IND 205 LESSON #11

DEMILITARIZE
GOVERNMENT PROPERTY
TLO-11: Given the requirement to demilitarize (DEMIL) Government property analyze the requirements for demilitarization.

**ELOs:**

1. Define the terms associated with demilitarization.
2. Describe the Department of Defense Policy for demilitarization according to DoD Instruction (DoDI 4160.28).
3. Determine the responsibilities of the Contracting Officer, Plant Clearance Officer, and Property Administrator with respect to demilitarization.
DEMILITARIZE GOVERNMENT PROPERTY

**ELOs:**

5. Analyze demilitarization court case.
6. Identify the critical aspects of demilitarization.
7. Explain the importance of auditing the contractor for compliance to the demilitarization requirements in the contact.
8. Analyze Agility/DRMS court case.
DEFINITIONS

FAR 45
“Demilitarization” means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

DFARS 252.245-7004
“Demilitarization” means the act of eliminating the functional capabilities and inherent military design features from DoD personal property. Methods and degree range from removal and destruction of critical features to total destruction by cutting, tearing, crushing, mangling, shredding, melting, burning, etc.
DEFINITIONS

**Significant Military Equipment (SME)** - means those articles for which special controls are warranted because of their capacity for military utility or capability.

**Munitions List Items (MLI)** - means those items listed on the U.S. Munitions List. The U.S. Munitions List delineates the articles, services and related technical data designated as defense articles and defense services pursuant to the Arms Export Control Act.
Government Policy

- FAR 45.603 Abandonment or Destruction of Personal Property
- DFARS 245.604-3 (e) Sale of Surplus Property
- PGI 245.602-70 (12)&(13) Reporting, Reutilization and Disposal
- DoDI 4160.28 Vol 1-4

Contract Clauses

- FAR 52.245-1 (j)(7)(ii)
- DFARS 252.245-7004 (d)
- DFARS 252.245-7004 (j)(9)(i),(ii)&(iii)
Contracting Officers (CO) Responsibilities
FAR 52.245-1 (j)(7)(ii)
The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.
Plant Clearance Officer (PLCO) Responsibilities

DFARS 246.603 (e) Plant clearance officers shall consider any special disposal requirements such as demilitarization or trade security control requirements in accordance with DoDI 4160.28-M, Defense Demilitarization Manual, and DoDI 2030.08, Implementation of Trade Security Controls, respectively (See PGI 245.6).
Plant Clearance Officer (PLCO) Responsibilities
PGI 245.602-70

(12) The PLCO shall, prior to sales contract award—


(iii) Consult with the DoD Demilitarization (Demil)/Trade Security Control (TSC) Program office to determine if the contractor inventory can be sold to the public; and if a TSC assessment of the prospective buyer is required. Reference DoD Instruction 2030.08, Implementation of Trade Security Controls (TSC) for Transfers of DoD U.S. Munitions List (USML) and Commerce Control List (CCL) Personal Property to Parties Outside DoD Control; and Defense Demilitarization Manual, DoD 4160.28-M;

(iv) If TSC is required, provide the DoD Demil/TSC Program office with a completed DLA Form 1822 End-Use Certificate (EUC) for the prospective buyer. Note: TSC assessments/EUCs are typically not required for scrap sales.
Plant Clearance Officer (PLCO) Responsibilities

- Witness DEMIL or;
- Delegate to another Government functional specialist for the verification of DEMIL
- Notify PCO if funding is needed for DEMIL
Property Administrator Responsibilities

- Assist the PLCO as requested for witnessing DEMIL
- Review contract for specific DEMIL instructions
- Review Contractor written PMS procedures for coverage of DEMIL
- Reviewing DEMIL documentation during audit of the disposal process.
Contractor Responsibilities
FAR 52.245-1 (j)(7)(i)
The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer.
Unless otherwise directed by the Contracting Officer or by the Plant Clearance Officer, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.
Critical Aspects

- Codes - Getting the Correct Information.
- Funding for DEMIL – Who Pays for It?
- End use certificates – It’s the Law!
  - International Trade Controls
DEMIL Codes Links and Resources

- DLA Coding Management Office
- DoDM 4160.28 Defense Demilitarization Vol 2
- DoDI 2030.08 Implementation of Trade Security Controls for Transfers of DoD Personal Property to Parties Outside DoD Control
- FEDLOG – Logistics Information Warehouse – Portal (need to request subscription).
Who is responsible for funding DEMIL? Contractor or Government? **It Depends!**

First… What do the Regulations Read?

**FAR 45.201(c)** “…shall require all offerors to submit the following information with their offers—

(1) A list or description of all Government property that the offeror or its subcontractors propose to use on a rent-free basis…”

**FAR 52.245-1(b)(2)** “The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition,…”
What do the Regulations Read? Continued…

FAR 52.245-1(f)(7)(ii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

DoDM 4160.28 Vol 1 Enclosure 5, DEMIL Planning Guidance
(3) - DEMIL Plans identify the who, what, how, and where for the Demilitarization of Government Property.
Who is responsible for funding DEMIL?

Continued...

Second, what do the Contractor’s Property Management System procedures say?

What about the Contractor’s Accounting Procedures / Disclosure Statement?

- If the contract is silent it does not automatically mean that the Government will pay all the costs.
- Negotiations will need to take place between the CO/ACO and the Contractor.
Who is responsible for funding DEMIL? Continued…

What is the Property Administrator/Plant Clearance Officer’s role?

- Ensure that contractor is screening for excess throughout the performance of the contract.
- Ask the DEMIL question at pre-award.
- If not involved in pre-award, request a listing of assets that will require DEMIL as soon as possible.
- Encourage the PCO to identify and negotiate charges upfront or as soon as need is identified.
Who is responsible for funding DEMIL? Continued…

Costs should be negotiated at the beginning of the contract.

- If items are added after award the items need to be identified and the Contracting Officer and Program Manager need to be notified.
- FAR Part 31, Contract Cost Principles and Procedures, and use of the GFP drive the CO’s decision to fund.
- If DEMIL is outside Contractor capabilities then they can request reimbursement in accordance with:
  - 52.245-1(j)(7)(ii) Equitable adjustment.
Important Lesson Learned

DEMIL will usually cost less when agreed to at the beginning of the contract!
Current Issues

• Lack of Planning
• Misunderstanding of Roles and Responsibilities
• Very Little Evidence (documented) of Follow-up on GAO Findings.

Example: GAO-06-943 Control Breakdowns Present Significant Security Risk and Continuing Waste and Inefficiency
End Use Certificates **DLA Form 1822**

- Required BEFORE the sale of any MLI or CCL items.
- A document used in international transfers, including sales and arms provided as aid, of weapons and ammunition to certify that the buyer:
  - is the final recipient of the materials, and
  - is not planning on transferring the materials to another party.
DEMILITARIZE GOVERNMENT PROPERTY

“Captain Crunch”

ELO # 6
Why does the Government care about Demilitarization?
- Protects Warfighter
- Prevents National Security Risks
- Avoids High Risk of Liability

How do we audit the process of Demilitarization?
- What do the Contractors Procedures say?
- What type of DEMIL will they have to perform?
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