

# Government Property Beyond the Tank Factory

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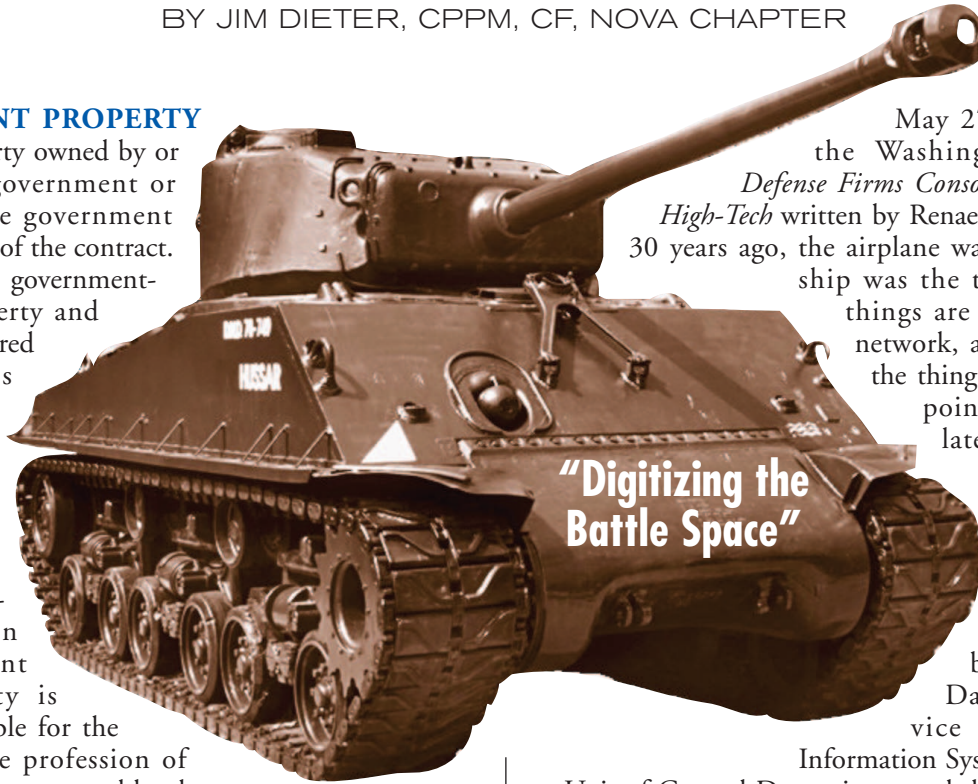
## GOVERNMENT PROPERTY

means all property owned by or leased to the government or acquired by the government under the terms of the contract. It includes both government-furnished property and contractor-acquired property as defined in this section. (FAR 45.101 Definitions)

The emphasis the United States Government places on the management of its property is largely responsible for the existence of the profession of Property Management, and has been a key driver of theory and practice. While the profession and the NPMA have expanded in scope, become more inclusive, and broadened horizons, "Government Property" remains a leader with initiatives such as the Unique Identification (UID) program sponsored by Acting Undersecretary of Defense (Acquisition, Technology & Logistics) Michael Wynne.

The sections of the Federal Acquisition Regulations (FAR) relevant to the management of government property, with the related agency supplements, are the most prominent and important government documents for property management, and remain the primary and ultimate policy and procedure drivers for the government's influence on the profession. Unfortunately, due to the failed efforts to revise the relevant sections of the FAR and other factors, this guidance remains primarily focused on an industrial economy that has been replaced by an increasingly service oriented economy.

Even in defense, where most production is still performed domestically, the importance of the service industry component of weapon systems has grown dramatically both in practice and perception. Stuart McCutchan, publisher of *Defense Mergers & Acquisitions* was quoted in a



"Digitizing the  
Battle Space"

May 27, 2003 article in the Washington Post titled *Defense Firms Consolidate as War Goes High-Tech* written by Renae Merle: "Just 20 or 30 years ago, the airplane was the thing or the ship was the thing. Now those things are just nodes in the network, and the network is the thing." The same article points out that in the late 1990s the Army

stopped ordering new tanks, but spent millions upgrading its existing arsenal with digital capabilities. Kenneth C. Dahlberg, executive vice president of the

Information System and Technology Unit of General Dynamics, stated that "The new focus was digitizing the battle space." Merle deems this a "fundamental change in the structure of the defense industry as the top players move away from their roles as mere weapons makers and increasingly cast themselves as "systems integrators" that produce high-tech networks for the battlefield." [*Defense Firms Consolidate as War Goes High-Tech*, by Renae Merle; The Washington Post; May 27, 2003]

The implications of this shift on property management in the defense industry are significant. The "tank factory" is now a high-tech environment, both in product and production. The internal systems of many weapon systems and the NASA space shuttles are "rack-em-stack-em" built largely from integrated, off-the-shelf electronic components necessary to connect to the networks and systems for guidance, command, control, and communication.

At government direction, through government contracts large and small, the defense industry is largely responsible for the planning, design, acquisition, installation, and operation of the networks and other technology that integrate the weapon system components and "digitize the battle space." The "traditional" neat separation of customer and supplier, characterized by a tank rolling off the

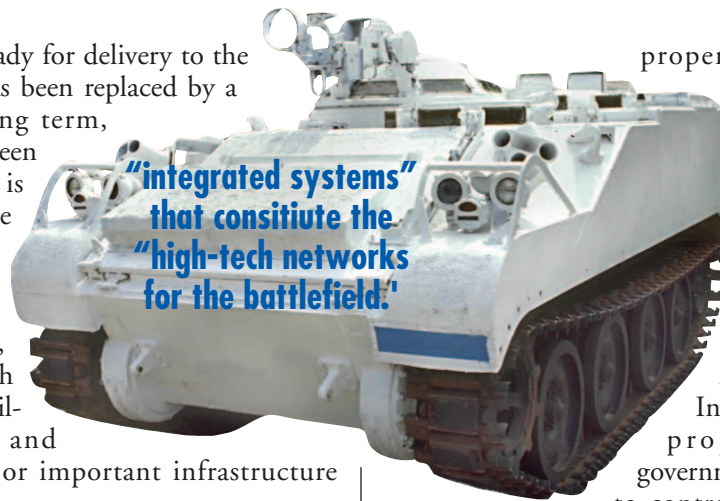
contractor's assembly line, ready for delivery to the customer at a fixed price, has been replaced by a much more integrated, long term, operational relationship between customer and contractor. It is not atypical for a cost type government contract (or series of contracts) to require the contractor(s) to research, investigate, plan, design, build, and operate a high-tech system to provide essential military command, control, and communication functions, or important infrastructure support tools and systems.

The implications for property management within these businesses, and for their government customers, is both subtle and significant. Viewing the FAR property management regulations from this perspective reveals issues impacting implementation and interpretation in both production and service environments.

Difficulties begin with the definition of "government property" quoted above from the FAR Part 45. In light of the expanded professional understanding fostered by the NPMA and documented in consensus standards published by ASTM, the wording "all property owned by or leased to the Government or acquired by the Government under the terms of the contract" can only be viewed as incorrect in wording and more importantly in usage.

ASTM E2135 defines property as "something or a number of things in which one has the rights and interests subject to ownership." So, clearly, government property is "all property owned by the government." While the government can certainly issue policy that causes property it leases to be managed in the same manner as property it owns, there is no question that leased property is owned by the lessor, and is therefore not "government property." And, as the definition perhaps redundantly states, if property is "acquired by the Government," (connoting a transfer of ownership from another to the government), whether "under the terms of the contract" or otherwise, it is government property.

The most relevant and significant problems are based on the use of this term "Government Property" as the title and "boundary" of FAR Part 45. The government owns enormous amounts of property not covered by the limited scope of FAR 45. Per FAR 45.000, the scope is limited: "This part prescribes policies and procedures for providing Government property to contractors..." The intent is to address that subset of government property provided under the terms of the contract. DoD manual DoD 4161.2-M, December 1991, titled "DoD Manual for the Performance of Contract Property Administration," attempts to provide a clearer term for this subset of government property, calling it "Contract Property." Unfortunately, the term is not defined in the document, and uses the term "government



property" rather than "contract property" in the document text. It does establish contract property as an accurate, clear term for this major subset of government property. Unfortunately there is no common term for the remaining subset – government property not provided to contractors.

In other words, government property accountable to the government rather than accountable to contractors. For purposes of this discussion, the term "government accountable government property" will be used to refer to this other subset.

Government Accountable Government Property is government property accountable to the government. It is used and controlled in accordance with applicable government policies and procedures. It does not include contract property.

In the traditional tank factory, these distinctions were not particularly relevant. The only government property related to the work effort was the contract property subset, so even if everyone referred to it generically as government property, there was not much cause for confusion or issues regarding the applicability of FAR 45. Even in a GOCO (government owned contractor operated) environment, typically all the government property involved was provided under FAR 45 and was accountable to the contractor.

In the service contracting environment, the situation is quite different. Day-to-day interaction with the customer is the norm. Customer administrative and technical personnel are often co-located with contractor counterparts, both on contractor and government premises. Deliverables are often not detailed as contract line items. The contractor often not only designs and builds the "tank" – in this case typically an integrated IT system, but is contracted to operate, maintain, and upgrade the "tank,"

Left unsaid to this point is that this "service industry" is still very much product oriented. Sometimes this product is a report or database of information, clearly out of the realm of property management. Other times it may be contractor developed, government owned software, which while largely excluded from FAR 45 applicability, perhaps shouldn't be, based on its importance to the government. Of particular relevance to this discussion is the large amount of typically off-the-shelf electronic and IT components that, with licensed and developed software, when assembled, connected and programmed become the "integrated systems" that constitute the "high-tech networks for the battlefield."

These factors lead to complexity and issues in property management that are often confused by reliance on FAR 45 and its definition and use of the term "government property."

Service contractors are accountable for significant amounts of government property provided by their customers for use in contract performance. And while the FAR 45 regulations are certainly worthy of continued discussion and efforts toward improvement, here we will suffice to appropriately, and clearly, offer a definition of “contract property,” adding the designation “government” to the beginning to differentiate it from property provided to a contractor by other customers.

Government Contract Property is government property accountable to a contract. It is provided, used, and controlled in accordance with FAR 45. It includes plant equipment, real property, material, special tooling, special test equipment, and agency-peculiar property.

In addition to government contract property, service contractors deal with government property in two additional scenarios. The first is the more obvious, and represents the situation typified by contractor employees working onsite at a government facility. Government contracts typically provide a list of “Government Provided Property and Information” that includes items like cafeteria usage, motor pool availability, documents and manuals, office space, furniture, and computer resources, along with guidance directing contractor employees to follow policy and procedure guidance as applicable to civil servants at the location. So, while this government property is used by the contractor in contract performance, it remains accountable to the customer and is used and controlled in accordance with customer policies and procedures applicable to government employees. FAR 45 is not a factor. A definition of this scenario of government accountable government property follows.

Contractor Use Government Accountable Government Property is government property accountable to the government, provided to contractors for use, and which is controlled in accordance with applicable government policies and procedures.

The second scenario is somewhat more confusing. One of the services that contractors sometimes provide to their government customers is ...Property Management! Sometimes as a part of a logistics function, sometimes as administrative support, contractor personnel are tasked by the contract Statement Of Work (SOW) to manage Government Property for the customer. A definition of this scenario follows.

SOW Government Property Management is government property management services provided in accordance with contract Statement Of Work provisions. Such services may include all or some of the standard government property control functions, including identification, receipt, tracking, management, storage, maintenance, physical inventory, loss reporting, acquisition, disposal, etc. If it is clear that the tasks relate to Government Accountable Government Property, confusions are minimized even if the contract also provides for Government Contract Property and therefore includes FAR property clause

52.245-2 or 52.245-5. As clarified above, these clauses do not apply to Government Accountable Government Property.

But, as is typical in service contracting, the contract may not be as clear in this regard as it could be. The SOW provisions may reference “property management in accordance with FAR 45” for some or all functions. The SOW government property management direction may include management of both Government Accountable Government Property and Government Contract Property. Contract attachments listing the Government Accountable Government Property may be titled “Government Furnished Property” or “GFP.”

Two tests, transfer of accountability and use, enable the differentiation of the first two scenarios. If accountability for the government property is transferred to the contractor for use in performing the contract, then the property is Government Contract Property. If accountability for the property used by the contractor in contract performance, typically located at a government facility, is not transferred to the contractor, then the property is Contractor Use Government Accountable Government Property.

The test applicable to differentiate the third scenario requires a review of the applicable SOW. SOW specified services related to Government Property Management are SOW Government Property Management. The property managed is typically Government Accountable Government Property, which may include Contractor Use Government Accountable Government Property as well as Government Accountable Government Property used by civil servants (another concept without a defined term!). It could even include the management of Government Contract Property. The key issue here is that responsibility for SOW Government Property Management does not guarantee or imply that property related to the SOW tasks is Government Contract Property. As stated, the use and accountability determine if the property is Government Contract Property or Government Accountable Government Property.

As both the battle field and business environments have changed, the rules for property management have stayed largely the same. Increased cooperation between the government and its contractor community has greatly improved products and decreased costs and errors. We have found ways together to do it better. Recognizing the property management scenarios detailed above will enable property professionals to assure that the government’s best interests and intent are served, and that property owned by the government, regardless of scenario, will be appropriately, adequately, and professionally managed. ♦

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