Contract Property Discussion

Cleared For Public Release

Presented by:
Tom Ruckdaschel
Deputy Director, Govt Property
tom.ruckdaschel@dcma.mil
804-734-0505

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Today’s Discussion

• “Contract Property” and accountability – meaning and context

• DFARS GFP reporting: DFARS clause 252.211-7007

• Contractual transfers of property accountability
This information:

Should not be construed as changing or modifying any statute, regulation, DoD policy or guidance, or any term(s) of any contract with the U.S. Government or any department or agency of the U.S. Government.

Does not affect in any way, any on-going or future property management system analysis.
Refresher

- Federal Acquisition Regulations System (Title 48 of the U.S. Code of Federal Regulations (CFR))
  - Federal Acquisition Regulation (FAR) = Chapter 1, Parts 1-99 of 48 CFR
  - Defense Federal Acquisition Regulations (DFARS) = Chapter 2, Parts 200-299 of 48 CFR
- FAR: provides uniform policies and procedures for acquisitions by executive agencies of the Federal Government
  - Issued and maintained by DoD, General Services Administration and the National Aeronautics and Space Administration
- DFARS: supplements the FAR; is issued and maintained by DoD (only). DoD specific; delegations of FAR authorities
Current Regulatory Landscape

- Federal Acquisition Regulation (FAR)
  - Part 45-Government’s Policy
  - Clause 52.245-1 (June 2007, August 2010, April 2012)
- Defense Federal Acquisition Regulation Supplement (DFARS)
  - Part 245—DoD Policy
  - DFARS clauses:
    - 252.211-7007 (Reporting of GFE to the DoD UID Registry)
    - 252.245-7001 (Tagging, Labeling and Marking of GFP)
    - 252.245-7002 (Reporting Loss of Government Property)
    - 252.245-7003 (Contractor Property Management System Admin.)
    - 252.245-7004 (Reporting, Reutilization, and Disposal)
- Procedure, Guidance and Information
First Principles

• All Government contract property (whether Government furnished or contractor acquired) must be contractually accountable to a contract – and only one contract at a time

• Government property can only be transferred from one contract to another when firm requirements exist under the new, follow-on or gaining contract. See PGI 245.103-71

• Contractual transfers of property accountability must be accomplished by contract modification of both gaining and losing contracts; contract modifications shall use the fillable PDF formats prescribed in the “smart” attachments found at PGI 245.103-72
• Government “contract” property (DoDI 4161.02)
  - Furnished to a contractor by the Government (“GFP”)
  - Acquired by a contractor under cost-reimbursement contracts (“CAP”)

• The requiring activity is the decision point as to whether or not to furnish property to contractors
  - FAR Part 7.105 (a) (15), Contents of Written Acquisition Plans
  - FAR Parts 45.102 (Policy on Providing) and 45.201 (Solicitation Requirements)
    - PGI 245.103-70

The cognizant DCMA contracting officer may execute contractual transfers of property accountability in coordination with the cognizant procuring contracting officer(s) –FAR 42.302 (30)(v)
All Government contract property (whether Government furnished or contractor acquired) must be contractually accountable to a contract – and only one contract at a time.
Contractual Accountability

• Government property cannot be accountable to things that “look like” contracts:
  • CLINS
  • ELINS
  • IDC delivery and task orders
  • CDRLs

• Government property **can only be** accountable to **contracts**

• True, a contract can limit the **use** of property to various CLINS, task orders, etc., but that’s not the same as contractual accountability, which is fundamental
• Government property can only be transferred from one contract to another when firm requirements exist under the new, follow-on or gaining contract. See PGI 245.103-71 - THIS IS BASED ON:

FAR 45.102:
Contracting Officers shall provide property…only when it is clearly demonstrated to be: in the Government’s best interest; that the overall benefit to the acquisition significantly outweighs the increased cost of administration (including property disposal); that providing property does not substantially increase the Government’s risk; and that Government requirements cannot otherwise be met.
Contractual transfers of property accountability must be accomplished by contract modification of both gaining and losing contracts; contract modifications shall use the fillable PDF formats prescribed in the “smart” attachments found at PGI 245.103-72 THIS IS BASED ON:

FAR 45.106:
“Such transfers shall be documented by modifications to both gaining and losing contracts. Once transferred, all property shall be considered Government-furnished property to the gaining contract.”
Transfer/Disposal Process

- When Govt. property is no longer required on a contract, the FAR clause at 52.245-1 requires contractors to:
  - Report property to the plant clearance officer for disposition (DCMA’s etool PCARSS is used for this purpose) or
  - Notify the Contracting Officer that property can be used on another contract
- In general, these requirements involve two (2) processes:
  - PCARSS reporting: standardized, automated, consistent, well-established
  - Notification/request for property transfer of accountability: ad-hoc, manual, inconsistent
- Our new process (PCARSS 3.2) collapses everything into one standard automated process
• A new requirement for all DoD contract writing systems
• (OSD memo April 11, 2012)
• We’re using the same template for property transfers
• Required by PGI 245.103-72
Benefits

• Property will be available on new or follow-on contracts…faster
• Standardizes the GP attachment as data (which can then be used and reused via EDA)
• Demonstrates proper contract structure
• Less potential for negative audit findings
• Enhances both data integrity and property accountability
• Potentially faster contract close out

Major DoD effort underway on GFP accountability (tied to FIAR plan)
How the process works

• The contractor:
  • Identifies a new requirement; requests transfer of accountability to the other contract
  • Reports the property to PCARSS
  • An email will be sent to the Contracting Officer (CO) with the “smart attachment”

• The CO can approve or disapprove the transfer
  • If approved, the CO can create the contract modification through the Modifications and Delivery Orders etool—using the smart attachment. Done! (plant clearance case can be closed)
  • If disapproved, the excess property is disposed of like any other excess property

Note: Reporting property to PCARSS does not constitute a contractor request for transfer of accountability—contractors must still make a formal request (outside of PCARSS)
If “Yes” is selected for this question, the User must enter a DCMA Contract Number.
“The contractor [ABC, Inc.] has requested that the Government Property identified on the attached listing be transferred from contract F0960398D0083 to contract FA877104D0003. Accordingly, consistent with FAR 45.106, contract modifications to each contract (both gaining and losing) are required.”

“Please note that failure to expeditiously modify these contracts may result in unnecessary property storage costs, impact the timely closeout of contract F0960398D0083, or otherwise impact contract performance on contract FA877104D0003.”
THE FOLLOWING PARAGRAPH SHOULD BE ADDED TO THE MODIFICATION FOR THE LOSING CONTRACT:

The purpose of this modification is to transfer accountability of the contract property items listed on the attachment -- from this contract to contract FA877104D0003".

THE FOLLOWING PARAGRAPH SHOULD BE ADDED TO THE MODIFICATION FOR THE GAINING CONTRACT:

"The purpose of this modification is to transfer accountability of the contract property items listed on the attachment -- from contract F0960398D0083 to contract FA877104D0003".
“This modification does not waive the Contracting Officers’ responsibility to consider any potential unfair competitive advantage resulting from this transfer of accountability. The Contracting Officer may consider applying a rental charge or equivalent as specified in FAR 52.245-9, which is hereby added to this contract, or other form of consideration.

The FAR clause 52.245-1 and DFARS clauses 252.245-7001, 252.245-7002, 252.245-7003, 252.245-7004 and 252.211-7007 are also added to this contract to the extent it may not already contain these clauses.”
GFP Reporting
• 2007: Contractor reporting of GFP begins in earnest
• Regulatory (DFARS) timeline:
  • 252.211-7007 [August 2012] *(includes new 2014 requirements*)
  • 252.211-7007 [November 2008] (Final Rule)
  • 252.211-7007 [September 2007] (Interim Rule)
• Multiple changes created a degree of confusion; however, core reporting requirements did not change

*Afforded industry adequate time to prepare for new requirements
This briefing focuses on the August 2012 version of DFARS Clause 252.211-7007
November 2008

- Contractors are required to report Government-Furnished Equipment
  - Special Tooling
  - Special Test Equipment
  - Equipment
- Valued at $5,000 or more
- **Excludes** item for repair

August 2012*

- Contractors are required to report Government-Furnished Property (includes items for repair), as follows:
  - Through December 31, 2013:
    - Each serially managed item $5,000 or more in dollar value
  - As of January 1, 2014:
    - Each serially managed item regardless of dollar value
    - Non-serially managed material items (receipt **ONLY**)

*applies to new solicitations and contracts
• DFARS clause 252.211-7007 continues to be misunderstood:
  • The clause does not contain a “marking” requirement
  • The clause does contain a GFP reporting requirement
• The clause is often confused with DFARS 252.211-7003
• Both clauses involve the DoD IUID registry. However, each reflects fundamentally different requirements:
  • DFARS clause 252.211-7003 pertains to delivery of items
  • DFARS clause 252.211-7007 pertains to reporting of GFP
With respect to DFARS reporting, there are two (2) types of GFP:

1. Serially managed
2. Non-serially managed

Of the two types, there could be:

- GFP previously marked with a registered “Ull” (or)
- GFP not marked with a registered Ull; these items could be serially managed…or not

The method of reporting depends on the existence of a Ull. More on that later…
• What is a UII?

  
  “a set of data elements marked on items that is globally unique and unambiguous. The term includes a concatenated unique item identifier or a DoD recognized unique identification equivalent.”

• Why do some GFP items have Ulls? Because…
  
  • The contractor assigned and registered a UII by virtue of delivery under DFARS 252.211-7003 requirements, or
  
  • The DoD Component assigned and registered a UII while the item was in its custody

• Most items with a UII are serially managed
Okay. So what exactly does serially managed mean?
Serially managed means*:

“An item designated by DoD to be uniquely tracked, controlled, or managed in maintenance, repair and/or supply systems by means of its serial number.”

*DFARS clause 252.211-7007

*In addition to items previously marked with a Ull, certain FAR property categories already, today…right now…meet this definition!
“Inherently” Serially Managed Items

• All items subject to DoD Instruction (DoDI) 5000.64 are considered serially managed, i.e., “designated by DoD”
  ➢ Special tooling (ST), special test equipment (STE), and equipment all fall under DoDI 5000.64
  ➢ Therefore all ST, STE, and Equipment items are subject to DFARS 252.211-7007 reporting [as serially managed items]

• Material (items other than ST, STE and Equipment) is a different matter; material cannot be considered “inherently” serially managed*

*True, “some” material items have serial numbers—but that does not make them inherently “serially managed”
Equipment (for use or repair)
Special Tooling
Special Test Equipment
These are inherently serially managed
Remember: the Government, not the contractor, has to identify serially managed items; contract terms and conditions must identify all items to be serially managed*

*For example, items individually listed on the [Serialized Item List” section of the “Scheduled GFP Attachment (SGFP)”]
• A new requirement for all DoD contract writing systems
• OSD memo April 11, 2012
• Required by PGI 245.103-72
So what exactly does “report” mean?

In simplest terms, it means sending information to the DoD IUID registry (“the registry”) related to a property item’s custody.
Reporting Events

- Reporting involves the following events:
  - Receipt of property
  - Delivered or shipment from the contractor’s plant (unless to a subcontractor)
  - Consumed or expended
  - Disposed of
  - Transferred to a follow-on or other contract
- Let’s look at each of these reporting events:
• Receipt means acknowledging (electronically) the physical receipt of all GFP

• This is clearly the most important reporting requirement:
  • Impacts overall property accountability
  • The Government’s warranty of timeliness of GFP delivery
  • Contract performance
  • Readiness
  • Applies to all categories of GFP. Period. No exceptions.

*Universal electronic acknowledgement of all GFP items is a fundamental requirement of DFARS 252.211-7007 and property accountability!*
• Electronic receipt acknowledgment is crucial and required for all GFP items
• It does not matter if the GFP is:
  • Serially managed
  • Not serially managed*
  • Valued above or below $5,000
  • An item for repair
  • Lacks a UII

*If the property is not serially managed, acknowledgement of receipt is all that’s needed. No other reporting is required under the clause.

Done!
The receipt of GFP items can be reported to the registry three (3) ways:

1. Through Wide-area Workflow (WAWF)
2. By using the registry website (if the item has a UII and is was previously registered)
3. Via direct submission to the registry through electronic files (if the item has a UII and was previously registered). Note: a UII can be added at the time of direct submission

**IMPORTANT:** The presence of a UII and its existence in the IUID registry impacts the method of reporting!
• If the GFP item has a UII: reporting may be accomplished via WAWF or direct update to the registry

• If the GFP item does not have a UII: reporting can only be accomplished by WAWF

There is no requirement for contractors to “SIGN FOR” GFP upon its receipt!
• Delivered or shipped from the contractor’s plant (this is different from “disposed of”):
  • IAW contract terms and conditions or by direction from the contracting officer
  • Shipped to a DoD entity or to another DoD contractor (this would require electronic acknowledgment of receipt by the gaining contractor) and WAWF repairable receiving reports (for repair items only)

• Disposed of (this is different from “delivered or shipped”) means:
  • Transfer to a non-DoD Federal agency
  • Donation, sale, or abandonment
• PCARSS automatically updates the registry when “disposed of” events occur
• PCARSS does not automatically update the registry when “shipment” (to Army, Navy, Air Force, Federal civil agencies) events occur

Note: DCMA’s Property Loss Tool updates the registry automatically upon contractor reporting of property loss (reference: DFARS 252.245-7002)
• Consumed or expended
  • Destructive testing
  • Test firing a missile
  • Certain types of drill bits

• Transferred to a follow-on or other contract means: a contractual transfer of property accountability (same contractor/same CAGE)

• Registry (via WAWF) must be updated to reflect the new contract
The registry is merging with WAWF in August 2014. This may result in changes to the (language of) reporting clause.
Contract Property Resource Page:

https://home.dcma.mil/POLICY/124r/index.cfm

Plant Clearance Resource Page:

https://home.dcma.mil/POLICY/111r/index.cfm

DoD Procurement Toolbox:

http://dodprocurementtoolbox.com/

DPAP GFP Policy Page:

Questions?
BACK UP SLIDES
What is the problem we are trying to fix?

- We don’t know what we own.
- We don’t know where it is.
- We don’t know what its worth.
- We don’t get the most value out of what we own.
PCARSS and Property Loss Tools

- PCARSS automatically updates the registry when certain property life cycle events occur:

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<th>Disposition Type</th>
<th>UID Lifecycle Event</th>
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<td>AA ABANDONED</td>
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<td>CONTRACT TRANSFER</td>
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The PL etool automatically updates the registry when:

<table>
<thead>
<tr>
<th>Case Type (Property Loss/LTDD)</th>
<th>UID Life Cycle Event (Condition Code)</th>
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<td>Lost</td>
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<td>Stolen</td>
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<td>Destroyed-Accident</td>
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<td>Destroyed Combat</td>
<td>Destroyed-Combat</td>
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