

# Why is Government-Owned Property Provided to Contractors...and is it Worth it?

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Wouldn't all of our lives be less complicated if government-owned property wasn't provided to contractors? In fact, isn't it the general policy of the government to minimize contractor-held government-owned property? If that is the case, why is there so much property in the hands of federal contractors?

## In the Beginning

One of the first rules that I was taught as a Contract Specialist when I started my career with the government in 1969 was that a contractor was expected to furnish all property assets required during the performance of a contract. The second thing I learned was that only naive kids fresh from college thought federal rules were hard and fast with no exceptions. In fact, I found that in those cases where the contractor was unwilling or unable to provide the necessary property, the government was expected to furnish existing excess assets that could be used in the production of the goods or services to be provided under the contract. Finally, I was instructed that if suitable assets were not available or could not be provided in a timely manner from the government's inventory, the government could authorize the purchase or fabrication of the assets needed for contract performance.

Obviously, the exceptions to the rule allow millions of dollars worth of government-owned property to be provided to federal contractors. But why are there exceptions? What possible benefits out-weigh the government and contractor financial and administrative resource costs associated with the acquisition, management, and disposition of such property?

## The Justification for Contractor-Held Government-Owned Property

A number of reasonable arguments come to mind and the first among them is simply one of economy. Obviously, to the extent that property assets can be provided to a contractor, those assets are elements of the contract that are not charged as a cost to the government. Accordingly, one justification for providing such property assets is to obtain the most favorable contract price possible. In this same vein, one might want to provide certain property assets to increase competition. This is especially true when the competition is limited by a small group of contractors who have unique property or equipment not generally available to others. In such cases, the government may be able to

provide similar assets to potential offers, thereby extending the competition and reducing the final cost to the government. This last point raises another argument: some assets needed for contract performance are so scarce or their availability so unpredictable, that only the government can ensure their availability in time to meet the contract performance schedule.

To this point, the justification for transferring government-owned property to contractors seems to be based on trying to obtain the most favorable price for the government and shortest performance schedule for completion. However, there are some very unique arguments that have not been addressed. For instance, issues involving security, homeland defense, and export control. It is my experience that since the events of 9-11 this justification is being used more frequently. In such cases the performance of a contract may require access to classified or controlled items which only the government can provide to the contractor. The homeland defense argument can be extended to include the need to maintain the industrial base. The national experience in all of the wars, police actions, and peace missions of this century has demonstrated that certain types and quantities of different kinds of equipment, tooling, and technology licenses must be readily available to facilitate the production of military materials for the war fighters. It is probably unrealistic to expect that private industry will or can afford to maintain the idle capital investment necessary to meet these needs at some undefined point in the future.

This brings me to my last two points. First, government-owned property may be provided to contractors in support of small disadvantaged and women-owned business programs. These "social program" entities may have or can access the labor, skills, and production supplies that are required to perform under a federal contract, but may not have the capital resources to acquire the equipment or other key elements of production. In these cases, the government-furnished equipment can be used to support the public purposes of such programs with a goal of expanding job and business opportunities for targeted segments of the public and broadening the industrial base. Finally, the government may provide equipment in an effort to standardize the quality of similar products manufactured under multiple contracts. In many cases, specialized equipment may be available only from the government and access to that equipment is the only way to ensure uniformity among product deliverables.

## Contractor Held Property Begets Property Management

We can see that a strong case can be made that all parties benefit from the government providing property assets to industry. However, once a contractor assumes control of government property in trust for the expectation of performance, the contractor is accountable for the property. In general terms, accountability means ensuring that property assets are used only for the intended purposes, adequate property records are maintained; scheduled maintenance is performed; the public ownership interests are protected and property is dispositioned as directed by the government. The true management of government-owned property in the hands of contractors involves responsibilities and consequences that necessitate the development and implementation of property control systems.

We all know that neither a perfect or optimal property management system exists. Besides all of their other flaws, most property management systems cost too much relative to the actual losses they are designed to protect. Historically, the compromise between cost and benefit when evaluating property management systems has been to approve "acceptable" systems. Even at this most basic and ill-defined level, the costs of the control effort greatly exceed the asset loss, damage, or destruction data experienced at most facilities. To deal with this issue, NPMA has worked with the American Society for Testing and Materials to publish the E-2220-02 and E2221-02 Standard Practices for the Valuation of Durable, Movable Property. It is thought that these standards will provide an economic model for the design of more efficient and most effective property management systems. The common denominator found in traditional and more recent, creative property management programs is to ensure that the contractor is accountable for maintaining a government-approved property management system. To do this the government either directly or, in this age of reduced federal oversight, the contractor performs self-assessments as a way of exercising some degree of surveillance over performance under the contractor's systems.

At the most simplistic level, the surveillance is to ensure that the property management organization knows what is needed for production and what is on hand. In the first instance an organization needs to have a requirements determination system and in the latter case knowing what is on hand requires a system of accountability and control over the property entrusted by the government to the contractor. The use, preservation, and disposition of property are activities which all fall under this system. The expectation is that the contractor will exercise all of the manage-

ment functions necessary to control the property including: accountability, safeguards, and retention/disposition reviews.

## The Price to be Paid

What is the cost of property? In my department alone approximately \$19.5 billion of government-owned assets have been transferred to contractors to assist in the performance of the missions under their contracts. The value of such property held by all government contractors is estimated to be \$ 200 billion. While I have greater confidence in my department's numbers, one can be assured that a vast sum of taxpayer dollars are reflected in millions of individual items of equipment that are being managed by government contractors. As taxpayers, each of us as government, commercial, or university employees should

ensure that these dollars and assets are not subject to waste, fraud, or abuse. In some eyes, the cost of property justifies any expense to manage the property. Are they wrong?

What is the cost of administration? When government- furnished property has been provided under a contract each party to the agreement has responsibilities for management of the property. Contractor costs are incurred for acquiring, receiving, and marking property, for developing and maintaining automated inventory systems, for the performance of periodic inventories, for reconciling inventory data, for compli-

ance actions, for maintenance and for disposition activities. Government costs are incurred for policy development, surveillance, asset delivery, condition determination, and inspection. It seems to some that sound management practices dictate that contractors and the government should expend vast sums to protect the taxpayers investments. On the other hand, practical management and the realities of the economy dictate that all property management controls be cost effective. Who is correct?

Are there other costs? Earlier I suggested that one reason to provide property assets to a contractor is to broaden the competition base for government work. The downside to that argument may be that certain contractors are especially adept at acquiring government property and use that property to exercise a financial advantage over their competitors. Certainly, a contractor with all of its equipment and tooling provided by the government has an advantage over a competitor who has already incurred a significant capital investment or a potential outlay to control the use of similar equipment or tooling. To level the playing field the government must seek consideration for the use of its property assets. The failure to obtain that consideration in an amount approximately equal to the competitive value of the assets will most certainly result in higher prices paid

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under government contracts as a consequence of the loss of competition. Additional political and financial cost may stem from charges that the government "subsidized" the operation of "favored" contractors.

Are there assumed costs? Whenever the government places itself in the position of influencing or affecting the ability of a contractor to perform under the scope of a contract, the contractor's responsibility and accountability for performance is reduced. If the government is unable to provide the property assets on time or they are not in working condition and either circumstance causes the contractor to incur additional costs or delays in delivery, the government assumes the liability for the additional costs and delays. These costs can be enormous. Recently, I heard a story about a relatively inexpensive aircraft part that due to its unavailability was going to shut down an assembly line at a cost to the government of \$1 million per day.

## Summary

Returning to the things I learned as a Contract Specialist, the goals for every government contract were to buy goods and services and balance quality, price, and delivery. I think Contracting Officers expend great amounts of time and energy trying to ensure that taxpayers get what they pay for. On the other hand, there are many capable negotiators who try just as hard to negotiate the best possible deals for their commercial employers. The problem is that most of this activity and energy is directed at the negotiation of issues that have very little to do with asset management. The property function is almost always a second thought in government contract administration and, as such, the administration of government-owned property, in the hands of contractors, assumes its greatest importance at contract closeout. Between contract award and closure, property professionals take the subject of property administration much more seriously than others.

As a property professional, I am convinced that furnishing government property to contractors has its benefits and, in general they outweigh the costs. But, I understand that among all the members of the team that are involved in administering government contracts, it is only our community of public and private property practitioners who are well-versed in the property statutes, policy and practices which are essential to effective property asset administration. The measure of "worth" is really gauged on the ability of those involved in managing the property to manage the costs of control. Essentially, I am addressing the ability of each of you to rationally apply the requirements of the property clause that contractors maintain an accounting system and controls adequate for the proper administration of the contract.

Fortunately, much of what is done within NPMA gives visibility and attaches worth to your efforts to reasonably control property, maintain property systems and records and to reduce the costs of those activities. ♦

# Thinking Out of the Box for Disposals

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I am sure we are not alone in our efforts to "Think Out of the Box" on the disposal of property, whether the property is government-owned or company-owned. Downsizing, right sizing, acquisitions, mergers and consolidations have left us property folks with some mighty tasks in recent times. One particular effort comes to mind during the consolidation of our New York operations.

We were part of a team that was tasked with closing several buildings. Our task was to make sure all property was dispositioned in a timely manner to ensure that we could sell a company-owned building or turn it over to the government, if part of our GOCO. Schedules were in place and management was all over us from day one to meet the schedules.

One plant was 985,000 square feet and contained 200,000+ tools and about 300 major pieces of machinery. All was going well for us. We had received the disposition instructions on the tools; relocated the tools we were retaining; relocated our disposition warehouse; sold the machines and removed all but one. We were three months ahead of schedule! Piece of cake! Not!

That last machine fell into "Murphy's Law!" Whatever could go wrong did go wrong. The buyer was delinquent in removing the machine. It was a 150-ton Verson Press. It was dismantled, palletized and ready to go, however, the buyer was a broker and had lost his buyer for the machine. Week after week he would tell us "I think I have another buyer."

The pressure was on and time was running out. We contacted the buyer and told him that if he did not move it, we would move it – out into the street! He said he needed to rent space somewhere and could we offer any space in another building. We could not. However, we knew that the buyer of our building was planning to use the building as leased space to smaller companies. So we told the machine buyer to contact our building buyer to review the feasibility of leasing space for the Verson Press but to also let him know that he was already in the building.

It worked! Now we had to convince the lawyers – on both sides – that this was okay! We requested a copy of the tentative lease agreement and a copy of the check deposit from the machine buyer and worked it into our building sale agreement.

On to the next building...the government owns it...but we own the land! ♦