



Critical Issues Relating to Government Property in the Acquisition/Contracting Process



Presented by:
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Background

- Over the past 25 years as a professor I have had the opportunity to work with Government activities as well as contractor entities.
- During that time I have seen “interesting” things happen with Government Property.
- This presentation is an effort to help folks understand some of the **CONTRACTUAL REQUIREMENTS**, problems and unintended outcomes of dealing with Government Property in the possession of Contractors.



GOVERNMENT PROPERTY in the Acquisition/Proposal Planning Process Pre-Award and Post-Award Concerns

- Program Managers, Contracting Officers Responsibilities for Government Property



FOR THE GOVERNMENT

- It is a FAR requirement that the GOVERNMENT **PROPERLY PLAN** for the PROVIDING, MANAGEMENT, USE and DISPOSAL OF GOVERNMENT PROPERTY (GP).

- FAR 45.1 Policies on various aspects of GP
- FAR 45.2 Government actions in regard to GP
- FAR 45.3 Use of GP
- FAR 45.6 Reporting, Reutilization and Disposal of GP

IMPORTANT!
ALL of FAR 45
is direction to
the
GOVERNMENT



FOR THE GOVERNMENT

- The Government **MUST** comply with the policy on providing GP:

- FAR 45.101(a) Contractors are **ordinarily** required to furnish **all property** necessary to perform Government contracts.



FOR THE GOVERNMENT

- The Government **MUST** comply with the policy on providing GP:

(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.



POLICY ON PROVIDING GP

Government's "best interest" may include situations where the Government **may** provide property to the contractor to achieve:

- ECONOMY
- SCARCITY OF ASSET
- STANDARDIZATION
- MAINTAIN INDUSTRIAL BASE
- SECURITY
- CONTRACT TYPE
- EXPEDITE PRODUCTION

PGI 245.103-70 FURNISHING GOVERNMENT PROPERTY TO CONTRACTORS
http://www.acq.osd.mil/dpap/dars/pgi/pgi.htm/PGI245_1.htm



FOR THE GOVERNMENT A SPECIFIC REQUIREMENT

FAR 45.201

- (a) The contracting officer **SHALL** insert a listing of the Government property to be offered in all solicitations where Government-furnished property is anticipated (see 45.102). The listing shall include at a minimum—
 - (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.



Ahhh, but there's more...

DOD has provided additional guidance and direction



DFARS PGI GUIDANCE

- 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.



http://www.acq.osd.mil/dpap/dars/pgi/pgi.htm/245_2.htm



DFARS PGI GUIDANCE

- (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.
- 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) PTN CAGE	(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: Acq Yes/No Cost*	(J) Unit Acq Cost*	(K) Tag, Label or Permanent Marking Inst**
<small>*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.</small>										

Contractors need this data for multiple reasons – costing, pricing, etc., but from a GP Perspective they need it to create STEWARDSHIP RECORDS!



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 B - Non-Serialized Items Listed by NSN and Quantity										
(A) Item Number	(B) Type Designation	(C) PTN CAGE	(D) MFR CAGE	(E) Quantity and Unit of Measure	(F) Nomenclature and Description	(G) NSN Model Number	(H) Part/ Model Number	(I) AS IS: Acq Yes/No Cost*	(J) Unit Acq Cost*	(K) Tag, Label or Permanent Marking Inst**
<small>*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.</small>										



CO Requests to CONTRACTOR S Pre-Award Requirements

- FAR 45.201(c)
- ... and shall require all offerors to submit the following information with their offers—
 - (4) The voluntary consensus standard or industry leading practices and standards to be used in the management of Government property, or existing property management plans, methods, practices, or procedures for accounting for property.

- We are asking for the contractor to submit a **PROPERTY MANAGEMENT PLAN**, explaining to us **HOW** they will manage GP to be provided under this contract!
- If you need assistance with the APPLICATION of the GP Requirements as applied by the Contractor in this plan – seek assistance from the cognizant Property Administrator



GP CONCERNS OFTEN OVERLOOKED

<ul style="list-style-type: none"> • Guarantees for GFP <ul style="list-style-type: none"> – Timely Delivery – Suitability for Use • TITLE issues • Records • Liability Issues <ul style="list-style-type: none"> – DoD Deviation 	<ul style="list-style-type: none"> • Disposition of GP <ul style="list-style-type: none"> – FUNDING FOR: <ul style="list-style-type: none"> • DEMIL • HAZARDOUS WASTES – Abandonment • IUID Requirements • Post Award Utilization Requests • Reports
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Warranties regarding GFP

- Generally the Government warrants that GFP will be:
 - Delivered on a Timely Basis
 - Delivery Date is to be inserted into the Proposal/Contract
 - PM/CO Needs to ensure that the GFP is REALLY AVAILABLE and will be DELIVERED on time!
 - Suitability for Use
 - Unless you have specified that the GFP is in an “AS IS” condition, ALL GFP is considered to be provided is a SUITABLE FOR USE condition!
- Any Failure on the part of the Government to meet these two guarantees may entitle the Contractor to an Equitable Adjustment!



TITLE TO GP

- **FIXED PRICE CONTRACTS**
 - GFP is ALWAYS TITLED to the Government
 - Contractor has title to all property it acquires
 - Government will take title to Deliverable END ITEMS
 - CLINS (After Inspection and Acceptance – DD250)
- **COST REIMBURSEMENT CONTRACTS**
 - GFP is ALWAYS TITLED to the Government
 - Government has title to ALL Property
 - Must be reasonable, allocable, allowable
 - Direct Charged
 - In accordance with Disclosure Statement
 - CASB DS1 and Cost Accounting Standards



TITLE TO GP

- **BE CAREFUL ABOUT DIRECTING CONTRACTORS TO ACQUIRE SPECIFIC TYPES OF PROPERTY**
 - Remember the Government's Policy on providing!!!
 - You should not be directing them to acquire something that they would OR SHOULD have bought with their own capital!
- **Work closely with your Property Administrator and DCAA to ensure acquisitions under CR type contracts are appropriate:**
 - Some examples of concern:
 - Acquisitions of General Purpose Equipment direct charged to Government contract versus paid for with their own capital
 - Making Government Property Non-severable by it being attached to Contractor Owned Property



RECORDS OF GP

- **The Government is required to maintain its OWN RECORDS of GP provided to the contractor**
 - Department of Defense activities are required to establish and maintain records of the Government Property accountable to their activity.
 - DoD Instruction (DODI) 5000.64, entitled "Accountability and Management of DoD-Owned Equipment and Other Accountable Property"
 - DoD activities are also required to establish an accountable property system of record (APSR)
- **Contractors establish and maintain "STEWARDSHIP" records of the GP in their possession.**



LIABILITY FOR LTD&D OF GP

- DAMAGE TO GOVERNMENT PROPERTY HAPPENS!!!!



\$500 Million Satellite -- \$139 Million of Damage



Liability Issues

- Government generally acts as a self-insurer for Government Property
- Two forms of liability
 - FULL RISK OF LOSS (Contractor bears Risk of Loss)
 - FAR 52.245-1 (Alternate I)
 - FOR DOD – this has been eliminated through a Deviation
 - <http://www.acq.osd.mil/dpap/policy/policyvault/USA000633-10-DPAP.pdf>
 - LIMITED RISK OF LOSS (Government bears Risk of Loss)
 - FAR 52.245-1



Liability Issues

- If you provide GP to a Contractor -- and that GP is lost, stolen, damaged or destroyed -- you may have to provide:
 - \$ to replace Government Property or
 - \$ to repair Government Property or
 - Actual Replacement of Government Property from Government Inventory

NOTE: Also new KTR Reporting requirement Via DCMA's E-Tools. DFARS 252.245-7002



http://farsite.hill.af.mil/xeqbtm/regs/far2afmctars/fardfars/dfars/DFars252_237.htm#P1095_66887



DISPOSITION OF GP

- Disposition of GP is driven by STATUTE with very specific detailed requirements and actions PRIOR to effecting disposition
- Some Thoughts:
 - It would be a wise and prudent action to PLAN for the DISPOSITION of GP at time of Contract AWARD (Or even Pre-award)!
 - If you FURNISH GFP – do you want it back?
 - If you FURNISH GFP and you want it back – WHERE do you want it to go?



DISPOSITION OF GP

- Some Additional Thoughts:
 - There is a PROCESS to effect DISPOSITION – it is through an automated WEB BASED system called Plant Clearance Automated Reutilization Screening System (PCARSS)
 - Plant Clearance Officer defined – Authorized representative responsible for the screening, redistributing, and disposing of contractor inventory (GFP, CAP, Termination Inventory)
 - Additional FUNDING for disposal MAY BE REQUIRED for:
 - DEMILITARIZATION OF GP
 - PROPER DISPOSITION OF HAZARDOUS WASTES



DISPOSITION OF GP

- SUGGESTION TO PCOs (And their reps CORs, COTRs, TRCOs, etc.) in regard to DISPOSITION...
 - DO NOT give direction to contractors to effect disposition (Other than to direct return of GP to the Government or ship to another Government activity) unless you understand the PROCESS of DISPOSITION, i.e., all of the REQUIRED SCREENING inside and outside the Government!
 - DO NOT DIRECT ABANDONMENT unless all disposal screening requirements have been accomplished!



IIID Requirements

- **CRITICAL to the MANAGEMENT OF GP**
 - Multiple Perspectives:
 - Financial, Logistical, Auditability (E&C), Property Accountability, etc.
 - Information & Guidance on the application of IIID Concepts:
 - <http://www.acq.osd.mil/dpap/pdi/uid/index.html>
 - Policy – DODI 8320.04
<http://www.dtic.mil/whs/directives/corres/pdf/832004p.pdf>
 - TWO DFARS CLAUSES:
 - DFARS 252.211-7003 Item Identification and Valuation
 - Kitchen English purpose – requires the application of Unique Item Identifier (UII) for deliverable end items (CLINs, SLINs, Exhibit Line Items)
 - All delivered items for which the Government's **unit acquisition cost is \$5,000 or more**
 - DFARS 252.211-7007 Reporting of Government-Furnished Equipment in the DoD Item Unique Identification (IIID) Registry
 - Kitchen English – requires the contractor to apply "virtual UII or a DoD recognized unique identification" to GFP (Equipment, ST, STE – **NOT MATERIAL**) under their stewardship.

CAG 1U2R7
SER M980312
PNR F100200300400AP



Post Award Utilization Requests

- The requirement for contractors to provide information regarding GP Accountable under other Government contracts that they desire to use on prospective contracts had multiple intents – one of which was to greatly reduce the dreaded **"RENT FREE NON-INTERFERENCE POST AWARD UTILIZATION"** request!
- But... if you receive a POST AWARD UTILIZATION request, then you must consider the potential unfair competitive advantage, i.e., if you **ALLOW** the contractor to **USE** that GP – then in certain situations you need to obtain **CONSIDERATION**
 - FOR EXAMPLE -- FP CONTRACTS -- RENT IN ACCORDANCE WITH THE USE AND CHARGES CLAUSE 52.245-9
 - CR Contracts – a different story!



Reports

- **EVIDENCE OF REDUNDANT, DUPLICATIVE REPORTS!!!**
- The GP Clause of FAR 52.245-1 has embedded in it the requirement for numerous reports, e.g.:
 - Discrepancies incident to shipment of GFP
 - Physical Inventory Results
 - Loss, theft, damage or destruction (LTD&D) reports
 - Done Electronically now through DFARS 252.245-7002
- Seen an explosion of requests for various reports –
 - Ensure the use of CDRLs or DIDs
 - Fair to you, Fair to the Contractor



QUESTIONS?



THANK YOU!

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OLD DAU PROFESSOR
Recently Retired - now Rehired as an Intermittent.
President of the newly incorporated GP Consultants, LLC.

Chief cook and bottle washer at Home, responsible for all "honeydue" requirements - though my wife has told me to stay out of HER house!



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