



The Use & Application of GOVERNMENT PROPERTY CLAUSES



Following the completion of this training module, you should:

- Be able to identify and develop a basic understanding of the applicable FAR parts and clauses that impact Government Property (GP)
- Have a fundamental understanding of the applicable DFARS clauses impacting Government Property
- Understand and identify which clauses are mandatory, which clauses are optional and the conditions requiring the use of the optional clauses



GOVERNMENT PROPERTY CLAUSES - ISSUES

Recent studies have shown:

- A deficiency in the area of proper usage of the Federal Acquisition Regulation (FAR) and Department of Defense FAR Supplement (DFARS) Government property and related clauses
- GP clauses were NOT being properly inserted into solicitations and contracts.
- Contracting Officers need to increase their emphasis in ensuring the proper GP clauses are included in the solicitations and contracts that they issue and award



GOVERNMENT PROPERTY CLAUSES - CONTRACTING OFFICER RESPONSIBILITIES

Defining and understanding the word “shall” in context of the FAR

- The statement used in every FAR Part discussing contractual requirements reads, “The Contracting Officer **SHALL** (emphasis added) insert the clause at...”
- FAR 2.101 provides the regulatory definition of the word:
 - ““Shall” means the imperative”
- “Shall” provides that requirement for the Contracting Officer to insert, to use a clause or clauses, when required by the FAR in a COMMAND form of the word
 - NOT an option: it is a **mandatory** action





GOVERNMENT PROPERTY CLAUSES - CONTRACTING OFFICER RESPONSIBILITIES

FAR Clauses include both MANDATORY and OPTIONAL situations

Mandatory:

- Where the Contracting Officer SHALL insert the appropriate clauses

Optional:

- Contracting Officers may insert clauses based on situations or thresholds



The Use of the Government Property Clause at FAR 52.245-1

With its two alternates



FAR 52.245-1

- The policy on using the FAR Government property clauses is found at FAR 45.107
- There are three prescriptive paragraphs (paragraphs (a) through (c)) for the use of the Government property clause
- One prescriptive paragraph that provides a conditional exemption.



Policy at 45.107(a)

- (1) Except as provided in paragraph (d) of this section, the contracting officer shall insert the clause at 52.245-1, Government Property, in—
 - (i) All cost reimbursement and time-and-material type solicitation and contracts, and labor-hour solicitations when property is expected to be furnished for the labor-hour contracts.
 - (ii) Fixed-price solicitations and contracts when the Government will provide Government property.
 - (iii) Contracts or modifications awarded under FAR Part 12 procedures where Government property that exceeds the simplified acquisition threshold, as defined in FAR 2.101, is furnished or where the contractor is directed to acquire property for use under the contract that is titled in the Government.



Policy at 45.107(a) cont'd

- (2) The contracting officer shall use the clause with its Alternate I in contracts other than those identified in FAR 45.104(a), Responsibility and Liability for Government Property.
- (3) The contracting officer shall use the clause with its Alternate II when a contract for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014) is contemplated.



Critical Analysis for Application

- Prescriptive language provides clear direction

FEDERAL ACQUISITION REGULATION

45.107 Contract clauses.

(a)(1) Except as provided in paragraph (d) of this section, the contracting officer **shall** insert the clause at [52.245-1](#), Government Property, in—

NOTE:

- The imperative “SHALL” is used
- The GP clause is a mandatory clause

Remember:
Shall =
Mandatory!!



GOVERNMENT PROPERTY CLAUSES - POLICY

Conditions: (i) ALL COST REIMBURSEMENT and TIME-MATERIAL- TYPE CONTRACTS

Why?

- This clause establishes the management requirements for GP provided under the instant contract
- Without this clause, there would be no management controls placed over the GP
- Through the interaction with the Allowable Cost and Payments Clause, FAR 52.216-7, the Government takes title to all property acquired by the contractor subject to conditions set forth in FAR Part 31 as to reasonableness, allocability and allowability

NOTE: GFP is always owned/titled to the Government!



GOVERNMENT PROPERTY CLAUSES - POLICY

Conditions: (ii) FIXED-PRICE SOLICITATIONS AND CONTRACTS when the GOVERNMENT WILL PROVIDE GOVERNMENT PROPERTY

Why?

- The Contracting Officer SHALL use the GP clause in Fixed-price contracts when the Government is furnishing GP to the contractor
- Fixed-price contracts with **NO** GP furnished, the GP clause is **NOT** required
- Also establishes the management requirements for GP provided under the instant contract; without this clause, there would be no management controls by contractor placed over the GP



Condition: FAR PART 12 contracts

Specifics: (iii) Contracts or modifications awarded under FAR Part 12 procedures where Government property that exceeds the simplified acquisition threshold, as defined in FAR 2.101, is furnished or where the contractor is directed to acquire property for use under the contract that is titled in the Government.

Why?

- This scenario distinction is driven by the simplified acquisition THRESHOLD of \$150,000
 - ➔ The GP clause, **52.245-1**, SHALL be used if the cumulative acquisition cost **EXCEEDS** the \$150,000
 - ➔ The GP clause is NOT required if the GFP's cumulative acquisition cost does not exceed threshold
- Contractor is directed to acquire property for use under the contract and that property is titled in the Government



Use of Alternate I and Alternate II to the GP Clause, FAR 52.245-1

- FAR 45.107 continues paragraph (a) with two further applications
- Alternate I which deals with the “Full Risk of Loss” provision
- Alternate II addresses contracting with a nonprofit organization for the conduct of scientific research



GOVERNMENT PROPERTY CLAUSES - LIABILITY

Responsibility and Liability for the loss of Government Property in the possession of Contractors

The Government's policy is to act as a "self insurer" by relieving contractors

Liability provision is embedded within the GP clause at FAR 52.245-1(h)

This paragraph provides the contractor with a "Limited Risk of Loss" provision for loss of GP when certain conditions are met

The "Limited Risk of Loss" in GP Clause, FAR 52.245-1, is used with:

- Cost-reimbursement contracts
- Time-and-material contracts
- Labor-hour contracts
- Fixed-price contracts awarded on the basis of submission of certified cost or pricing data



Use of Alternate I

- 45.107 states: *“The contracting officer shall use the clause with its Alternate I in contracts OTHER THAN THOSE IDENTIFIED in FAR 45.104(a), Responsibility and Liability for Government Property.”*
- Therefore, Alternate I, with its “Full Risk of Loss” provision, is used ONLY with FIXED PRICE contracts that DO NOT require the submission of certified cost and pricing data

NOTE: The Department of Defense, in DFARS 245.10,7 has slightly altered this requirement. It reads, *“(6) For negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data for which Government property is provided, use the clause at FAR 52.245-1, Government Property, without its Alternate I.”*



Use of Alternate II

- Alternate II to the Government Property clause, FAR 52.245-1, is used in contracts with nonprofit organizations and provides for the vesting of title to the nonprofit in accordance with statutory allowance.
- No distinction is made regarding the pricing arrangement of the contract and this alternate, though in practice its application is mainly in the cost reimbursement environment.



Questions?



The Use of the Government Property Clause at FAR 52.245-9

Entitled "The Use and Charges"
Clause



The Use and Charges Clause, FAR 52.245-9:

- Addresses the authorized use of Government Property in the contractor's possession
- Addresses the calculation of rental charges when necessary, which may be applied pre-award or post-award
- Provides reference to the collection of any rent and the statutory penalties that may be invoked for unauthorized use of GP



GOVERNMENT PROPERTY CLAUSES - USE AND CHARGES CLAUSE

Application of FAR 52.245-9

- Anytime FAR 52.245-1 (Government Property clause) is applied in the solicitation or contract, then FAR 52.245-9 **MUST ALSO BE INCORPORATED** into the contract
- Another mandatory clause!



The Use of the Government Property clause at FAR 52.245-2

Entitled "Government
Property (Installation
Operation Services)"



Application of FAR 52.245-2

It is used **ONLY**:

- With **FIXED** price contracts
- When it is to be performed on Government installations
- Where Government-furnished property is to be provided for INITIAL PROVISIONING ONLY
- Where the Government is **NOT** responsible for repair or replacement of the Government-furnished property



Application of FAR 52.245-2

It would NOT to be used:

- With Cost Reimbursement contracts
- When **NOT** performed on a Government installation
- Where the Government **IS** responsible for repair or replacement of the Government-furnished property



GOVERNMENT PROPERTY CLAUSE - INSTALLATION OPERATION SERVICES

It interacts with the previously discussed Government
Property clauses....

Therefore, any time you use
FAR 52.245-2,
you ***must also*** use
FAR 52.245-1 and FAR 52.245-9!



Government Property Clauses

Found in DFARS



GOVERNMENT PROPERTY CLAUSES - DFARS

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- DoD has supplemented the FAR in the Department of Defense FAR Supplement (DFARS)
- Six DoD-specific clauses related to Government Property
 - Found in DFARS at 252.211 and 252.245:

252.211-7007

252.245-7000

252.245-7001

252.245-7002

252.245-7003

252.245-7004



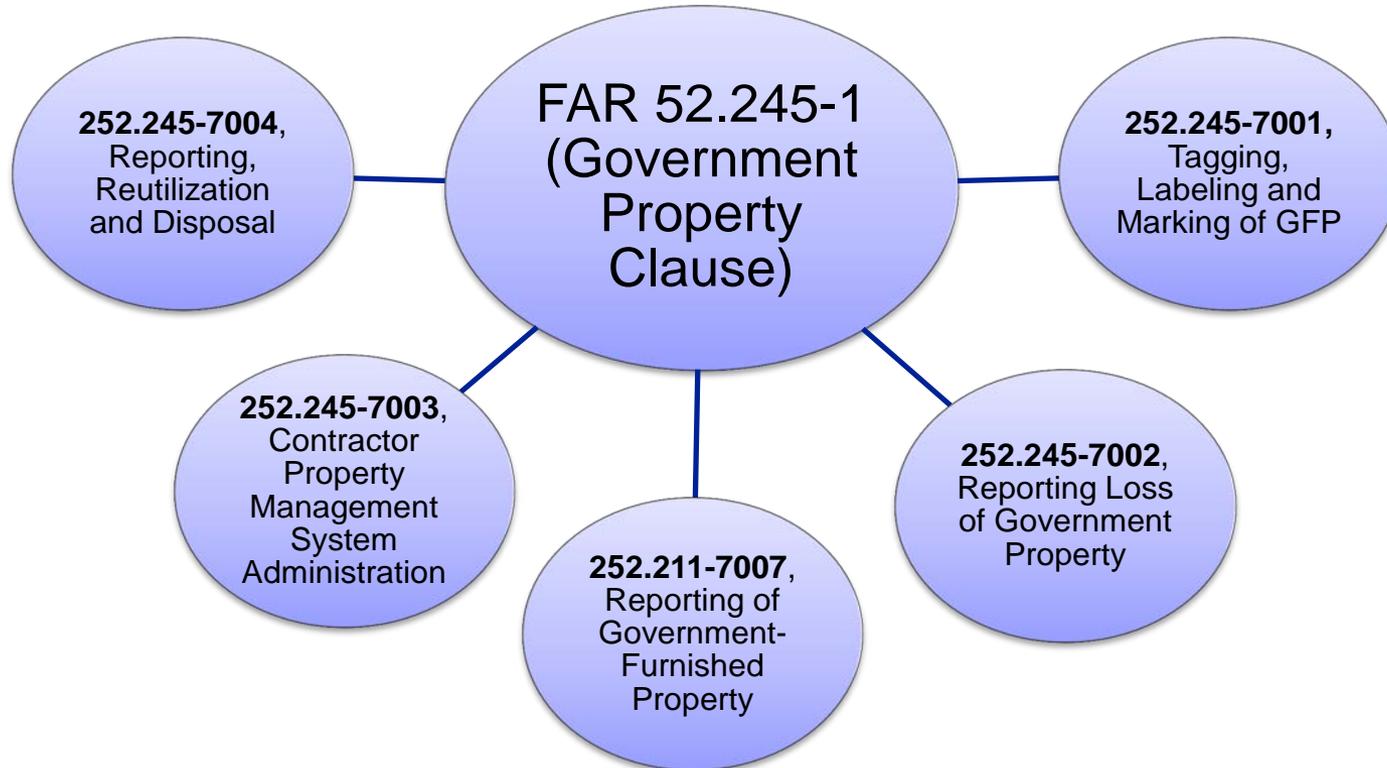
Contracting Officers Responsibilities

- It is very important for the Contracting Officers to be aware of the linkage between the FAR and the DFARS
 - Many DFARS clauses are dependent upon the FAR GP clauses
 - Nowhere is this more evident than with the DFARS Government property clauses and the FAR Government property clause of 52.245-1



GOVERNMENT PROPERTY CLAUSES - DFARS

- Five DFARS Government Property Clauses that are LINKED to the FAR 52.245-1 (Government Property Clause) include:



NOTE: If FAR 52.245-1 is used in the contract, then all five of these DFARS must be used!



GOVERNMENT PROPERTY CLAUSES - DFARS

One additional DFARS Government Property Clause:

- **252.245-7000**, Government-Furnished Mapping, Charting and Geodesy Property

Application

- The policy for use of this clause is found at DFARS 245.107:
 - (1) *Use the clause at [252.245-7000](#), Government-Furnished Mapping, Charting, and Geodesy Property, in solicitations and contracts when mapping, charting, and geodesy property is to be furnished.*

NOTE: this clause does **NOT** require the concurrent inclusion of FAR **52.245-1** and **52.245-9!!**



Government Property Clauses

Review



GOVERNMENT PROPERTY CLAUSES - REVIEW

There are **THREE** FAR Government Property Clauses:

(1.) 52.245-1, Government Property

- Mandatory clause where there is GP
- Two Alternates may be used (depending upon contracting situation)

(2.) 52.245-2, Government Property Installation Operation Services

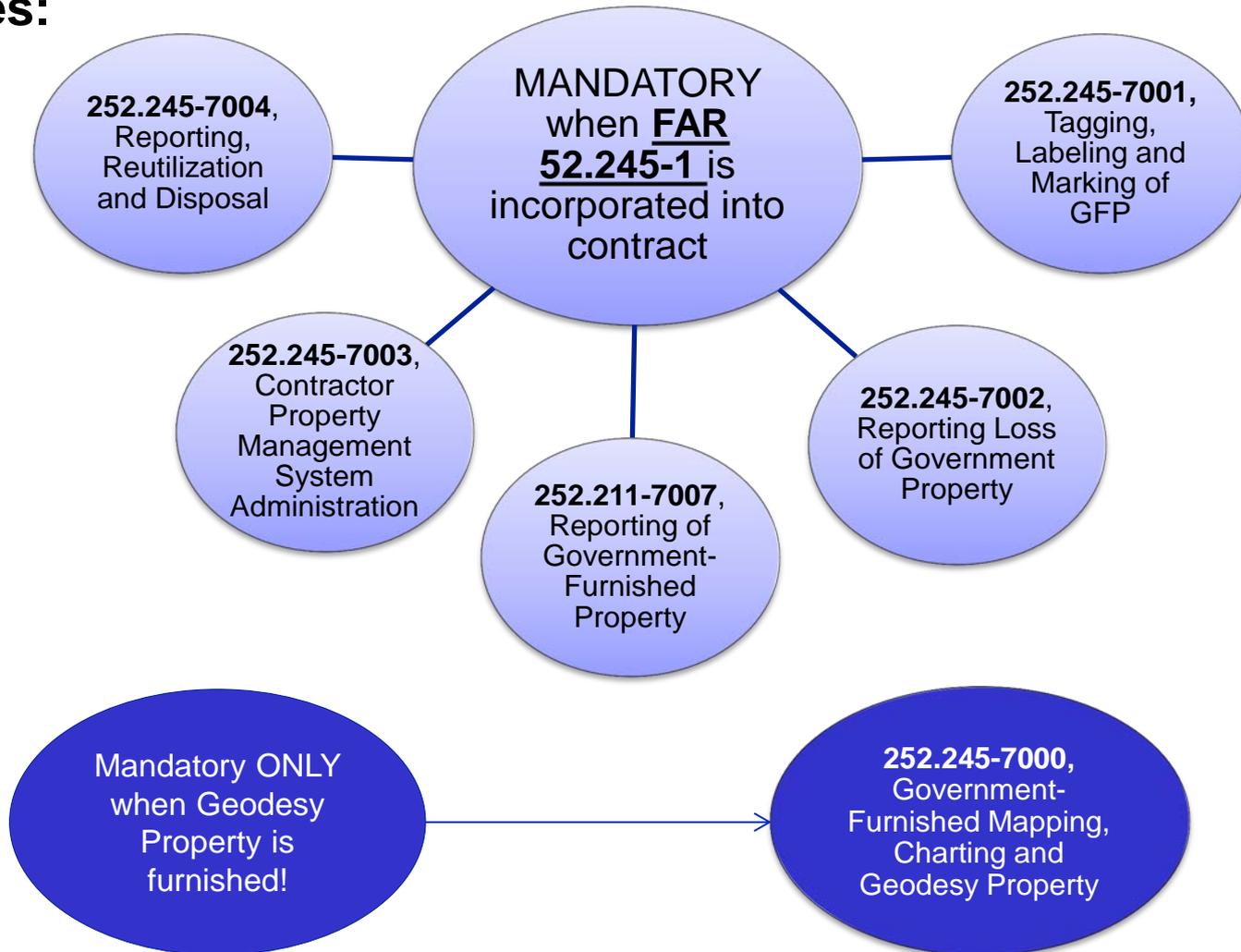
(3.) 52.245-9, Use and Charges

- Mandatory clause when 52.245-1 is used



GOVERNMENT PROPERTY CLAUSES - REVIEW

There are **SIX DFARS Clauses** relating to **Government Property clauses**:





IN CONCLUSION...

- It is a critical responsibility that Contracting Officers ensure the proper inclusion and use of the FAR and DFARS Government Property – even when using automated contract writing systems!
- As business managers, Contracting Officers need to understand the MANDATORY inclusion of the Government Property clauses
 - It will enable DoD to properly account for and manage the billions of dollars worth of GP in the possession of contractors



Questions?



GOVERNMENT PROPERTY CLAUSES - RESOURCES

Resources Used:

FAR Guidance

- <http://www.acquisition.gov/far/>

DFARS Guidance

- <http://farsite.hill.af.mil/VFDFARA.HTM>

Government Furnished Property

- http://www.acq.osd.mil/pepolicy/accountability/accountability_GFP.html

DPAP Procurement

- <http://www.acq.osd.mil/dpap/index.html>

DFARS PGI

- <http://www.acq.osd.mil/dpap/dars/dfars/changenotice/2014/20140311/pgi-changes-20140311.pdf>

P&PE Policy Website

- <http://www.acq.osd.mil/pepolicy/index.html>