

## Stealing Government Property

Written by Nick Sanders  
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Government Property rules are complex and it takes a specialist to ensure that a contractor is in compliance with them. We don't claim to be specialists in that particular area, but we do have more than a passing familiarity with the applicable requirements.

For example, we understand that when a contractor is awarded a cost-reimbursable contract, then costs charged directly to that contract for tangible equipment and other material items convey title to the government customer. If you buy a piece of test equipment and decide to charge it directly to a cost-type contract, then you no longer own that piece of equipment. It now belongs to your government customer. Thus, while equipment provided by the customer for your use may be deemed "Government Furnished Property," equipment acquired for contract use and direct-charged to the contract is deemed "Contractor-Acquired Government Property". In both cases, the equipment must be controlled and maintained. In both cases, you cannot just dispose of the equipment as if it were yours do to with as you please—because it is no longer yours.

Contractors that want to retain title to equipment and other tangible assets need to avoid charging the acquisition cost of those items to the contract as direct costs and, instead, capitalize them and put them on the balance sheet for depreciation/amortization over time. In that way, you retain title. The equipment is yours to do with as you please. The downside of that course of action is the cash flow hit. If you direct charge the cost to the contract, you get to bill 100 percent in your next billing cycle. You may even get fee on top of the acquisition cost! But if you capitalize and depreciate, you only recover a small piece of the cost in the current year. Indeed, you may charge the depreciation to your indirect cost pools and have to recover the current year depreciation as part of your overhead or G&A expense rate. That's not nearly as good for your cash flow as a direct-charge-and-bill scenario.

Clearly, the trade-off is between title and cash flow. If you give up title, you get the cash now. If you defer recovery of the cost, you get the title and you can use the equipment on this contract and any others you may want to support. You can even sell the equipment.

But if you direct-charge the costs and title passes, and the equipment becomes owned by your government customer, then you cannot use the equipment for other contracts without permission. You cannot sell the equipment without permission. You can't do anything other than support the current contract without permission.

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This one time we worked on an environmental cleanup contract at a military base. It was a cost-plus contract. As part of our efforts, we had to acquire a large commercial trash container. Because we charged the cost of that trash container as a direct contract cost, title passed to the government customer. We knew this and clearly identified the trash container as being owned by the U.S. Government. (We did that by spray painting “PROPERTY OF THE UNITED STATES GOVERNMENT” on two sides of the container.) We parked that container at a remote part of the military base.

One day we went to the base and the trash container was gone. By “gone” we mean to say it had been moved about 300 yards and was sitting over the fence line in the field of the farm next door. Our property person, Deborah, went to visit the farmer and calmly asked for the trash container to be returned. The farmer refused in a not-nice manner. Deborah nodded, returned to the office, and made a call.

The next day the FBI showed up to ask the farmer why he had stolen government property—a [violation](#) of Title 18 of the United States Code.

The trash container was returned to the military base 12 hours later.

The moral of the lesson, dear readers, is that the government may waste millions or even billions of taxpayer dollars each year, but they don’t take kindly to people taking things that belong to the taxpayers. It’s not a big deal, until it’s a big deal. Then it’s a big deal indeed. Even for trash containers.

So with that story in mind, let’s take a look at a recent ASBCA [decision](#) in the matter of Snowdon, Inc. According to the ruling by Judge McIlMail, Snowdon had a “research and development” contract with the Defense Threat Reduction Agency (DTRA). The Judge didn’t say, but we presume it was a cost-reimbursement contract, since Snowdon was “reimbursed” for the cost of acquiring two pieces of the equipment, “vesting title in the equipment to the government.”

Contracts end and this one was no exception. As the contract ended, Snowdon and the government “engaged in a series of communications” regarding disposition of the

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government-owned, contractor-acquired, property. According to the decision—

On 17 May 2012, the government informed Snowdon by email that '[i]f none of the equipment is deemed good for use here or transferred to another project then it will be left to Snowdon,' ending the email with the postscript 'More to follow ....' ... Later the same day, in response to Snowdon asking when the government might make its decision, the government's representative stated 'I think 2 weeks at the most' ... On 20 June 2012, Snowdon followed up, requesting that the government provide equipment disposition instructions because, Snowdon advised, it was vacating its facility at the end of the month...

Hearing nothing back from the government customer, Snowdon sold the equipment on July 30, 2012, netting \$47,500. Importantly, Snowdon never offered to remit its proceeds to the government; it simply pocketed the cash. When the Contracting Officer found out about the sale, he issued a Final Decision demanding the funds. Snowdon refused and appealed the COFD to the ASBCA.

We suspect many contractors sympathize with Snowdon's plight. The company gave the government ample notice to provide disposition instructions, and provided a clear deadline with a good rationale ("we are vacating our facility"). The government, as is so frequently the case, did not provide timely property disposition instructions. The deadline came and passed. What was Snowdon to do?

Well, we think Snowdon was lucky. Judge McIlmail found that Snowdon only was liable for the proceeds from the sale of the equipment plus interest. Nobody filed charges alleging that Snowdon stole government property.

But the possibility, as remote as it may have been, was always there.