

Caltech

**Property Management Presentation Series
Session 3- Government Owned Fabrications,
Deliverables, and Equipment
FY2015**

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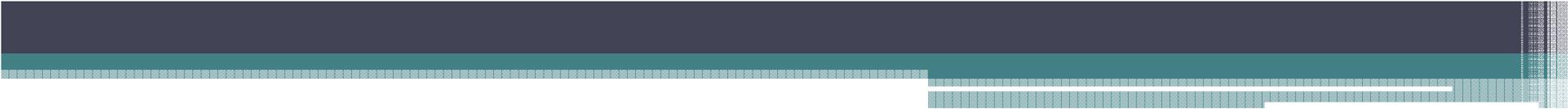
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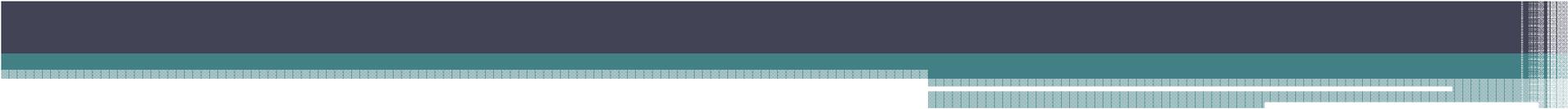
Post Award Administration (PAA)

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This presentation will be posted at:

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Government Owned Fabrications, Deliverables, and Equipment

Overview

1. Difference Between Federal Grants and Contracts
2. How Funding Mechanism and Title affects compliance requirements
3. Utilizing Government Property
4. Government Owned Equipment, Fabrication and Deliverables
5. Shared Equipment (Service Center)
6. Three Caltech Cases

Important Federal Regulations

- 2 CFR Part 200 - Uniform Guidance (UG)
- 2 CFR Part 215 - OMB Circular A-110 (A-110)
- 2 CFR Part 220 - OMB Circular A-21 (A-21)
- Federal Acquisition Regulations (FAR) Part 45
- Federal Acquisition Regulations (FAR) 52.245-1
Government Property.

Note: Campus must also follow Institute Policies and Practices regarding property and equipment

How the Type of Funding Mechanism and Equipment Title Affects Compliance Requirements

Equipment Title and Ownership	Federal Award	Federal Contract
Government Owned	UG: 2 CFR Section 200.312 / (or OMB A-21 and A110)	FAR Part 45 and FAR 52-245-1
Caltech Owned-Conditional Title (Note 1)	UG: 2 CFR Section 200.313 / (or OMB A-21 and A110)	Not Applicable (Note 2)
Caltech Owned-Federal Exempt Title (Note 1)	No Further Obligations to the Federal Government	Not Applicable (Note 2)

Note 1: Exempt federally-owned property means property acquired under a Federal award where the Federal awarding agency has chosen to vest title to the property to the non-Federal entity without further obligation to the Federal Government. Conditional titles are subject to 2 CFR 200.213 compliance.

Note 2: Title vests with the Federal Government during the period of performance of the contract. The non-federal entity may request a transfer of title to them after completion of the federal contract from which the equipment was purchased. If title is granted to the non-federal entity, the non-federal entity will have no further obligations to the federal agency in regards to that equipment.

Question #1

What is the difference between a federal grant agreement and a federal contract?

Answer:

Per UG Section 200.51, a **grant agreement** is a legal instrument of financial assistance between a federal awarding agency and a non-federal entity.

(a) It is used to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use;

Question #1

Answer (cont'd):

(b) A **grant agreement** is distinguished from a **cooperative agreement** in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

Question #1

Answer (cont'd):

A **federal contract** is used by the federal agency to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use

Per UG Section 200.22, a **contract** means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award.

Question #2

Why is it important to know whether the work performed is funded by a federal grant or federal contract?

Answer:

Generally

- ***A grant agreement is subject to compliance with the A-21 and A-110 or the UG***
- ***A federal contract is subject to compliance with the FAR***

Property Management Process Lifecycle

1. Acquisition & Procurement
2. Receiving and Acceptance
3. Records
4. Physical Inventory
5. Subcontractor Controls
6. Reports
7. Relief of Stewardship Responsibility & Liability
- ➔ 8. Utilizing Government Property
9. Maintenance
10. Property Closeout

8. Utilizing Government Property

Acquired through a Federal Contract not a Grant

FAR 52.245-1 (f)(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.

8. Utilizing Government Property

Acquired through a Federal Grant not a Contract

UG Section 200.312 (a) Federally-Owned and Exempt Property

- Title and ownership remains with the federal agency
- Upon completion of the federal award, or when the property is no longer needed, the property must be reported to the federal awarding agency for further federal agency utilization

8. Utilizing Government Property

UG Section 200.312 (b) Federally-Owned and Exempt Property

- If the federal agency has no further need for the equipment, it must declare the equipment as excess and report it for disposal to the appropriate federal disposal authority, unless the federal agency has statutory authority to dispose of the property by alternative methods (e.g., donations).
- The federal agency must provide disposition instruction to the non-federal entity.

8. Utilizing Government Property

UG Section 200.312 (c) Federally-Owned and Exempt Property

- **Exempt federally owned property** means property acquired under a federal award where the **federal awarding agency has chosen to vest title to the non-federal entity without further obligation to the federal government**, based upon the explicit terms and conditions of the federal award.

Title Vested in Non-Federal Entity as “Federal Exempt”

8. Utilizing Government Property

UG Section 200.312 (c) Federally-Owned and Exempt Property (cont'd)

- Federal agency may exercise this option when statutory authority exists.
- In absence of statutory authority and specific terms and conditions of the federal award, title to the exempt federally owned equipment acquired under the federal award remains with the federal government.

Title Vested in Non-Federal Entity as “Federal Exempt”

Question #3

What does Section 200.312 say about the use of the federally owned equipment for “other purposes” outside the original work that the equipment was purchased to perform?

Answer:

Does not explicitly address; however, it does say that upon completion of the federal award, or when the property is no longer needed, the property must be reported to the federal awarding agency for further federal agency utilization

8. Utilizing Government Property

Acquired through a Federal Grant not a Contract

UG Section 200.313 Equipment

(a) Unless a statute specifically authorizes the federal agency to vest title in the non-federal entity without further obligations to the federal government and the federal agency elects to do so, the title must be a **conditional title** and subject to the conditions disclosed in section 200.313.

Title Vested in Non-Federal Entity as “Conditional Title”

8. Utilizing Government Property

UG Section 200.313 Equipment (cont'd)

(1) Use of the equipment for the authorized purpose of the project during the period of performance, or until the property is no longer needed for the purposes of the project.

(2) Not encumber the property without the approval of the federal awarding agency or pass-through entity.

(3) Use and dispose of the property in accordance with paragraphs (b), (c), and (e) of this section.

Title Vested in Non-Federal Entity as “Conditional Title”

8. Utilizing Government Property

UG Section 200.313 Equipment (cont'd)

(b) A state must use, manage, and dispose of equipment acquired under a federal award by the state in accordance with state laws and procedures. Other non-federal entities must follow paragraphs (c) through (e) of this section

Title Vested in Non-Federal Entity as “Conditional Title”

8. Utilizing Government Property

UG Section 200.313 Equipment (cont'd)

(c) Use

(1) Equipment **must be used by the non-Federal entity in the program or project for which it was acquired as long as needed**, whether or not the project or program continues to be supported by the Federal award, and **the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:**

Title Vested in Non-Federal Entity as “Conditional Title”

8. Utilizing Government Property

UG Section 200.313 Equipment (cont'd)

(c) Use (1) (cont'd)

Order of priority when equipment is no longer needed for its original program or project:

- (i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then
- (ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.

Title Vested in Non-Federal Entity as “Conditional Title”

8. Utilizing Government Property

UG Section 200.313 Equipment (cont'd)

(c) Use

(2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, **provided that such use will not interfere with the work on the projects or program for which it was originally acquired.**

Title Vested in Non-Federal Entity as “Conditional Title”

8. Utilizing Government Property

UG Section 200.313 Equipment (cont'd)

(c) Use (2) (cont'd)

First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and **second preference** must be given to programs or projects under Federal awards from other Federal awarding agencies. **Use for non-federally-funded programs or projects is also permissible.** User fees should be considered if appropriate.

Title Vested in Non-Federal Entity as “Conditional Title”

8. Utilizing Government Property

UG Section 200.313 Equipment (cont'd)

(c) Use

(3) Notwithstanding the encouragement in §200.307 Program Income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.

Title Vested in Non-Federal Entity as “Conditional Title”

8. Utilizing Government Property

UG Section 200.313 Equipment (cont'd)

(c) Use (3) (cont'd)

Note: During the time that equipment is used on the project or program for which it was acquired, any income generated using that equipment will be considered **program income**. Unless otherwise instructed by the federal agency or the specific award, program income generated must be used to benefit the federal award or federal agency based on the guidelines stated in Section 200.307 (e).

(e1) Deduction from current total allowable costs charged

(e2) Addition to award funding (requires approval)

(e3) Cost Sharing Matching Funds (requires prior approval)

Title Vested in Non-Federal Entity as “Conditional Title”

8. Utilizing Government Property

UG Section 200.313 Equipment (cont'd)

(c) Use

(4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

Title Vested in Non-Federal Entity as “Conditional Title”

Question #4a

What does Section 200.313 say about the use of the federally funded equipment with title vested in the non-federal entity for “other purposes” outside the original work that the equipment was purchased to perform?

Answer:

This is allowable provided that the “other use” does not interfere with the use of the equipment on the original project or program for which the equipment was purchased; otherwise approval is needed from the federal agency or pass-through entity.

Question #4b

Does this mean that Caltech can freely use Caltech owned equipment funded by federal sources to use for “other purposes” without receiving approval from the funding agencies?

Answer:

This depends on whether Caltech’s ownership title is Conditional (more common) or Exempt (less common). Under conditional title, Caltech may need to prove that the “other use” did not interfere with use of the equipment for the original program or project.

Question # 4b (cont'd)

Answer (cont'd):

For example, if the original work was delayed, or no-cost extensions were needed to complete the original work, then government auditors may perceive that the equipment may have been encumbered by “other uses” of the equipment during the period of performance of the award.

Question # 4b (cont'd)

Note: Keep in mind that DCAA auditors do not need to prove non-compliance to support an audit finding, as they expect the contractor to be able to prove compliance!

If the contractor fails to prove compliance, then that is enough for DCAA to use as a basis for non-compliance and to support an audit finding. It is more difficult to prove that equipment was not encumbered than it is to prove that it was encumbered.

Government Owned Fabrication and Deliverables under a Federal Contract

FAR 54-245-1

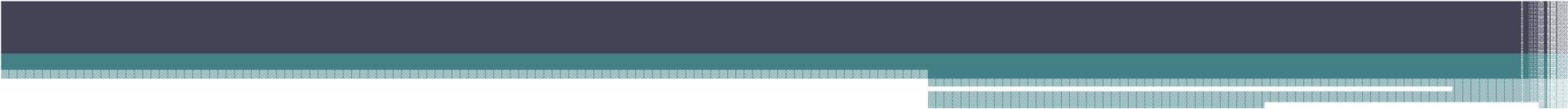
- Title vests with the Federal Government while the work is being performed
- All materials & supplies must not be comingled with materials not owned by the government
- Movement or re-locating the government owned items require notification and pre-approval from the federal funding agency or the pass-through entity

Government Owned Fabrication and Deliverables under a Federal Contract

FAR 54-245-1

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

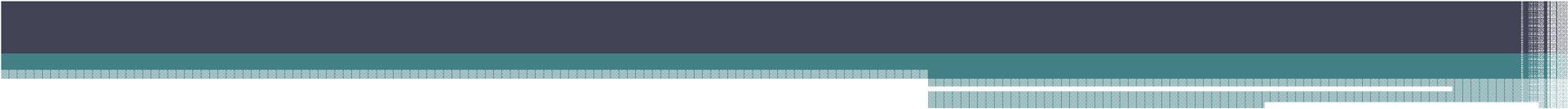
- (1) The name, part number and description, National Stock Number.....
- (2) Quantity received (or fabricated), issued, and balance-on-hand.
- (3) Unit acquisition cost.
- (4) to (10) see full listing in FAR 54-245-1 (iii)



Government Owned Fabrication and Deliverables under a Federal Contract

FAR 54-245-1 (contd.)

Note: Item (2) on the previous slide means that the non-federal entity be able to account for the quantity of all items purchased, used on the project, and quantity of items not used. In addition, this information should be reconciled to the procurement information posted in the financial system.



Government Owned Fabrication and Deliverables under a Federal Contract

FAR 54-245-1 (contd.)

- All unused materials must be tracked and retained to allow the government the opportunity to have these items sent to them
- No items can be disposed of without approval from the federal funding agency. This includes scrap metals, or other waste.

Shared Equipment

UG Section 200.213

- Service Center (SC) Usage
 - Government owned equipment cannot be used for service center purposes without the approval of the funding agency
 - Caltech owned equipment with “federal exempt” title can be used for SC activities without obtaining approval
 - Caltech owned equipment with “federal conditional” title may be used for SC activities only when its use does not interfere with its use for the work on the federal award that funded the purchase of the equipment

Shared Equipment

UG Section 200.213

- Service Center (SC) Usage (Cont'd)
 - Equipment Fees charged cannot be lower than what a private company would charge for the same or equivalent services
 - 2 CFR 200.468 (b): The costs of such services, when material, **must be charged directly to applicable awards based on actual usage of the services** on the basis of a schedule of rates or established methodology.....
 - Income generated prior to the completion of the federal award that funded the equipment is to be treated as “Program Income”

Case 1 - Government Owned Equipment Deliverable

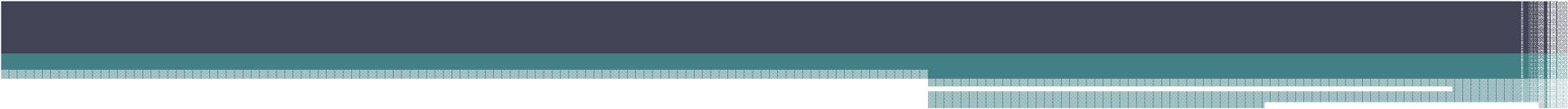
- There was a government owned equipment deliverable project under a federal contract subject to FAR regulations.
- This required us to account for and inventory used and unused materials & supplies that were acquired under this contract. It also required that the materials and supplies purchased for the project be segregated from other materials & supplies from other projects.
- Caltech was not in compliant with the FAR regulations and the government prime contractor insisted on paying only for the items that can be accounted for as described under FAR.
- Caltech was able to reach an agreement which minimized the amount that Caltech had to write-off for being non-compliant with FAR.

Case 2 - Unauthorized Disposal

- About 1 year ago, there was a case at Caltech where a government owned equipment was broken and was not repairable. New equipment was purchased, and the government owned equipment was disposed of without notifying Caltech's central administration (e.g., Property Services, OSR, or PAA).
- This event was not reported to the funding federal agency because this case was not reported to central administration by the research group.
- Now a year later, this disposal was identified during the federal award close-out process, and we are waiting for federal agency response.

Case 3 - Unreported Movement of Equipment Offsite

- A recent ONR audit identified 3 government owned equipment assets in their test population that had been moved off the authorized work site by the research group without providing notification to or obtaining authorization by the federal funding agency.
- These equipment movements were also not reported to Caltech's central administration office, so the necessary documentation and required process was not followed.
- Resulted in audit findings and Caltech will need to provide a response back to ONR on those findings and include a corrective action plan
- ONR will also look at this process again in their next audit.



Questions?