





2017 National Education Seminar
YOUR EDUCATIONAL TRACK TO SUCCESS
July 31-August 3
JW MARRIOTT DESERT RIDGE RESORT & SPA | PHOENIX, AZ



**Technical Issues Related
to Contract Property
Management -- or "I Didn't
Know That!"**

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CONTRACT GOVERNMENT PROPERTY

- This isn't a new career or technical field
- Even with the FAR Rewrite in 2007 – we now have 10 years of experience with the new regs...
 - Granted DoD has been playing around with the requirements a little more than other agencies
- So, WHY... WHY are we still not following, understanding or even more importantly **PROPERLY** applying the regulatory requirements?



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CONTRACT GOVERNMENT PROPERTY

- So, I wanted to have a little bit of fun with this, based upon my experience(s) over the past few years.
- No, I am NOT going to name names...
 - Though I would like to... O.k., maybe I will name AGENCIES... O.k?
- But these are REAL WORLD SITUATIONS that people have approached me with questions



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So, let's
have at
it!!!



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INSTRUCTIONS

1. DO NOT ANSWER OUT LOUD!!!
2. WRITE YOUR ANSWER DOWN,
SOMEWHERE, ANYWHERE, SUCH THAT
ONLY YOU CAN SEE THE ANSWER!
3. OR, JUST THINK IT IN YOUR MIND.
4. SEE HOW WELL YOU DO!
WHY??? I DO NOT WANT TO EMBARRASS
ANYONE!



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- PROVIDING GOVERNMENT PROPERTY



**SOMETIMES,
IT
GETS
MESSY!!!**



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CONTRACT GOVERNMENT PROPERTY

- PROVIDING GOVERNMENT PROPERTY
 - ISSUES EVEN BEFORE CONTRACT AWARD
 - **GOVERNMENT SIDE OF THE HOUSE**
 - DETERMINATION to FURNISH GP
 - » FAR 45.102
 - » DFARS PGI 245.103-70
 - LISTINGS of GFP
 - » FAR 45.201
 - » DFARS PGI 245-103-72
 - » THIS IS TO BE DONE PRE-AWARD and POST AWARD (In other words it needs to be in the Solicitation AND the Contract).



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CONTRACT GOVERNMENT PROPERTY

- PROVIDING GOVERNMENT PROPERTY
 - ISSUES EVEN BEFORE CONTRACT AWARD
 - **GOVERNMENT SIDE OF THE HOUSE**
 - REQUEST FOR INFORMATION:
 - FAR 45.201 (c)
 - » and shall require the offeror to submit the following information:
 - List of Government property in the Contractor's possession that they have used in the performance of the COGNIZANT CO contract.

REALLY – IS THE GOVERNMENT ASKING YOU FOR THIS “DATER?”



CONTRACT GOVERNMENT PROPERTY

- PROVIDING GOVERNMENT PROPERTY
 - ISSUES EVEN BEFORE CONTRACT AWARD
 - **GOVERNMENT SIDE OF THE HOUSE**
 - REQUEST FOR INFORMATION:
 - (4) A description of the offeror's property management system, plan, and any customary commercial practices, voluntary consensus standards, or industry-leading practices and standards to be used by the offeror in managing Government property.
 - IS the CO doing this?



CONTRACT GOVERNMENT PROPERTY

- PROVIDING GOVERNMENT PROPERTY
 - ISSUES EVEN BEFORE CONTRACT AWARD

- **CONTRACTOR SIDE OF THE HOUSE**

- IF THE GOVERNMENT DOES NOT DO ANY OF THE AFOREMENTIONED REQUESTS...
 - » LISTS OF GP
 - » GP ALREADY IN YOUR POSSESSION
 - » Request for PMS Description
- WHAT DO YOU DO?



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CONTRACT GOVERNMENT PROPERTY

- PROVIDING GOVERNMENT PROPERTY
 - ISSUES EVEN BEFORE CONTRACT AWARD

- **CONTRACTOR SIDE OF THE HOUSE**

- AND IF THE GOVERNMENT FAILS IN ITS ACTIONS TO DO WHAT THEY ARE SUPPOSED TO DO... DOES IT IMPACT YOU???
- HOW???



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CONTRACT GOVERNMENT PROPERTY

- **PROPER CLAUSES**

- LACK OF THE USE OF THE PROPER CLAUSES

- **Government side -- a little bit better**

- Why? Within DoD they are tracking this Metric.

- In the writing of the FAR we tried to make it a “no Brainer”

- You use 52.245-1

- You **MUST** use 52.245-9

- In DoD you use 52.245-1

- You **MUST** use DFARS 252.245-7001 through 7004



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CONTRACT GOVERNMENT PROPERTY

- So, what difference does it make if the right clause is not there?!?!?

- IT DEPENDS!

- Government side – may challenge for its inclusion via operation of law, i.e., The Christian Doctrine

- Contractor side – may also argue Christian but may also ask for Equitable Adjustment – BUT...

- EVEN MORE IMPORTANT -- if clause is not there – which liability provision applies???



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CONTRACT GOVERNMENT PROPERTY

- One of my favorites...
- TITLE TO GOVERNMENT PROPERTY
- “The Government has title to all property acquired by the contractor under a Cost Reimbursement type contract.”
- TRUE OR FALSE



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CONTRACT GOVERNMENT PROPERTY

- Really? REALLY???
- **REALLY???**
- One of the “Great Myths” of Government Property!!!



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CAP UNDER COST TYPE CONTRACTS



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CONTRACTOR ACQUIRED PROPERTY (CAP)

- 45.402 -- Title to CAP.
 - (b) Under cost type and time-and material contracts, the **Government acquires title to all property** to which the **contractor is entitled to reimbursement**, in accordance with paragraph (e)(3) of clause 52.245-1.

Government
Policy
Statement



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CONTRACTOR ACQUIRED PROPERTY (CAP)

- FAR 52.245-1(e) **GP CLAUSE**
- 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**

SPECIFIC CRITERIA



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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 -

SPECIFIC CRITERIA
As to
WHEN!

- **Issuance of Material**
- **Commencement of Processing of Material or its use**
- **Reimbursement of the cost,**
- **Whichever comes first!**



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CONTRACTOR ACQUIRED PROPERTY (CAP)

So, let's break this
portion of the GP
CLAUSE down into
its smallest
components!!!



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CONTRACTOR ACQUIRED PROPERTY (CAP)

- FIRST PART –
- “TITLE TO **ALL** PROPERTY... VESTS IN THE GOVERNMENT...”
 - On the surface it sounds good but, it is a **FALSE/INCOMPLETE** STATEMENT!
 - The Government **DOES NOT** take title to **ALL** Property!
 - We have to address the VARIABLES EMBEDDED within the paragraph....



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CONTRACTOR ACQUIRED PROPERTY (CAP)

SECOND PART

- “...for which the contractor is **ENTITLED** to be **REIMBURSED**...”



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CONTRACTOR ACQUIRED PROPERTY (CAP)

- What does **ENTITLED** to be **REIMBURSED** mean???
- We have to go the “Allowable Cost and Payment Clause.”
 - FAR 52.216-7
 - (a) Invoicing.
 - (1) The Government will make payments ... in amounts determined to be **ALLOWABLE** by the Contracting Officer in accordance with **Federal Acquisition Regulation (FAR) Subpart 31.2 in effect on the date of this contract** and the terms of this contract.



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CONTRACTOR ACQUIRED PROPERTY (CAP)

- So, “**ENTITLED** to be **REIMBURSED**”
- Takes us to **FAR 52.216-7** which
- Takes us to **FAR 31.2**, as an incorporation by reference!
 - FAR 31, Contract Cost Principles and Procedures
 - FAR 31.2, Contracts with Commercial Organizations



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CONTRACTOR ACQUIRED PROPERTY (CAP)

- So, under FAR 31.2 -- What does **ENTITLED** to be **REIMBURSED** mean???
- **THREE CRITERIA** -- Cost must be:
 - **REASONABLE**
 - **ALLOCABLE** and
 - **ALLOWABLE**

FAR PART 31



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COST ACCOUNTING STANDARDS

- WE also have to deal with “**Standards promulgated by the CAS Board**, if applicable....”
- **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
 - » Arnavas and Ruberry
 - <http://www.whitehouse.gov/OMB/procurement/casb.html>



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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



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COST ACCOUNTING STANDARDS

- COST ACCOUNTING STANDARDS AFFECT THE WAY CONTRACTORS CHARGE THE GOVERNMENT FOR PROPERTY
 - For example – whether or not contractors may direct charge the Contract for “GENERAL PURPOSE EQUIPMENT”
- A BIGGEE FOR US IN GOVERNMENT Property CAS 402 – The “**CONSISTENCY**” Standard
 - **Kitchen English...**
 - **BUY LIKE ITEM,**
 - **USE FOR LIKE PURPOSE,**
 - **THEN CONTRACTOR MUST CHARGE IN LIKE FASHION**



– http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/FARapndx1.htm#P1185_222409



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COST ACCOUNTING STANDARDS

- Contractors must be “**CONSISTENT**” in their charging practices!!!
 - **IF THEY BUY LIKE ITEM,**
 - **THAT IS USED FOR LIKE PURPOSE,**
 - **THEN THE CONTRACTOR MUST CHARGE IT IN A CONSISTENT – read that – the same FASHION!!!**

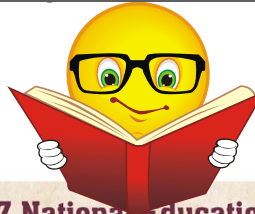


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COST ACCOUNTING STANDARDS

- BOTH Sides of the Property world – Government and contractor -- need to have ACCESS TO and READ and UNDERSTAND the contractor's Disclosure Statement in order to deal PROPERLY with PROPERTY!
 - CASB-DS-1 FORM [CASB-DS-2 for Non-profits]
 - http://www.whitehouse.gov/OMB/procurement/casb_ds-1.pdf
 - http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/FARapndx1.htm#P332_70916



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LAST ITEM

“... AS A

DIRECT

ITEM OF COST...!”

- The Government, under the GP Clause does NOT take title to property charged INDIRECT!

Title to Government Property: Applications and Implications for Property Management, Taxation, and Unintended Consequences -

<http://www.ncmahg.org/NewsPublications/JCMArticleDetail.cfm?ItemNumber=4236>



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So, under a Cost Reimbursement Type Contract is it a correct statement to say that the Government has title to **ALL** property Acquired by the Contractor?



QUESTION?

- May/should a contractor charge administrative supplies (e.g., pens, pencils, paper, TOILET PAPER) as a DIRECT CHARGE to a COST REIMBURSEMENT TYPE CONTRACT?



ANSWER

- HMMMMMMMMM... IT DEPENDS
- NOT REALLY!!!
- Why?
 - 1. Check the DISCLOSURE STATEMENT CASB-DS-1!
 - 2. Check out the words in FAR PART 31 –
 - 31.201-3 -- Determining Reasonableness.
 - (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.



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ANSWER!

<https://www.youtube.com/watch?v=23ZRWypu6II>

- But some do!
- Why??? Because the CO doesn't THINK about GP until it is toooooooo late!!!



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CONTRACT GOVERNMENT PROPERTY

- A TECHNICAL QUESTION...
 - UNDER A COST REIMBURSEMENT TYPE CONTRACT MAY A CONTRACTOR, WHEN ACQUIRING GENERAL PURPOSE EQUIPMENT (NOT AS A DELIVERABLE LINE ITEM), **APPLY PROFIT TO THE ACQUISITION OF GENERAL PURPOSE EQUIPMENT?**



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PROFIT ON EQUIPMENT

- **NOPE!!!**
- A LITTLE KNOWN REQUIREMENT!!!
- FAR 15.404-4(c)(3)
 - Exclude from the price negotiation objective the purchase cost of Contractor-Acquired Property that is categorized as Equipment.
 - **Take that one back to your Contracts folks and see what they say???**
 - **I will tell you right now – they will scream BLOODY MURDER!!!**
 - NOTE – EVEN THE CONTRACTS' FOLKS FROM ANOTHER PROFESSIONAL ASSOCIATION GOT THIS ONE WRONG!!! OOPS!!!

**BURIED
REQUIREMENT!!!**



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PERFORMING AN AUDIT (PMSA)

- **DON'T ANSWER OUT LOUD – THINK!**
 - Upon performing an audit I selected a Judgement sample for a process/outcome
 - Found a goodly # of significant defects
 - I Generalize back to the population, and request the contractor to take corrective action to its Property Management System for that outcome.
 - Right Direction or Wrong Direction?



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PERFORMING AN AUDIT (PMSA)

- **Wrong Direction!!!**
 - When using a JUDGEMENT SAMPLE your results are not **GENERALIZABLE!!!**
 - You can only request that those defects disclosed be corrected
 - You cannot say “FIX THE SYSTEM.”
 - You may only **GENERALIZE** back to the POPULATION when using **STATISTICAL/ RANDOM SAMPLING!**
- **And yet I see this happening in audits by BOTH PARTIES – Government and Contractor.**



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CONTRACT GOVERNMENT PROPERTY

- No records are required for Government Property, in the Possession of Contractors, below \$5000.

- **A RECURRING THEME**

- HUH???

- Where does it say that?



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CONTRACT GOVERNMENT PROPERTY

- Internal to the Government – for DOD, we have DODI 5000.64 with a \$ Threshold
- For Contractors – the FAR Government Property clause is quite clear
 - FAR 52.245-1(f)(1)(iii) “(iii) Records of Government property. The Contractor shall create and maintain records of **ALL** Government property accountable to the contract....”
 - Sorry, I am a little confused about the word “**ALL**.”



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CONTRACT GOVERNMENT PROPERTY

- **ANOTHER RECURRING THEME**

- THE FAR REQUIRES CONTRACTORS TO PERFORM AN ANNUAL PHYSICAL INVENTORY!



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CONTRACT GOVERNMENT PROPERTY

- ANNUAL PHYSICAL INVENTORIES
 - REALLY!
 - **REALLY???**
 - Where in the FAR GP Clause, 52.245-1, is there a requirement that you do an

ANNUAL
Physical Inventory?!?!?!?



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CONTRACT GOVERNMENT PROPERTY

- The term used is PERIODIC!!!
 - Which **MAY VARY:**
 - With type of Property,
 - The effectiveness of your system,
 - The methodology employed,
 - etc.
- But, I keep hearing everyone say that they are being required to do an ANNUAL PHYSICAL INVENTORY!!!



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CONTRACT GOVERNMENT PROPERTY

- MISAPPLICATION OF THE FAR LIABILITY CLAUSAL REQUIREMENT
 - **Erroneous determinations of LIABILITY**
 - **Erroneous application of INTRINSIC VALUE**



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CONTRACT GOVERNMENT PROPERTY

- MISAPPLICATION OF THE FAR LIABILITY CLAUSAL REQUIREMENT
 - Erroneous **determinations** by Government Property Administrators
 - i.e., **HOLDING** the contractor LIABLE when they are **NOT** liable
 - DRIVEN BY **EMOTION** and NOT INTELLECT
 - DRIVEN BY OTHER FACTORS
 - Orders from above!
 - “I don’t care what Goetz says, you hold them liable!”
 - What about the regs and the law???



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CONTRACT GOVERNMENT PROPERTY

- MISAPPLICATION OF THE FAR LIABILITY CLAUSAL REQUIREMENT
 - Erroneous application of **INTRINSIC VALUE**
 - VERY CLEAR CASE LAW REGARDING THIS ISSUE
 - WHY ARE WE STILL USING “ACQUISITION COST” vis-à-vis INTRINSIC VALUE?!?!?!?
 - PAs – MAKE SURE YOU FOLLOW THE RULES!!!
 - CONTRACTOR MANAGEMENT – IF THE WRONG DETERMINATION IS MADE... WHY AREN’T YOU PUSHING BACK???

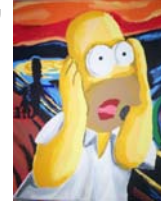


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AND BEFORE I GO ON...

As I travel the country over and over
again, on **BOTH SIDES**,
GOVERNMENT and **INDUSTRY**,
I find people
MAKING STUFF UP
AS THEY GO ALONG!!!



And I am going to be a little harsh here -- Because they do not know their career field, and they either do not want to ask or cannot ask or for whatever reason, they make things up!



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MAKING STUFF UP AS THEY GO ALONG!!!

- **TWO ITEMS LINKED**
 - Government -- Requiring the Contractor to do things that are **NOT** in the contract!
 - Previously mentioned ANNUAL PI
 - Contractor – Not knowing the rules when they sign a contract. And then asking “Where does it say I have to do that?”
 - Keeping Records of property below “X” valuation (Previously discussed)



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CONTRACT GOVERNMENT PROPERTY

A FEW BRAIN TEASERS!



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QUESTION?

- CAN YOU **TRANSFER** CONTRACTOR ACQUIRED PROPERTY (CAP) TO ANOTHER CONTRACT AS CONTRACTOR ACQUIRED PROPERTY (CAP)?



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ANSWER!

- **NOPE!!!**
- At least not in DOD!!!
- PGI 245.402-71 Delivery of contractor-acquired property.
 - (1) **The contractual transfer of accountability of CAP from one contract to another is prohibited.** Only upon delivery under a line item can property be transferred to other contracts as Government-furnished property (GFP) (see PGI 245.103-71).



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CONTRACT GOVERNMENT PROPERTY

- TRANSFERRING ACCOUNTABILITY OF GP
 - FAR 45.106
 - Government property shall be transferred from one contract to another only when firm requirements exist under the gaining contract (see 45.102). **YEAH, RIGHT!!!**
 - Such transfers shall be documented by modifications to both gaining and losing contracts. **YEAH RIGHT!!!**

WHY IS THIS A PROBLEM???



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QUESTION?

- What was the Change that was made to the Government Property clause, FAR 52.245-1, in the latest Edition of the GP Clause, Dated January 2017???



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ANSWER! ONE STINKIN' WORD! FIND THE WORD!

FAR 52.245-1(April 2012)

- (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.

FAR 52.245-1(January 2017)

- (e) Title to Government property.
- (3) Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable line items under Fixed-Price contracts.



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ANSWER! ONE STINKIN' WORD!

FAR 52.245-1(April 2012)

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FAR 52.245-1(January 2017)

- (e) Title to Government property.
- (3) Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable line items under Fixed-Price contracts.



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QUESTION?

- **Can the Government ask you, the Contractor, to just hold onto the Deliverable End Items for a little while after inspection and acceptance?**

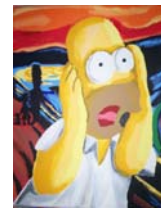


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ANSWER!

- The Government can ask you to do anything it wants!!!
 - Contractors... Do you have to do it?
- **It depends upon your management.**
- **Sometimes they (MANAGEMENT) will tell you, “Do whatever the customer wants!”**
- Is that a good idea?
 - IT DEPENDS!!! (NOTE: See next slide for technical answer!)



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ANSWER!

- A VERY OBTUSE and OBFUSCATED ANSWER!!!
 - **THE ANSWER IS A STINKIN’ FOOTNOTE to the GUIDEBOOK FOR CONTRACT PROPERTY ADMINISTRATION Dated December 2014 Page 1**
- 1 If a contract deliverable item is shipped in place (FOB Origin), the deliverable item would become either GFP (in which case 52.245-1 applies) or “not” (52.245-1 does not apply). If the contracting officer intends the property to be GFP, then 52.245-1 and its associated clauses must be added to the contract (assuming the contract lacks those clauses).



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ANSWER!

**YEAH
RIGHT!!!**

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AND ONE DISPO ITEM!!!

- A couple of NASA computers dating back to the Apollo mission era have been recovered from the basement of a deceased engineer in Pittsburgh. The revelation comes from a NASA Office of the Inspector General (OIG) report, which was released with the engineer's name redacted in response to a Freedom of Information Act (FOIA) request.
- Hundreds of tape reels many of them unmarked were found alongside the computer.
 - Thanks to Tom Ruckdaschel for sending me this one.
 - <http://www.foxnews.com/tech/2017/07/17/nasa-computers-tapes-from-apollo-era-discovered-in-basement-late-engineer.html>

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AND ONE DISPO ITEM!!!

- NASA was first contacted about the objects by a scrap dealer who had purchased them from the engineers heir. "Please tell NASA these items were not stolen," the heir told the scrap dealer. "They belonged to IBM Allegheny Center Pittsburgh, PA 15212. During the 1968-1972 time frame, **IBM was getting rid of the items so [redacted engineer] asked if he could have them and was told he could have them.**"
- **OMG!!!**
- **NEVER HAPPEN ON OUR WATCH – RIGHT???**



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So, what does this mean?

1. WE REALLY NEED TO LEARN OUR CRAFT
 - A. STUDY THE REGS
 - B. STUDY THE LITERATURE
 - C. Ask your Peers!
 - D. ASK YOUR BOSSES (Nicely)!
 - E. CONTINUOUSLY EXPAND THE DEPTH AND BREADTH OF YOUR KNOWLEDGE
2. DON'T MAKE THINGS UP AS YOU GO ALONG – MAKE SURE YOU HAVE THE CORRECT ANSWER!!!



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OUR CHALLENGE

- As Property Professionals it is **OUR RESPONSIBILITY** to ensure that we do it the right way! Not the easy way! Not the quick way! But the **CORRECT WAY** – based upon:
 - The **REGULATORY REQUIREMENT** and
 - **TO ENSURE COMPLIANCE** with our contracts and
 - **TO PROTECT OUR COMPANIES AND THE GOVERNMENT!!!**

**GOOD LUCK ON
YOUR QUEST!!!**



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THANK YOU!
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