PRELUDE

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

– WHAT DO YOU OWN and WHEN do your own it?
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!!!
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)
THE PROCESS OF ACQUISITION

• IT IS EXPECTED THAT THE CONTRACTOR WILL ADDRESS THIS PROCESS/OUTCOME IN ITS PMS AND:
  – DESCRIBE THE PROCESS IN SUFFICIENT DEPTH AND DETAIL AS TO THESE REQUIREMENTS
  – WHO, WHAT, WHERE, WHEN, and HOW!
• IT IS EXPECTED THAT THE CONTRACTOR WILL ADDRESS THIS PROCESS IN ITS PURCHASING SYSTEM:
  – DESCRIBE THE PROCESS IN SUFFICIENT DEPTH AND DETAIL TO MEET THOSE PROCESS REQUIREMENTS
  – Approaching the issue from a different vector
    • Careful with Subcontractor Liability – but that is a whole ‘nother presentation!! 😊

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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)
ACQUISITION OF GFP

• TITLE TO **GFP** ALWAYS VESTS IN THE GOVERNMENT
  – FAR 45.401
  – FAR 52.245-1
ACQUISITION OF GFP

• GFP may come into the possession of the contractor three ways. It may be:
  – PUSHED
  – PULLED or
  – TRANSFERRED

E.g., DD FORM 1348
TITLE TO GFP

To reiterate…

TITLE

ALWAYS VESTS

IN THE GOVERNMENT

FOR

GFP

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NOW ON TO THE GOOD STUFF!!!
CAP...
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 them!
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
CONTRACTOR ACQUIRED PROPERTY (CAP)

- TYPES OF CONTRACTS
- TWO BROAD PRICING ARRANGEMENT

- FIXED PRICE
- COST REIMB.

- PLUS LOTS OF VARIANTS
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!!!
• **45.402 -- Title to Contractor-Acquired Property.**
  
  (a) 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.
• 45.402 -- Title to CAP.
  - (a) .... 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.
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.
CONTRACTOR ACQUIRED PROPERTY (CAP)

- CLAUSAL REQUIREMENT -- 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:

IMPANTANT!!!

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CONTRACTOR ACQUIRED PROPERTY (CAP)

• TITLE TO PROPERTY UNDER COST REIMBURSEMENT CONTRACTS
  – Upon VENDOR’S DELIVERY
  – 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 for use
    • Reimbursement of the cost,
    • Whichever comes first!

These are ACTIONS At which Point Title VESTS!

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CONTRACTOR ACQUIRED PROPERTY (CAP)

• What does ENTITLED to be REIMBURSED mean???

• Cost must be:
  – REASONABLE
  – ALLOCABLE and
  – ALLOWABLE
• 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.
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
• No presumption of reasonableness shall be attached to the incurrence of costs by a contractor. If an initial review of the facts results in a challenge of a specific cost by the contracting officer or the contracting officer’s representative, the burden of proof shall be upon the contractor to establish that such cost is reasonable.
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.
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.
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
• **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.
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

– http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/FA Rapndx1.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://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)
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!**)
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.
• 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.
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
• **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.
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
SIMPLE EXPLANATION OF TITLE

• FIXED PRICE
  • GFP – Government always has title!
  • CONTRACTOR has TITLE to ALL PROPERTY

• COST REIMBURSEMENT
  • GFP – Government ALWAYS HAS TITLE
  • CAP – GOVERNMENT has TITLE to ALL PROPERTY:
    – To which the contractor is ENTITLED TO BE REIMBURSED:
      • R, A & A
      • CHARGED DIRECT
      • Consistent with DISCLOSURE STATEMENT

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• DOES THE CONTRACTOR REQUIRE APPROVAL PRIOR TO ACQUIRING PROPERTY FOR THE GOVERNMENT?
  – GENERALLY NO!
  – BUT SOMETIMES MAYBE!
• 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)
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
      – PROPERTY OF THE GOVERNMENT

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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.
LAGNIAPPE!
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.
ACQUISITION OF GFP by TRANSFER

- WHERE **CAP** IS TRANSFERRED FROM CONTRACT #1 to CONTRACT #2 – with **no costs transferred** – it becomes **GFP** to Contract #2.

- BOTH CONTRACTS MUST AUTHORIZE THE TRANSFER.
52.245-1(ALT. II)

• USED WITH NON-PROFITS
  – E.g., Universities
  – FAR 45.107(a)(3)

• For applied and basic research or scientific research
  – 35.014

• Main concern – **TITLE VESTING**!

• Generally an Office of Naval Research (ONR) Responsibility
52.245-1(ALT. II)

• e)(3) Title to property (and other tangible personal property) purchased with funds available for research and having an acquisition cost of LESS than $5,000 shall VEST in the Contractor upon acquisition or as soon thereafter as feasible; provided that the Contractor obtained the Contracting Officer’s approval before each acquisition.
• Title to property purchased with funds available for research and having an acquisition cost of $5,000 or more shall vest as set forth in this contract. If title to property vests in the Contractor under this paragraph, the Contractor agrees that no costs shall be allowed for any depreciation, amortization, or use under any existing or future Government contract or subcontract thereunder.
52.245-1(ALT. II)

• The Contractor shall furnish the Contracting Officer a list of all property to which title is vested in the Contractor under this paragraph within 10 days following the end of the calendar quarter during which it was received.
Vesting title under this paragraph is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract, the Contractor accepts and agrees that—

— “No person in the United States or its outlying areas shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to property).”

We cannot and do not let others discriminate!
THANK YOU!

Dr. Douglas N. Goetz, CPPM, CF
PRESIDENT, GP CONSULTANTS
OLD AFIT/DAU PROFESSOR
Hopefully a Good Instructor.

Chief cook and bottle washer at Home, responsible for all “honey do” requirements – though my wife has told me to stay out of HER house!

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