Better Buying Power

Understanding and Leveraging Data Rights in DoD Acquisitions

Have you developed your Data Management Strategy (DMS)?

Program Managers shall assess the data required to design, manufacture, and sustain the system—including in-house uses, as well as competitive outsourcing—in their sustainment planning and Acquisition Strategies.

Data Management and Data Rights Resources

Laws, Regulations, Policies, and Instructions

- Title 10, U.S. Code, Sections 2320 and 2321
- Defense Federal Acquisition Regulation Supplement (DFARS):
  - 227.71 (Rights in Technical Data)
  - 227.72 (Rights in Computer Software and Computer Software Documentation)
  - 2252.227-7013, -7014, -7015, -7018
- OSD Policy Memo, Clarifying Guidance Regarding Open Source Software (OSS), 16 Oct 2009
- DoDI 5000.02, Operation of the Defense Acquisition System, Enclosure 12, Section 9, Dec. 2008
- DoD 5010.12-M, Procedures for the Acquisition and Management of Technical Data, May 1993 (under revision)

Additional Guidance

- Army Guide for the Preparation of a Program Product Data Management Strategy
- Naval Open Architecture Contract Guidebook for Program Managers

Prepared by the
Department of Defense
Open Systems Architecture
Data Rights Team
January, 2013

Please visit
https://acc.dau.mil/oa
for additional information and resources

Statement A:
Approved for public release; distribution is unlimited.
“Data Rights” → Rights in Technical Data (TD) and Computer Software (CS)

“Data Rights” is a shorthand way to refer to the Government’s license rights in two major categories of valuable intellectual property:

- Technical Data (TD) includes any recorded information of a scientific or technical nature (e.g., product design or maintenance data, computer databases, and computer software documentation (CSD)).
- Computer software (CS) includes executable code, source code, code listings, design details, processes, flow charts, and related material.

Data Delivery Requirements

The DFARS clauses do not require delivery of TD or CS— the Government must include specific delivery requirements in each contract. For TD, it is important to distinguish detailed design data from less detailed operation or maintenance data. For CS, it is important to distinguish executable code from source code and other design data. Consider a priced option for contingency-based data delivery or data rights needs.

Data Rights Granted to the Government

The Government’s license rights to a contractor’s TD and CS generally depend upon the extent to which the Government funded the development of the technology, whether the technology is commercial or noncommercial, and any negotiations for mutually agreeable “special” license agreements. Some types of data qualify for Unlimited Rights regardless of development funding, such as “form, fit, and function data,” (FFF) and data necessary for operation, maintenance, installation, and training (OMIT) purposes.

<table>
<thead>
<tr>
<th>Rights Category</th>
<th>Applies to These Types of TD or CS</th>
<th>Rights Criteria</th>
<th>Permitted Uses Within the Government</th>
<th>Permitted Uses by Third Parties Outside the Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unlimited Rights (UR)</td>
<td>Noncommercial TD and CS</td>
<td>Developed exclusively at Government expense, and certain types of data (e.g., FFF, OMIT, CSD)</td>
<td>All uses; no restrictions</td>
<td>All uses; no restrictions</td>
</tr>
<tr>
<td>Government Purpose Rights (GPR)</td>
<td>Noncommercial TD and CS</td>
<td>Developed with mixed funding</td>
<td>All uses; no restrictions</td>
<td>For “Government Purposes” only; no commercial use</td>
</tr>
<tr>
<td>Limited Rights (LR)</td>
<td>Noncommercial TD only</td>
<td>Developed exclusively at private expense</td>
<td>Unlimited; except may not be used for manufacture</td>
<td>Emergency repair or overhaul²</td>
</tr>
<tr>
<td>Restricted Rights (RR)</td>
<td>Noncommercial CS only</td>
<td>Developed exclusively at private expense</td>
<td>Only one computer at a time; minimum backup copies; modification³</td>
<td>Emergency repair/overhaul; certain service/maintenance contracts²</td>
</tr>
<tr>
<td>Negotiated License Rights</td>
<td>Any/all TD and CS— including commercial TD and CS</td>
<td>Mutual agreement of the parties; use whenever the standard categories do not meet both parties’ needs</td>
<td>As negotiated by the parties; however, must not be less than LR in TD and must not be less than RR in noncommercial CS (consult with legal counsel as other limits apply)</td>
<td></td>
</tr>
<tr>
<td>SBIR Data Rights</td>
<td>Noncommercial TD and CS</td>
<td>All TD or CS generated under an SBIR contract</td>
<td>All uses; no restrictions</td>
<td>Cannot release or disclose except to Government support contractors</td>
</tr>
<tr>
<td>Commercial TD License Rights</td>
<td>Commercial TD only</td>
<td>TD related to commercial items (developed at private expense)</td>
<td>Unlimited in FFF and OMIT; other rights as negotiated</td>
<td></td>
</tr>
<tr>
<td>Commercial CS Licenses</td>
<td>Commercial CS only</td>
<td>Any commercial CS or CS documentation</td>
<td>As specified in the commercial license customarily offered to the public¹</td>
<td></td>
</tr>
</tbody>
</table>

¹ All third party use under Government’s license is subject to Government authorization. For rights categories other than UR, releases or disclosures to third parties must be accompanied by either the Non-Disclosure Agreement (NDA) from DFARS 227.7103-7 or must occur under a contract containing DFARS 227-7025. A notice requirement also applies to releases of LR data and RR software.

² In addition to the footnote 1 NDA and notice requirements, all authorized Covered Government Support Contractor recipients of LR data or RR software must sign an NDA directly with the owner of the data/software, unless the direct-NDA requirement is waived by the owner.

³ See DFARS 252.227-7014(a)(15) (March 2011) (or (a)(14) in previous versions) for more information.

⁴ Such licenses must be consistent with Federal procurement law and satisfy user needs.