The requiring activity should determine if GFP will be marked with a UII. Marking and registration of those items shall be accomplished in accordance with DFARS clause 252.211-7003.





## DFARS PGI GUIDANCE

- (2) *Second Attachment*. A listing of Government property to be authorized for contractor requisition from DoD supply sources in accordance with the clause at FAR 52.251-1.
  - Government-Furnished Property Attachment Number ( \* )
  - Government Property Authorized for Contractor Requisition with or without Reimbursement from DoD Supply Sources
  - Pursuant to the Government property clause herein, the Government shall furnish to the contractor the item(s) of property listed below as Government property for use in performance of this contract. Requisitioning documentation for the property will be prepared by the contractor pursuant to the clause at 252.251-7000, Ordering from Government Supply Sources, as specified herein. Items on the Part A list are subject to reporting as GFP. Items on the Part B list become contractor-acquired property and are not subject to reporting as GFP.

**Part A - Contractor-Requisitioned Non-Serialized Items List**

(A) Item Number	(B) Type Designation	(C) EIN	(D) MFR CAGE	(E) Quantity and Unit of Measure	(F) Nomenclature and Description	(G) NSN Number	(H) Unit Acq Cost	(I) AS IS: Yes/No	(J) Tag, Label or Permanent Marking Inst*
* The requisiting activity should determine if GFP will be marked with a UII. Marking and registration of those items shall be accomplished in accordance with DFARS 252.211-7003.									

## ULTIMATE DECISION

- Government Contracting Officers must make a conscious deliberate decision to furnish Government Property based upon the factors set forth in the FAR Policy.
  - Real world – sometimes you have no choice, i.e., CR type contracts



**Ahhhh,  
But wait,  
There's MORE!!!**



## **CO REQUESTS OF OFFERORS**

- THE CO IS TO REQUEST TWO ITEMS FROM THE PROSPECTIVE CONTRACTORS BEFORE CONTRACT AWARD:
  - INFORMATION RELATED TO GP ALREADY IN THE OFFEROR'S POSSESSION
    - » And a
  - PROPERTY MANAGEMENT PLAN



## CO REQUESTS OF OFFERORS 45.201(c)

- [Prospective Contractors] Shall 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; and



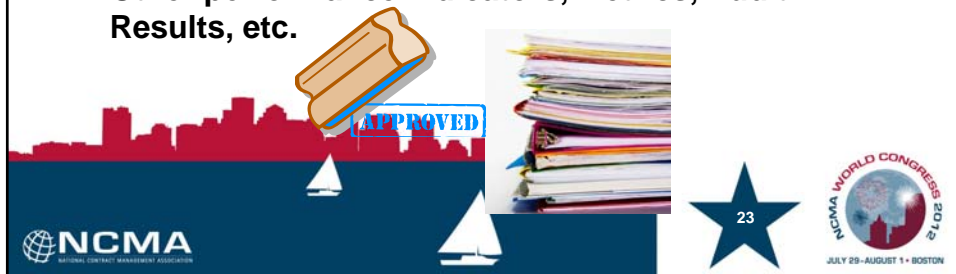
## OFFEOR IS REQUIRED TO SUBMIT THEIR PROPERTY MANAGEMENT PLAN (45.201(c)(4))

- CO is required to ask the Contractor for a Property Management Plan (PMP)
  - PMPs are to be Executive Level Documents where the contractor BRIEFLY describes its Property Management Processes.
    - Note – The FAR Part 45 rewrite should have created a solicitation provision. We didn't – so it is the PCO's RESPONSIBILITY to ask for it!
    - Contractors – it is YOUR responsibility to include it!



## WHAT MAY BE IN A PMP?

- Offeror may discuss:
  - Status of current Property Management System
    - Approved/Disapproved (Critical with the new Business System Rules)
  - Voluntary Consensus Standards in place or proposed for use
  - Industry Leading Practices in place or proposed for use
  - Other performance indicators, Metrics, Audit Results, etc.



## INCLUSION of the CORRECT CLAUSES 45.107

- Where there is GP -- There **MUST** be a clause!!!
  - FAR 52.245-1 and FAR 52.245-9
    - Government Property Clause and
    - Use and Charges Clause
  - BUT/EXCEPT!!!
    - No GP clauses required for property repair contracts/purchase orders with GP below the Simplified Acquisition Threshold



## CLAUSAL VARIATIONS

- FULL RISK OF LOSS
  - MUST USE THE ALT I to FAR 52.245-1
    - For COMPETITIVE FP Contracts
- WITH NON-PROFIT ENTITIES
  - MUST USE THE ALT II to FAR 52.245-1
    - Provides Vesting of TITLE to Contractor Acquired Property in the Non-Profit
- And check out DFARS 252.245
  - There are multiple clauses there for the DOD COs to use



## CONCERNS FOR THE PCO



**WHEN THERE IS GP UNDER YOUR CONTRACT –  
BAD THINGS CAN HAPPEN...  
WHICH CAN COST YOU \$  
AND DELAY YOUR PROGRAM!**



## FUNDING FOR ACTIONS

- The Equitable Adjustment portion of the GP Clause is activated
  - When GFP is:
    - Not suitable for use
    - Not delivered in a Timely basis
    - Decreased
  - When GFP requires repair beyond NORMAL Maintenance

CONTRACTORS – PAY ATTENTION!  
This is Important from YOUR  
PERSPECTIVE as well!!!



## WARRANTIES REGARDING GFP

- That's right – the Government promises that the GFP Provided will be **SUITABLE** for its intended use!!!
  - If it is **NOT** suitable for its intended use -- Equitable Adjustment
  - **NOTE** – it we, the Government, provide it in an **“AS IS”** Condition – we make **NO WARRANTY** regarding its condition – though we **DO** allow the Contractor to Inspect it **PRIOR** to contract award.



## WARRANTIES REGARDING GFP

- That's right – the Government promises that the GFP Provided will be delivered on a **TIMELY BASIS!!!**
  - If it is **NOT** delivered – Contractor entitled to an Equitable Adjustment
  - **NOTE** – Contractor **DOES** need to show that there is an impact to performance or delivery.



## FUNDING FOR ACTIONS

- Funding for replacing LOST, DAMAGED, DESTROYED, or STOLEN Government Property.
  - Yes, contractors DO damage GP!

\$500 Million Satellite  
\$139 Million in Damage!



*And, in most Cases, the Government Acts as a Self Insurer/ And therefore **INSURANCE COSTS NOT ALLOWABLE!***



## FUNDING FOR ACTIONS

- FUNDING DISPOSAL ACTIONS
  - Including:
    - DEMILITARIZATION
    - DISPOSAL OF HAZARDOUS WASTES
  - NOTE: Contractors are **ALREADY REQUIRED** by the contract to “prepare for shipment and deliver FOB Origin.”
    - Anything AFTER THIS is the Government’s Responsibility.
- FUNDING FOR STORAGE
  - “What are you going to do with that GP when the Contract is complete?”

Please don't tell the contractor  
“To ship in place.”



## POST AWARD CO ISSUES

**WHAT THE ACO**  
**(In coordination with the PCO)**  
**needs to know**  
**and do regarding GP!**





## POST AWARD ACO RESPONSIBILITIES

- FAR PART 42 Discusses the Contract Administration Delegation:
  - 42.302(a)(26) through (30)



## FAR 42.302(a)(26) through (30)

- (26) Perform property administration (see Part 45).
- (27) [Reserved]
- (28) Perform necessary screening, redistribution, and disposal of contractor inventory.
- (29) Issue contract modifications requiring the contractor to provide packing, crating, and handling services on excess Government property. When the ACO determines it to be in the Government's interests, the services may be secured from a contractor other than the contractor in possession of the property.



## **FAR 42.302(a)(26) through (30)**

- (30) When contractors **request** Government property—  
(Editor's Note – AFTER CONTRACT AWARD!!!)
- (i) Evaluate the contractor's requests for Government property and for changes to existing Government property and provide appropriate recommendations to the contracting officer;
  - (ii) Ensure required screening of Government property before acquisition by the contractor;
  - (iii) Approve use of Government property on a noninterference basis in accordance with the clause at 52.245-9, Use and Charges;
  - (iv) Ensure payment by the contractor of any rental due; and
  - (v) Ensure reporting of items no longer needed for Government production.



## **POST AWARD CO RESPONSIBILITIES**

- **A QUICK LISTING of RESPONSIBILITIES**
  - Equitable Adjustments
  - PMS Actions
  - Liability Actions
  - Maintenance Funding Actions
  - Modification of Contracts for Changing GP
  - Modification of Contracts for Authorizing USE
  - Collection of Rent



## THE CONTRACTOR'S PROPERTY MANAGEMENT SYSTEM

- Contractors are required to establish and maintain an ADEQUATE Property Management System (PMS)
  - Two Components
    - WRITTEN PROCEDURES
    - APPLICATION/COMPLIANCE
- In compliance with:
  - Clausal Requirements (FAR 52.245-1 & 52.245-9)
  - Voluntary Consensus Standards
  - Industry Leading Practices
  - Customary Commercial Practices



## AND – there is a Relatively NEW CHANGE AND IT'S A BIGGEE!!

- Based upon a Proposed DFARS CASE, DoD has issued an INTERIM RULE affecting six different “SYSTEMS” including:
  - Accounting System
  - Estimating System
  - Purchasing System
  - Earned Value Management System (“EVMS”)
  - Material Management and Accounting System (“MMAS”) and

### GOVERNMENT PROPERTY SYSTEM



## DFARS 252.245-7003

- **DEFINITIONS:**
  - **Contractor Property Management System Administration**
    - **“Acceptable property management system”** means a property system that complies with the system criteria in paragraph (c) of this clause.
    - **“Property management system”** means the Contractor’s system or systems for managing and controlling Government property.
    - **“Significant deficiency”** means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.



## DFARS 252.245-7003

- **(b) General.** The Contractor shall establish and maintain an acceptable property management system. Failure to maintain an acceptable property management system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.
- **(c) System criteria.** The Contractor’s property management system shall be in accordance with paragraph (f) of the contract clause at Federal Acquisition Regulation 52.245-1.



# DFARS 252.245-7003

- The Clause discusses the issue of...
  - (d) *Significant deficiencies.*
    - (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.
    - And then the “Sturm and Drang” of corrective actions, debate as to the significance of deficiencies, and other “stuff”....



And  
Then  
Things  
Get  
Nasty!!!



## DFARS 252.245-7003

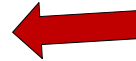
- (f) *Withholding payments.* If the Contracting Officer makes a final determination to **DISAPPROVE** the Contractor's property management system, leading to a potential risk of harm to the Government, and the contract includes the clause at [252.242-7005](#), Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.
- **DFARS 252.242-7005 says,**
  - “five percent of amounts due from progress payments and performance-based payments, and
  - ... withhold **five percent** from its billings on interim cost vouchers on cost, labor-hour, and time-and-materials contracts .”
  - “...**Ten percent** for significant deficiencies in multiple contractor business systems.”



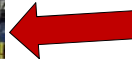
## My Opinion... SORTA' A DOUBLE WHAMMY!

- If the Contractor's PMS is **DISAPPROVED** two things may happen:
  - Withholding of Payment and
    - DFARS 252.245-7003
  - Withdrawal of Government's Assumption of Risk for "Loss" of GP
    - FAR 52.245-1 and
    - DFARS 252.245-7002

**OUCH!**



**DOUBLE  
OUCH!**



# SOME DOs and DON'Ts FOR CONTRACTING PROFESSIONALS In regard to GOVERNMENT PROPERTY



## Some DOs and DON'Ts for Contracting Professionals

- **DO** have the Program Manager or Requiring Activity Provide **JUSTIFICATION** to Support the Providing/Furnishing of GP  
–FAR 45.102 (b)(1) & (2) & (3) and (4)



## Some DOs and DON'Ts for Contracting Professionals

- **DON'T** agree to furnish Government Property unless the action meets the policy requirements of FAR 45.102
  - And DOCUMENT the ACTION
  - This is a “MONETARY” Decision (\$\$\$)
- **DO** Ensure the PROPER LISTING of GFP
  - Furnished WITH Government Warranties
  - Furnished “AS IS”
  - Furnished under FAR 52.245-2

**THREE  
POTENTIAL  
LISTS of GFP**



## Some DOs and DON'Ts for Contracting Professionals

- **DO** Ensure That The GP Clause Is In The Contract (When Applicable)
- **DON'T** Direct The Contractor To Acquire Property For The Government That May Normally Be The Contractor's Responsibility (FAR Part 31 and CAS Issue)
- **DO** Mod The Contract When Adding Or Decreasing GP





## Some DOs and DON'Ts for Contracting Professionals

- **DON'T Ask The Contractor To “Ship In Place” Without Establishing Contractual Accountability (Due To Liability Issues)**
  - GP Clause liability vs. FOB clause liability
- **When On Base Or Installation DO Specify DRMO Use Versus GP Clause Disposition Process (When beneficial to the Government).**



## Some DOs and DON'Ts for Contracting Professionals

- **DON'T “GIVE” GP To The Contractor at Contract Completion Because Your Contract No Longer Needs It...**
  - Violation Of Law (Federal Property And Administrative Services Act Of 1949)
- **DON'T Abandon GP To The Contractor When The Contractor Is Performing On A Government Base Or Installation.**



## Some DOs and DON'Ts for Contracting Professionals

- **DON'T** Direct The Contractor To Retain GP After Contract Completion Because They “MAY” Be Awarded Another Government Contract.
- **Do** Contact The Appropriate Government Property Administrator If You Have Technical Questions About GP!



# QUESTIONS???



# Thank you!

**Dr. Douglas N. Goetz, CPPM, CF**  
**President , GP Consultants LLC**  
**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

