

Understanding and Leveraging Open Systems Architecture in DoD Acquisitions to Increase Competition

Effective Competition requires use of Competitive Strategies and an Open Business Model.

Open Business Model (OBM) = Use of Open Systems Architectures (OSA) and an Intellectual Property Strategy (IPS)

Open Systems Architectures (OSA)

Who?

- Program Managers and other Acquisition Corps professionals.

What?

- Plan for and leverage the use of Open Systems Architectures (OSA) and Open Business Model to increase access to innovation and reduce cost through competition.

Why?

- Use of OSA standards and approaches allows for multiple vendors to propose innovative and affordable design solutions that will meet performance and interface requirements. The multiplicity of solution alternatives creates opportunity for competition for the system components without being locked into a single vendor's proprietary design or technology. This sole source situations or costly acquisition of license rights to use proprietary solutions. This also facilitates fluid integration of new capability to meet warfighter demands.

When?

- OSA can be used anytime in the product life cycle. Maximum benefit is obtained if OSA is used from the beginning of system development, but later life cycle activities such as engineering changes, product improvements or modernization efforts can also be opportunities to bring in or enhance the use of OSA.

Where?

- OSA should be an integral part of the Acquisition Strategy development and the Systems Engineering process, both for initial product development and for later product improvements.

Intellectual Property Strategy (IPS)

The IPS addresses all of a program's Intellectual Property (IP) requirements (focusing on technical data and software and associated data rights) throughout the life cycle of the system.

Data Rights Resources Laws, Regulations, and Policies

- 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)
 - 252.227-7013, -7014, -7015, -7018
- Better Buying Power 2.0
A Guide to Help You Think

Additional Guidance

- Army Guide for the Preparation of a Program Product Data Management Strategy (Under Revision)
- DoD Open Systems Architecture Contract Guidebook for Program Managers
- Acquiring and Enforcing the Government's Rights in Technical Data and Computer Software Under Department of Defense Contracts, Air Force Space and Missile Systems Center



Better Buying Power

Understanding and Leveraging Data Rights in DoD Acquisitions

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

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“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.

Anticipating the Need for Data and Data Rights

A Program Manager must ensure that all TD and CS and related license rights required for procurement and sustainment of a system are available throughout the system’s life cycle.

- Sustainment activities include reprourement, maintenance, repair, modifications or interfacing/ interoperability activities, and upgrades or technology insertion.
- Consider a priced option for any data deliverables or data rights that you may need in the future, but do not order up front.

Identify and Resolve Data and Data Rights Issues Prior to Contract Award

Identify and resolve data delivery or data rights issues prior to contract award, by:

- Requiring Offerors to assert all restrictions on deliverable TD and CS—both commercial and noncommercial—up front, in their proposals;
- Evaluating the data and data rights packages being offered;
- Negotiating for mutually agreeable specialized license rights whenever the standard license categories do not meet both parties’ needs.

Data Delivery Requirements

The DFARS clauses do not require delivery of TD or CS—the Government must include specific delivery requirements in each contract, mere access may not protect Government interests. 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. (Excluding detailed manufacturing and process data).

Rights Category	Applies to These Types of TD or CS	Rights Criteria	Permitted Uses Within the Government	Permitted Uses by Third Parties Outside the Government ¹
Unlimited Rights (UR)	Noncommercial TD and CS	Developed exclusively at Government expense, and certain types of data (e.g., FFF, OMIT, CSD)	All uses; no restrictions	All uses; no restrictions
Government Purpose Rights (GPR)	Noncommercial TD and CS	Developed with mixed funding	All uses; no restrictions	For “Government Purposes” only; no commercial use ¹
Limited Rights (LR)	Noncommercial TD only	Developed exclusively at private expense	Unlimited; except may not be used for manufacture	Emergency repair or overhaul ¹
Restricted Rights (RR)	Noncommercial CS only	Developed exclusively at private expense	Only one computer at a time; minimum backup copies; modification ³	Emergency repair/overhaul; certain service/maintenance contracts ¹
Negotiated License Rights	Any/all TD and CS—including commercial TD and CS	Mutual agreement of the parties; use whenever the standard categories do not meet both parties’ needs	As negotiated by the parties; however, must not be less than LR in non commercial TD and must not be less than RR in noncommercial CS (consult with legal counsel as other limits apply)	
SBIR Data Rights	Noncommercial TD and CS	All TD or CS generated under an SBIR contract	All uses; no restrictions	Cannot release or disclose except to Government support contractors ^{1,2}
Commercial TD License Rights	Commercial TD only	TD related to commercial items (developed at private expense)	Unlimited in FFF and OMIT; other rights as negotiated	
Commercial CS Licenses	Commercial CS only	Any commercial CS or CS documentation	As specified in the commercial license customarily offered to the public ⁴	

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 252.227-7025. 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 Contractors of LR data or RR software must sign an NDA directly with the owner of the data/software, if required by the owner.

³ See DFARS 252.227-7014(a) for more information.

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