



SESSION GUIDE
SEASON 2023, EPISODE TWENTY-FOUR
PARTS 45, 46, AND 47:
GOVERNMENT PROPERTY, QUALITY
ASSURANCE, AND TRANSPORTATION

I. Introduction

Today we come to another group of topics that should always be considered in government contracting: Government property, quality assurance, and transportation. For example, the buyer and the seller involved in a Government contract should always be aware and have a meeting of the minds before a contract is executed with regard to how goods/services will be inspected and accepted by the Government, where and how goods will be delivered to the U.S. Government and, in some circumstances, whether property belonging to the Government can be used by the contractor.

As we near the end of this Workbook, we suggest taking some time to go back through previous chapters. The issues we will discuss in the following pages will rely heavily on concepts we have already learned. If you need a refresher on anything, now is the time to take it!

II. Government Property

In discussing **Part 45** it is important to figure out what it does and does not cover. It *does* cover specific subsets of what a lawyer would term “personal property,” which is to say any movable, tangible item that isn’t attached to land. It *does not* cover intellectual property or the disposal of real property (although it does, to some extent, cover contractor use of Government real property). **45.000(b)**. The goal of this Part is to help the Government and the contractor figure out who is responsible for Government property during and after contract performance. It also helps us determine what property belongs to the Government in the first place, and whether the Government retains title to the property or if it passes to somebody else. **45.101**.

So, when can a contractor use Government property during the performance of a contract? As it turns out, the Government is pretty picky about who can use its things/resources. In fact, as a general rule, contractors are required to use their own property to perform a contract. **45.102(a)**. But, according to **FAR 45.102**, the Government is permitted to grant the contractor the right to use its resources to perform under a contract.

Question 1 – What four factors must be considered before the Government contracting officer can take that action? [Hint: check out **45.102(b)**]

A. Procedures for Using Government Property

Sometimes the CO can anticipate that a contractor will need to use Government property to perform a contract. In that case, she should list the available Government property in the solicitation, so contractors will not add the cost of those resources in their proposals. **45.201(a)** tells us what property-related information a contracting officer should include in that listing, and **45.201(b)** gives additional information related to competitive acquisitions.

The fact that the work required under the solicitation will use Government property adds an extra dimension to evaluation of offerors, because the CO will need to evaluate the offeror's property management system. Thus, the solicitation will need to include those additional evaluation factors, and should also require all offerors to comply with those requirements. **45.201(c)**. Additionally, sometimes an offeror already has rent-free access to Government property under of a different contract, and wants to use that property to perform this new contract. In that case the CO may need to apply an adjustment to the evaluated price to make sure that offeror doesn't receive an unfair advantage over offerors who don't have that same access to Government property. **45.202(a)**.

Question 2 – What should the contracting officer included in the listing of the Government property required by **45.201**?

So we have a situation where a contractor needs to use Government property. Does the contractor have to pay the Government to use Government property? The lawyer's perennial favorite answer applies here: it depends! Usually, the contractor won't have to pay rent to use Government property as long as the contractor is only using the property for authorized Government contracts. **45.301(a), (b), and (e)**. If the contractor wants to use the property for other purposes, however, it will probably have to pay rent, though as usual there are some exceptions to that rule. **45.301(c), (d), and (f)**. Additionally, if the

contractor wants to use the property for an independent research and development (IR&D) program, the CO can authorize that in certain situations. **45.303**.

Question 3 – What guidance does the FAR give us regarding use of U.S. Government property by other foreign governments or international organizations? Why do you think it gives this guidance? [Hint: check out **45.302**]

As you might expect, the Government retains title to all Government-furnished property “until properly disposed of.” **45.401**. (We’ll talk about what “properly disposed of” means in the next section.) The Government also takes title to any property the contractor acquired using Government funds. **45.402(a)**. (Remember, as noted at the beginning of this chapter, **FAR Part 45** does not apply to intellectual property. That type of property is governed by **FAR Part 27**.)

The general rule with regard to ownership of property procured by a contractor during contract is whether the contractor gets reimbursed for its costs in making that purchase. **45.402(b)**. If the Government didn’t end up paying for the property, then the Government doesn’t take title to the property.

The Government has an inherent interest in making sure its property is well protected when it “loans” it to a contractor. The Government employees who are responsible for that task—usually DCMA personnel—evaluate the prime contractor’s property management systems to make sure that they are responsible and efficient. **45.501**. They also evaluate subcontractor property management systems, and can request support in those evaluations, as well as for evaluation of prime contractor systems at “alternate locations.” **45.502(a)**.

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B. What Happens to Government Property After Contract Performance?

Now we know what happens to Government property during contract performance. But what about after? What if a contractor no longer has a need for the property because the contract has been fully performed? Or what if the contractor has excess inventory after a termination for convenience? That's still Government property, since the Government paid for it, right? Yes, and **Subpart 45.6** has us covered there. We should note that it does not cover real property. However, it also does not cover property for which the Government received title solely because of some variety of liquidated payments (basically, when the Government has repossessed some property because of a contractor debt to the Government). **45.600**.

Essentially, **Subpart 45.6** tells us how to reduce waste in manufacturing. Some manufacturing methods produce scrap. Contractors usually have to deal with that on their own, though the Government oversees the process per **45.606**. Sometimes, though, there's stuff left over after a contract. The Government wants to use as much of the property and materials as possible, so the FAR prescribes ways to reuse or recycle most manufacturing-related leftovers based on various factors like type of property, whether demilitarization is necessary, and whether the leftovers present some kind of public hazard. (Demilitarization here means "rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used," per **45.101**.) In fact, **45.602-2** is a list of priorities for reusing excess inventory! But how do we figure out whether the inventory can be reused or recycled? For that, we have plant clearance officers. These officers screen the excess inventory and determine how it should be disposed of. **45.602-3** tells us the process these officers use and the timelines for screening. If the plant screening officer finds that some leftover inventory does have commercial value, we jump to **45.604**, which tells us how to sell that inventory. Regardless of the plant screening officer's findings, though, she must always promptly fill out an SF 1424, Inventory Disposal Report, and detail what exactly she did with the property. **45.605**.

Question 6 – Suppose the plant screening officer puts a contractor's inventory through the screening process we mentioned and finds that it has no commercial value, does not require demilitarization, and is not a danger to public health or welfare. What can that officer do with the inventory? [Hint: check out **45.603**]

III. Quality Assurance

You probably have experience in the area of quality assurance, though in everyday life it's not called quality assurance. In our private lives we perform actions like those in **Part 46** all the time! If you've ever returned a defective item, you've performed quality assurance. The finer points of quality assurance in the government contracting world work similarly to those in the commercial contracting world. If you have some experience with the Uniform Commercial Code, you're probably familiar with the concepts we will discuss in this section. However, since this is the Government, there are a few areas where the application of the concepts will be different. Additionally, the quality assurance requirements in **Part 46** apply to both supplies and services (unlike the UCC, which applies only to the sale of products).

Before we go any further, we need to know who's responsible for what. **Subpart 46.1** tells us that we have three responsible players: the contracting office (**46.103**), the contract administration office (CAO) (**46.104**), and the contractor (**46.105**). The contracting office is responsible for five different tasks, including issuing instructions to the cognizant CAO, where applicable, and ensuring that nonconformances in a product are identified.

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The contractor itself is responsible for the longest list of tasks, according to **46.105**. This is because the contractor has the primary responsibility to provide products and services that meet contract requirements. It shouldn't just throw uncontrolled products at the Government; instead, it should take steps to ensure that everything it makes for Government use conforms to the standards the Government has given it. Thus, all the contractor's tasks support that core responsibility.

A. Quality Requirements in General

There are two different general quality requirements subparts in **Part 46**. **Subpart 46.2** deals with contract quality requirements, and **Subpart 46.4** deals with Government contract quality assurance. (**Subpart 46.3** just tells us which contract clauses to use for quality assurance based on type of contract, but we won't get into that beyond this brief mention.) So what's the difference between these two Subparts? The answer lies in the definitions of their headings. **46.101** defines "contract quality requirements" as "the technical requirements in the contract relating to the quality of the product or service and those contract clauses prescribing inspection, and other quality controls incumbent on the contractor, to assure that the product or service conforms to the contractual requirements." It defines "Government contract quality assurance" as "the various functions, including inspection, performed by the Government to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity." In other words, the responsibility for the former falls on the contractor, while the responsibility for the latter falls on the Government.

We'll start in **46.2** with contract quality assurance. Before the contractor can comply with quality requirements, those requirements must be in the solicitation or contract, of course. Thus, **46.201** mandates that the CO should include all quality requirements in the solicitation and contract—but should also be open to alternatives if the offeror or contractor has a better solution. There are four levels of contract quality requirements, in order from least onerous to most onerous: 1) contracts for commercial items (**46.202-1**), 2) Government reliance on inspection by contractor (**46.202-2**), 3) standard inspection requirements (**46.202-3**), and 4) higher-level contract quality requirements (**46.202-4**). Each of these levels comes with its own requirements, detailed in the subsections we referenced. We find the criteria for sorting contracts into these levels in **46.203**.

Question 8 – What are the three criteria to help a CO determine what level of contract quality requirement is most appropriate?

In **46.4**, we come to Government contract quality assurance. This Subpart applies when the Government will need to conduct quality assurance surveillance. **46.401(a)**. The facilities at which the Government will conduct this surveillance vary, so the solicitation and contract should always include the extent and locations of surveillance the Government will require. In general, the Government will conduct surveillance either at source or at destination. “At source” means the Government will go to the contractor’s own facility, be it a manufacturing plant or an office where services are performed. The Government performs this surveillance while the supplies are being made or the services are being rendered. **46.402**. “At destination” means the Government only inspects the supply or service after the contractor has delivered it. It is less invasive for the contractor and is useful in situations where the Government doesn’t need to inspect the actual process of making the supplies or performing the services. **46.403**. If the contract falls at or below the simplified acquisition threshold, then the quality assurance requirements should not be quite as detailed, unless special circumstances apply. **46.404(a)**.

What about subcontracts? We know from our discussion in the previous chapter that the Government does not have “privity of contract” with subcontractors, and generally has to approach any subcontractor through the prime. Does that apply to quality assurance too? Not exactly. The Government can conduct quality assurance surveillance at subcontractor facilities too and does not necessarily need to involve the prime. However, the Government can conduct such surveillance “only when required in the Government’s interest.” **46.405(a)**. Additionally, any oral or written statements, including contract terms and conditions, must be worded in such a way as to keep the normal contractual relationships between the prime, sub, and Government intact. **46.405(d)**.

Now we know how and when the Government can conduct quality assurance surveillance. But what happens if the Government finds something hinky during its inspection, either before or after receiving the supplies or services? Maybe the T-shirts the contractor delivered are the wrong color. Maybe the tech support the Government contracted for was supposed to fix a problem with the Internet connection, but instead the contractor completely redid the Government’s network. If something like

that happens, the CO *should* reject the supplies or services. **46.407(a)**. The discrepancy doesn't even have to be serious; any supply or service that doesn't conform to the contract requirements in every respect can be rejected.

This doesn't necessarily mean that the contractor is out of luck, though. The Government must still give the contractor a chance to correct the problem, as long as the correction can be accomplished within the required delivery schedule. Unfortunately for the contractor, this correction also doesn't justify any extra cost to the Government. **46.407(b)**. Thus, it's very important for contractors to get it right the first time—and if that the profit motive doesn't provide enough incentive, repeated nonconformity goes on the contractor's performance record! **46.407(e)**. However, if the nonconformity is minor, the Government may be permitted to accept it. **46.407(d)**. Regardless, if the Government decides to reject supplies or services it needs to promptly send a notice of rejection to the contractor, explaining why the supplies or services are being rejected. **46.407(g)**.

Question 9 – Suppose a CO accepts a good with a major nonconformance as authorized in **46.407(c)**. What further steps must she take after accepting that good? [Hint: check out **46.407(f)**]

B. Acceptance, Warranties, and Liability

We have discussed what happens with respect to quality assurance during contract performance and right up to acceptance of supplies or services. But what happens after contract completion, and what steps can the Government take to protect itself for the future, through warranties or allocation of liability. Here, we will discuss those topics. So, what do all these terms mean? Broadly, acceptance is “acknowledgment that the supplies or services conform with applicable contract quality and quantity requirements” (unless, of course, the CO decides to accept nonconforming supplies or services, in which case we move back into the issues we discussed in the previous section). **46.501**. Warranties in government contracting are substantially the same as the warranties people deal with every day. If you've made a large purchase, like a phone or car, you were probably offered a warranty. You may or may not have decided to accept the warranty, depending on whether you thought the warranty protection was worth the extra cost. The Government also considers issues like that when deciding whether to obtain a warranty. **46.702(c)**.

The CO is the one who accepts supplies or services, unless he delegates that authority to a CAO. **46.502**. However, the place where the CO accepts the supplies or services varies by contract, and each contract

should specify the place of acceptance. **46.503**. The CO has several options regarding how he accepts the supplies or services, which we find in **46.504**. For supplies (not services), title passes to the Government once the CO formally accepts the supplies. **46.505(a)**. However, this does not mean that the Government has to have the supplies in its physical possession at the time of acceptance. It also doesn't mean that the risk of loss (that is, who pays for any damages in transit) always passes to the Government along with title. That part depends on transportation arrangements, which we will discuss in detail in the next section. **46.505(b)**.

Question 10 – Is the contractor ever liable if supplies it sends to the Government are damaged by Government employees? Why or why not? [Hint: check out **46.505(d)**]

Suppose the Government has purchased an expensive widget like a supercomputer, and it's nervous about that widget failing sometime within the next year. The Government might consider obtaining a warranty for the widget. Note that warranties are *not mandatory* in government contracting. In fact, COs have to go through a long list of factors to consider before even trying to get a warranty! **46.703**. These factors include whether the warranty is cost-effective and whether it's a normal industry practice to obtain a warranty. We should note that the Government often takes advantage of warranties for commercial items, although these warranties are still subject to the same considerations in **46.703**. **46.709**. Unlike you and me, the Government has some serious clout when it comes to dictating the terms and conditions of a warranty. The CO can actually prepare the terms and conditions herself if necessary, per **46.706(b)**. In any event, she should make sure that any warranty, whether she prepared it or not, complies with the specifications in **46.706(a)**. There are also many contract clauses she can use; **46.710** discusses the situations in which each clause is relevant.

This takes us to limitation of contractor liability. Limitation of contractor liability usually applies when the Government has purchased a super-expensive widget or "high-value item" that typically costs more than \$100,000, like a ship or jet (not just a normal expensive widget like a computer). The CO must also designate the item as high-value for this Subpart to apply. **46.802**. Demanding that contractors remain liable for any defects discovered after acceptance of such expensive items would seriously deter contractors from contracting with the Government to provide those items. This doesn't mean that contractor is totally scot-free, though. If the Government discovers a defect *before* the loss of or damage to the expensive item, the contractor might be liable for fixing the defect. **46.803(b)(1)**. The Government may also seek "equitable relief" (a legal term of art meaning some kind of non-monetary relief, such as repairs or other specific performance). **46.803(b)(2)**. We can find a discussion of the contract clauses for these situations in **46.805**.

Question 11 – Can a contract that falls at or below the simplified acquisition threshold use any of the contract clauses that limit the contractor’s liability for high-value items? Why or why not? [Hint: check out **46.805(b)**]

IV. Transportation

We’ve already talked a fair amount about delivery of supplies and other transportation-related concepts in this chapter. Now we come to the actual discussion of how transportation in government contracting works. There are several policy issues which come into play here. As we know, the Government likes to get the best bang for its buck. However, if you recall our discussion of **Part 25**, you also remember that the Government places a significant emphasis on buying from American sources. That Buy American-type preference generally applies to transportation as well—though, of course, some exceptions do crop up.

If you don’t frequently work in transportation, there might be some unfamiliar terms in here. Before you jump into the rest of this section, we recommend reading through all the definitions in **47.001**. We will define any terms that aren’t in that subsection as they come up, but we will assume that you’ve read through the definitions in **47.001**.

Question 12 – Describe the different between a “Commercial bill of lading” and a “Government bill of lading”?

In general, the Government uses commercial bills of lading (CBLs) for domestic shipments. Bills of lading are basically just documents that contain information regarding what’s in the shipment, the terms of the shipping contract, and other information relevant to getting items through customs. A CBL is prepared by the commercial shipper. You’ve probably used one before when shipping something through FedEx or UPS. A Government bill of lading (GBL) is prepared by a Government official; the Government often uses those for international shipments. **47.101(a)**. Sometimes the Government will also use its own vehicles for transportation; however, it prefers to use commercial carriers. **47.101(d)**.

Subpart 47.1 also contains information regarding insurance for supplies in transport, how the Government pays for transportation, and other relevant baseline topics. We do not have the space to dig deeply into those topics; suffice to say that **47.1** is quite thorough!

A. Contracts for Transportation

Subpart 47.2 brings us to transportation contracts—not contracts that have transportation as a component, but contracts that are just for transportation and related services. Such contracts include freight transportation by rail, train, motor, and water, as well as transportation-related services including stevedoring, storage, and packing. **47.200(a)**. This Subpart also applies to transport of passengers, and to household goods belonging to people being relocated at Government expense. **47.200(c) and (d)**. However, it does *not* apply to freight transportation acquired by bills of lading, among a few other things detailed in **47.200(b)**.

While agencies may contract on their own for transportation (unless their regulations prohibit), it's often most economical for agencies to use the term contracts and basic ordering agreements (BOAs) that GSA and DoD already have in place. **47.205(a)**. Should an agency wish to contract on its own, it should usually use fixed-price service contracting procedures—provided those procedures don't run afoul of those in **47.207**. **47.206(a)**. The fixed-price preference makes sense; aside from the FAR's customary emphasis on fixed-price contracts, much of transportation is easily defined in terms of cost, duration, and end goal. This makes transportation contracts a great fit for fixed-price contracting. But why do we have the issue with **47.207**? This is because **47.207** has some specific requirements for transportation and related services. There is a total of eleven categories of requirements in **47.207-1 through -11**, which deal with everything from qualifications of offerors to volume movements within the contiguous United States. These issues do not normally arise in other contracts, as you can probably imagine. Thus, both CO and contractor must look to **47.207** for guidance, and that subsection also prevails in case of a conflict between it and normal fixed-price contracting.

Question 13 – COs should specify the contractor's liability in transportation contracts. But what happens if the contractor's liability isn't specified in the contract? Do they have liability? If so, what? [Hint: check out **47.207-7(b)**]

B. Transportation in Other Contracts

As you are no doubt aware, transportation crops up tangentially in many contracts. Thus, the FAR provides us guidance for how transportation issues should be dealt with in those other contracts. **Subpart 47.3** covers transportation in supply contracts, **Subpart 47.4** addresses the U.S.-flag carrier requirement with respect to air transportation, and **Subpart 47.5** addresses similar requirements for ocean transportation. The U.S.-flag carrier requirement applies no matter what type of transportation is needed, be it for supplies or people, and it applies no matter how transportation is implicated in a

contract. There are several statutes implementing this U.S.-flag carrier requirement, all of which are incorporated by reference into the FAR.

First, though, we will take a look at the more general requirements surrounding transportation in supply contracts. **Subpart 47.3** applies transportation and traffic management considerations within the acquisition of supplies in fixed-price contracting. **47.300(a)**. Why is that important enough to warrant a very long FAR Subpart? It's important because transportation can get expensive quickly and can also result in damage to supplies. Since the Government wants the best value it can get, it's important the minimize costs related to transportation and also minimize potential problems with delivery. **47.301**.

So who's responsible for all this? It's ultimately the CO's job to make sure transportation issues are dealt with effectively in contracts for supplies. However, she doesn't have to do this alone. Her two main resources are traffic management offices and transportation offices. **47.301-1**. COs can obtain factors from traffic management offices for use in solicitations and awards, as well as in contract administration and other actions. **47.301-1(a)**. If an acquisition of supplies is particularly large, heavy, or otherwise unwieldy or hazardous, the CO should request participation from a transportation office to help figure out the best way to handle the situation (at the best cost, of course). **47.301-1(b)**. Agencies also have transportation officers who can assist in these matters too. **47.301-2**.

Much of the rest of **47.3** is concerned with delivery terms and contract clauses. **47.303** deals with standard delivery terms and contract clauses, and **47.304** deals with how to determine these terms. Both these subsections are very long and detailed. Transportation is an old and well-established part of the commercial sector, so COs have a lot of existing laws, regulations, and terms to work with. Therefore, both these subsections go into great detail to help COs figure out the best possible answer to transportation problems.

Exercise 1 – It's a Bird! It's a Plane! It's... a Delivery of Supplies!

What does "f.o.b." mean? What is its application in transportation aspects of contracts? [Hint: check out **2.101**]

How should a CO determine delivery terms? [Hint: check out **47.304-1(a)**]

What does "CONUS" mean, and why is it important? [Hint: check out **47.302(a)**]

Now that we understand the basics of transportation in supply contracts, we move into some of the more specific statutory requirements, specifically those surrounding U.S.-flag carriers and vessels. The main takeaway from these requirements is that if the transportation is financed by the Government, it should be on a U.S.-flag carrier or vessel. This includes transportation of Government employees and their dependents, as well as contractors and grantees—and, of course, supplies or other freight. **47.402 and 47.502**. However, we should note that issues surrounding transportation of people don't come up much when dealing with ships, simply because we have planes now and planes tend to be far more convenient than ships for transporting people. This also means that the issues surrounding U.S.-flag carriers tend to be a little stickier than those surrounding U.S.-flag vessels. Freight usually has fewer opinions about creature comforts than people!

The guidelines for figuring out whether a U.S.-flag carrier is available and usable are in **47.403**. This subsection implements the Fly America Act, which is one of the main sources of this preference for American carriers. The methods by which we figure out whether a U.S.-flag carrier is available and should be used are not as straightforward as you might think. Lots of other factors come into play, such as location of trip (**47.403-1**), air transport agreements between the U.S. and foreign governments (**47.403-2**), and what fare the Government is willing to pay (**47.403-3**). The requirements for air freight forwarding are in **47.404**.

The guidelines for U.S.-flag vessels are, as we noted, a little simpler than those for U.S.-flag carriers. However, their statutory authority is quite robust. We can find all the statutes establishing the policy relating to U.S.-flag vessels in **47.502**. The U.S.-flag vessel requirement applies in several situations and can come into play even if the Government does not currently own the supplies on the vessel. **47.503**. However, there are also some situations where this requirement and the policies and procedures associated with it do *not* apply. These include, among other things, shipments aboard vessels as required or authorized by law or treaty (because the FAR is a creature of law and does not trump the laws themselves) and shipments of classified supplies when the classification prohibits use of non-Government vessels (because a Government vessel is inherently a U.S.-flag vessel). **47.504**. Construction contracts have their own special requirements in **47.505**, although they still use the same procedures as other contracts, which are outlined in **47.506**.

Question 14 – What is the 50 percent requirement? When does it apply? [Hint: check out **47.502(a)(3)**]

Discussion Questions

1. Which type of contracts should the *Government Property* clause, 52.245-1 be included? [Hint: check out **45.107**]

2. Why might a contracting officer choose to accept supplies or services with major or critical nonconformities? What must a contracting officer consider before making such a determination? [Hint: Check out FAR 46.407]

3. What information should be specified in a quality assurance surveillance plan?

4. Describe a situation where Government contract quality assurance and source is appropriate?

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Answer Key

Answer 1 – The contracting officer must determine whether offering prime contractors government furnished property: (i) is in the Government's best interest; (ii) the overall benefit to the acquisition significantly outweighs the increased cost of administration, including ultimate property disposal; (iii) providing the property does not substantially increase the Government's assumption of risk; and (iv) the Government requirements cannot otherwise be met.

Answer 2 – The contracting officer should include the following information: (i) The name, part number and description, manufacturer, model number, and National Stock Number (if needed for additional item identification tracking and management, and disposition); (ii) Quantity/unit of measure; (iii) Unit acquisition cost; (iv) Unique-item identifier or equivalent (if available and necessary for individual item tracking and management); and (v) A statement as to whether the property is to be furnished in an "as-is" condition and instructions for physical inspection.

Answer 3 – Per, FAR 45.302, requests by, or for the benefit of, foreign Governments or international organizations to use Government property shall be processed in accordance with agency procedures.

This guidance is because property means all tangible property, both real and personal, and its function and purpose is specific to each agency; and each agency has its specific regulations regarding government property and foreign Government or international organizations.

Answer 4 – Upon receiving Government Furnished Property a contractor must take the following step to protect that property:

(i) The Contractor shall document that all property was acquired consistent with its engineering, production planning, and property control operations.

(ii) The Contractor shall receive Government property and document the receipt, record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.

(iii) The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property.

(iv) The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination.

(v) (A) The Contractor shall award subcontracts that clearly identify items to be provided and the extent of any restrictions or limitations on their use. The Contractor shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss of Government property.

(B) The Contractor shall assure its subcontracts are properly administered and reviews

are periodically performed to determine the adequacy of the subcontractor's property management system.

(vi) The Contractor shall have a process to create and provide reports of discrepancies, loss of Government property, physical inventory results, audits and self-assessments, corrective actions, and other property-related reports as directed by the Contracting Officer.

(vii) The Contractor shall have a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Government property, including losses that occur at subcontractor or alternate site locations;

(viii) (A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance. (B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government material with material not owned by the Government;

(ix) The Contractor shall properly maintain Government property. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.; and

(x) The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss of Government property cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

Answer 5 – In instances where the prime contractor does not concur with the findings of the support Property Administrator, the prime Property Administrator shall immediately refer the matter to the contracting officer.

Answer 6 – The officer can choose to do one of the following actions: (i) direct the contractor to destroy the property; (ii) abandon non-sensitive property at the contractor's or subcontractor's premises; or (iii) abandon sensitive property at the contractor's or subcontractor's premises with contractor consent.

Answer 7 – The contracting officer is responsible for performing the following tasks:

(i) Receiving from the activity responsible for technical requirements any specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies or services (the activity responsible for technical requirements is responsible for prescribing contract quality requirements, such as inspection and testing requirements or, for service contracts, a quality assurance surveillance plan);

(ii) Including in solicitations and contracts the appropriate requirements for the contractor's control

of quality for the supplies or services to be acquired;

(iii) Issuing any necessary instructions to the cognizant contract administration office and acting on recommendations submitted by that office (see 42.301 and 46.104(f));

(iv) When contract administration is retained (see 42.201), verifying that the contractor fulfills the contract quality requirements; and

(v) Ensuring that nonconformances are identified, and establishing the significance of a nonconformance when considering the acceptability of supplies or services which do not meet contract requirements.

Answer 8 – The three criteria that a contracting officer must consider when determining the level of contract quality requirements are: (i) technical description (commercial vs. military specifications), (ii) complexity, and (iii) criticality.

Answer 9 – When supplies or services are accepted with critical or major nonconformances as authorized in paragraph (c) of this section, the contracting officer must modify the contract to provide for an equitable price reduction or other consideration. In the case of conditional acceptance, amounts withheld from payments generally should be at least sufficient to cover the estimated cost and related profit to correct deficiencies and complete unfinished work. The contracting officer must document in the contract file the basis for the amounts withheld. For services, the contracting officer can consider identifying the value of the individual work requirements or tasks (subdivisions) that may be subject to price or fee reduction.

Answer 10 – No, per 46.505(d), the contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

Answer 11 – In response to a contractor's specific request, the contracting officer may insert the clauses prescribed in paragraph (a)(1) or (a)(4) of this section in a contract at or below the simplified acquisition threshold and may obtain any price reduction that is appropriate.

Answer 12 – A commercial bill of lading establishes the terms of contract between a shipper and transportation service provider. It serves as a receipt of goods, a contract of carriage and documentary evidence of title. It's prepared by the shipper, and is used by the Government for domestic shipments. It is not an accountable transportation document. A Government bill of lading is an accountable transportation document, authorized and prepared by a Government official, and is used for international shipments.

Answer 13 – Yes. The contractor has the usual measure of liability as prescribed in section 11706 of the Interstate Commerce Act (49 U.S.C.11706).

Exercise 1 – F.O.B. means "free on board". The term is used to identify a physical location of shipment which determines (i) risk of loss, (ii) liability, and (iii) passage of title/ownership.

In determining whether f.o.b. origin or f.o.b. destination is more advantageous to the Government, the contracting officer shall consider “overall costs” as well as the availability of lower freight rates (Government rate tenders) to the Government for f.o.b. origin acquisitions.

CONUS means “contiguous United States”.

Answer 14 – Under the Cargo Preference Act of 1954, at least 50% of the gross tonnage of supplies that may require ocean transportation, is transported on privately owned US flag commercial vessels to the extent that such vessels are available at rates that are fair and reasonable for US flag commercial vessels.

Discussion Questions Answer Key

1. The Government Property clause should be included in cost reimbursement, time and materials, labor hour contracts AND fixed prices contracts when the Government intends to provide Government furnished property.
2. For reasons of economy or urgency; in the government's best interest. If doing so, the CO should make the determination based on:
 1. advise of the technical activity that the item is safe to use and will perform its intended purpose;
 2. information regarding the nature and extent to the nonconformance or otherwise incomplete supplies or services;
 3. a request from the contractor for acceptance of the nonconforming or otherwise incomplete supplies or services;
 4. a recommendation for acceptance, conditional acceptance or rejections, with supporting rationale, and
 5. the contract adjustment considered appropriate, including any adjustment offered by the contractor.
3. Such a plan should include the service or standard; the survey period; surveillance method (random sampling, 100% inspection, periodic inspection, customer complaint); level of surveillance (monthly, quarterly, as needed); percentage of items sampled during survey period; analysis of results; observed service providers performance measurement rate; service providers performance (meets standards, does not meet standards); and a narrative of performance during surveillance period.
4. Per, FAR 46.402, agencies shall perform contract quality assurance, including inspection, at source if:
 - (a) Performance at any other place would require uneconomical disassembly or destructive testing;
 - (b) Considerable loss would result from the manufacture and shipment of unacceptable supplies, or from the delay in making necessary corrections;
 - (c) Special required instruments, gauges, or facilities are available only at source;
 - (d) Performance at any other place destroy or require the replacement of costly special packing and packaging;
 - (e) Government inspection during contract performance is essential; or
 - (f) It is determined for other reasons to be in the Government's interest.
5. Per the DCMA GUIDEBOOK FOR GOVERNMENT CONTRACT PROPERTY, the Government Property Administration (PA) must look at the contractor's procedures that establish processes to minimize or prevent possible damage to property. Where appropriate, the contractor's procedures should address controls for the proper operation of material handling equipment including roles and responsibilities of authorized operators. Compliant procedures ensure that accurate location changes are promptly posted to the record any time Government property is moved unless that property is managed using the low risk practice methodology as described in the DCMA Low Risk Practice SOP. There are some contractors that do not create separate movement documentation for internal moves, and instead document those move solely by updating the location data element in the property record. A contractor that uses this methodology needs to clearly describe this process in the written procedures in order to be compliant. OBJECTIVE: The PA is responsible for determining whether the contractor performs movement of Government property under proper authority, whether appropriate support documentation is prepared and maintained, and that location changes are promptly recorded by the contractor. Additionally, the PA must determine whether the contractor adequately protects Government property during movement, and whether

the contractor promptly reported any losses resulting from inadequate protection. The population consists of all moves of Government property, both internal and external to the contractor's facility.

The PA will address location accuracy of the contractor's records. External property moves should have shipping documentation. If a contractor has both internal and external moves, but the contractor does not separately document internal property moves, the PA must identify a separate population and source documents. Source documents must include location change orders, move tickets, custodial transfer documents, maintenance work orders, issue slips, shipping tickets, DD1149s, DD1348s, Bills of Lading, and other similar documents. Support documents must include the contractor's Government property records and other documents generated for the movement of property.

6. In the absence of specific language, the Government would be responsible for risk of loss here AFTER the date the Government accepted the widgets.
7. The rules governing the use of U.S. flagged vessels can be found at FAR 47.501.

APPENDIX

All of the following materials are linked and can be found via the Links Document or online.

[DODIG Fiscal Year 2022 Oversight Plan](#)

Oversight plan by the US Department of Defense for the fiscal year 2022 reviewing the top DoD management and performance challenges, as well as best practices for detecting and deterring fraud, waste, and abuse in the agency programs. The plan includes a comprehensive review of the top ten concerns for the Department and how to address them including audit mechanisms and implementing reforms.

[GSA Freight Handbook 2021](#)

GSA's freight transportation handbook, last updated in May 2021, provides a guide to the applicable government regulations and legislation which applies to all forms of freight transportation in the U.S. The handbook provides an overview of the administrative and fiscal principles for operating with greater efficiency in the shipping and receiving operations of the government.

[GAO-19-33 Federal Personal Property: Improve the Exchange Sale Process](#)

Report to the Committee on Homeland Security and Governmental Affairs concerning Federal Personal Property and the GSA and VA's opportunities to improve the exchange and sales process published in November 2018. The GAO recommended that the GSA OGP address agency confusion regarding exchange/ sale authority and clarify the responsibilities and scope of authority of the GSA.

[Guidebook for Contract Property Administration August 2022](#)

This guidebook for contract property administration provides a policy framework for Government "contract" property stakeholders, along with those designated the responsibility oversight of stewardship. The guidebook reviews relevant regulations, DFARS and FAR clauses, and best practices for effective and efficient stewardship of Government contract property.

[NDIA Property Management Plan Template](#)

Template for a Property Management plan including the categories stewards of government property must address and an outline of responsibilities under the agreement.

[Quality Assurance Surveillance Plan Template](#)

This template for a quality assurance surveillance plan includes a general guide to the elements which should be included in a QASP which should be adjusted based on the requirements found in the performance work statement and specific agency requirements.

[SF1186-14 Transmittal for Transportation Schedules and Related Documents](#)

Form for the transmittal for transportation schedules and related documents to the GSA.

FUN WITH THE FAR
Episode 24
FAR Parts 45, 46, & 47
Summary Outline

I. Introduction

II. FAR PART 45

- A. General Observations**

- B. Government Property Before and During Contract Performance**

- C. Government Property After Contract Performance**

III. FAR PART 46

- A. General Observations**

- B. Types of Quality Assurance**

- C. Acceptance of Supplies**

IV. FAR Part 47

- A. General Observations**

- B. Specific Transportation Issues**

V. Closing Remarks