THE ACQUISITION OF GOVERNMENT PROPERTY BY DEFENSE CONTRACTORS

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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.
A Preface –

APPLICABLE VCS

• Though it is a contractual requirement that contractors use VOLUNTARY CONSENSUS STANDARDS or Industry Leading Practices for the MANAGEMENT OF Government Property...

• THERE IS NO VOLUNTARY CONSENSUS STANDARD FOR THE ACQUISITION PROCESS – AS OF TODAY.
THE PROCESS OF ACQUISITION

• FAR 52.245-1(f)(1)(i) Acquisition of Property
• A Very Broad General Statement
  - The contractor shall document that all property was acquired consistent with its engineering, production planning, material control operations, and/or cost accounting disclosure statement.
DEFINITIONS

- Government Property
  - means all property owned or leased by the Government.
  - Government property includes both Government-furnished and Contractor-acquired Property.
• DEFINITIONS
  - Government Furnished Property
    • means property in the possession of, or directly acquired by, the Government and subsequently furnished to the contractor for performance of a contract.

TITLE ALWAYS VESTS IN GOVERNMENT
• DEFINITIONS
  - Contractor Acquired Property (CAP)
    • means property acquired, fabricated, or otherwise provided by the contractor for performing a contract and to which the Government has...
ACQUISITION AND TITLE ARE LINKED!
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:
  - PUSHED
  - PULLED or
  - TRANSFERRED

ACQUISITION OF GFP

• “PUSHED” GFP
  – Government activities may DIRECT SHIP GFP to contractors with NO ACTIONS on the part of the Contractor.
    • GFP IS SPECIFIED IN THE CONTRACT
    • GOVERNMENT SHIPS
    • CONTRACTOR NEED TAKE NO ACTION TO ACQUIRE
    • CONTRACTOR RECEIVES PROPERTY INTO THEIR PROPERTY MANAGEMENT SYSTEM
• “PULLED” GFP
  - WHERE THE CONTRACTOR REQUISITIONS THE GFP REQUIRED FOR CONTRACT PERFORMANCE
  - Requisition method specified in the contract
    • Military Standard Requisitioning and Issuance Procedures (MILSTRIP)
      - DoD 4000.25-1-M
    • Also FEDSTRIP
ACQUISITION OF GFP

• “PULLED” GFP
  - Contractor must have the AUTHORITY to REQUISITION GFP through the MILSTRIP SYSTEM

• REFERENCES
  - FAR PART 51
  - DFARS PART 251
  - PLUS THE ASSOCIATED CLAUSES

Contracting Officers: It is YOUR Responsibility To Provide this Authorization.

• “PULLED” GFP
  - CONTRACTOR MAY BE LIMITED TO REQUISITIONING ONLY CERTAIN ITEMS OF GOVERNMENT PROPERTY THROUGH THE MILSTRIP SYSTEM
  - Procurement activities establish a MANAGEMENT CONTROL ACTIVITIES (MCA) to SCREEN all MILSTRIP requisitions to ensure contractor requisitions ONLY that “stuff” that is AUTHORIZED
    - DoD 4140.1-R, May 23, 2003 (Chapter 5.11)
“PULLED” GFP

- CONTRACTORS SHALL PROVIDE PROCEDURES TO ADDRESS THIS PROCESS IN THEIR PROPERTY MANAGEMENT SYSTEM WHERE MILSTRIP REQUISITIONS ARE AUTHORIZED.

• Critical aspects
  - Force Activities Designators (FAD)
  - Priority designators

SUGGESTION!!!
ORDER THE DLA DESKBOOK

ACQUISITION OF GFP

• GFP BY TRANSFER
  – GFP MAY COME INTO EXISTENCE BY TRANSFER OF PROPERTY FROM ONE CONTRACT TO ANOTHER

WARNING: THERE BE MODS HERE!
With all due respect to Scotty!

ACQUISITION OF GFP

• 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.
ACQUISITION may take many different forms and may use many different processes:
- Acquiring 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 with 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.
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.
CONTRACTOR ACQUIRED PROPERTY (CAP)

• **TRANSFER** of Property
  - Contractor may use a system to move property, generally material, 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 (More on this later)
    • 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 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
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
  - Generally CONTRACTORS retain title to ALL property Acquired under FIXED PRICE CONTRACTS
  - The Government only obtains title to the DELIVERABLE END ITEM specified in the contract through Contract Line Item Numbers (CLIN)

NOTE: Financing Provisions have an impact on title
CONTRACTOR ACQUIRED PROPERTY (CAP)

- **TITLE TO PROPERTY UNDER FIXED PRICE CONTRACTS**
  - If there is a **CLIN** directing the contractor to acquire **MATERIAL**, FOR THE GOVERNMENT, as a **DIRECT ITEM OF COST**
  - **TITLE VESTS** in the **GOVERNMENT**:
    - 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!
CONTRACTOR ACQUIRED PROPERTY (CAP)

• TITLE TO PROPERTY UNDER FIXED PRICE CONTRACTS
  - **TITLE** to each item of
  - **EQUIPMENT, SPECIAL TEST EQUIPMENT & SPECIAL TOOLING**
  - **ACQUIRED** by the **CONTRACTOR**
  - **FOR THE GOVERNMENT**
  - shall pass to and **VEST** in the **GOVERNMENT** when:
    • Its **USE COMMENCES** or
    • When the Government has **PAID** for it,
    • Whichever is earlier,
    • Whether or not title previously vested in the Government.
CONTRACTOR ACQUIRED PROPERTY (CAP)

- **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**
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!
CONTRACTOR ACQUIRED PROPERTY (CAP)

• What does **ENTITLED** to be **REIMBURSED** mean???

• Cost must be:
  - REASONABLE
  - ALLOCABLE and
  - ALLOWABLE

FAR PART 31
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.
• 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
• 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.
• 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 AFFECT THE WAY CONTRACTORS CAN CHARGE US FOR PROPERTY
- For example - whether or not contractors direct charge us for “GENERAL PURPOSE EQUIPMENT”

CAS 402 – CONSISTENCY
- Kitchen English...
  • BUY Like Item,
  • USE for Like Purpose,
  • THEN KR MUST CHARGE in Like FASHION

- http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/FARapndx1.htm#P1185_222409
• One needs to have **ACCESS TO** and **READ** and **UNDERSTAND** the contractor’s Disclosure Statement
  - CASB-DS-1 FORM
    - http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/FARapndx1.htm#P332_70916
• Do a Search on Google for “Cost Accounting Standards Disclosure Statements”
  - Lots of hits
    • http://www.utah.edu/govacct/d1.htm
    • http://www.rgs.uky.edu/ospa/cas/dsmc.pdf
    • http://research.uiowa.edu/dsp/main/downloads/ds2_re_v1.pdf

• 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)
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.
• TITLE TO PROPERTY CHARGED INDIRECT
  - There is some debate raging from a tax standpoint that says the Government has title to Property Charged through overhead/indirect.
  - TODAY, we do NOT manage indirect charged property as Government Property for purposes of the Government Property Clause.
REFERENCES

• Federal Acquisition Regulations - Current Version
• If you got Questions about Government Property... I got answers (Maybe, hopefully, probably)!!!
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