



Army Data & Data Rights (D&DR) Guide

**A Reference for Planning and Performing
Data Acquisition and Data Management Activities
Throughout the DoD Life Cycle**

1st Edition - August 2015

UNITED STATES ARMY
PRODUCT DATA  ENGINEERING 
WORKING GROUP

DISTRIBUTION STATEMENT A. Approved for public release.

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Preface

A. Purpose

The Army Data & Data Rights Guide (D&DR Guide) was prepared by members of the Army Product Data and Engineering Working Group (PEWG) and Department of Defense (DoD) subject matter experts to help Army and other Military Service professionals better understand data and data rights acquisition and management throughout the DoD life cycle. The people and organizations that helped create this Guide are listed in the [Acknowledgements](#) section [§ 401, p 125]. Their contributions are gratefully appreciated.

The Assistant Secretary of the Army for Acquisition Logistics and Technology (ASA(ALT)) issued a Delegation of Authority to Headquarters, Army Materiel Command (HQ AMC) in April 2004, giving HQ AMC responsibility for management of certain areas including Configuration Management, Data Management, and engineering, technical, and product data throughout the Army. The PEWG was formed to provide support to HQ AMC and ASA(ALT) in these areas. It is led by product data subject matter experts from the Armament Research, Development and Engineering Center with membership from the other Army Research, Development and Engineering Centers and several Lifecycle Management Commands.

The era of acquisition reform in the late 1980s and 90s taught a generation of Government professionals that acquisition of data and data rights was too costly and not necessary to have a successful program. Unfortunately, many DoD programs are now locked into sole source manufacturing and logistics support agreements due to a lack of data, data rights, or both. The Government cannot competitively source these manufacturing or sustainment functions to address changing requirements or reduce costs. This guide is a compilation of the known best practices regarding data and data rights to help readers make informed decisions in the future to avoid similar situations.

Thoughtful consideration of the best practices discussed in this guide will enable programs to acquire the data and data rights to which it is legally entitled at no additional cost, and pay fair and reasonable costs for additional data and data rights (if needed). The result will maximize the Government's ability to use competitive sourcing to manage life cycle costs.

Reader feedback to the Guide is strongly encouraged. Routine content updates to the Guide are planned and will be based on reader feedback received and any relevant changes to Public Law, DoD, or Army policy.

B. Applicability

The D&DR Guide is a significantly expanded version of the 2010 *Army Guide for the Preparation of a Program Product Data Management Strategy (DMS)* and subsequent 2012 *Addendum*.

The concepts and recommendations in this D&DR Guide are applicable to engineering professionals acquiring or working with Technical Data, Computer Software, or Contract Administration Information.

When a DoD activity executes a research and development program performed by a contractor, the contractor owns the data created during that effort. However, contract clauses and provisions from the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement entitle the

Government to certain rights to use “noncommercial” Technical Data or Computer Software delivered by the contractor. In general, these rights can be: (1) Unlimited, i.e. useable by the Government in any manner or for any purpose, (2) Government Purpose, i.e. usable for Government purposes; or (3) Limited or Restricted, i.e. only usable within the Government and only for very limited and specific purposes without approval of the owner.

The determination of the Government's data rights entitlements is critical to maximizing the ability to use competitive sourcing in the future. The D&DR Guide discusses best practices when acquiring data and data rights in the process of contracting for research and development and, recommendations for the management and use of that data after it is delivered. Resolution of data and data rights issues discovered during the Production & Deployment or Operations and Support phases will be the subject of a future publication.

CAUTION: The contents of this Guide are in no way a substitute for appropriate legal counsel. All teams should seek the advice of their program attorney before proceeding with any recommendations contained herein.

C. Synopsis

i. Major Content Sections

The **FUNDAMENTAL** information sections provide definitions, concepts, and context for the subject areas discussed throughout the guide. The Fundamental content is identified with 100 series section numbers and red page footers.

The **CORE** information sections address the major tasks necessary to successfully acquire and manage data and data rights and culminate with a list of best practice recommendations in the *Data & Data Rights Program Checklist* [§ 209, p 87] section. The Core content is identified with 200 series section numbers and blue page footers.

The **DETAILED** information sections contain detailed information about select subjects discussed in the Fundamental or Core sections of the D&DR Guide. The Detailed content is identified with 300 series section numbers and yellow page footers.

The **REFERENCE** information sections contain acknowledgements, a glossary, an acronym list, and an index. The Reference content is identified with 400 series section numbers and black page footers.

Major Content Sections

Sec 101-104

Fundamental Information

Sec 301-307

Detailed Information

Sec 201-209

Core Information

Sec 401-403

Reference Information

i. Navigation

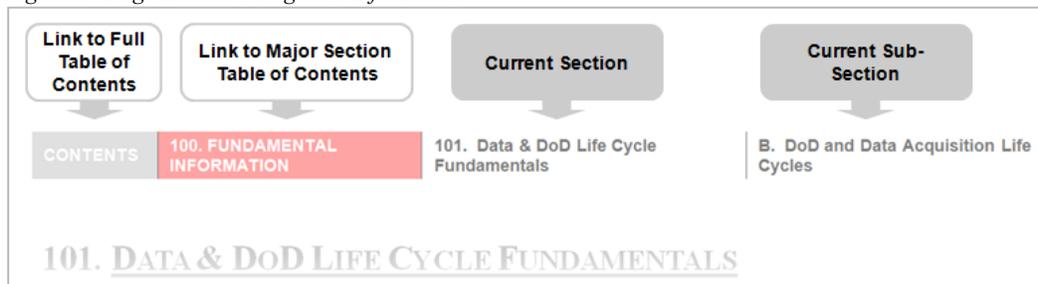
A graphical table of contents is shown in [Table 1](#). Each listing is also a hyperlink to that section.

Table 1 - Graphical Table of Contents (HYPERLINKED)

§ 100. FUNDAMENTAL INFORMATION		§ 300. DETAILED INFORMATION	
	101. Data & DoD Life Cycle Fundamentals		301. Data Rights Details
	102. Data Fundamentals		302. Data Markings Details
	103. Data Rights Fundamentals		303. Life Cycle Data & Data Rights Requirements Details
	104. Data Markings Fundamentals		304. Request for Proposal Preparation Details
§ 200. CORE INFORMATION			305. Data Rights Attachment Details
	201. Intellectual Property Strategy		306. Data Rights Options Decision Details (Concept)
	202. Life Cycle Data and Data Rights Requirements		
	203. Data & Data Rights Related Life Cycle Costs	§ 400. REFERENCE INFORMATION	
	204. Data & Data Rights Potential Risks		401. Acknowledgements
	205. Request for Proposal and Source Selection Plan		402. Glossary & Acronyms
	206. Proposal Evaluation and Data & Data Rights License Agreements		403. Index
	207. Data Delivery, Verification, and Acceptance		
	208. Data Management and Use		
	209. Data & Data Rights Program Checklist		

To assist reader navigation, the top of each page is styled like a web page as shown in Figure 1. The far left portion is a hyperlink to the full Guide table of contents followed by a link to the major section table of contents. The remaining portions shown the titles of the current section and sub section.

Figure 1 - Page Header Navigation Information



ii. Formatting

This guide uses a variety of formatting to identify types of content. The colors used throughout the guide were chosen to enhance readability by persons affected by color blindness.

Figure 2 depicts the Guide hyperlink formatting. Links to information within the guide have a grey dotted underline and include the corresponding section and page number in brackets. Links to material found external to the guide are blue text.

Figure 2 - Hyperlink Formatting

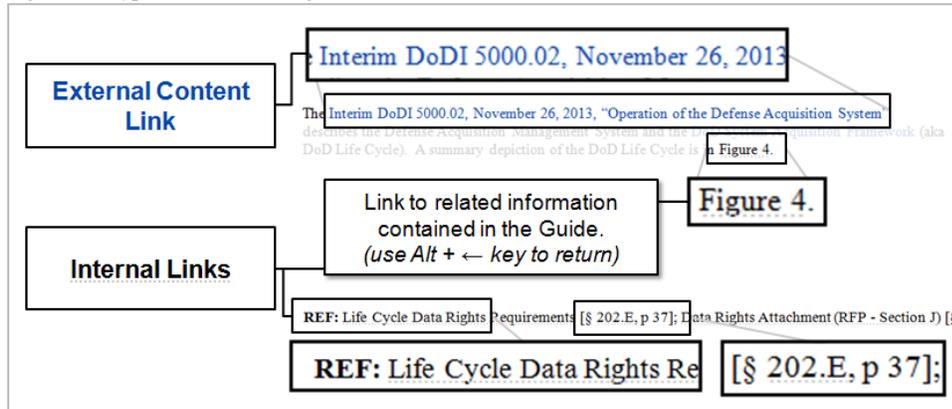
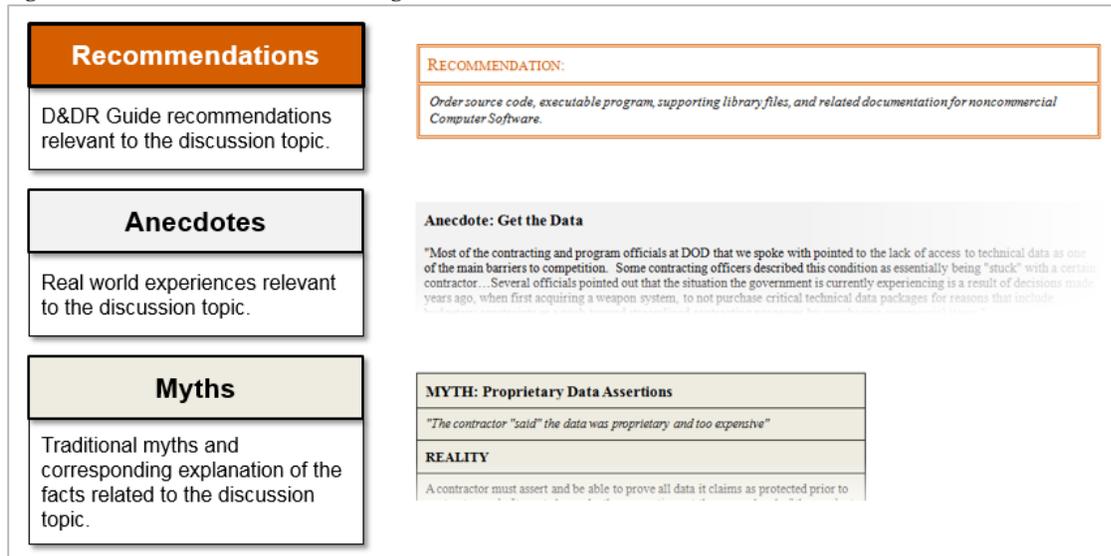


Figure 3 shows additional content formatted. Recommendations are in full width boxes outlined with orange double borderlines. Anecdotes describing real world experiences are shown in partial width light blue boxes with no outline. Myths and explanation of the facts are shown in light tan boxes with black solid outline.

Figure 3 - Additional Content Formatting



NEW indicates new content that is related to the Data Rights (DR) Attachment (§ 205.K) and its implementation. Use of a DR Attachment is new to Army acquisition professionals.

\$ CONCEPT indicates notional content for addressing data and data rights costs considerations into program life cycle cost estimates. Program teams and costing subject matter experts are encouraged to scrutinize these concepts and provide feedback on how they can be improved.

CONCEPT indicates notional content for addressing the use of contract options to acquire additional data rights. Program teams are encouraged to include provisions to acquire additional rights for their specific acquisition and provide feedback on the concept.

iii. Online Content

An **online version** of the D&DR Guide has been created within DoDTechipedia, an online encyclopedia for the science and technology community hosted by the Defense Technical Information Center. The [Data & Data Rights Guide \(Online\)](#) site contains the entire D&DR Guide in web format.

DoD military, civilian employees and contractors can access DoDTechipedia after registering their Common Access Card. Other US Federal Government employees and Contractors can access DoDTechipedia after registering with [DTIC](#).

The full web address for the online Guide is <https://www.dodtechipedia.mil/dodc/x/ZoQGAQ>.

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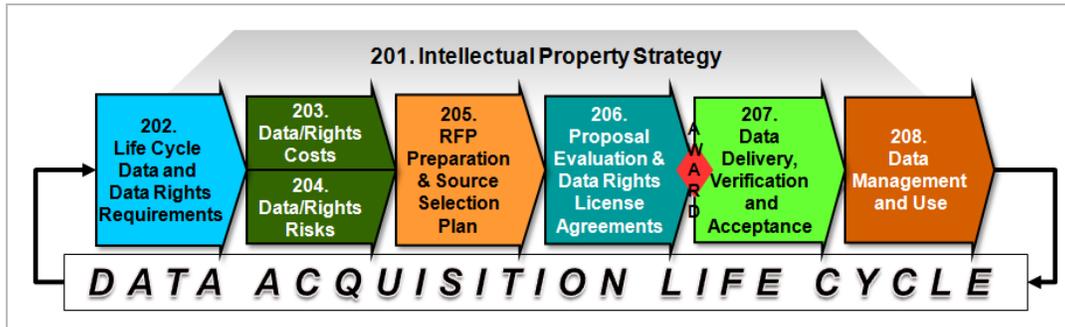
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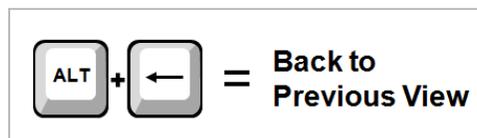
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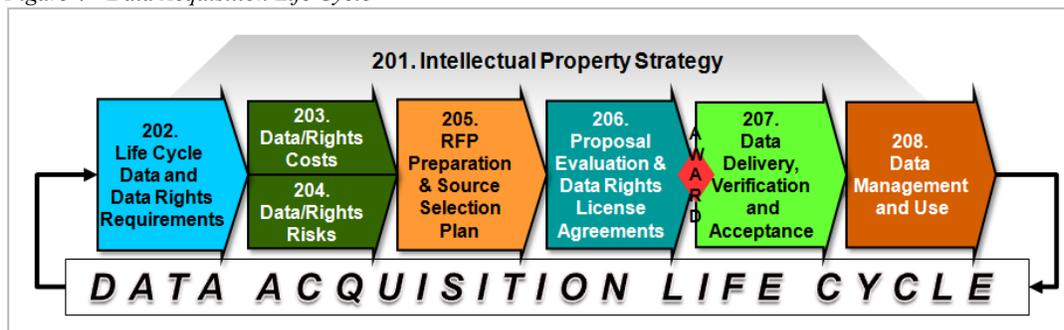
101. DATA & DOD LIFE CYCLE FUNDAMENTALS

This section addresses steps in the data acquisition life cycle and how they relate to the [DoD System Acquisition Framework](#).

A. Data Acquisition Life Cycle

Figure 4 depicts a typical Defense-related data acquisition “life cycle” for identifying and contractually acquiring data and data rights and then using them to support production and sustainment of the product. The three digit identifiers (i.e. 201, 202, etc.) correspond to sections in the D&DR Guide.

Figure 4 - Data Acquisition Life Cycle



An Intellectual Property (IP) Strategy [§ 201, p 29] defines and documents the program data and data rights needs and plans for each step in the data life cycle.

The data and data rights requirements for the system [§ 202, p 33] must be defined for the entire life cycle to ensure all DoD life cycle activities will be supported. The life cycle costs [§ 203, p 41] related to data and data rights need to be estimated and accounted for in the program life cycle cost estimate. The potential data and data rights related risks [§ 204, p 47] should be identified and mitigated. A Request for Proposal and Source Selection Plan must be properly prepared to acquire the desired data and data rights on contract [§ 205, p 51]. Offeror responses to the RFP should be evaluated [§ 206, p 71] from a data and data rights perspective and all data and data rights license agreements must be attached to the contract and stored for future reference. Data deliveries from the contract should be inspected and verified [§ 207, p 75] before Government acceptance. Once accepted, the Government manages and uses the data [§ 208, p 81].

B. DoD and Data Acquisition Life Cycles

The [DoDI 5000.02, January 7, 2015, “Operation of the Defense Acquisition System”](#) describes the Defense Acquisition Management System and the [DoD System Acquisition Framework](#) (aka DoD Life Cycle). A summary depiction of the DoD Life Cycle is in [Figure 5](#).

The Government Accountability Office describes the early stages of the DoD life cycle in [GAO-13-286 Defense Technology Development](#) as “The Science & Technology (S&T) community engages in activities ranging from basic research through advanced technology development that are conducted by the government or externally by universities and commercial industry. Once the S&T community has completed its technology development, additional product development activities, such as technology

demonstration and testing, are often needed before incorporating the technologies into military weapon systems. Under the management of the acquisition community, product development further advances technology received from S&T developers and integrates it into systems that are ultimately delivered to support the warfighter.”

Figure 5 - DoD System Acquisition Framework (aka DoD Life Cycle)

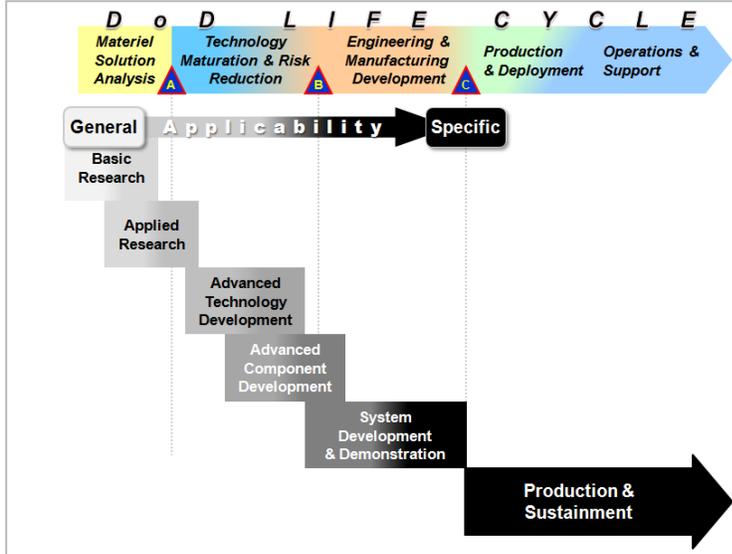
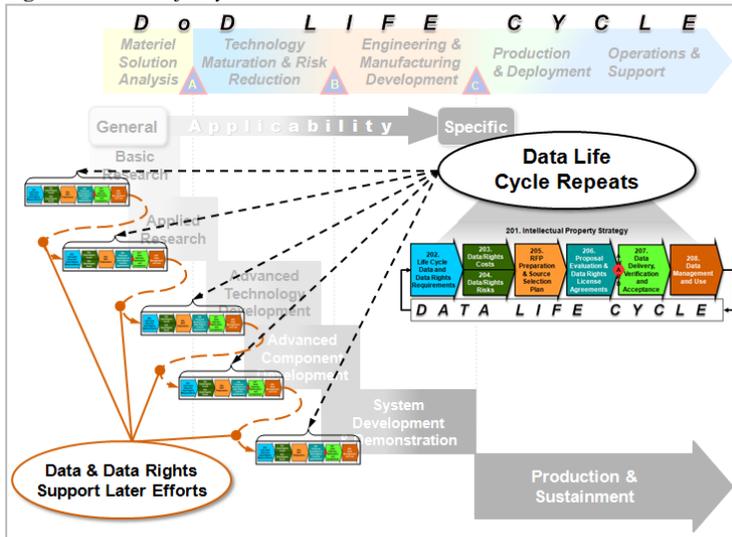


Figure 6 overlays the data life cycle to the DoD Life Cycle. The data life cycle repeats with each phase of development or new contract and then settles into management and use of the data once it has been delivered and accepted.

Figure 6 - Data Life Cycle

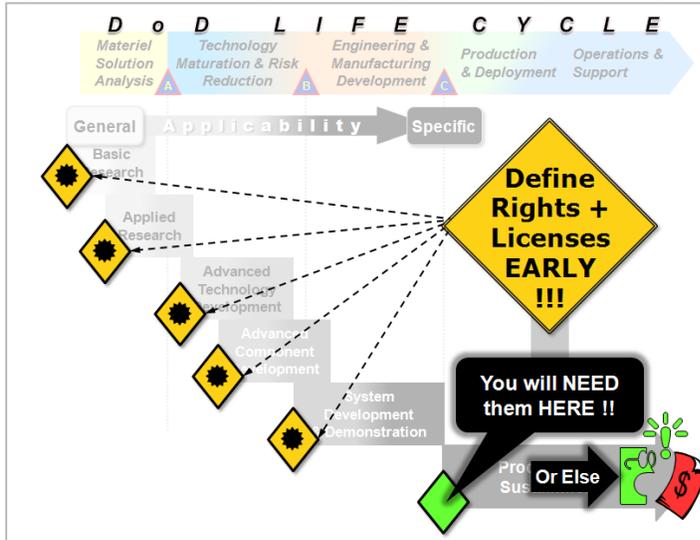


C. Data & Data Rights License Agreement Timing

When the Government's planning allows for exclusive private development of critical technology (or the Government simply finds that this is the reality upon first consideration of acquiring a technology), it is important to fully define and reach agreement on any private sector data rights restrictions as **early** as

possible in a development effort as shown in Figure 7. Execution of the Production & Deployment, and Operation & Support phases are significantly impacted by rights restrictions that could have been addressed in development. The Government's bargaining position is also strongest in the early phases of the program and the cost of additional data rights is normally lower.

Figure 7 - Data & Data Rights License Agreement Timing In Development Phases



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102. DATA FUNDAMENTALS

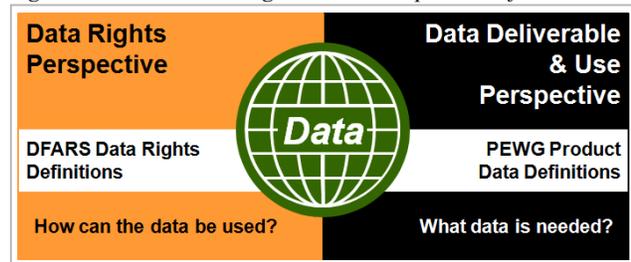
This section includes definitions for data and categories of data. It also discusses how data can be viewed from a data rights or data deliverable and use perspective.

A. D&DR Guide Perspectives of Data

For the purposes of this D&DR Guide, data can be viewed from the two perspectives shown in Figure 8.

The “data rights” perspective focuses on how the data can be used by Department of Defense (DoD) activities and the “data deliverable & use” perspective focuses on what data is needed to develop, acquire, and sustain a DoD product. The data rights perspective is defined by federal regulations and the data deliverable and use perspective is defined by a taxonomy developed by the Army Product Data & Engineering Working Group (PEWG). It is important to keep these two perspectives in mind throughout the D&DR Guide.

Figure 8 - Data & Data Rights Guide Perspectives of Data



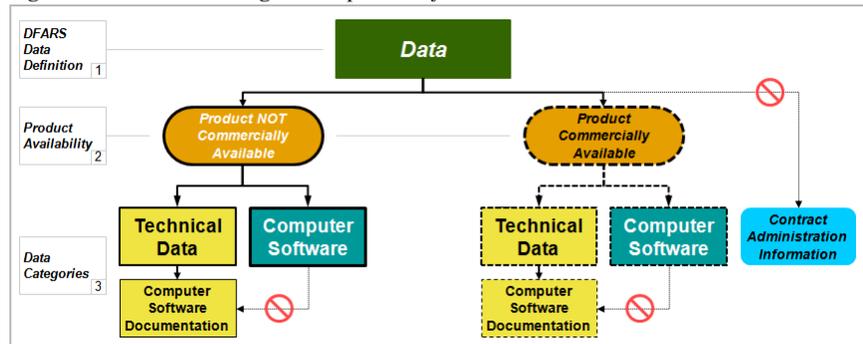
B. FAR/DFARS Data Rights Perspective of Data

The Federal Acquisition Regulation (FAR) is the principal set of rules governing Federal acquisitions of supplies and services. It contains 53 parts and more than 1,800 pages of standardized policies and procedures used or referenced in federal contracts.

Many Government Agencies and Departments supplement the FAR with additional regulations specific to its acquisitions needs. The Department of Defense supplement is the Defense Federal Acquisition Regulation Supplement (DFARS). The FAR can be found at <https://www.acquisition.gov/far/>. The DFARS and Procedures, Guidance, and Information (PGI) can be found at <http://www.acq.osd.mil/dpap/dars/dfarspgi/current>.

The FAR and DFARS treatment of data is only in terms of the Government's rights to use that data on its behalf. These regulations define “data” as either Technical Data or Computer Software, and define Government rights entitlements based on a range of criteria such as product availability and data category. This DFARS view of data is depicted in Figure 9.

Figure 9 - DFARS Data Rights Perspective of Data



As explained further in section 103.B, DoD activities must generally follow the DFARS policies and utilize DFARS provisions and clauses in solicitations and contracts with respect to data rights.

i. FAR/DFARS Data Definition

Most data related DFARS definitions come from subparts [227.71 \(Rights In Technical Data\)](#) or [227.72 \(Rights In Computer Software And Computer Software Documentation\)](#). Unfortunately, neither Subpart includes a definition for “Data.” [FAR subpart 27.401](#) defines data as “...recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.” Note this definition is from the perspective of defining data rights for Technical Data and Computer Software only. Other types of data, such as Contract Administration Information, are NOT covered by any predefined rights in the FAR/DFARS.

ii. Product Availability

The type or availability of the product the data is associated with must be defined before data rights determinations can be made. The two types of product availability are “commercial” and “noncommercial” as shown in row 2 of [Figure 9](#).

Commercial products are available to the public and noncommercial products are anything that is **not** a commercial product. These distinctions directly affect how some Government data rights entitlements are determined. Some Government terms often associated with commercial products are Commercially Available Off-The-Shelf and Non-Developmental Item. The full definition of commercial item can be found in [FAR 2.101 - Definitions](#).

iii. DFARS Data Categories

The categories of data derived from the DFARS are shown in row 3 of [Figure 9](#). The three categories are Technical Data, Computer Software, and Contract Administration Information.

DFARS [252.227-7013](#) defines Technical Data as “... recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.” Note the inclusion of software documentation and exclusion of contract financial and/or management information.

DFARS [252.227-7014](#) defines Computer Software as “computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.” Even though excluded from the definition of software, the rights to software documentation are covered in this clause.

DFARS [252.227-7014](#) defines Computer Software Documentation as “...owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.”

The definition of Contract Administration Information can be derived from DFARS [252.227-7013](#) which refers to “...data incidental to contract administration, such as financial and/or management information”

C. PEWG Product Data Deliverables Perspective of Data

The Army Product Data & Engineering Working Group (PEWG) recognized that additional distinctions beyond the DFARS types and categories of data would be helpful to DoD professionals, especially when determining program needs for data. This group created a data hierarchy and data groupings that focus on the uses of data to define, manufacture, and support a product. The following sections discuss the hierarchy and groupings.

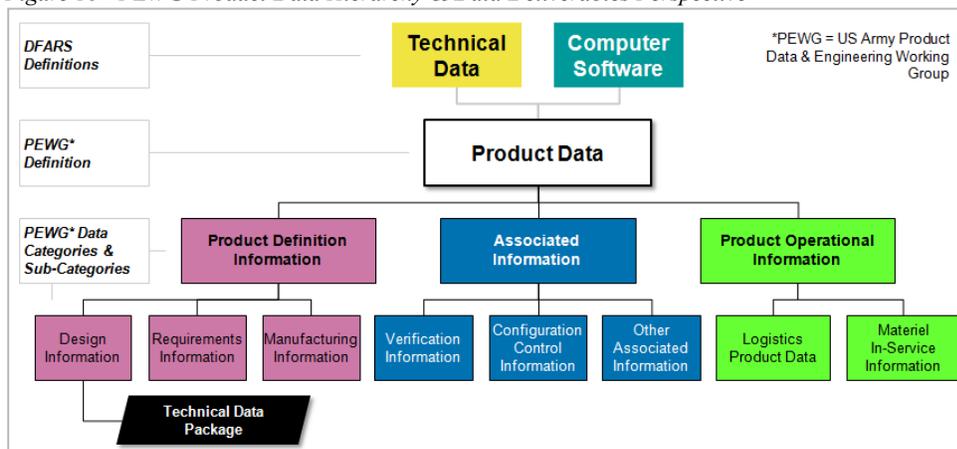
i. Product Data Hierarchy

The PEWG leveraged industry concepts and terms to create a data hierarchy focused on data needed to define, manufacture, and support a Product, Component, or Process. The PEWG hierarchy divides product data into three major groups: Product Definition Information, Product Operational Information, and Associated Information. Figure 10 depicts how these groups relate to the DFARS definitions of Technical Data and Computer Software.

Product Data is a sub-set of Technical Data and Computer Software, as defined by the DFARS that directly relates to a product or weapon system. Product Data is distinct from other types of Technical Data that do not relate to a product; for example, a manpower staffing study of a DoD organization would be considered Technical Data but not Product Data as defined by the PEWG because it does not relate to a particular product or weapon system.

The top of the hierarchy is the DFARS definitions for Technical Data and Computer Software. The PEWG hierarchy subsequently takes any Technical Data or Computer Software that defines or relates to a product and groups them together as “Product Data” which the PEWG defines as “All data created as a consequence of defining (requirements), designing, testing, producing, packaging, storing, distributing, operating, maintaining, modifying and disposing of a product.”

Figure 10 - PEWG Product Data Hierarchy & Data Deliverables Perspective



ii. PEWG Data Group - Product Definition Information

The PEWG definition of Product Definition Information is “Information that defines the product's requirements, documents the product's attributes, and is the authoritative source for configuration definition and control.” This set of information defines the product requirements, the product design, and any manufacturing or modification instructions. This group is sub-divided into Design Information,

Requirements Information, and Manufacturing Information. Examples of the content for these sub-groups are listed in Table 2.

Table 2 - PEWG Product Definition Information Sub-Groups and Examples

Requirements Information	Capabilities Development Document Capabilities Production Document System Specifications
Design Information	Design Concept Information Functional Breakdown Descriptions Trade Study Reports Design Selection Document, Engineering Analyses Models And Test Cases (Simulations) As Designed Product Configuration Technical Data Package (TDP) Computer Aided Design Models Interface Control Documents Computer Software Source Code Software Development Environment Definition
Manufacturing Information	Manufacturing Instructions, Process routings Depot Overhaul/Modification Information

The Technical Data Package (TDP) is specifically identified as a key part of the Design Information sub-group because so much product data is derived from it. [Military Standard MIL-STD-31000A](#) “[Technical Data Packages](#)” defines a TDP as “A technical description of an item adequate for supporting an acquisition, production, engineering, and logistics support (e.g. Engineering Data for Provisioning, Training, and Technical Manuals). The description defines the required design configuration or performance requirements, and procedures required to ensure adequacy of item performance. It consists of applicable technical data such as models, drawings, associated lists, specifications, standards, performance requirements, QAP, software documentation, and packaging details.”

Note there is a conflict between the MIL-STD-31000A inclusion of software documentation as part of a TDP, and the DFARS definition of [Computer Software Documentation](#) as “...owner's manuals, user's manuals, installation instructions, operating instructions...” This edition of the Guide uses the DFARS definition and assigns software documentation to the Product Operational Information group.

REF: [Technical Data Package \(TDP\)](#) [§ 205.B.i, p 53];

iii. PEWG Data Group- Product Operational Information

The PEWG definition of Product Operational Information is “Information used to operate, maintain, and dispose of the product.” This group is sub-divided into Logistics Product Data, and Materiel In-Service Information. This set of information describes how to operate, maintain, repair, and otherwise logistically support the product and the configuration of each physical instance of the product. Examples of the content for these sub-groups are listed in Table 3.

Table 3 - PEWG Product Operational Information Sub-Groups and Examples

Logistics Product Data	<ul style="list-style-type: none"> Technical Manuals Maintenance Planning Information Technical Publications Support & Test Equipment Info Supply Support Info Manpower, Personnel & Training Info Packaging, Handling, Storage & Trans Info Environmental Safety & Occupational Health Info Computer Software Documentation
Materiel In-Service Information	<ul style="list-style-type: none"> Field Feedback Information Item Prognostics & Diagnostics Info Maintenance Actions Product Unit Configuration Info: <ul style="list-style-type: none"> As-Built As Maintained As-Modified

iv. PEWG Data Group - Associated Information

The PEWG definition of Associated Information is “Information generated as part of the product development and life cycle management process, but isn't clearly definable as either of the other two groups.” The Associated Information group is sub-divided into Verification Information, Configuration Control Information, and Other Associated Information. Examples of the content for these sub-categories are listed in Table 4. Note: Some or all of associated information may be included by organizations as a part of either their product definition information or product operational information.

Table 4 - PEWG Associated Information Sub-Groups and Examples

Verification Information	<ul style="list-style-type: none"> Test Reports Physical Configuration Audit Results Functional Configuration Audit Results
Configuration Control Information	<ul style="list-style-type: none"> Requests For Change Requests For Variance Configuration Control Board Decisions Product Configuration Management Status
Other Associated Information	<ul style="list-style-type: none"> Obsolescence Notices Government-Industry Data Exchange Program Supplier Notices Disposal Info

v. Software Related Information and PEWG Data Groups

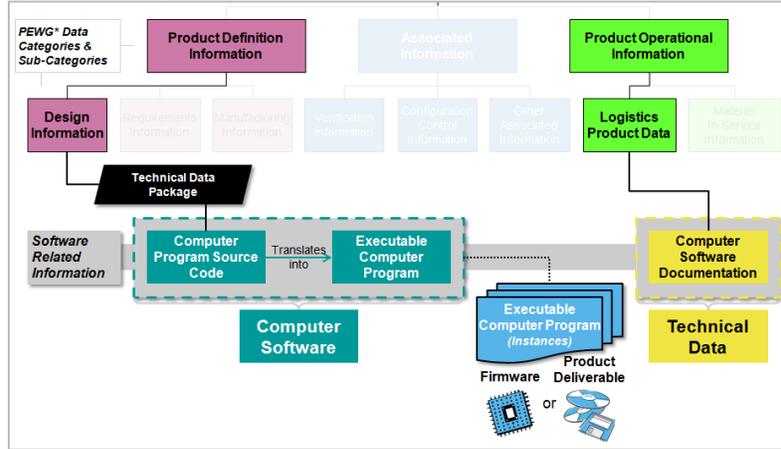
The DFARS distinguishes Computer Software from Technical Data for the purposes of data rights determinations. However, this distinction is irrelevant when considering the information from a product data perspective. Both Technical Data and Computer Software source code and executable programs must be acquired and managed as part of a development program, whenever present.

Figure 11 depicts how software related information fits within the PEWG product data groups. Source code is the authoritative source describing the software design and fits within the Design Information sub-group of Product Definition Information. The “master” executable program file compiled from the source code also fits under this sub-group. However, copies of the master executable program do NOT fit into this sub-group. These copies become “instances” of the original and are distributed as Firmware (embedded in a hardware system) or a product deliverable.

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It is important to distinguish which type of executable program is being discussed in a given situation.

Figure 11 - Computer Software and PEWG Product Data Groups

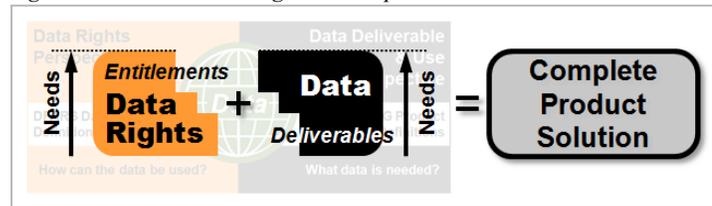


D. Data Rights and Data Relationship

The DFARS data rights and PEWG data deliverable perspectives are interdependent. Data deliverables and data rights form the foundation of a complete product solution as shown in Figure 12. The program manufacturing and sustainment plans for a particular component, sub-system, or system, define what data and data rights are needed.

A complete product solution is only realized by combining the needed data AND data rights for the particular item. Specifically, the Government must have all of the needed data in hand (preferred), or unrestricted access to it (for the life of the system), and the rights needed to use that data or share it with third parties as required by the program plans. Either partial or incomplete data, unclear data rights, or both, will prevent the Government from manufacturing and supporting the item as intended.

Figure 12 - Data + Data Rights = Complete Product Solution



103. DATA RIGHTS FUNDAMENTALS

This section addresses Government data rights. It discusses Government data rights types and how rights entitlements are determined.

REF: [Data Rights Details](#) [§ 301, p 91];

A. FAR and DFARS Overview

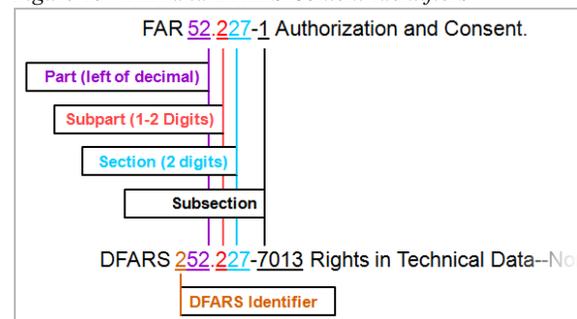
The Federal Acquisition Regulation (FAR) is the principal set of rules governing Federal acquisitions of supplies and services. The Department of Defense supplements the FAR with the Defense Federal Acquisition Regulation Supplement (DFARS) and the Army supplements the FAR and DFARS with the Army Federal Acquisition Regulation Supplement (AFARS). Other agencies and departments follow similar conventions.

The Defense Procurement & Acquisition Policy (DPAP) organization is responsible for all contracting and procurement policy matters in the Department of Defense. This organization publishes a companion resource titled DFARS Procurement Guidance Information (PGI), which includes policy, and guidance that does not meet the criteria for inclusion in the DFARS.

The FAR can be found at [Acquisition Central](#). The DFARS and guidance can be found at [Defense Procurement and Policy DFARS and PGI](#). Figure 13 shows how FAR and DFARS content is identified.

The FAR and DFARS contain both “solicitation provisions” and “contract clauses.” Solicitation provisions are for items used only in solicitations and applying before contract award. Contract clauses are for items used in both solicitations and contracts, applying solely after award or both before and after award.

Figure 13 - FAR and DFARS Content Identifiers



B. Data Related FAR Provisions & Clause Fundamentals

Some important data and data rights related FAR content are in Part 27 and Part 52. [FAR Part 27--Patents, Data, and Copyrights](#) prescribes “policies, procedures, solicitation provisions, and contract clauses pertaining to patents, data, and copyrights.” This content can be thought of as the “rules” prescribed by the Government. [FAR Part 52--Solicitation Provisions and Contract Clauses](#) delineates the provisions and clauses, which implement the prescriptions of FAR Part 27 in a contract.

However, not all FAR subpart 27.4 and referenced provisions and clauses apply to DoD activities and contracts. FAR 27.400 states “The policy statement in 27.402 applies to all executive agencies. The remainder of the subpart applies to all executive agencies except the Department of Defense.” DFARS 227--Patents, Data, and Copyrights, [subpart 227.4](#) states, “DoD activities shall use the guidance in Subparts 227.71 and 227.72 instead of the guidance in FAR Subpart 27.4.”

Bottom line: DoD activities must use the DFARS for data rights in accordance with FAR 27.402 and DFARS 227.4.

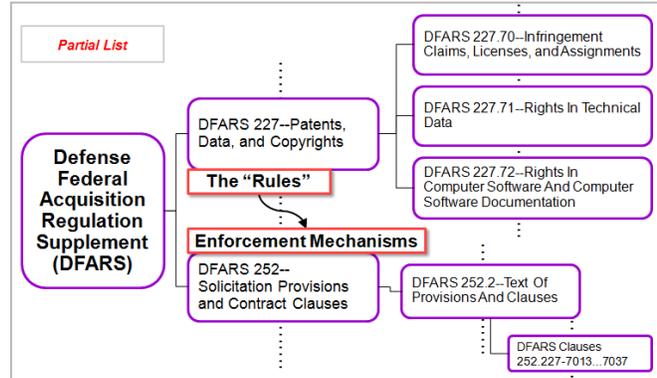
C. Data Related DFARS Provisions & Clause Fundamentals

Some noteworthy DFARS content is shown in Figure 14.

DFARS 227.70 (Infringement Claims, Licenses, and Assignments), 227.71 (Rights In Technical Data) and 227.72 (Rights In Computer Software And Computer Software Documentation) prescribe DoD-unique policies, procedures, provisions, and contract clauses (the “rules”) pertaining to the acquisitions and rights to data, patents, and copyrights.

DFARS 252--Solicitation Provisions and Contract Clauses, and specifically, the DFARS 252.227.7013-7037 clauses delineate the provisions, which implement the prescriptions of DFARS 227.71 and 227.72.

Figure 14 - Data/Rights Related Defense Federal Acquisition Regulation Supplement Content



D. DFARS Data Rights Categories

Department of Defense data rights and entitlements are defined by specific clauses in the DFARS. These clauses were created to implement several statutes including 10 U.S.C. § 2320 Rights in Technical Data and 10 U.S.C. § 2321 Validation of Proprietary Data Restrictions as well as the policy at FAR 9.505-4 -- Obtaining Access to Proprietary Information.

The Intellectual Property Assets, Rights, and Protection Methods [§ 201.B, p 30] section introduces Intellectual Property assets. DoD contractors generally retain ownership of IP Assets created during the contract effort. The Government is afforded license rights to use these assets in accordance with FAR/DFARS and any specific agreements in the contract. These rights control how the Government can use, disclose, or reproduce contractor owned information.

DFARS clauses 252.227-7013, 252.227-7014, 252.227-7018, and 252.227-7015, supported by other regulations, define the Government Standard Data Rights. These are the minimum data rights the Government is legally entitled to as determined by the FAR and DFARS clauses **included** in the contract used to order the delivery of the data. “Order” means to contractually require delivery of data to the Government.

The DFARS data rights categories for data associated with noncommercial products are:

- Unlimited Rights
- Government Purpose Rights
- Specifically Negotiated License Rights
- Small Business Innovation Research Data Rights
- Limited Rights (for Technical Data)
- Restricted Rights (for Computer Software)

Figure 15 is a summary view of what the Government is permitted to do with data associated with noncommercial products based on its data rights category. Rights in the upper, green rows allow

maximum flexibility for the Government to use the data as needed to support a program. Rights in the red, lower rows significantly restrict how the Government can use the data and often will dictate that only a single source will be able to supply systems, parts, and/or support, which usually requires a justification and approval of a sole source to comply with the Competition in Contracting Act.

Figure 15 - Data Rights and Permitted Uses of Data Associated with Noncommercial Products

NONCOMMERCIAL ONLY			
Rights Category	Criteria for Applying Rights Category	Permitted Uses Within Government	Permitted Uses Outside Government
Unlimited	Developed exclusively at Government expense	No restrictions. Government can use, modify, reproduce, perform, display, release, or disclose data in any manner, and for any purpose whatsoever, and to have or authorize others to do so.	
Government Purpose	Developed using mixed funds from both the Government and the contractor	No restrictions.	May release for "Government purposes" only. No commercial use.
Specifically Negotiated License	Mutual agreement of both parties	Specific conditions as negotiated by the parties. Similar to Limited/Restricted but with additional rights. Cannot be more restrictive than Limited or Restricted rights.	
Small Business Innovative Research	Developed under SBIR contract	Any Government purpose.	Same as Limited Rights or Restricted Rights during SBIR data protection period.
Limited (Technical Data)	Developed exclusively at private expense	May not be used for manufacture; otherwise, no restrictions.	May not be released without contractor permission except for evaluation, emergency repair or overhaul. May share with CGSCs.
Restricted (Computer Software)	Developed exclusively at private expense	May not reverse engineer or decompile.	May not be released without contractor permission except as listed in DFARS 252.227-7014(a)(15). May share with CGSCs.

CGSC = Covered Government Support Contractor

Competitive Use

No Competitive Use

i. Unlimited Rights

Unlimited Rights give the Government the ability to use, modify, reproduce, perform, display, release, or disclose the data in any manner, and for any purpose whatsoever, and to have or authorize others to do so (absent any separate security classification or export control restriction).

ii. Government Purpose Rights

Government Purpose Rights give the Government the ability to reproduce, modify, perform, display, use, disclose, or release the data for Government purposes without restriction. However, the Government cannot release the data for any commercial purpose. These rights are essentially a middle path unique to defense contracts that offers a way for contractors to exploit data in the commercial market for a limited time while the Government also gets immediate benefits. Government Purpose Rights expire after a time limit (the standard is five years after contract execution unless another time is negotiated in the contract) at which point the Government Purpose Rights become Unlimited Rights.

iii. Specifically Negotiated License Rights

A Specifically Negotiated License Rights (SNLR) agreement is required when the standard data rights arrangements, defined in the DFARS or by a commercial entity, are modified by mutual agreement between a contractor and the Government. The new terms are spelled out in a unique SNLR agreement.

The DFARS limits the terms of SNLR agreements based on whether the data is associated with a noncommercial or commercial product. A SNLR agreement pertaining to Technical Data associated with noncommercial products or noncommercial Computer Software is usually a compromise between Limited or Restricted, Small Business Innovation Research (SBIR), Government Purpose, and Unlimited Rights. A SNLR agreement for this type of data cannot result in the Government having lesser rights than Limited or Restricted Rights as defined in the DFARS.

A SNLR agreement pertaining to commercial Computer Software has no limitations stipulated in the DFARS. However, DFARS 227.7202-1(a) states “Commercial computer software or commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with Federal procurement law or do not otherwise satisfy user needs.”

SNLR agreements that go outside the bounds of or otherwise uses license terms inconsistent with DFARS Subparts [227.71 \(Rights In Technical Data\)](#), [227.72 \(Rights In Computer Software And Computer Software Documentation\)](#), or [DFARS Subpart 201.4 \(Deviations from the FAR\)](#), will require deviation approval from the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).

CAUTION: Definitions of terminology are binding in Government contracts when mandated by statute or regulation or agreed upon by the parties in a contract. In the data and data rights contexts, it may be especially important to expressly define critical or nonstandard terms in a specifically negotiated license within the license itself to avoid uncertainty and disputes regarding the meaning and scope of the license. The terminology listed in the glossary of this Guide are for illustrative purposes only and should not be taken as official endorsement or as meaning that such definitions will be binding in Government contracts.

iv. Limited Rights (Technical Data)

Limited Rights apply to Technical Data associated with noncommercial products only. The Government may use the Technical Data within the Government but not release the Technical Data outside of the Government except in limited circumstances. The Government may not use the data for manufacturing additional quantities of the item. However, the Government may share this data with a Covered Government Support Contractor (CGSC). This type of contractor works directly with the Government to support the management and oversight of a program or effort.

v. Restricted Rights (Computer Software)

Restricted Rights apply to noncommercial Computer Software only. The Government may only run the software on one computer at a time, and may make only the minimum copies needed for backup. The software may not be released outside of the Government except in limited circumstances and only after notice is provided to the owner. However, the Government may share this data with a Covered Government Support Contractor. This type of contractor works directly with the Government to support the management and oversight of a program or effort.

vi. Small Business Innovation Research (SBIR) Data Rights

Small Business Innovation Research (SBIR) rights apply to both Technical Data associated with noncommercial products and noncommercial Computer Software. These rights apply when the Government enters into a research and development effort awarded as a Small Business Innovation Research contract. If a product was developed as part of an SBIR effort, the Government is entitled to SBIR Data Rights, which are generally equivalent to Limited or Restricted Rights, but for a fixed period known as the SBIR data rights period. This time frame is defined in DFARS 252.227-7018 as “...the period commencing with contract award and ending upon the date five years after completion of the project from which such data were generated.” The completion date should be understood and agreed to by all parties at the start of an SBIR effort..

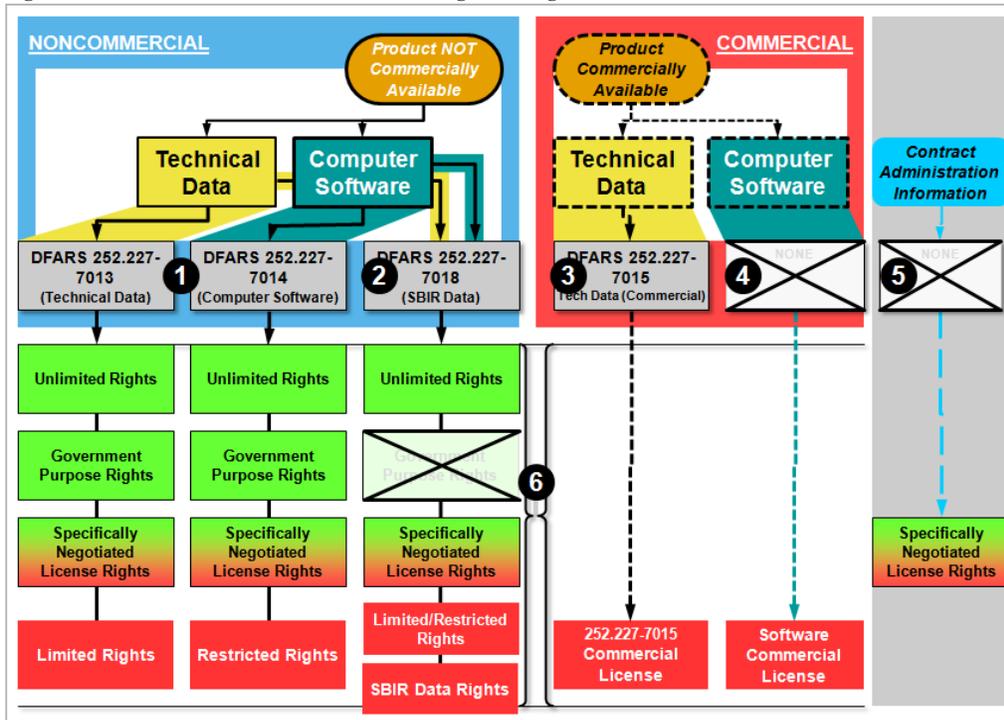
SBIR efforts are divided into three successive phases (I, II, III) with the ultimate goal to commercialize the technology in question. Details of SBIR efforts and data rights entitlements are discussed in the [DoD SBIR Desk Reference for Contracting and Payment](#).

E. DFARS Clauses and Data Rights

The specific Government “standard” rights entitlements are dependent upon many factors such as the type of data, the type of item the data is associated with, and who paid for the development of the item and data. A contractor's agreement with the terms of a particular contract includes granting standard rights to the Government as specified by the FAR and DFARS clauses included in the contract.

Different clauses define data rights based on the category of data and product availability as depicted in Figure 16 and discussed in the following sub-sections.

Figure 16 - DFARS Data, Clauses, and Data Rights Categories



i. Data Rights Associated with Noncommercial Products (FAR Contract)

DoD rights to Technical Data associated with a noncommercial product or noncommercial Computer Software are determined by DFARS clauses 252.227-7013 (Rights in Technical Data--Noncommercial Items) and 252.227-7014 (Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation), respectively (Figure 16, Item 1). The resulting rights can be Unlimited, Government Purpose, Specifically Negotiated License, Limited (Technical Data), or Restricted (Computer Software).

These clauses also define data rights marking requirements which are discussed in the Data Rights Markings section [§ 104.D, p 24].

ii. Data Rights Associated with Noncommercial Products (SBIR Contracts)

DoD rights to Technical Data associated with a noncommercial product or noncommercial Computer Software acquired using a Small Business Innovation Research contract are defined in DFARS clause 252.227-7018 (Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program) (Figure 16, Item 2). The resulting rights can be Unlimited, Specifically Negotiated License, Limited (Technical Data), Restricted (Computer Software), or Small Business Innovation Research.

This clause also defines data rights marking requirements for SBIR data including the expiration of the SBIR data rights period. These requirements are discussed in the Data Rights Markings section [§ 104.D, p 24].

iii. Data Rights Associated with Commercial Products (All Contracts)

DoD rights to Technical Data associated with commercial products are defined in DFARS clause 252.227-7015 (Technical Data--Commercial Items) (Figure 16, Item 3). Although not worded as such in the clause, the data disclosure and use restrictions in 252.227-7015 are the same as Limited Rights. However, DFARS section 227.7102 exempts certain types of data from this restriction. Section 103.H discusses this topic.

There are no DFARS data rights definitions for commercial Computer Software (Figure 16, Item 4). The specific rights and terms of use for this information are dictated by the software developer in a license agreement. However, DFARS 227.7202-1 (a) states “Commercial computer software or commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with Federal procurement law or do not otherwise satisfy user needs.” As such, it is important to have Government legal representatives review all commercial software licenses before agreeing to them.

iv. Data Rights Associated with Contract Administration Information (All Contracts)

Contract Administration information (Figure 16, Item 5) is frequently ordered by the Government and subsequently shared with non-Government entities. However, the DFARS does not define data rights for this information. Therefore, the rights to share Contract Administration information must be defined in a

Specifically Negotiated License Rights agreement and the Contracting Officer must ensure compliance with [FAR 9.505-4 -- Obtaining Access to Proprietary Information](#).

F. Standard, Needed/Desired, and Additional Rights

Standard Data Rights are the minimum rights the Government is legally entitled to as determined by the FAR and DFARS clauses included in the contract used to order the delivery of the data. The specific “standard” rights entitlements are dependent upon many factors such as the type of data, the type of item the data is associated with, and who paid for the development of the item and data. A contractor's agreement with the terms of a particular contract includes granting standard rights to the Government as specified by the clauses included in the contract.

Needed data rights are the minimum rights necessary for the Government to use the delivered data in support of the approved program strategies. The program team should determine the needed rights for each contract data deliverable. Any rights that are less restrictive than the standard rights are defined as “additional” rights per the DFARS. Therefore, the needed rights may be a mix of standard and additional rights.

A Data Rights Attachment (§ 205.K) in the RFP is the recommended method for the Government to communicate the needed rights to potential contractors. However, the rights are labeled as “desired” rights. This is done to avoid potential misinterpretation that granting additional rights is a requirement to be responsive to the RFP.

In some cases, the needed rights may align with the standard rights. For example, a program determines it needs Government Purpose Rights for a specific deliverable. The standard rights entitlement for that deliverable per the DFARS is also Government Purpose. As such, the needed/desired rights are the same as the standard rights.

In other cases, the needed rights may be less restrictive than the standard rights. For example, a program determines it needs Government Purpose rights for a different contract data deliverable. However, the standard rights for that data deliverable are Limited. In this example, the needed/desired rights are “additional” to the standard rights. If a selected source is unwilling to grant the desired additional rights, the Government will need to revise the affected program strategies to reflect the presumed sole source, manufacture, spare parts, and support/sustainment of the affected item(s). As such, the Government must incentivize potential contractors to offer these additional rights. This can be done using compensation (contract price) or, when competitive procurement is still possible, evaluating offered data rights as a source selection factor.

If an offeror is unwilling to grant the standard rights for any data deliverable, they can be determined to be non-responsive to the Government requirements.

REF: Source Selection and Data Rights [§ 205.E, p 59]; Data Rights Attachment (RFP - Section J) [§ 205.K, p 65];

G. DFARS Data Rights Entitlement Determinations - Funding Source

The data-related DFARS clauses describe a range of criteria that define the Standard Data Rights to which the Government is legally entitled to at no additional cost.

A majority of disagreements regarding data rights entitlements for data associated with noncommercial products relate to who funded the creation or development of the product in question. This funding source determination is dictated by [10 U.S.C. § 2320. Rights in Technical Data](#) and codified by DFARS clauses 252.227-7013 and 252.227-7014.

Figure 17 depicts the funding source allocations and resulting standard data rights entitlement. The Government is entitled to specific rights depending on funding source. If the product was developed exclusively with Government funding, the Government is entitled to Unlimited Rights and the contractor cannot restrict the use of the data in any way. If the product was developed using a combination of Government and private (contractor) funding in any ratio, the Government is entitled to Government Purpose Rights which revert to Unlimited Rights after five years unless different term lengths are negotiated.

Figure 17 - Data Rights & Funding Sources (Noncommercial Only)

Government Funding	Private Funding	Government Rights
100%	0%	Unlimited
Mixed	Mixed	Government Purpose
0%	100%	Limited or Restricted
SBIR Mixed	SBIR Mixed	SBIR

NONCOMMERCIAL ONLY

If a contractor funded the development of items, components, or processes completely at **private expense**, and can provide proper documentation supporting this claim, the contractor may restrict the Government's use of that data by asserting Limited Rights or Restricted Rights.

If a product was developed as part of the Small Business Innovation Research program (SBIR), the Government is entitled to SBIR Data Rights as described in [SBIR Desk Reference](#) and DFARS 252.227-7018. SBIR data rights are generally equivalent to Limited or Restricted Rights. SBIR rights become Unlimited Rights after expiration of the data rights period which is "...five years after completion of the project from which such data were generated." This period can potentially be longer if the data is used on subsequent SBIR contracts.

Note the SBIR data rights entitlements reflected in DFARS 252.227-7018 do not clearly align with those described in the [Small Business Innovation Research Program Policy Directive \(Feb 24, 2014\)](#). Program teams are advised to consult legal counsel whenever dealing with SBIR data rights entitlements.

H. DFARS Data Rights Entitlement Determinations - Unlimited Rights

The data related DFARS clauses also identify certain types of data to which the Government is entitled to Unlimited Rights irrespective of who funded its development. Noteworthy among the types of data are [Form, Fit, and Function Data \(FFF\)](#), [Operation, Maintenance, Installation and Training Data \(OMIT\)](#), "studies, analyses, test data, or similar data" and [Computer Software Documentation](#).

The Government is entitled to Unlimited rights to FFF, OMIT, and Computer Software Documentation associated with a noncommercial product in accordance with DFARS clauses 252.227-7013, 252.227-7014, and 252.227-7018.

The Government is entitled to similar rights for FFF, OMIT, and certain Technical Data associated with a commercial product. DFARS section [227.7102](#) exempts FFF, OMIT, and Technical Data that "describe the modifications made at Government expense to a commercial item or process in order to meet the requirements of a Government solicitation," from the standard rights restrictions associated with commercial item Technical Data. DFARS clause 252.227-7015 defines these rights as the "unrestricted

right to use, modify, reproduce, release, perform, display, or disclose technical data....” rather than Unlimited Rights.

The Government is also entitled to Unlimited Rights to “studies, analyses, test data, or similar data produced for the contract, when the study, analysis, test, or similar work was specified as an element of performance” in accordance with DFARS clause 252.227-7013.

There are additional conditions under which the DFARS defines Government entitlement to Unlimited Rights to data. A complete list of these criteria is shown in the Unlimited Data Rights Entitlement Details [§ 301.A, p 91] section.

I. Contractor Data Rights Assertions

DFARS provision 252.227-7017 requires contractors to “assert” in their proposals their belief that certain Technical Data or Computer Software ordered in the RFP should be provided to the Government with less than Unlimited Rights (i.e. with restrictions on the Government's use of that data). The provision also requires a rationale for each assertion be provided.

DFARS clauses 252.227-7013, 252.227-7014, and 252.227-7018 allow for post-award assertions by stating “...other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision.”

If there are “reasonable grounds,” DFARS 252.227-7019 or 252.227-7037 permit contracting officers “to challenge the validity of an asserted restriction.” This stringent and time-consuming process allows the Government to challenge a contractor's assertion that a product was developed exclusively at private expense and without any Government contribution.

Contractors cannot legally assert more rights restrictions than those defined by the DFARS clauses included in the RFP and contract (i.e. the contractor cannot assert Limited Rights for data clearly defined as Unlimited Rights per the DFARS).

REF: Data Rights Assertion Provision (RFP - Section K) [§ 205.L, p 67]; Post-Award Data Rights Assertions [§ 207.C, p 77];

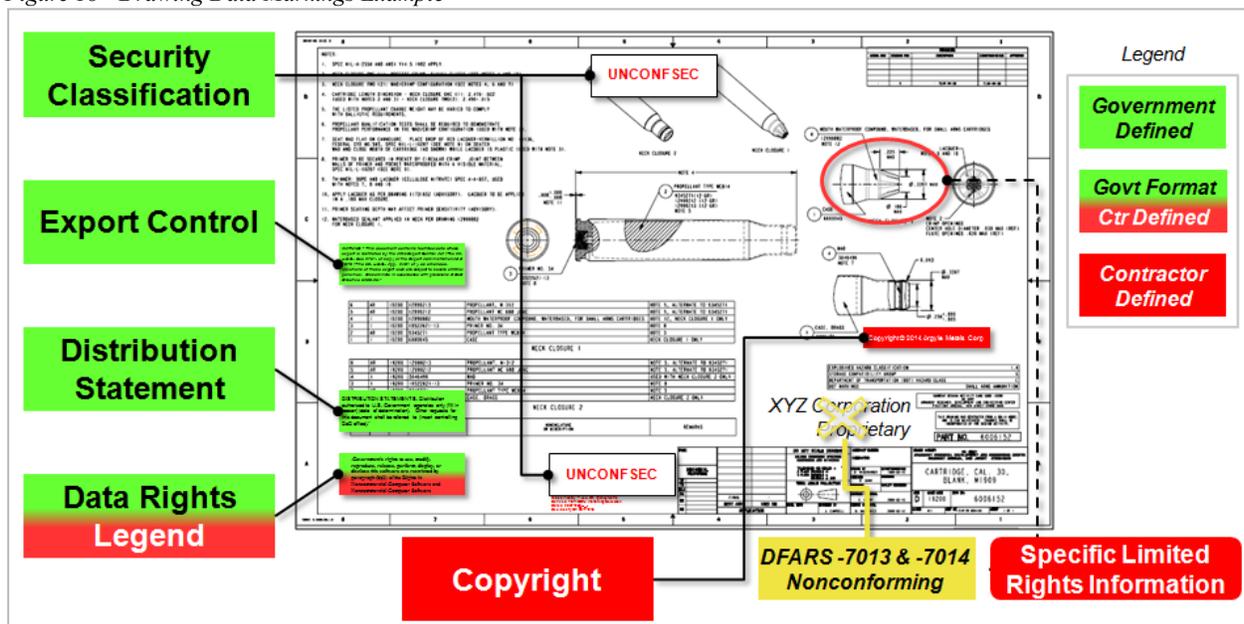
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104. DATA MARKINGS FUNDAMENTALS

This section discusses approved data markings as defined in the FAR and DFARS and how these markings should be applied to delivered data.

Data markings are used to identify data ownership, use, and distribution restrictions. There are five types of data related markings acknowledged by the Government: Distribution Statement, Export Control, Data Rights, Copyright, and security classification. Figure 18 shows an example of markings applied to a typical drawing.

Figure 18 - Drawing Data Markings Example



REF: Data Markings Details [§ 302, p 93];

A. Distribution Statement Markings

Distribution statements are mandated by DoD Instruction 5230.24, “Distribution Statements on Technical Documents” and specify what “authorized audience” may see the data without additional authorization. Normally, a distribution statement will require a statement letter, some descriptive text and often the dates and offices associated with the distribution determination. The Government Controlling Office determines the authorized audience for specific data and can grant additional access if needed for a specific purpose. This office can take responsibility for applying the proper distribution statement to the data or has the option to require a third party to do so as part of data delivery.

Data with restrictive data rights markings should use Distribution Statement B, E, or F to prevent unauthorized distribution of the information. Additional guidance on distribution statements is available on the Defense Technical Information Center web Page [Distribution Statements for Use on Technical Documents, Journals Articles and Conference Proceedings](#).

B. Distribution Statements and Data Rights Markings

One of the reasons for selecting the appropriate distribution statement for a data item is the nature of its Government data rights. [DoD Instruction 5230.24](#) Enclosures 4 and 5 provide a complete discussion of the relationship between distribution statements and data rights markings.

The distribution statement levels and allowable data rights markings are shown in [Table 5](#).

Table 5 - Distribution Statement Designation & Allowable Data Rights Markings

Distribution Statement	Dissemination Restriction (summary)	Allowable Data Rights Markings
DISTRIBUTION A.	Public Release	None (Unlimited Rights)
DISTRIBUTION B.	U.S. Govt Agencies	Government Purpose, SBIR, Restricted, Limited, or Specifically Negotiated
DISTRIBUTION C.	U.S. Govt Agencies & Contractors	None (Unlimited Rights)
DISTRIBUTION D.	DoD and U.S. DoD Contractors	None (Unlimited Rights)
DISTRIBUTION E.	DoD components only	Government Purpose, SBIR, Restricted, Limited, or Specifically Negotiated
DISTRIBUTION F.	Controlled Dissemination	Government Purpose, SBIR, Restricted, Limited, or Specifically Negotiated

C. Export Control Markings

22 U.S.C. § 2778 of the [Arms Export Control Act](#) describes the authority to limit export of data to foreign governments or industries. [DoD Directive 5230.25](#), “[Withholding of Unclassified Technical Data](#)” describes the process to identify “all unclassified technical data with military or space application in the possession of, or under the control of, a DoD Component that may not be exported lawfully without an approval, authorization, or license...”

Data identified as such must be marked as “export controlled” in accordance with [DoD Instruction 5230.24](#), “[Distribution Statements on Technical Documents](#).” The Government Controlling Office is responsible for ensuring export control markings are applied.

The specific marking is defined in [DoD Instruction 5230.24](#) as: “WARNING - This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C., Sec 2751, et seq.) or the Export Administration Act of 1979 (Title 50, U.S.C., App. 2401 et seq), as amended. Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provisions of DoD Directive 5230.25.”

D. Data Rights Markings

Data rights markings are required by the Government to identify the data rights entitlements for third party owned data associated with noncommercial products. There are no marking requirements for Technical Data associated with commercial items or commercial Computer Software.

The originator is responsible for properly marking any data delivered to the Government with less than Unlimited Rights. The originator is also responsible for identifying the specific information that is subject to the terms of the data rights restriction.

There are three DFARS clauses applicable to the data rights markings for noncommercial products; [252.227-7013](#) for Technical Data, [252.227-7014](#) for Computer Software, and [252.227-7018](#) for Small Business Innovation Research data. These clauses define the correct and allowable rights markings “legends” for various categories of data rights, which ultimately define how the Government can use, disclose, or reproduce, the data. “All Rights Reserved,” “Proprietary,” “Company Confidential,” and similar markings do NOT conform with the Government marking requirements in these clauses and the originator should be required to change them to the correct and allowable rights legend.

“All Rights Reserved,” “Proprietary,” “Company Confidential,” and similar markings may be acceptable for commercial Technical Data under DFARS [252.227-7015](#) or commercial Computer Software.

REF: [Data Rights Marking Verification \[§ 207.B, p 75\]](#); [Data Rights Markings Details \[§ 302.A, p 93\]](#); [DFARS Clause Data Rights Marking Format versus Validation Details \[§ 302.B, p 95\]](#);

E. Copyright Markings

[17 U.S.C. §§ 401 and 402](#) defines the requirements for a copyright “notice” or marking. This marking must contain three elements: the copyright symbol or abbreviation, the year of first publication of the work, and the name of the copyright owner.

F. Security Classification Markings

Marking and handling classified information is beyond the scope of this guide. [DoD Manual 5200.01](#) is the authoritative source on this topic explains the proper markings for classified information.

The proper marking of a classified document is the specific responsibility of the original or derivative (Government) classifier (i.e., the author or originator of the information). Derivative classifiers shall refer to the source document(s), security classification guide(s), or other guidance issued by the original classification authority when determining the markings to apply.

The holder of an improperly marked classified document must contact the document originator to obtain correct markings and then apply those markings as required.

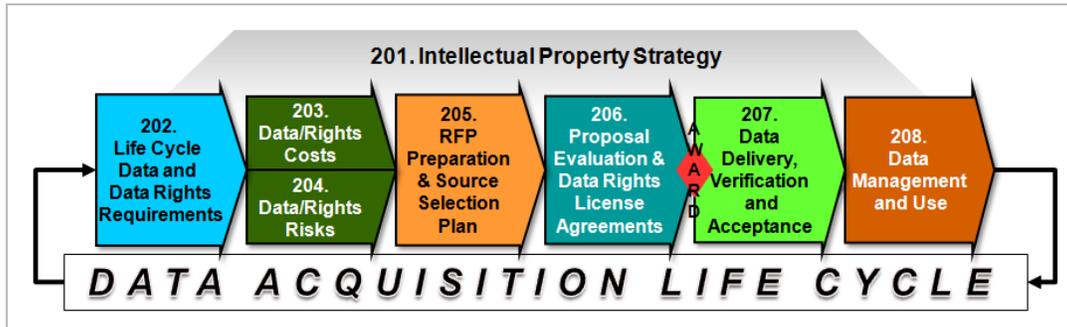
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200. CORE INFORMATION

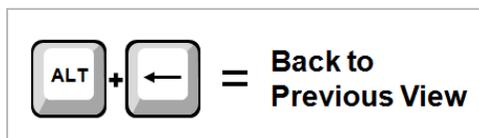
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§ 100. FUNDAMENTAL INFORMATION		§ 300. DETAILED INFORMATION	
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201. INTELLECTUAL PROPERTY STRATEGY

This section introduces the new DoD requirement for an Intellectual Property (IP) Strategy, which replaces the Technical Data Rights Strategy and is required by DoDI 5000.02, January 7, 2015, “Operation of the Defense Acquisition System”

A. IP Strategy Background

The requirements to address program data and data rights needs stems from DFARS 207.106 Additional requirements for major systems which incorporates language from the National Defense Authorization Act for Fiscal Year 2007. The name of the strategy to address these needs has evolved from “Data Management Strategy” in 2007, to “Technical Data Rights Strategy” in 2011, to “Intellectual Property Strategy” in 2013.

DoDI 5000.02 describes the requirement for an IP Strategy as “Program management must establish and maintain an IP Strategy to identify and manage the full spectrum of IP and related issues (e.g., technical data and computer software deliverables, patented technologies, and appropriate license rights) from the inception of a program and throughout the life cycle.” It also states that “The IP Strategy will describe, at a minimum, how program management will assess program needs for, and acquire competitively whenever possible, the IP deliverables and associated license rights necessary for competitive and affordable acquisition and sustainment over the entire product life cycle...”. And that “The IP Strategy will be updated throughout the entire product life cycle, summarized in the Acquisition Strategy, and presented with the Life-Cycle Sustainment Plan during the Operations and Support Phase.”

RECOMMENDATION:

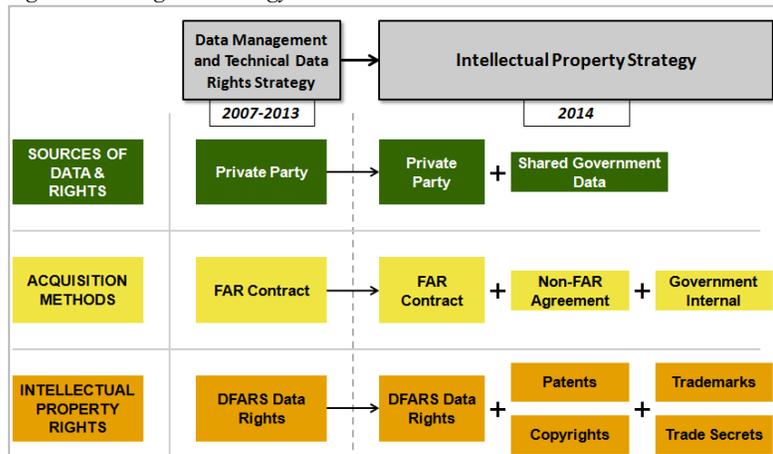
Develop a comprehensive Intellectual Property Strategy and use it to govern data and data rights related program activities.

A team of DoD subject matter experts is developing guidance for the content, preparation, and use of an IP Strategy.

It is expected that a program IP Strategy will address an expanded set of issues than was contained in previous data related strategies. This will include expanded sources of data and data rights, a broader range of acquisition mechanisms, and a wider array of IP Rights as shown in Figure 19.

NOTE: The contents of this Army Data & Data Rights Guide only focus on Data, Data Rights, and FAR Contract acquisitions.

Figure 19 - Program Strategy Content Evolution



B. Intellectual Property Assets, Rights, and Protection Methods

The term “Intellectual Property” is not well known or often used outside of legal circles, so some background, and explanation is in order. Intellectual property “assets” can be defined as original concepts or ideas having commercial value. Table 6 lists some potential IP assets from the [United States Patent and Trademark Office IP Awareness Assessment](#).

Table 6 - Potential Intellectual Property Assets (Partial List)

Specialized packaging of unique shape, color or design
Slogan, name, logo, tag line
Written or recorded material (books, music, operating manuals, catalogs, etc.)
Computer hardware, software, web site or architectural materials
Special design of products
Physical products and processes using them (any machine, tool, instrument, compounds, formulations, medicines ... and methods of making and using any of these)
Original art, graphic design, advertising, photography, written articles, poetry, books, music, audio or video recordings, films, or dramatic works
Textile, apparel, jewelry or any other accessory designs
Proprietary information that gives advantage over competitors (product formulas, manufacturing processes, customer lists, marketing strategies, computer source code...)

United States laws and policies regarding intellectual property generally incentivize and reward investments in time, effort, and funding that lead to the creation of IP assets by the granting of intellectual property rights. Intellectual Property assets can and should be protected using patents, copyrights, trademarks, or trade secrets. These protections provide the concept or idea owner methods to protect or restrict use of the subject matter by others.

Patents, copyrights, and trademarks are protection methods enforceable through statutory and common law while trade secret protection is accomplished using physical and contractual means to maintain secrecy of the information. The [U.S. Department of Commerce STOPFakes.gov “Understanding Intellectual Property Rights”](#) document is an excellent resource to explain and illustrate IP rights. Quoted content in the following sections comes from the [STOPFakes.gov](#) web site.

i. Patents

“A patent is a Government grant of a property right that permits an inventor to exclude others from making, using, selling, offering for sale, or importing his or her invention. In return, the inventor must fully disclose the invention in the patent application process. An invention is a product, machine, material, or process, including a new use for a known product and improvements of any of these; that provides a new way of doing something or offers a new technical solution to a problem. Patents may be obtained for a broad array of subject matter, including machines, tools, instruments, methods, systems, processes, compounds, formulations, and even plants and animals in some circumstances.” - [STOPFakes.gov](#)

Patents are time limited (20 years) and protect against unauthorized use of any new or improved “process, machine, manufacture, or composition of matter” as defined in [35 U.S.C. § 101. Inventions Patentable](#).

ii. Trademarks

A trademark is basically a brand name. “A trademark is a word, phrase, symbol or design-- or a combination of any of these--that serves to identify and distinguish a specific product or service from others in the marketplace. Nike's “Swoosh,” McDonald's “Golden Arches,” the names Coca-Cola, Starbucks and Amazon.com--all of these marks immediately conjure up certain feelings and images in the minds of consumers that these companies have worked extremely hard to achieve.” - *STOPfakes.gov*

iii. Copyrights

“Copyright is a form of legal protection granted to the authors of original creative works. Copyrights are used to protect a wide range of subject matter, including:

- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Computer programs” (*abridged*)

“Contrary to popular belief, copyright protection extends only to the tangible expression of an idea, not to the idea itself. ...the copyright owner has the **exclusive** right to do and to authorize others to do any of the following:

- Copy the work
- Change the work
- Distribute the work publicly
- Perform or display the work publicly” - *STOPFakes.gov*

Formal registration with the US Copyright office is not required to claim copyright; however, it is useful should proof of ownership be required. Registration is also required to recover statutory damages and attorney's fees in an action for infringement per [7 U.S.C. § 412](#). [Registration as prerequisite to certain remedies for infringement](#).

Note that works created by officers or employees of the Government cannot be copyrighted. [17 U.S.C. § 105](#). [Subject matter of copyright: United States Government works](#) states “Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.”

iv. Trade Secrets

“In a general sense, a trade secret is confidential information that has commercial value. Under international agreements, trade secrets are defined to include information that:

- Is secret. International law defines secret information as that which is not “generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question.”
- Has commercial value because it is secret. Commercial value does not just mean dollar value; it can include anything that gives a business an advantage over competitors.
- Has been subject to reasonable procedures designed to maintain its secrecy” - *STOPFakes.gov*

The formula for Coca-Cola is an example of a trade secret. Trade secrets do not expire and are protected by Federal law per 18 U.S.C. § 1832. Theft of trade secrets and 18 U.S.C. § 1831. Economic espionage. All but three states have adopted similar protections under the Uniform Trade Secrets Act.

C. IP Strategy Timing

Enclosure 1, Table 2 of DoDI 5000.02 specifies the timing for an IP Strategy as shown in Figure 20.

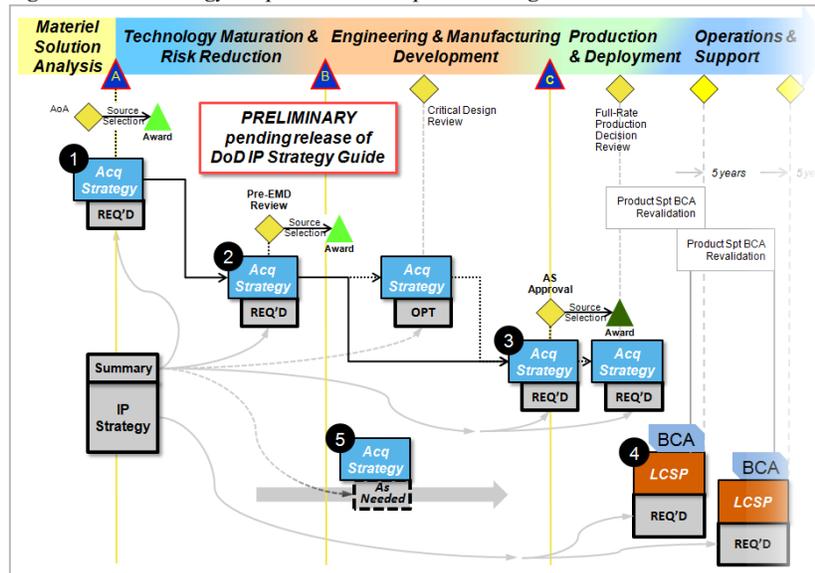
A program IP Strategy should be prepared early in the development life cycle, updated prior to each life cycle phase, and approved before each RFP is issued to potential offerors. Figure 21 depicts the timing of these preparation and update events as they occur during the DoD Systems Acquisition Framework.

Figure 20 - IP Strategy Timing Requirements

INFORMATION REQUIREMENT	PROGRAM TYPE ¹		LIFE-CYCLE EVENT ^{1,2}							
	MDAP	ACAT	MDD	MS A	CDD Val	Dev RFP Rel	MS B ⁴	MS C	FRP/FD Dec	OTHER
INTELLECTUAL PROPERTY (IP) STRATEGY			•			✓	✓	✓	✓	✓

The first program IP Strategy should be prepared and approved before the RFP supporting Technology Development is issued (Item 1). The IP Strategy should then be updated before the RFP supporting Engineering and Manufacturing Development is issued (Item 2). It is optional, but potentially worthwhile, to update the IP Strategy as part of the Critical Design Review. The IP Strategy should be updated again before the Production & Deployment solicitation is issued and (optionally) before the Full-Rate Production decision review (Item 3). The IP Strategy and LCSP are updated in conjunction with any product support Business Case Analysis revalidation efforts (Item 4). Revision of the IP Strategy should be also considered any time there is new information such as new or more detailed assertions of restrictions from contractors or program consideration of new technologies with potential IP Rights restrictions (Item 5).

Figure 21 - IP Strategy Preparation and Update Timing



202. LIFE CYCLE DATA AND DATA RIGHTS REQUIREMENTS

This section addresses how to identify the data and data rights required for managing and supporting the product from the beginning to the end of its life cycle. Topics include sources for the needed data, authoring environments necessary to maintain and update the data, repositories in which to keep the data, organizations that will be responsible for administering the data repository, and the metadata required to store, retrieve, and manipulate the data in the repository.

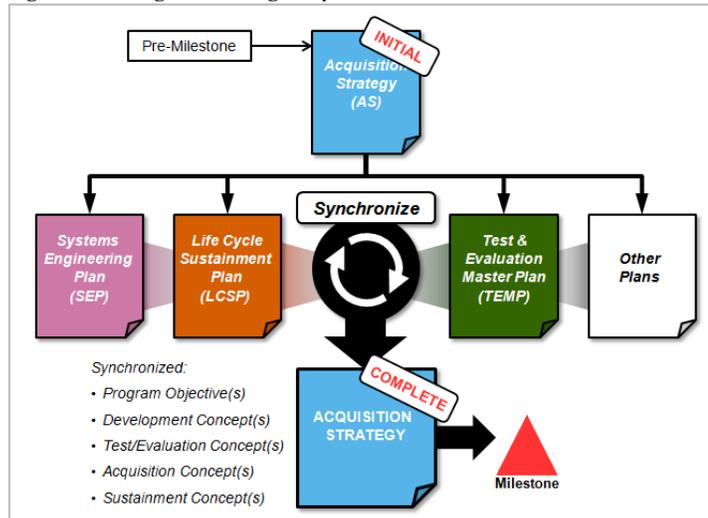
A. Program Strategies Review & Synchronization

Program strategies and plans are documents that summarize the overall plans for a given acquisition related topic. The strategies or plans that affect data and data rights acquisition include the Acquisition Strategy (AS), Life Cycle Sustainment Plan (LSCP), Systems Engineering Plan (SEP), and Test and Evaluation Master Plan (TEMP).

Synchronization of the program strategies is important for successful data acquisition and management. This synchronization is achieved by starting with an “initial” AS and concurrently and iteratively writing or revising all of the other program strategies such that each supports common program objective(s), development concept(s), and sustainment concept(s). The process depicted in Figure 22 should result in a complete and synchronized AS for the milestone review.

The resulting AS should define what life cycle efforts are needed to support the program and when they will be performed. It should also describe who will perform the required efforts and how they will be obtained from Government and non-Government sources.

Figure 22 - Program Strategies Synchronization



RECOMMENDATION:

Synchronize the Program Plans and Strategies to have aligned program objective(s), development concept, and sustainment concept, before gathering data and data rights requirements.

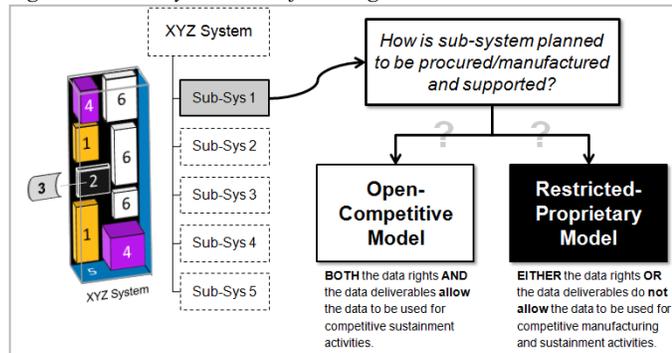
B. Sub-System Manufacturing and Sustainment Models

The synchronized program strategies and plans should enable grouping of the proposed system into functional subsystems. Each sub-system should have a specific manufacturing and sustainment model as shown in Figure 23.

The Open-Competitive (O-C) Model is applicable when both the data rights and the data deliverables are sufficient to permit competitive manufacturing and sustainment activities. The Restricted-Proprietary (R-P) Model is applicable when either the data rights or the data deliverables are insufficient to permit competitive manufacturing and sustainment activities.

The model used for individual sub-systems can vary depending on the program plans for manufacturing and sustainment of the specific sub-system.

Figure 23 - Sub-System Manufacturing & Sustainment Models

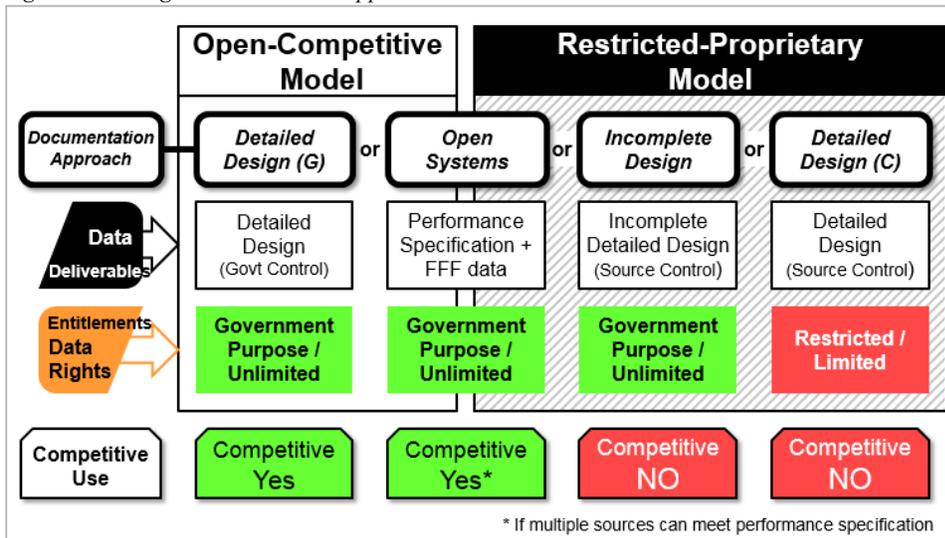


C. Sub-System Design Documentation Approaches

After a sub-system manufacturing and sustainment model is defined, it is important to define the planned design documentation approach. The chosen documentation approach will subsequently determine the specific data and data rights requirements for each sub-system.

The available design documentation approaches are shown in Figure 24 and discussed in the following sections.

Figure 24 - Design Documentation Approaches



i. Detailed Design Documentation Approach (Government Controlled)

The Government controlled detailed design approach documents every aspect of a sub-system design in a Technical Data Package (TDP). The Government acquires the TDP during development and maintains configuration control throughout the life of the item. The Government must also obtain sufficient data rights such that the TDP can be used to obtain competitive bids for the manufacture and support of the sub-system exactly as documented.

The detailed design approach is a viable option for sub-systems planned to have a reasonably long service life **and** the Government has rights for competitive use of the design information. If a sub-system using the detailed design approach encounters data rights restrictions and additional data rights cannot be acquired, a change to a modular/open system approach should be considered.

ii. Open Systems Design Documentation Approach

The open systems design approach uses Open Systems Architecture (OSA) concepts. The Government acquires and maintains the performance and interface requirements and uses them to procure and support modular solutions from multiple vendors. Under this approach, the Government will not have visibility into, or configuration control over, the vendor's detailed design of the modular sub-system.

By allowing competitive sourcing and multiple design solutions of the module or subsystem, this approach reduces the likelihood of sole source situations or costly acquisition of license rights to privately developed technology or Computer Software.

While any weapon system can potentially benefit from an OSA approach, sub-systems expected to contain proprietary technology, have frequent technology updates, or are available from multiple sources, are particularly strong candidates. Another reason to consider the modular/open system approach would be if the sub-system were expected to have data rights restrictions, which are not likely to be mitigated through the acquisition of additional data rights.

A major benefit of the modular/open systems approach from a data rights perspective is that the performance and interface information should meet the DFARS criteria of form, fit, and function data and thereby have no Government data rights restrictions.

The OSA approach may not be practical or beneficial for all sub-systems. If multiple vendors do not exist, are not expected to bid on the manufacturing or support or new vendor qualification requirements are significant or costly, OSA may not be a good choice for that sub-system.

iii. Incomplete Design Documentation Approach (Source Controlled)

The incomplete design approach does not document detailed aspects of the sub-system. The Government only acquires interface (form, fit, function) information. The item design details and configuration remain under the control of the source. The provided information is not subject to data rights restrictions but does not contain sufficient information to be used for competitive manufacturing or sustainment activities.

iv. Detailed Design Documentation Approach (Source Controlled)

The source controlled detailed design approach documents every aspect of a sub-system design in accordance with that source's documentation standards and practices. The Government acquires a copy of this documentation with appropriate data rights markings that restrict its use for competitive manufacturing or sustainment activities. The source maintains configuration control of the documentation throughout the life of the item.

D. Life Cycle Data Requirements

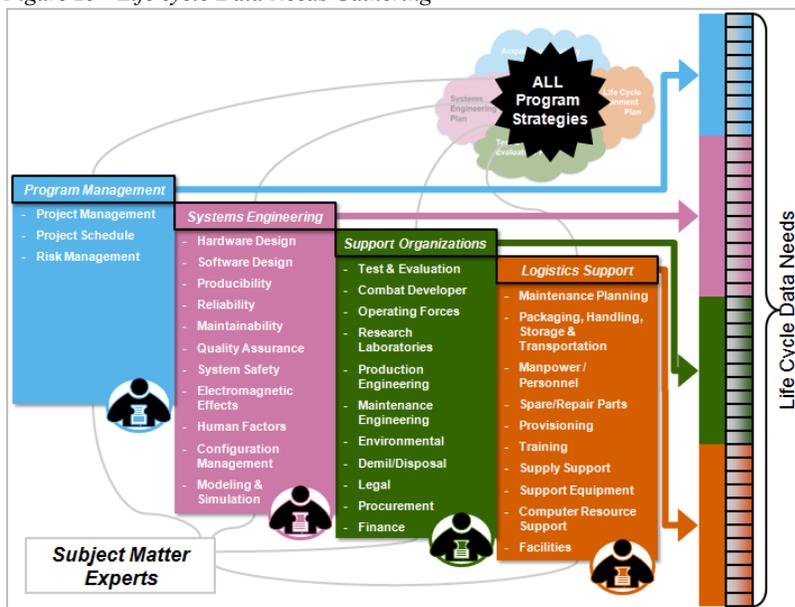
The Acquisition Reform initiative of the 1980s and 90s promoted performance specifications rather than acquisition of detailed design data. For a variety of reasons the policy pendulum has swung back to acquiring the data to support competitive acquisition, manufacture, and sustainment of the product. However, due to the laws relative to data rights and limitations on program budgets it may not always be possible or feasible to just “acquire ALL the data.” Therefore, a more reasoned approach is recommended whereby each program must determine its life cycle data and data rights requirements based on its approved program strategies and objectives.

Determining program life cycle data requirements is a complex task involving many different considerations, which evolve as time passes. Data related decisions made early in the life of a program can significantly affect its success during later phases.

Gathering life cycle data requirements begins with an understanding of the program strategies and related activities and then determining what data is needed to support those strategies and activities. The best resources for the life cycle data needs are the functional area subject matter experts (SMEs) from the organizations that are or **will be** involved with the development, product manufacture, or product sustainment of the item or system being developed.

Figure 25 is an illustration of functional area subject matter experts that should be surveyed when gathering life cycle data requirements. The functional areas can be grouped into the categories of Program Management, Systems Engineering, Support Organizations, and Logistics Support. Each category has multiple functional areas representing a potentially vital source of data and data rights requirements for the project.

Figure 25 - Life cycle Data Needs Gathering

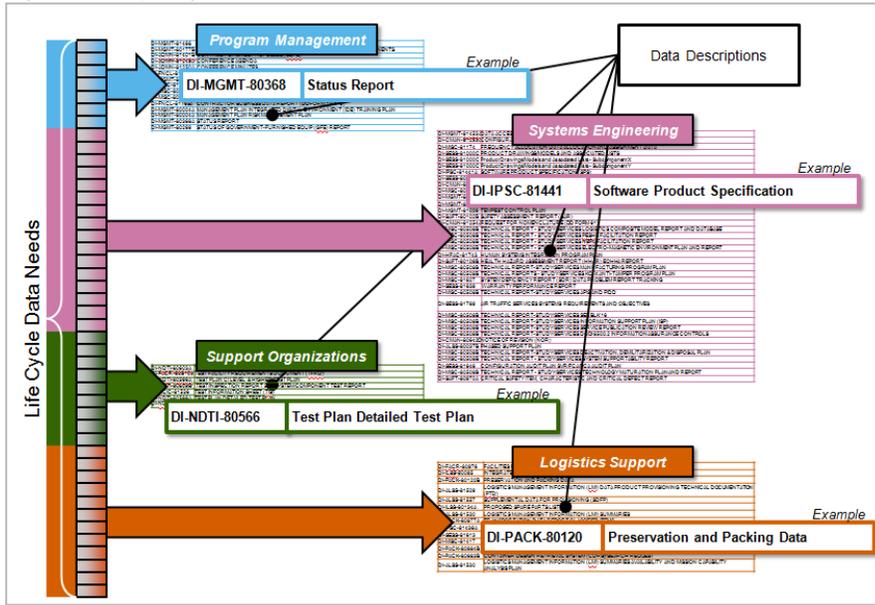


The program strategies (AS, LCSP, SEP, TEMP, etc.) should explain what efforts are needed throughout the product life cycle and the entity planned to perform them. These strategies should be socialized with the relevant functional area SMEs to obtain their recommended short- and long-term data needs. The individual data needs from each subject matter expert will generally be defined by a Data Item Description, military standard, or FAR/DFARS clause.

Support organizations such as Legal and Procurement traditionally do not supply specific data requirements. However, they are vitally important for properly translating the data requirements into contractual requirements.

The collection of these requirements forms the program life cycle data needs. Figure 26 depicts how the list of life cycle data requirements might appear as provided by the functional area SMEs.

Figure 26 - Defining Data Needs



RECOMMENDATION:

Gather short- and long-term data and data rights requirements from every subject matter expert that will support the development, test, manufacture, operation, or support of the product.

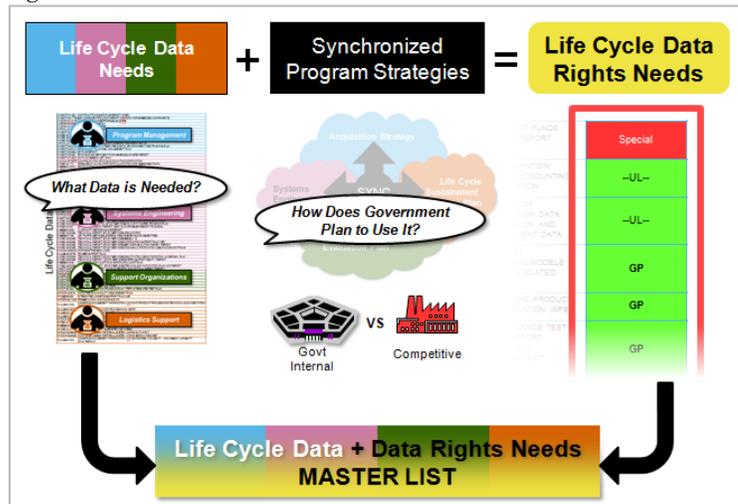
E. Life Cycle Data Rights Requirements

Once the life cycle data needs have been identified, it is necessary to determine the associated data rights needed for each data item. Program teams should consult with their legal representatives to carefully consider the data rights requirements for each data item and the statutory requirements to support a Government organic core maintenance capability per 10 U.S.C. § 2464. Core depot-level maintenance and repair capabilities.

Figure 27 illustrates how the data rights needs are the result of combining the data needs and synchronized program strategies to answer the question: Will the data be used for competitive sourcing or just internal Government use?

The Department of Defense (DoD) goal for competitive procurement of products and services can be satisfied when the Government has Unlimited or Government Purpose rights to the data. However, Specifically Negotiated License Rights may also be sufficient depending on the specific license terms.

Figure 27 - Data RIGHTS Needs Determination and Master List Creation



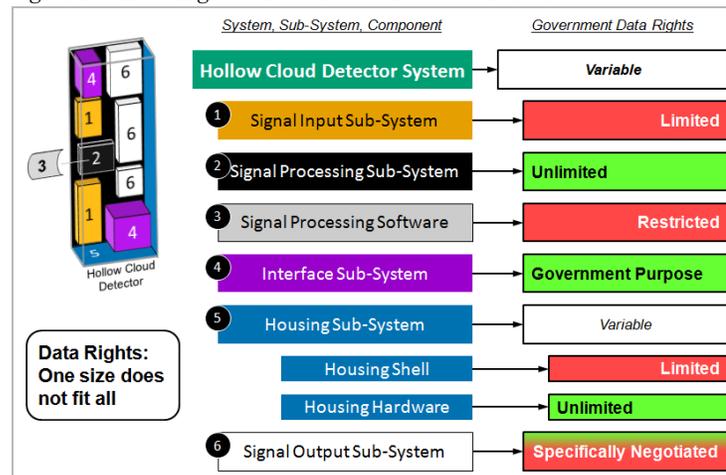
The combination of the data and associated data rights needs for life cycle of the weapon system results in a master list that is quite valuable when defining data and data rights requirements in Requests for Proposals.

F. Data Rights Variation by Sub-System or Component

Program teams should not assume data rights for a given data item will necessarily be the same for all components or assemblies of the system being developed. An offeror may claim that certain subsystems or components have been or will be developed entirely at private expense. As such, the offeror can legitimately claim the Government is only entitled to Restricted or Limited Rights to design information for those items. Therefore, offeror asserted data rights can, and most likely will, vary from one sub-system or component to another. Data rights assertions will also vary from one offeror to another.

Figure 28 depicts a fictitious product and the potential Government's data rights variation among its sub-systems and components. As such, the Government should require offerors to identify these data rights variations by including DFARS provision 252.227-7017 which requires that an offeror assert any rights restrictions as part of their proposal. Adding a Data Rights Attachment in the RFP will provide detail about which data deliverables are proposed to have rights restrictions.

Figure 28 - Data Rights Variations in a Fictitious Product



REF: Data Rights Attachment (RFP - Section J) [§ 205.K, p 65]

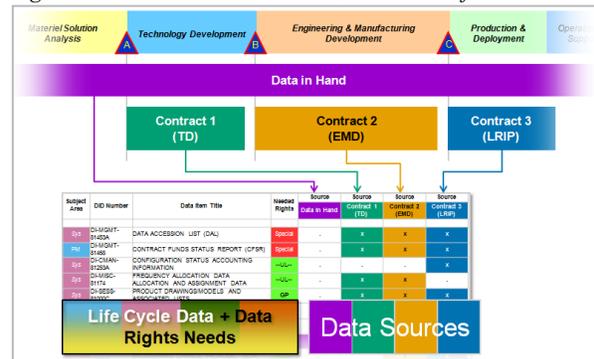
G. Sources to Meet Data and Data Rights Requirements

Once the data and data rights needs have been established, it is necessary to determine **how** those needs will be met. The usual choices for acquiring needed data are a new contract in the current or a later life cycle phase or from data already in the Government's possession.

Figure 29 depicts the life cycle requirements mapping list of data needs and how they will be met by data already in Government possession (Data in Hand) or through new contract efforts. Many data needs must be satisfied iteratively through multiple contract efforts.

Finding data already owned or accessible by the Government should be a priority before ordering any new (and possibly duplicate) data on contract. Program team members should examine data repositories for potentially usable data and assess its

Figure 29 - In Hand and Contractual Sources of Data



usability to their effort. Some of the evaluation criteria could include any data rights use restrictions and format of the data. Finding usable “Data in Hand” could eliminate the need to acquire it using a new contract. The remaining data needs will require contracting or other work efforts. The program team must coordinate when (life cycle phase) and how (specific contract) the data needs will be satisfied.

H. Data Repository System Choices

Data will be created as part of any development program. Therefore, it is necessary to address the following questions for any contractor-developed data of interest to the Government:

- Where the resulting data will be stored? (Which data repository?)
- Who will control the data repository? (Government or contractor?)
- Who will maintain the data? (Government or contractor?)
- Who will have access to the data and what type of access is permitted?

There are three general repository options: 1) Fund and establish a program unique data repository run by Government personnel, 2) Fund and establish a program unique data repository run by a contractor, or 3) Use an existing Government Enterprise data repository. The advantages and disadvantages of these options are shown in Table 7.

Table 7 - Data Repository Options

Option	Type of Repository	Loss of Access Risk	Pro's (+)	Con's (-)
1	Program Unique Government Repository	Low ↓	Total Program Control	High Cost Limited Enterprise data access Limited Enterprise data sharing and reuse May be noncompliant with Title 40/Clinger-Cohen Act
2	Program Unique Contractor Repository	High ↑	Easy for Government Program Team	Government access subject to contractor whim May inhibit data sharing in Army Verification of data rights may be overlooked
3	Government Enterprise Repository	Low ↓	Supports data sharing	Requires funding and maintenance. Not easily customized to meet unique program needs May have specific data format requirements

A program unique repository may not comply with the [Title 40/Clinger-Cohen Act](#) requirement to “establish effective and efficient capital planning processes for selecting, managing, and evaluating the results of all of its major investments in information systems” (40 U.S.C. § 11303. Performance-based and results-based management). This regulation mandates no duplication of existing information system capabilities within DoD and requires major information systems be approved by an Investment Review Board.

A contractor repository may be appropriate when the program information will be shared by a variety of Armed Services, development partners, and foreign government customers. [DFARS 227.7108](#) prescribes a range of conditions that the Government must contractually require from the repository management contractor. Contract Data Requirements Lists (CDRLs) are still required when utilizing a contractor repository. This is the only legally binding method to define data delivery requirements.

The Government may also face the risk of disrupted or terminated access to data stored in contractor-operated repositories due to contract disputes, corporate mergers, or business failure. A potential step to mitigate this risk is to mirror (or synchronize) the contractor repository with a Government repository so the Government always has a current copy of the data under its control. In any case, all of the delivered data should be transfer all to a Government repository no later than the end of the contract effort.

The Government Enterprise repository option is highly recommended as it represents a good balance between risk and cost. This option supports extensive data sharing; there is little, if any, risk to losing access to the data, and most research and development organizations already operate such a repository so the costs to use it should be minimal.

REF: Contract Data Requirements Lists (RFP - Section J) [§ 205.J, p 63]; Data Delivery, Verification, and Acceptance [§ 207, p 75]

RECOMMENDATION:

Utilize a Government enterprise data repository to store and manage delivered data.

I. Repository Metadata Requirements

Any data repository system uses Metadata elements to identify, manipulate, exchange, and control access to the data objects stored in the system. These elements consist of an element name and value for a particular data object. All data repository metadata requirements should be specified in the data deliverable requirements.

REF: Metadata Standards [§ 303.A, p 97]; Sample Metadata Elements [§ 303.B, p 97];

203. DATA & DATA RIGHTS RELATED LIFE CYCLE COSTS

This section identifies data and data rights related life cycle costs (incurred with purchasing data and data rights as well as costs resulting from decisions to not purchase the data and data rights) that may not have been accounted for in the program life cycle cost estimate.

Data and data rights costs are frequently overlooked when estimating program life cycle costs. Program teams often look at the cost to acquire “additional” data and data rights in isolation rather than comparing them against the total life cycle cost benefits from having that data and data rights.

A review of current DoD and Army cost analysis and estimation guidance revealed no specific information on data and data rights costs. Therefore, the Guide authors developed notional concepts for addressing data and data rights costs considerations in program life cycle cost estimates. The material in these sections are solely the brainchild of the Guide contributors/authors and do not necessarily represent those of the Offices of the [Assistant Secretary of the Army for Financial Management and Comptroller](#).

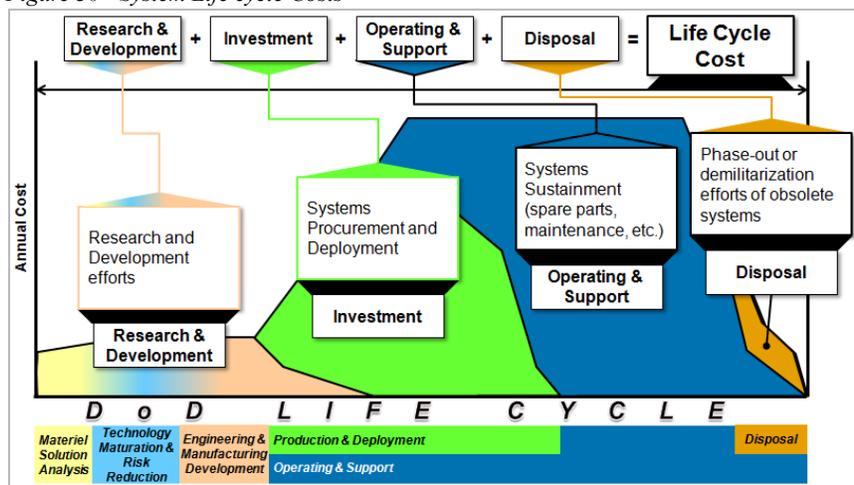
CONCEPT indicates notional content for addressing data and data rights costs considerations into program life cycle cost estimates. Program teams and costing subject matter experts are encouraged to scrutinize these concepts and provide feedback on how they can be improved.

A. Introduction to Life Cycle Cost

DoD 5000.4-M, [DoD Cost Analysis Guidance and Procedures](#) defines life cycle cost as “ALL affected appropriations; and encompasses the costs, both contractor and in house effort, as well as existing assets to be used, for all cost categories. It is the TOTAL cost to the Government for a program over its full life, and includes the cost of research and development, investment in mission and support equipment (hardware and software), initial inventories, training, data, facilities, etc., and the operating, support, and, where applicable, demilitarization, detoxification, or long term waste storage.”

The [OSD Cost Assessment and Program Evaluation Guide, March, 2014](#) categorizes life cycle cost as “...the sum of four major cost categories: (1) research and development costs; (2) investment costs, consisting of procurement, military construction, and acquisition-related operations and maintenance (O&M) associated with the production and deployment activities; (3) O&S costs; and (4) disposal costs.”

Figure 30 - System Life cycle Costs



These categories are shown in Figure 30, defined in the Glossary [§ 402.A, p 127], and discussed in the following sections, which identify data, and data rights related costs that may not have been accounted for in the program life cycle cost estimate.

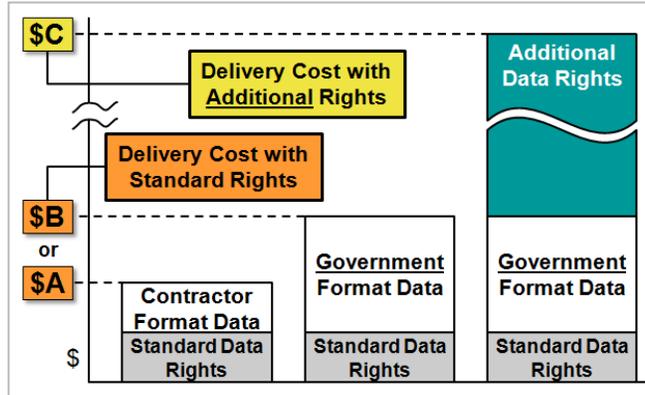
B. Data & Data Rights Acquisition Costs

Many acquisition professionals assume that data is “too expensive” and subsequently do not order it as part of a research and development (R&D) effort. Unfortunately, this decision may be based on a misunderstanding of the distinction between data delivery costs and additional data rights costs. The costs for **data delivery** are negligible compared to the potentially high costs to acquire additional **data rights**.

Figure 31 depicts how data rights and formatting requirements contribute to the cost of ordering data.

Acquisition of data with DFARS standard data rights and in contractor format should be relatively inexpensive (\$A). Acquisition of the same data with standard rights but delivered in a Government specific format is more costly (\$B). Acquisition of same data in Government format but with additional data rights can be very costly (\$C).

Figure 31 - Data Delivery Cost Contributors



Contractors have no obligation to provide the Government the ability to acquire additional data rights to privately developed data. Many contractors will not offer to grant additional rights at all. Those that do will likely ask for significant compensation or consideration in exchange.

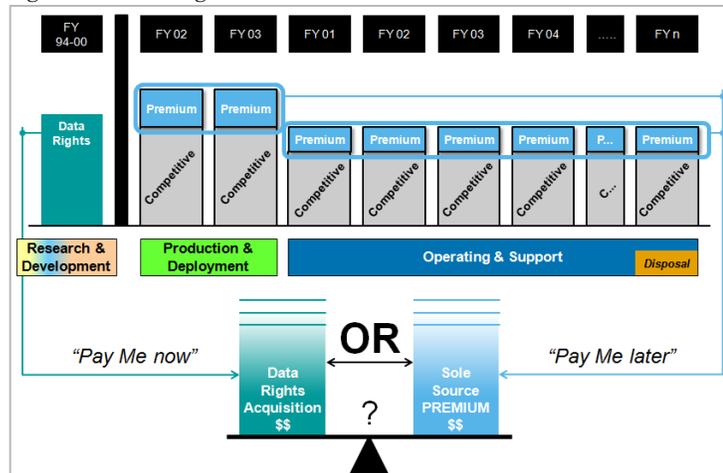
The Data & Data Rights and Costs to Order [§ 205.B.v, p 56] section discusses how program teams can distinguish these costs contributors to make informed decisions regarding acquisition of data for a specific RFP.

REF: Data & Data Rights and Costs to Order [§ 205.B.v, p 56];

C. Additional Data Rights Cost versus Sole Source Premium Cost

\$ CONCEPT The costs for data rights fall into a “pay me now or pay me later” scenario as depicted in Figure 32. If the rights to use data describing a component or process for competitive procurement were not obtained during the three Research & Development phases (“pay me now”), the program may have to use a sole source (“pay me later”) for spare parts, maintenance, and repair in the Production & Deployment and Operating & Support phases.

Figure 32 - Data Rights Cost versus Sole Source Premium Cost



The cost for systems, spare parts, maintenance, and repair, obtained from a sole source will likely be higher than those obtained using competition because the sole source will not experience any competitive pressure to keep costs low.

The sole source “premium” cost is the difference between the estimated costs to obtain these from a sole source versus using competition.

If a contractor proposes a price for the Government to acquire additional data rights, programs can estimate whether acquiring the rights is more cost effective than paying the estimated sole source premium over the life of the system. The [Post-Award Data Rights Options Decisions \(Concept\)](#) [§ 206.E, p 73] and [Data Rights Options Decision Details \(Concept\)](#) [§306, p 118] sections discuss a conceptual methodology and calculations to make this determination.

RECOMMENDATION:

Analyze costs and benefits of acquiring additional data rights, if offered.

D. Data & Data Rights Related Research and Development Costs

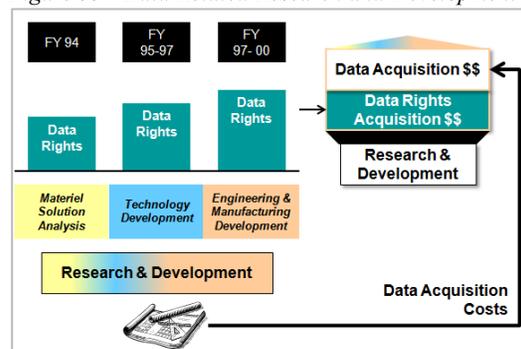
\$ CONCEPT Data and data rights related research and development costs should include data acquisition costs and can include data rights acquisition costs for all data and rights acquired during development phases of the life cycle as shown in Figure 33 and discussed in the following sub-sections.

i. Data Acquisition Costs

Data acquisition costs include the costs for a contractor to collect and transmit or deliver the data and, if applicable, costs associated with reformatting or reworking of the data to conform to any specific Government unique requirements.

Costs for data delivery should be minimal since much of the data requested by the Government will already exist as a natural consequence of the contractor performing tasks required by the Statement of Work. Chapter 9 of the [1986 DoD Armed Services Pricing Manual](#) describes this concept, as “the price you pay for a data item will be based on what it costs the seller to furnish the item, over and above the costs it would incur if you did not require it at all.” Additional costs for reformatting (rework, reformat, or marking) should be expected if the Government requires data to be delivered in a form or format other than what the contractor normally creates.

Figure 33 - Data Related Research and Development Costs



ii. Additional Data Rights Acquisition Costs

A range of Defense Federal Acquisition Regulation Supplement (DFARS) clauses determine the Standard Data Rights the Government is entitled to for data. **There should be NO additional costs to the Government to acquire the standard rights stipulated in the DFARS.** Data rights acquisition costs are only explicitly recognized when the Government pays for additional rights (**above** the DFARS standard rights) to data developed exclusively with private funds.

If the program concludes that it would be advantageous to acquire additional data rights beyond the standard for some technologies (“pay me now”), these costs must be included in the program life cycle cost.

REF: Additional Data Rights Cost versus Sole Source Premium Cost [§ 203.C, p 42];

RECOMMENDATION:

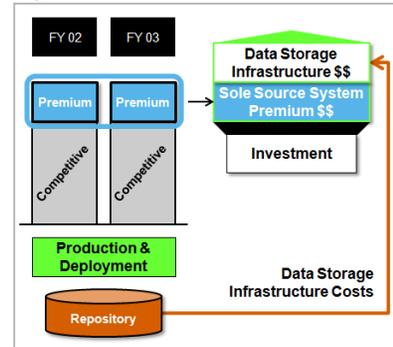
Include data and data rights related Research & Development costs in the program life cycle cost estimate.

E. Data & Data Rights Related Investment Costs

\$ CONCEPT Data and data rights related investment (procurement) costs include costs for the data storage infrastructure and any cost premiums associated with purchase of sole source components that are integral to the complete system as shown in Figure 34.

Data storage infrastructure costs are for establishment or expansion of a data management system to store the data being acquired. The life cycle investment costs will be higher if the rights to competitively acquire all of the system components were not obtained during the Research & Development phase. The sole source system premium costs are the additional money required when competition cannot be utilized to acquire all the components necessary to produce complete systems.

Figure 34 - Data Related Investment Costs



RECOMMENDATION:

Include data and data rights related Investment (procurement) costs in the program life cycle cost estimate.

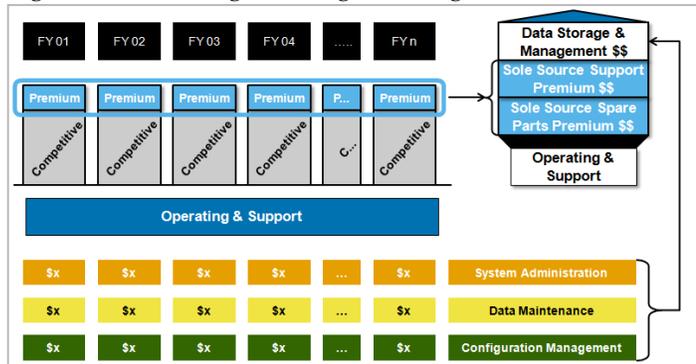
F. Data & Data Rights Related Operating and Support Costs

\$ CONCEPT Data and data rights related operating & support costs include operation of the data storage and management system, data maintenance activities, and any cost premiums paid for sole source spare parts and/or support for system components affected by data rights restrictions as shown in Figure 35.

Once the data associated with a product has been created and delivered, a repository and support staff will be needed to store, maintain, and manage that data to keep it current and usable for manufacturing and support.

The program operating and support costs will be higher if the rights to competitively acquire spare parts and support were not obtained during the Research &

Figure 35 - Data Storage & Management Long-Term Costs



Development phase. The sole source support and spare parts cost premiums are the additional money required for sole source acquisition of support and spare parts for a fielded system.

REF: Data Repository System Choices [§ 202.H, p 39], Data Management and Use [§ 208, p 81];

RECOMMENDATION:

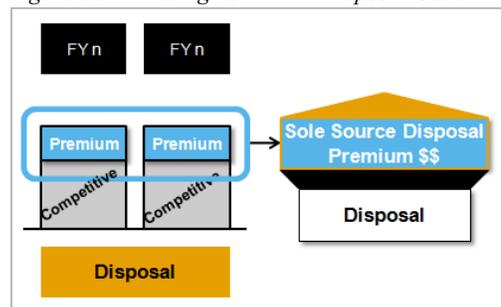
Include data and data rights related Operating and Support costs in the program life cycle cost estimate.

G. Data and Data Rights Related Disposal Costs

CONCEPT Data and data rights related disposal costs include the cost premiums paid for disposal (phase-out or demilitarization) support of system components affected by data rights restrictions as shown in Figure 36.

These premiums will be necessary if the rights to competitively acquire disposal support were not obtained during the Research & Development phase. The sole source disposal support premiums are the additional money required to obtain sole source support instead of competitive support.

Figure 36 - Data/Rights Related Disposal Costs



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204. DATA & DATA RIGHTS POTENTIAL RISKS

Data and data rights related risks could significantly affect the success of a program. These risks should be identified, analyzed, and addressed in the overall program risk management efforts. The following checklists show potential data related risks for the program and individual data items and suggested mitigations.

“Program” risks apply to all the data being acquired and generally occur prior to contract award. The remaining “Data” risks apply to specific data items and generally occur after contract award. Teams are encouraged to use these lists as a starting point for identifying data related risks to their program.

RECOMMENDATION:

Assess potential data & data rights risks and take steps to mitigate them.

A. Program Data Requirements Risks (Pre-Award)

Program Data Requirements Risks (Pre-Award)		Mitigation
Program Strategies Not Aligned		Align AS, LCSP, SEP, and TEMP.
Data Needs Not Defined		Gather data requirements from program Integrated Product Team.
Data Rights Needs Not Defined		Fully consider data rights needs for life cycle of program. Gather data requirements from program Integrated Product Team.

B. Program Data Acquisition Risks (Pre-Award)

Program Data Acquisition Risks (Pre-Award)		Mitigation
Data requirement(s) Not Included in RFP (by management decision)		Define impacts (performance, schedule, and cost) of not acquiring data to decision makers.
Data Requirement(s) Not Included in RFP (by mistake)		Modify RFP to include overlooked data requirements as soon as possible.
FAR/DFARS Clauses Not Included in RFP		Work with contracting professionals to update RFP. Ensure all data related clauses are included in RFP before release.

C. Program Data Costs Risks (Pre-Award)

Program Data Costs Risks (Pre-Award)		Mitigation
Data Rights Acquisition Costs Not Known		Include data rights option in RFP to acquire needed/desired additional data rights.
Costs to Prepare or Create Data Not Budgeted		Include data acquisition costs in program budget.
Costs to Store and Maintain Data Not Budgeted		Include data management costs in program budget.
Costs to Acquire Additional Data Rights Not Budgeted		Include additional data rights acquisition costs in program budget.
Premium Costs to Procure Sole Source Items Not Budgeted		Include additional costs for sole source manufacture and support in program budget.

D. Data Rights Risks (Pre-Award)

Data Item Rights Risks (Pre-Award)		Mitigation
Data Restrictions Not Clearly Asserted or Defined by Originator		Include DFARS provision 252.227-7017 in RFP. Include data rights attachment (§205.K, p 65) in RFP.
Data Rights License(s) Forbid Planned Program Uses		Revise program strategies or acquire needed data rights.

E. Data Delivery & Verification Risks (Post-Award)

Data Item Delivery & Verification Risks (Post-Award)		Mitigation
Data Ordered But Not Delivered		Inform contracting officer of missed deliveries and request appropriate action. (e.g. withholding of payment if DFARS clause 252.227-7030 is in contract)
Data Delivered only to Contractor Repository with Government Access		Thoroughly inspect all data deliverables before accepting. Copy or mirror delivered data from Contractor to Government repository after acceptance and no later than contract closeout.

Data Item Delivery & Verification Risks (Post-Award)		Mitigation
Government cannot access delivered Data stored in Contractor Repository		Inform contracting officer and request legal proceedings be initiated to stop any destruction or mismanagement of the Government data. Copy or transfer delivered data to Government repository if access restored.
Delivered Data Is Incomplete Or Poor Quality		Ensure DIDs and associated tailoring is clear. Thoroughly inspect all data deliverables before accepting.
Data Delivered with Restrictive Data Rights Markings without Prior Assertion		Require <u>Post-Award Data Rights Assertions</u> [§ 207.C, p 77]. Perform <u>Data Rights Assertions Review</u> [§ 207.D, p 78]. Challenge validity of unjustified data markings.
Data Delivered with Unauthorized or Nonconforming Data Rights Markings		Ensure proper clauses in contract. Compare data rights markings with <u>Data Rights Attachment</u> [§ 205.K, p 65]. Require contractor fix nonconforming marking(s) at own expense.
Data Cannot be Read or Revised by Government or Third Parties		Require native format delivery of data; acquire authoring file libraries, identify authoring tools.
Data Changes Not Controlled, Versions Unknown		Implement robust Configuration Management program by Government and contractor.

F. Data Management & Use Risks (Post-Award)

Data Item Management & Use Risks (Post-Award)		Mitigation
Data Restrictions Not Widely Known		Publicize and explain data restrictions required by distribution statement and data rights markings to all team members.
Restricted Data Improperly Released (per Data Rights agreements)		Educate all team members about data use restrictions. Control access to restricted rights data. If improper release occurs, consult with appropriate Government officials and legal counsel regarding investigation and follow-up actions.
Restricted Data Improperly Released (per Security requirements)		Educate all team members about data security restrictions. Control access to export controlled data. If improper release occurs, request investigation.

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205. REQUEST FOR PROPOSAL AND SOURCE SELECTION PLAN

This section discusses the data related content needed to create a Request for Proposal (RFP) that supports a contract prepared in accordance with the Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS). The Government must follow certain steps and use specific contract language to get all the Technical Data and Computer Software it needs and the data rights to which it is legally entitled. Due to the volume of information on this topic, Table 8 lists the topic of each sub-section.

Table 8 - D&DR Guide RFP Content

Background	205.A	Request for Proposal (RFP) & Source Selection Basics
RFP Input	205.B	RFP Input - DATA Requirements
	205.C	RFP Input - Data RIGHTS Requirements
	205.D	RFP Input - Source Selection Plan
	205.E	Source Selection and Data Rights
RFP Content	205.F	Contract Line Items (RFP - Section B)
	205.G	Work Statement (RFP - Section C)
	205.H	Special Contract Requirements (RFP - Section H)
	205.I	Contract Clauses (RFP - Section I)
	205.J	Contract Data Requirements Lists (RFP - Section J)
	205.K	Data Rights Attachment (RFP - Section J)
	205.L	Data Rights Assertion Provision (RFP - Section K)
	205.M	Instructions, Conditions, and Notices to Offerors (RFP - Section L)
205.N	Proposal Evaluation Criteria (RFP Section M)	

A. Request for Proposal (RFP) & Source Selection Basics

The Government prepares a Request for Proposal when seeking offers to provide products or services. It then follows a source selection process to determine the winning entity to perform.

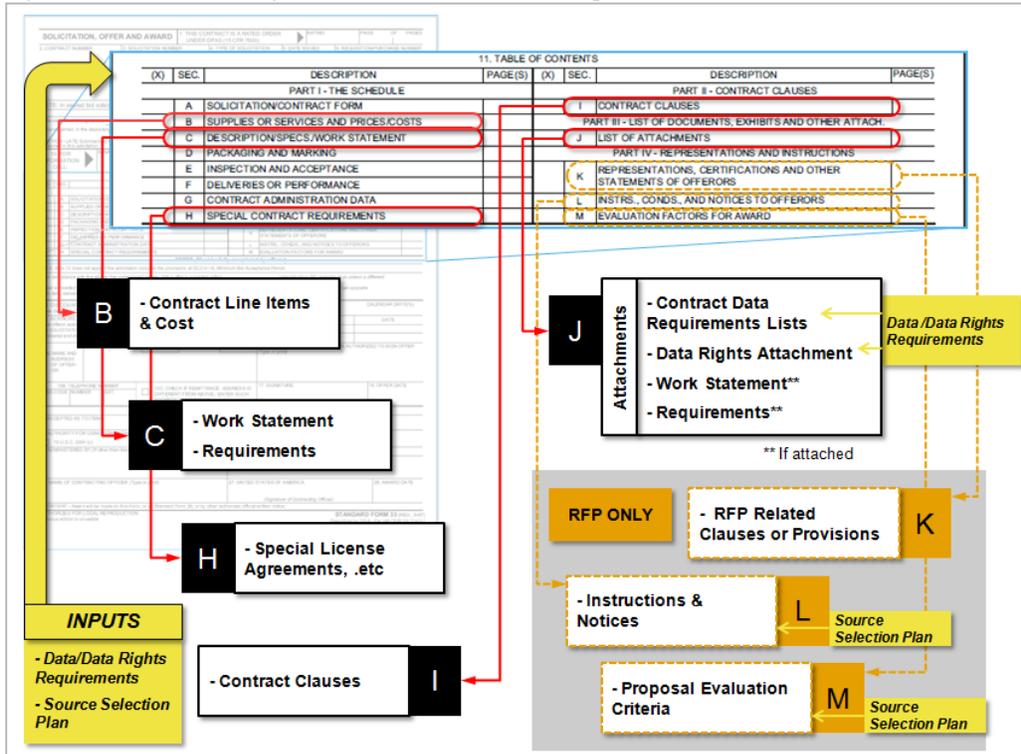
i. RFP Contents

RFPs for “negotiated contracts” under [FAR Part 15](#) follow the Uniform Contract Format (UCF) specified by FAR 15.204-1 [FAR 15.204-1](#) and [Standard Form 33 Solicitation, Offer, and Award](#). Commercial contracts using [FAR Part 12](#) and simplified acquisitions using [FAR Part 13](#) do not have to use the UCF.

The UCF specifies the distinct sections of a contract and the sequence in which they must be arranged.

Figure 37 shows the data and data rights related UCF sections and inputs. Significant to this Guide are the data requirements, data rights requirements, and source selection plan. Sections of the UCF itself have data and data rights related content requirements that are needed to ensure the best outcome for the Government. Guidance related to the inputs and UCF content is discussed in the following sections.

Figure 37 - Data & Data Rights Related UCF Sections and Inputs

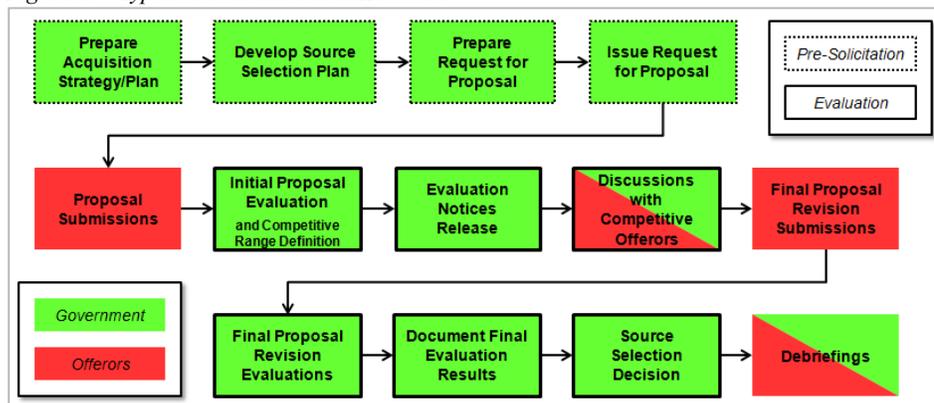


REF: Uniform Contract Format Details [§ 304.A, p 99]; Request for Proposal Preparation Details [§ 304, p 99];

ii. Source Selection Process

Figure 38 depicts a typical source selection process with Government and offeror activities and separated into Pre-Solicitation and the Evaluation processes. The Pre-Solicitation activities include preparation of an acquisition strategy or plan, development of the source selection plan, preparing and issuing the RFP. The Evaluation activities include initial proposal evaluations, competitive range determination (if applicable), Evaluation Notice release, discussions with offerors, request and receipt of final proposals, final proposal evaluation and results documentation, source selection decision, and debriefings of all offerors.

Figure 38 - Typical Source Selection Activities



The RFP and Source Selection Plan (SSP) should be a collaborative effort with the Program Manager, program Integrated Product Team (IPT), contracting, legal, and other subject matter experts.

The Program Manager and IPT are responsible for providing all the relevant information to the contracting organization, which facilitates the issuance and evaluation of proposals. Government legal participation in the RFP and SSP process is critical when dealing with data and data rights issues.

B. RFP Input - DATA Requirements

Once the decision is made to pursue a contractual effort, the data requirements specific to that effort must be identified and reviewed by the Program Manager. Significant data to be ordered includes Technical Data and Computer Software. Once approved for inclusion in the RFP, the Contract Data Requirements Lists (CDRLs) need to be created.

REF: [Contract Data Requirements Lists \(RFP - Section J\) \[§ 205.J, p63\]](#); [Request for Proposal Preparation Details \[§ 304, p 99\]](#);

Anecdote: Get the Data

“Most of the contracting and program officials at DOD that we spoke with pointed to the lack of access to technical data as one of the main barriers to competition. Some contracting officers described this condition as essentially being “stuck” with a certain contractor...Several officials pointed out that the situation the government is currently experiencing is a result of decisions made years ago, when first acquiring a weapon system, to not purchase critical technical data packages for reasons that include budgetary constraints or a push toward streamlined contracting processes by purchasing commercial items.”

“...Some contracting and program officials have inquired about the cost of obtaining the technical data, only to discover that the package is not for sale or purchase of it would be cost-prohibitive, especially the systems and equipment that have been contracted out for decades.”

- GAO Report 10-833, “Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received”, July 2010, page 19

i. Technical Data Package (TDP)

A particularly important data deliverable is documentation of the design. This documentation includes the [Technical Data Package \(TDP\)](#), which is vitally important for certain, types of DoD systems.

TDPs are valuable for noncommercial systems with a relatively long lifespan and plans for competitively procuring end items and spare parts exactly as they are documented in the TDP. In this case, programs should take delivery of the [Allocated Baseline](#), [Functional Baseline](#), and [Product Baseline](#) TDPs for noncommercial products at the conclusion of each phase of development.

Ordering the baseline documentation can also help establish what did or did not exist prior to the addition of Government-funded development, which could reduce the potential for disagreements and the need for time-consuming validation of restrictions processes.

Some Data Item Descriptions associated with ordering a TDP include [DI-SESS-80776A \(Technical Data Package\)](#), [DI-SESS-81001E \(Conceptual Design Drawings/Models\)](#), [DI-SESS-81002F \(Developmental Design Drawings/Models\)](#), and [DI-SESS-81000E \(Product Drawings/Models and Associated Lists\)](#).

There are conditions where acquiring a complete TDP may not be in the best interest of the Government. Some electronic systems and components have a relatively short life span because the supporting technology is constantly changing and frequently available from an array of sources. Items like this are candidates for the open system design documentation approach. As such, it would make more sense for

the Government to stay abreast of industry trends and replace short life span electronic items with newer technology rather than continue to acquire and support the old design specific technology.

REF: PEWG Data Group - Product Definition Information [§ 102.C.ii, p 9]; Sub-System Design Documentation Approaches [§ 202.C, p 34]; Data Acquisition Documents & Data Item Descriptions (DIDs) [§ 205.J.i, p63];

RECOMMENDATION:

Order a complete Technical Data Package for product baselines (Allocated, Functional, and Product) during development of a noncommercial product.

Anecdotes: Acquire the TDP

“Our interviews revealed that Technical Data Packages (TDP) are not being procured as much as they should be. Furthermore, during system development the government has the leverage to get a useful TDP at a fair price. If TDPs are bought after EMD, the government runs the risk of buying something that is inadequate for re-compete not just at the system level, but also the subsystem and component level. When armed with a sound TDP, the Army has been able to successfully break out subsystems and components, and achieve rewarding price competition during production”

- “Army Strong: Equipped, Trained and Ready” Final Report of the 2010 Army Acquisition Review, Chartered by the Secretary of the Army, January 2011

ii. Computer Aided Design (CAD) Authoring Environment

Programs may not consider what will be required to modify or manipulate a TDP once it is delivered. An authoring environment augments the delivered data with authoring software and support files to enable this functionality.

Modern TDPs are usually created using Computer-Aided Design (CAD) tools, and the resulting CAD files are normally in a proprietary format that is directly tied to a proprietary authoring tool and frequently require specific file libraries for the complete design model to be accessible. Therefore, the CAD authoring environment requires the authoring software and support files to be fully functional.

Programs must ensure they either already have or can establish a CAD authoring environment for purposes of data update and maintenance in the future. Ideally, programs can specify the TDP be delivered in a format that is fully functional in an existing Government authoring tool environment.

If this is not possible, programs often have the contractor translate the CAD files into a “neutral” file format or an alternative CAD format that is usable by the Government authoring tool. Unfortunately, this translation usually results in a loss of fidelity and functionality when compared to the original native file. Therefore, programs should acquire a complete set of the native CAD files, all necessary library files, and full documentation of the native authoring tool including software version if it is different from what the program has in-house. Additional translated files can also be ordered but should be in addition to the native files.

RECOMMENDATION:

Order a complete set of the native Computer Aided Design files, including all standard library components, and require full documentation of the authoring tool(s) used in their creation.

iii. Computer Software and Authoring Environment

Computer Software is another important deliverable. Frequently, the Government only orders the executable program. This deliverable alone will limit what the Government can do with the software in the future. It is important to order additional data to support duplication of the software-authoring environment. This information will enable the Government to reproduce, modify, and recompile the software.

Delivery of this information is normally not possible for commercial Computer Software. However, it should be entirely possible for noncommercial Computer Software. Programs should acquire the source code, all necessary library files, and documentation (e.g. specifications, architectures, designs, test plans, manuals, etc.) for noncommercial Computer Software.

Some Data Item Descriptions associated with ordering computer software include DI-IPSC-81441 (Software Product Specification), DI-IPSC-81434A (Interface Requirements Specification), DI-IPSC-81431A (System/Subsystem Specification), and DI-IPSC-81437A (Database Design Description).

Computer Software source code files are normally created in accordance with well-defined industry standards and can be opened and modified by a number of authoring tools. However, source code files frequently require a specific set of library files in order to compile into an executable program. As such, the Computer Software authoring environment does not require proprietary files or the original authoring tools, but does require the support files to function.

RECOMMENDATION:

Order executable program, source code, supporting library files, and related documentation for noncommercial Computer Software.

iv. Data Ordering Determination

The data needs identified for the specific RFP are traditionally evaluated by the Program Manager (PM) or designee who has the authority to decide what data will be acquired. PMs often elect not to acquire certain data because of budget or other programmatic concerns. These decisions are certainly within their prerogative but should be made with a full understanding of the potential impacts to the product development, manufacture, support, or all of these. The appropriate subject matter experts should be able to provide this information. If the decision is made **not to acquire** some data or data rights, the relevant program strategies should be reviewed and updated accordingly.

Before deciding NOT to acquire data, discuss the impacts to product development, manufacture, and competitive or organic life-cycle sustainment with the appropriate subject matter experts.

RECOMMENDATION:

Discuss the impacts to product development, manufacture, and competitive or organic life-cycle support, with the appropriate subject matter experts before deciding not to acquire requested data.

Update and resynchronize the relevant program strategies if the decision is made not to acquire any requested data.

v. Data & Data Rights and Costs to Order

The Data & Data Rights Acquisition Costs [§ 203.B, p 42] section discusses how data rights and formatting requirements contribute to the cost of ordering data.

Remember data **ordered as part of an R&D effort does not always need Government Purpose or Unlimited Rights** in order to be useable. There are many completely legal and valuable Government uses for data with DFARS standard Limited or Restricted Rights such as internal (non-manufacturing) uses or simply having the data in hand should it be needed for certain emergency situations.

Therefore, program teams should order and take delivery of all relevant data regardless of the data rights restrictions. The cost for **delivery** of data without additional rights is minimal, and the benefits are potentially significant to the overall program.

The Government does not have to pay for additional data rights just to take delivery of privately developed data as long as the use restrictions are honored.

REF: Data & Data Rights Acquisition Costs [§ 203.B, p 42];

RECOMMENDATION:

Order and take delivery of all required data regardless of data rights restrictions.

MYTH: Cost of Data

Technical data is costly and separate from the acquisition program development cost. As such, it should not be ordered.

REALITY

The costs to acquire data ordered in a contract and the Government's standard rights are priced into the cost of that contract. The only legitimate additional costs are for Government-unique media, data conversion, reproduction and marking (distribution statements, export control, etc.) delivery requirements **or** to acquire additional rights in data that may be necessary or desirable.

The Government is entitled to Unlimited Rights for certain categories of Technical Data (commercial and noncommercial) and in noncommercial Computer Software when properly ordered regardless of the funding source. These categories of data include Form, Fit, and Function (FFF); Operation, maintenance, installation and training (OMIT); Computer Software Documentation.

C. RFP Input - Data RIGHTS Requirements

Once the data requirements for the contract have been documented in the RFP Contract Data Requirements Lists (CDRLs), it is necessary to map the program data rights needs for each CDRL. The needed rights are defined in the Life Cycle Data Rights Requirements and/or contained in the synchronized program strategies.

Department of Defense (DoD) competition requirements are usually satisfied when the Government has Unlimited or Government Purpose rights to the data. However, Specifically Negotiated License Rights may also be sufficient depending on the agreed to license terms.

REF: Life Cycle Data Rights Requirements [§ 202.E, p 37]; Data Rights Attachment (RFP - Section J) [§ 205.K, p 65];

MYTH: What Rights Needed

“The Government should only “buy” rights to technical data it has a defined and current need for.”

REALITY

The Government should always pursue its “standard” rights to Technical Data and Computer Software.

Since additional needs for the data may occur later, and postponed data acquisitions may not be economically executable, Program Manager's should be wary of “giving up” rights to which the Government is legally entitled but may only need to use years, if not decades, in the future.

Anecdote: Data Rights Needed

“The Army and the Air Force have encountered limitations in their sustainment plans for some fielded weapon systems because they lacked needed technical data rights.... Although the circumstances surrounding each case were unique, earlier decisions made on technical data rights during system acquisition were cited as a primary reason for the limitations subsequently encountered.” - GAO Report 06-839 “DOD Should Strengthen Policies for Assessing Technical Data Needs to Support Weapon Systems”, page 6.

D. RFP Input - Source Selection Plan

The DoD Source Selection Procedures states “Source selection is accomplished by a team that is tailored to the unique acquisition. Composition of the team generally consists of the Source Selection Authority (SSA), Procuring Contracting Officer (PCO) (if different from the SSA), Source Selection Advisory Council (SSAC), Source Selection Evaluation Board (SSEB), Advisors, Cost or Pricing Experts, Legal Counsel, Small Business Specialists, and other subject-matter experts.”

The SSA designates a Chairperson who appoints Evaluators to a Source Selection Evaluation Board (SSEB). The SSEB is responsible for developing a Source Selection Plan (SSP), relevant RFP content, and evaluating offeror proposals in accordance with the SSP.

In general, a SSP identifies the goals of an acquisition and describes how proposals will be evaluated and the winning offeror(s) selected. The contents of a typical SSP are shown in Table 9. The shaded SSP

contents are placed in Section L (or equivalent) and Section M (or equivalent) of the RFP and discussed in the following sections.

A SSP is required for all best value, negotiated, competitive acquisitions in accordance with the [DoD Source Selection Procedures](#), [Army Source Selection Manual](#), and [FAR Part 15](#).

Table 9 - Typical Source Selection Plan Contents

- Description of what is being bought	- Solicitation/Proposal requirements
- Goals of the acquisition	- Definitions (ratings, strengths, etc.)
- Description of the Source Selection Organization and the duties and responsibilities of each of the key components	- Forms (Evaluation and Item For Negotiation format, etc.)
- Planned presolicitation activities (e.g., issuance of a draft solicitation, conduct of presolicitation, etc.)	- Source Selection Participation Agreement and Standards of Conduct
- Proposed acquisition strategy, including explanation of the contract type and whether multiple awards are anticipated	- Proposed evaluation methodology and any proposed innovative techniques
- Proposed evaluation factors and subfactors, their relative importance, and associated standards	- Source selection milestones occurring between receipt of proposals and signing the contract

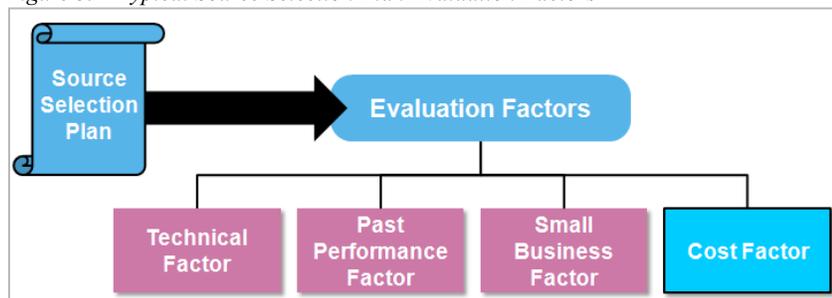
i. SSP Evaluation Factors

The [DoD Source Selection Procedures](#) defines part of the SSP development process as “Identify the evaluation factors, subfactors, their relative order of importance; the importance of all non-cost or price factors to the cost or price factor; and the evaluation process, including specific procedures and techniques to be used in evaluating proposals. Include within the SSP document or attach the relevant and most current portions of Sections L and M in the RFP (or a non-UCF solicitation) to preclude inconsistencies between the SSP and RFP.” These Procedures also state, “All source selections shall evaluate cost or price, and the quality of the product or services.”

The “Quality of Product or Service” evaluation factors normally include Technical, Past Performance, and Small Business Participation. The combination of these factors and cost results in the typical set of SSP evaluation factors as shown in [Figure 39](#).

The Procedures state the evaluation factors “represent those specific characteristics that are tied to significant RFP requirements and objectives having an impact on the source selection decision and are expected to be discriminators, or are required by statute or regulation. They are the uniform baseline against which each offeror's proposal is evaluated allowing the Government to make a best-value determination.”

Figure 39 - Typical Source Selection Plan Evaluation Factors



More than one non-cost factor can be used and any non-cost factor can be divided into subfactors. However, the number of factors and subfactors should be kept to a minimum and restricted to those that will be true discriminators between offeror proposals.

ii. SSP Evaluation Factors Relative Order of Importance

FAR 15.304 (e) requires solicitations to include priority statements that “relate one evaluation factor (or subfactor) to each of the other evaluation factors (or subfactors)” and “whether all evaluation factors other than cost or price, when combined, are (1) Significantly more important than cost or price; (2) Approximately equal to cost or price; or (3) Significantly less important than cost or price.”

iii. SSP Evaluation Factor Adjectival Ratings

The DoD Source Selection Procedures defines all non-cost evaluation factors other than past performance to be “technical” factors regardless of whether “technical” is in its title. The Procedures further require all technical factors use “adjectival” rating levels defined therein. Three rating schemes available for technical factors are defined in the procedures as Table 1 - Combined Technical/Risk Ratings, Table 2 - Technical Ratings, and Table 3 - Technical Risk Ratings.

iv. SSP Solicitation/Proposal Requirements

The solicitation requirements from the SSP are placed in Section L (or equivalent) of the RFP. Typical contents of Section L are instructions regarding how proposals should be constructed and returned to the Government to facilitate evaluation.

E. Source Selection and Data Rights

The evaluation of data rights as competitive source selection criteria by the Government has been the subject of debate within the DoD and industry due to the uneven and somewhat conflicting guidance provided in the DFARS. Nevertheless, some DoD components have successfully addressed data rights as an evaluation factor during competitive source selections.

Language in DFARS sections 227.7102 (Commercial items...), 227.7103 (Noncommercial items...), 227.7202 (Commercial computer software...), and 227.7203 (Noncommercial computer software...) specify what the Government can and cannot do regarding data rights in DoD solicitations. Table 10 summarizes these limitations.

Table 10 - DFARS Data Rights Evaluation Limitations

DFARS Data Rights Evaluation Limitations	Commercial Items (Technical Data)	Noncommercial Items (Technical Data)	Commercial Computer Software	Noncommercial Computer Software
<i>DFARS Section</i>	227.7102	227.7103	227.7202	227.7203
Cannot Require Additional Rights from Offerors	Applicable	Applicable *	Applicable #	Applicable *
Can Require Unlimited Rights Data	NOT Applicable	Applicable	NOT Applicable	Applicable
Can Evaluate Impact of Data Rights	Applicable ?	Applicable	Applicable ?	Applicable

* = Limited exception for Major Systems

= Government CAN refuse to purchase commercial computer software if the licensing terms “...are inconsistent with Federal procurement law or do not otherwise satisfy user needs.”

? = No specific DFARS guidance

Bottom Line: Generally, DoD activities cannot require additional data rights from offerors, BUT can evaluate the impact of offered rights for Technical Data and Computer Software.

DFARS [227.7102](#), [227.7103](#), [227.7202](#), and [227.7203](#), all have language specifying that the Government cannot require offeror's to relinquish rights to the Government in order to be considered responsive to a solicitation. However, the noncommercial item sections ([227.7103](#) and [227.7203](#)) include additional terms requiring offerors to provide what the DFARS defines as Unlimited Rights data.

DFARS [227.7102-1\(c\)](#) states "...offerors and contractors shall not be required, except for the technical data described in paragraph (a) of this subsection, to—(1) ... (2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose technical data pertaining to commercial items or processes except for a transfer of rights mutually agreed upon." DFARS [227.7202-1](#) has similar language addressing commercial software but also states the Government can refuse to purchase commercial computer software if the licensing terms "...are inconsistent with Federal procurement law or do not otherwise satisfy user needs" (e.g. single user licenses versus enterprise license).

DFARS [227.7103-1\(c\)](#) states "Offerors shall not be required, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish to the Government any rights in technical data related to items, components or processes developed at private expense except for the data identified at [227.7103-5\(a\)\(2\)](#) and (a)(4) through (9)." DFARS [227.7203-1](#) has similar language addressing Computer Software.

There is language in DFARS [227.7103](#) and [227.7203](#); however, that does allow the Government to ask for data rights information associated with noncommercial items and evaluate the impact of any data use restrictions. [227.7103-10\(a\)\(5\)](#) states "Information provided by offerors in response to the solicitation provision may be used in the source selection process to evaluate the impact on evaluation factors that may be created by restrictions on the Government's ability to use or disclose technical data." [227.7203-10\(a\)\(5\)](#) has similar language addressing Computer Software. There is no specific DFARS guidance for commercial items on this topic.

There are some very limited exceptions to the rule preventing DoD activities from requiring data rights in a solicitation. DFARS [227.7103](#) and [227.7203](#) refer to DFARS [207.106](#), which includes exceptions for noncommercial data and "major systems." This clause permits the Government to require additional data rights if "the contracting officer determines that— (1) The original supplier of the item or component will be unable to satisfy program schedule or delivery requirements; (2) Proposals by the original supplier of the item or component to meet mobilization requirements are insufficient to meet the agency's mobilization needs; or (3) The Government is otherwise entitled to unlimited rights in technical data."

A future release will describe concepts for evaluating data rights as source selection criteria.

F. Contract Line Items (RFP - Section B)

Section B contains Contract Line Item Numbers that describes separate items or services being procured as part of the contract effort. These deliverables can be hardware, services, software, data, or any combination thereof. Notable characteristics of contract line items are that each must be separately identifiable, have a single unit price, a separate delivery schedule, and defined acceptance requirements.

The program team should ensure that each contract line item is associated with a contract requirement. Pricing for each contract line item are included in each offeror's response to the Government RFP.

i. Data

A separate line item just for data is routinely included in RFPs. This line item is used for delivery of all the data requirements defined by the contract data requirements list. Frequently, the line item for data is not separately priced.

REF: [Sample Contract Line Items for Data & Data Rights](#) [§ 304.F, p 103];

ii. Data Rights Option

CONCEPT A separate line item can also be defined for a contract option to acquire additional rights associated with the delivered data. This option is relatively new to Army contracting and is only practicable when a Data Rights Attachment (DR Attachment) (See Section 205.K) requirement is part of the RFP.

Each offeror's completed DR Attachment can include costs to acquire additional data rights for specific data deliverables, which create the content of the data rights option. This option enables the Government to have flexibility regarding what additional data rights are acquired for each data deliverable.

REF: [Sample Contract Line Items for Data & Data Rights](#) [§ 304.F, p 103];

RECOMMENDATION:

Include contract option to acquire needed/desired additional data rights.

G. Work Statement (RFP - Section C)

Section C wording establishes and defines the contractor work requirements. A range of work statement styles can be used by the Government to state the RFP objectives. The major styles are Performance Work Statement, Statement of Work, and Statement of Objectives. The content of the D&DR Guide focuses on the Statement of Work (SOW). However, many of the recommendations can be applied to the other styles.

A [Statement of Work \(SOW\)](#) establishes and defines the requirements for contractor efforts and is an essential part of any development contract. Detailed guidance on the preparation of a statement of work is outside the scope of this guide. Program teams are urged to use [MIL-HDBK-245, "Department Of Defense Handbook for Preparation of Statement of Work \(SOW\)"](#) to prepare a SOW.

A proper SOW is critical to requiring a contractor to perform tasks with Government funding that will result in the generation of required data deliverables. CDRLs describe the content, format, etc. of the data deliverables but do not require generation of the data itself. Clear SOW requirements also make it difficult for a contractor to develop needed and identified technologies as purportedly being outside the Government contract scope and then claim it as developed exclusively at private expense. If the

Government intends for certain development to be accomplished at Government expense, the SOW should clearly reflect that.

SOW authors should confirm all the CDRLs tie back to specific work tasks and follow the guidance in [MIL-HDBK-245](#).

H. Special Contract Requirements (RFP - Section H)

Section H contains contractual requirements that are not included in other parts of the RFP/contract or when standard FAR or DFARS clauses do not adequately cover the Government's needs.

A Specifically Negotiated License agreement is an example of a special contract requirement. All of these agreements must comply with current statutory and regulatory guidance and be approved by Government legal counsel. Higher headquarters approval may also be required.

A Specifically Negotiated License Rights agreement could be included in Section H or included as a specific attachment to Section J. These agreements must be reviewed and approved by Government legal counsel before including in the RFP.

I. Contract Clauses (RFP - Section I)

Section I is for clauses that will apply to the contract. The Government's rights in data are **dependent** on the clauses included in **each** contract. The use of some clauses is mandated by the FAR while others are dependent on the type of acquisition being undertaken, and many data related clauses are NOT mandated by the FAR or DFARS. Therefore, it is necessary for the integrated product team, Government contracting professionals, and legal advisors, to specify what additional FAR/DFARS clauses should be part of a specific solicitation.

Program teams should seek legal counsel when determining what clauses to include in a RFP and the subsequent contract. Frequently cited DFARS clauses and provisions relating to data and data rights are shown in [Table 11](#). DFARS provision 252.227-7017 is particularly important because it is the only DFARS specified method to require offerors to identify data right assertions.

The [FAR and DFARS Details \(RFP Section I\) \[§ 304.G, p 104\]](#) section includes a more complete listing of clauses relevant to data, data rights, and Intellectual Property. The section also recommends which clauses to use for the major types of contractual efforts.

Table 11 - Frequently Cited DFARS Clauses and Provisions Related to Data & Data Rights

Clause	Clause or Provision Title	Clause	Clause or Provision Title
252.227-7013	Rights in Technical Data-- Noncommercial Items	252.227-7018	Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR)
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation	252.227-7019	Validation of Asserted Restrictions-- Computer Software

Clause	Clause or Provision Title	Clause	Clause or Provision Title
252.227-7015	Technical Data–Commercial Items	252.227-7037	Validation of Restrictive Markings on Technical Data
252.227-7017	Identification and Assertion of Use, Release, or Disclosure Restrictions (Provision in Solicitation Section K)	Additional Clauses	FAR and DFARS Details (RFP Section I) [§ 304.G, p 104]

REF: FAR and DFARS Overview [§ 103.A, p 13]; FAR and DFARS Details (RFP Section I) [§ 304.G, p 104];

MYTH: Proprietary Data Assertions

“The contractor “said” the data was proprietary and too expensive”

REALITY

A contractor must assert and be able to prove all data it claims as protected prior to contract award. It must also make these assertions at the proper level of the product (top weapon system, subsystem, assembly, or component).

A contractor has the burden of proving all assertions by maintaining and providing records showing the funding source(s) for development of the technology, component, or process in question.

J. Contract Data Requirements Lists (RFP - Section J)

Section J is for attachments to the RFP. One of the important attachments from a data deliverable perspective is the Contract Data Requirements Lists (CDRLs).

i. Data Acquisition Documents & Data Item Descriptions (DIDs)

A Data Acquisition Document is the authoritative source used by the Government to define the content and format requirements for acquired data. The majority of data acquisition documents are Data Item Descriptions (DIDs) but they can also be military standards or FAR/DFARS clauses. These descriptions are referenced in a Contract Data Requirements List, which contains legally binding requirements for delivery of the data specified.

Data Acquisition Documents must display a currently valid Office of Management and Budget (OMB) control number to be legally enforceable per [44 U.S.C. § 3512](#). [Public protection](#). Attempts to acquire data using less formal means may be unenforceable.

An individual DID defines the content, format, and intended use for a **single** type or class of data product (Technical Report, Preservation and Packing Data, Test Procedure, etc.). All DIDs must be created in accordance with [MIL-STD-963 \(Data Item Descriptions\)](#) and categorized per the Department of Defense [Standardization Directory-1](#) (Federal Supply Class and AREA Assignments).

There are approximately 1500 DIDs approved for repetitive use in DoD contractual acquisitions. These DIDs are freely accessible through the Defense Logistics Agency Acquisition Streamlining and

Standardization Information System (ASSIST) Document Database. In order to locate a specific DID in this database, the user must know its identification number (e.g., “DI-IPSC-81441A”) or the words used in the title (e.g., “Software Product Specification”).

REF: Data Item Descriptions (DIDs) Details [§ 304.C, p 100];

ii. Contract Data Requirements List (CDRL) Contents & Preparation

The SOW details the tasks to be performed by the contractor. These tasks often result in the generation of data that the Government needs. All Technical Data and all Computer Software should be ordered using CDRLs. A CDRL (DD Form 1423) defines the data requirement as well as the frequency, method, and medium of the data to be delivered under the contract. Table 12 shows some key CDRL contents and their descriptions.

Table 12 - Key CDRL Contents and Descriptions

CDRL Contents	Description
Data Item Description (DID) or data acquisition document reference	Format and content requirements
Tailoring instructions	Instructions to lessen the requirements of specified data acquisition document or DID.
Statement of work reference (s)	Statement of Work tasks that will result in generation of the data
Delivery requirements	Frequency, point of contact, delivery method, and delivery medium

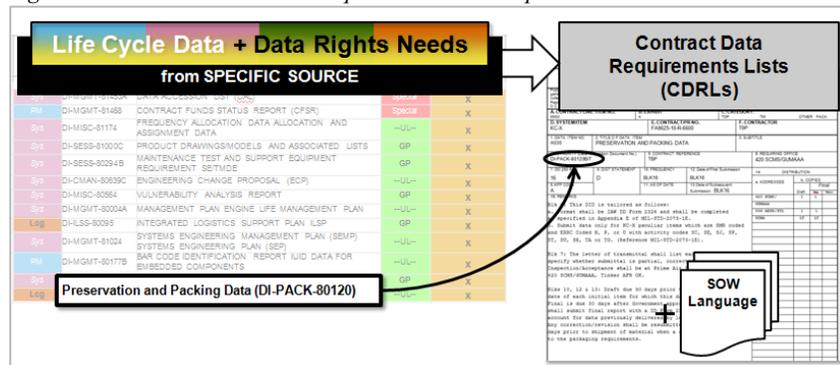
Multiple CDRLs can refer to a single data acquisition document or DID but a separate CDRL is required for each type or class of data to be delivered. The collection of CDRLs becomes an attachment to the contract and creates a legally binding requirement for delivery of the data specified.

Tailoring is a method used to lessen the requirements specified by the data acquisition document or DID as appropriate to the specific work task in the contract. This lessening or tailoring is encouraged as a way to avoid expense related to unnecessary information gathering or formatting. Tailoring instructions can be specified in Block 16 of the CDRL or other contract attachments but cannot be used to expand the requirements of the DID or data acquisition document, only to lessen those requirements. DoD 5010.12-M, “Procedures for the Acquisition and Management of Technical Data” is an excellent reference for CDRL preparation. An update to 5010.12-M is expected to be released in 2015.

Figure 40 depicts a typical translation from data requirement to a specific RFP CDRL.

Once the data requirements for the specific RFP have been approved by the Program Manager, the CDRLs can be created. Organization of the

Figure 40 - RFP Contract Data Requirements List Preparation



CDRLs can significantly ease preparation of the DR Attachment (See Section K) and make validation of data deliverable markings much easier for the Government.

REF: Relationships between SOW, CDRL, DR Attachment, and DIDs [§ 304.D, p 101]; Contract Data Requirements List Details [§ 304.E, p 102];

iii. CDRL Organization

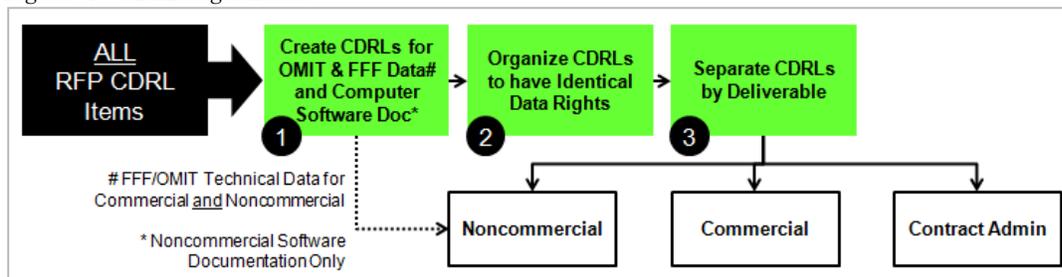
NEW Validation of data rights markings on delivered Technical Data or Computer Software can be made much easier if multiple CDRLs are used and they are divided into separate categories as shown in Figure 41.

The first step is to create separate CDRLs that require Form, Fit, and Function Data, Operation, Maintenance, Installation and Training Data, and Computer Software Documentation respectively since this information must be furnished to the Government with Unlimited Rights per the DFARS.

The second step is to identify CDRLs where the delivered data will likely have different data rights and separating them into individual CDRLs with identical rights to the maximum extent practicable. Organizing the CDRL contents in this manner will mean all data delivered per that CDRL will require the same data rights markings and make Government validation of those markings easier.

The third step is to separate the CDRLs into three groups. One group is for data associated with noncommercial products, another for commercial products, and a third for Contract Administration (cost, financial, schedule) information.

Figure 41 - CDRL Organization



REF: CDRL Organization Details [§ 305.B.i, p 111];

K. Data Rights Attachment (RFP - Section J)

NEW An additional attachment recommended for RFPs is a Data Rights Attachment (DR Attachment). This attachment identifies all of the contract CDRLs and their data rights level in a single document. Various methods to document offeror data rights assertions at a more detailed level than DFARS 252.227-7017 have been explored by the Military Services in the past. The Air Force Space & Missile Systems Center, Office of the Staff Judge Advocate, refined and documented the idea of a DR Attachment in the routinely update handbook “[Acquiring and Enforcing the Government's Rights in Technical Data and Computer Software Under Department of Defense Contracts: A Practical Handbook for Acquisition Professionals](#).” The Air Force handbook describes the use of a DR Attachment to clearly and specifically define data rights for each contract data deliverable.

Army subject matter experts have adopted the DR Attachment concept with minor modifications and highly recommend its use in conjunction with DFARS provision 252.227-7017 for all research & development RFPs. Detailed explanations of the DR Attachment concept and its uses are discussed in this section and referenced sections.

RECOMMENDATION:

Incorporate a Data Rights Attachment in research & development Requests for Proposal and contracts.

i. DR Attachment Contents

The DR Attachment consists of three tables as shown in Figure 42. Table 1 is for Technical Data associated with noncommercial products and noncommercial Computer Software, Table 2 is for Technical Data associated with commercial products and commercial Computer Software, and Table 3 is for Contract Administration (cost, financial, schedule) information and data that does not fall within the DFARS definitions of Technical Data or Computer Software.

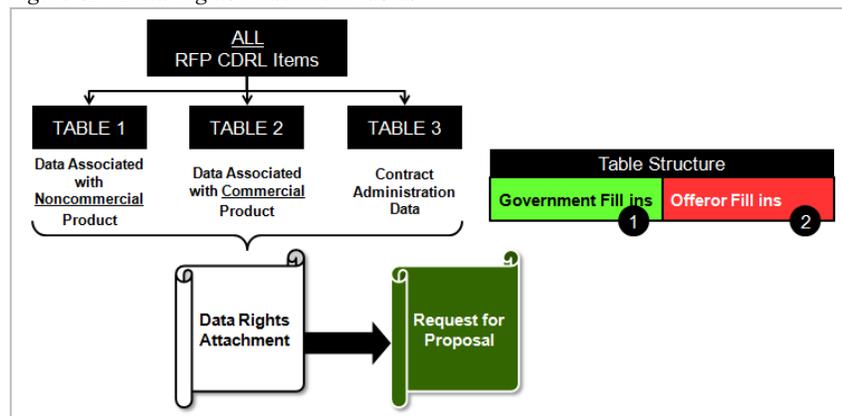
Each data requirement (CDRL) from the RFP is put into one of the three tables according to DR Attachment criteria. The program team fills in the left columns of the tables (Figure 42, Item 1) to specify the desired data rights for each CDRL before the DR Attachment is included in the RFP.

Offerors fill in the right columns of the tables (Figure 42, Item 2) to specify agreement, agreement with conditions/terms, or disagreement, to grant the desired rights. There are some cases where offerors will be requested to fill in the left columns. The offeror-

completed tables constitute the complete DR Attachment, which is included in the proposal. The references listed identify other sections that discuss the DR Attachment.

REF: General DR Attachment Process [§ 305.A, p 111]; Government Preparation of DR Attachment [§ 305.B, p 111]; Offeror Fill In of DR Attachment [§ 305.C, p 115]; Example Review of Offeror Submitted Table 1 [§ 305.D, p 117]; DR Attachment Table 1 Changes before Contract Award [§ 305.E, p 118];

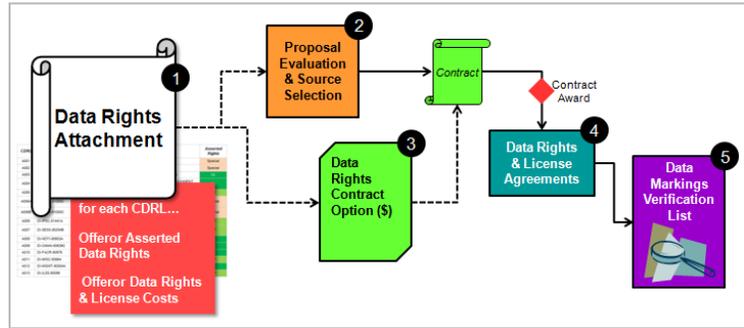
Figure 42 - Data Rights Attachment Tables



ii. DR Attachment Uses & Benefits

The completed DR Attachment can provide valuable information for the program team. The offeror data rights and license costs information (Figure 43, Item 1) can support future competitiveness evaluations between offeror solutions as part of the source selection process (Figure 43, Item 2). The data rights and license costs can be combined into a data rights contract option with the data rights costs defining separately exercisable options (Figure 43, Item 3). The DR Attachment information also provides a significant head start when defining data and data rights license agreements with the winning offeror (Figure 43, Item 4). Finally, the DR Attachment provides the program team an easy to use reference to verify the data markings of delivered data (Figure 43, Item 5).

Figure 43 - Data Rights Attachment Uses



REF: General DR Attachment Process [§ 305.A, p 111]; Offeror Fill In of DR Attachment [§ 305.C, p 115]; DR Attachment Table 1 Changes before Contract Award [§ 305.E, p 118];

L. Data Rights Assertion Provision (RFP - Section K)

Section K is where provisions or requirements related to the RFP itself are listed. This information pertains primarily to the solicitation and most of the content is not included in the resulting contract. It is frequently **not** in an offeror's best interest to communicate what proprietary design content they intend to use to meet the contract requirements. However, the program team needs to clearly understand all data rights restrictions to avoid costly data use limitations, sole source items, or time consuming negotiations later in the program. Therefore, programs must require offerors to identify data rights assertions as part of the proposals in response to a development effort RFP.

DFARS Provision 252.227-7017, "Identification and Assertion of Use, Release, or Disclosure Restrictions" should be included in Section K of all RFPs because the required information is critical to understanding and evaluating proposed restrictions on the Government's ability to use or disclose delivered Technical Data or Computer Software.

Figure 44 - DFARS Provision 252.227-7017 Assertion Table Format

Technical Data or Computer Software to be Furnished With Restrictions	Basis for Assertion	Asserted Rights Category	Name of Person Asserting Restrictions
For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such item, component, or process.	Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions.	Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited, restricted, or government purpose rights under this or a prior contract, or specially negotiated licenses).	Can list corporation, individual, or other person, as appropriate.
For computer software or computer software documentation identify the software or documentation.			
Date	_____		
Printed Name and Title	_____		
Signature	_____		

When included in a RFP, this provision requires offerors to identify any data to be delivered with rights more restrictive than Unlimited Rights. Using the table format prescribed in 252.227-7017 and shown in Figure 44, the offeror is claiming the data was developed entirely or partially with private funding and is asserting the right to restrict Government dissemination and use of that data.

REF: FAR and DFARS Details (RFP Section I) [§ 304.G, p 104];

RECOMMENDATION:

Include DFARS provision 252.227-7017 in Section K of research & development Requests for Proposal.

M. Instructions, Conditions, and Notices to Offerors (RFP - Section L)

Section L of the RFP includes content from the source selection plan including instructions for offerors regarding how to format, separate, and submit proposals for evaluation. The information in Section L primarily pertains to the solicitation and most of the content is not included in the resulting contract. The following sections discuss content for specific areas of instruction.

i. DR Attachment Instructions

NEW DR Attachment instructions are new content for Section L. Program teams should work with their legal advisors to word the instructions regarding the DR Attachment. The [Air Force Data Rights Handbook](#) contains DR Attachment instruction examples.

Section L instruction content Suggested from the handbook includes:

- “...explain in Section L its minimum needs for rights in technical data and computer software and the pedigree of those needs so that if such a protest results, the program office will be able to establish that rationale existed prior to release of the RFP – it is not some after-the-fact rationale the program office created after the protester filed its protest.”
- “...emphasize that the technical data and computer software rights described in the DFARS clauses listed in Section I of the RFP are the rights the program office expects to receive in exchange for paying for development of the technical data or computer software. The purpose of this information is to warn offerors they should not propose the Government have to pay an additional cost for acquiring those rights.”
- “...describe how the offerors Technical volume must explain how its Data Rights Attachment will meet the Government's minimum needs and will result in an executable program underneath the appropriate sub factor(s).”
- “...describing how they must fill-in their Data Rights Attachment...”
- “... requiring them to complete their DFARS § 252.227-7017 certification/representation consistent with the manner in which offerors have filled-in the tables in their Data Rights Attachment.”
- “...require offerors to provide copies of all licenses associated with all commercial technical data and computer software the offeror proposes to deliver to the Government.”

Additional instruction content suggestions include:

- Require copies of all terms and conditions associated with Government acquisition of additional data rights from the offeror.
- Require acceptance or revision proposals to the specifically negotiated license terms for Contract Administration Data defined in the DR Attachment of the RFP.

ii. Data Rights Option Instructions

NEW

The Government is required to inform offerors what contract options will be included in proposal cost evaluations. The Data Rights Option costs defined by offerors in the proposal DR Attachment should be required, but not be subject to any Government cost analysis, nor included in the proposal cost evaluation. This decision may appear to contradict the requirements set forth in FAR [Subpart 15.4—Contract Pricing](#). The issue is that no generally accepted methods to calculate the value of data rights exist. Subsequently, there are no means for the Government to analyze or determine the reasonableness of individual offeror proposed rights costs.

Although not subject to Government cost analysis, the data rights option cost information is needed to define the offeror price for the Government to exercise data rights options by specific CDRLs.

Note: Offerors must be given the choice to **not** price some or all of the data rights options for rights beyond the standard for the RFP to comply with the DFARS clauses discussed in the Source Selection and Data Rights section [§ 205.E, p 59].

N. Proposal Evaluation Criteria (RFP Section M)

Section M of the RFP includes content from the Source Selection Plan including proposal evaluation factors, subfactors, and their relative importance.

REF: [RFP Input - Source Selection Plan \[§ 205.D, p 57\]](#);

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206. PROPOSAL EVALUATION AND DATA & DATA RIGHTS LICENSE AGREEMENTS

This section provides guidance on evaluating offeror proposals for data related content, how to calculate what, if any, data rights options should be exercised, and the need to document and store data and data rights licenses.

A. DR Attachment and Assertions Inspection

Table 13 lists proposal content that should be inspected during the evaluation process.

Table 13 - Proposal Content Inspection Checklist

√ DR Attachment completely filled in by Offeror
√ Table 1 CDRLs separated to have identical data rights
√ Table 1 CDRLs identified with less than Unlimited Rights have corresponding rights assertion per DFARS 252.227-7017 provision
√ Copies of terms and conditions to acquire additional rights for applicable CDRLs listed in Table 1 (if applicable) included in proposal
√ Copies of commercial licenses for all CDRLs listed in Table 2 of the proposal
√ Offeror acceptance of or proposed modifications (if applicable) to the specifically negotiated license terms defined in the Government RFP

B. Commercial License Review & Approval

Copies of all license agreements associated with commercial Technical Data or Computer Software should be included with the DR Attachment. The specific content and terms of these licenses should be carefully reviewed by Government legal counsel during the proposal evaluation phase to ensure the terms are legally acceptable. There is the potential that some of the commercial license terms may contradict Federal law and therefore be unacceptable. There is also the potential the terms may simply not align with program technical requirements (e.g., site license versus individual licenses). Any issues found with the commercial licensees should be reported to the Procuring Contracting Officer for follow-up with the offeror.

Once the issues are resolved to the satisfaction of both parties, the commercial licenses must be made attachments to the contract prior to award.

C. Data & Data Rights License Agreement Documentation

The content of license agreements should address what specific data is covered by the license, the terms of use for that data, and any marking requirements. License agreements for commercial Computer Software usually include all of this information.

However, information from a range of sources is usually needed to fully define a license agreement for data associated with a noncommercial product. Figure 45 depicts how these information sources can be combined to meet the content requirements for a license agreement associated with a noncommercial product.

DFARS clauses 252.227-7013, 252.227-7014, and 252.227-7018 fully define the terms of use for Unlimited, Government Purpose, Limited, Restricted, and SBIR Data Rights for Technical Data and noncommercial Computer Software. These DFARS clauses are also the authoritative source for all Government data rights marking definitions. However, these clauses do not identify what contract deliverables are associated with a particular data right.

The data rights assertion list required by DFARS provision 252.227-7017 should identify any data to be delivered to the Government with less than Unlimited Rights. An offeror assertion list may or may not specify what CDRLs are affected but the DR Attachment is the recommended method to fully document what data deliverables are associated with what data rights.

Figure 45 - Data and Data Rights License Agreement Documentation

"What" Agreement Content	"How" Contract Content			
	DFARS Clause 252.227-7013, -7014 or -7018	Specifically Negotiated License Rights Agreement	Offeror Assertions List	Data Rights Attachment
	<i>associated with noncommercial hardware or software only</i>			
✓ Terms of Use	YES*	YES	Reference DFARS	YES (Table 3 Only)
✓ Specific Data Applicability	NO	Possibly**	Possibly**	YES
✓ Marking Requirements	YES	Reference DFARS	Reference DFARS	Reference DFARS

*for Unlimited, Government Purpose, Limited or Restricted data rights
**specific data assignments not required

If the terms of use defined in the DFARS are modified by mutual agreement between the Government and contractor, the revised terms must be documented in a Specifically Negotiated License Rights agreement. Contract Administration information is not addressed by any DFARS clause and the terms of use for this data should be documented in a Specifically Negotiated License Rights agreement.

D. License Agreement Resolution

Assertions of restrictions in noncommercial technical data and computer software are not necessarily determinative of final license agreements but may be subjected to pre-award or post-award challenge procedures. However, the DFARS discourages delay of competitive source selections by pre-award challenges "unless resolution of the assertion is essential for successful completion of the procurement." This creates a dilemma since agreeing to licenses prior to resolution of any questions regarding the propriety of asserted restrictions and only resolving questions after a contract is awarded may both be disadvantageous to the Government.

Legal counsel should be consulted with a consideration of whether specific license agreements made pre-award and related to questionable assertions can be maintained as subject to later challenge. In addition, when time constraints do not permit resolution of all restriction concerns, priority should be given to

CDRLs identified as key. The content of license agreements should address what specific data is covered by the license, the terms of use for that data, and any marking requirements. License agreements for commercial Computer Software usually include all of this information.

Accepted license agreements should be included as attachments in a contract.

E. Post-Award Data Rights Options Decisions (Concept)

CONCEPT The data rights options cost information included in the contract DR Attachment can be used to determine what, if any, data rights options should be exercised. For each CDRL with a priced data rights option, the program can roughly calculate whether acquiring the additional rights is advantageous to the Government.

The decision whether to exercise any data rights options should be made no later than the end of the contract. These decisions should preferably be made early in the contract to avoid disagreements or misunderstandings of data rights entitlements when data is delivered.

The determination can be made by comparing the estimated life cycle costs for three program paths:

- Acquire the additional data rights and competitively purchase and support the item
- Do not acquire the additional rights and procure the item and support from the sole source
- Embark on a reverse engineering program to replace the restricted rights item

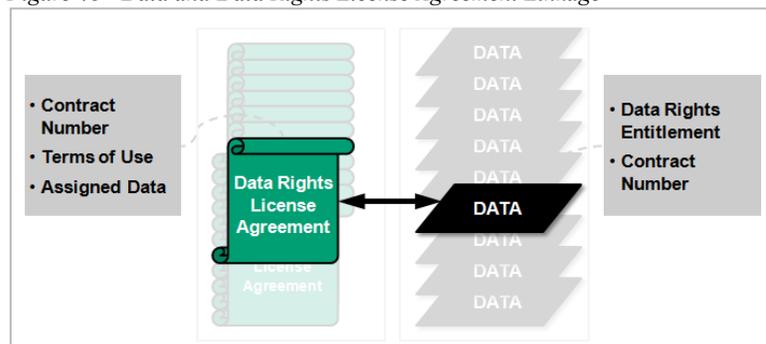
The Data Rights Options Decision Details (Concept) [§ 306, p 119] section discusses these calculations.

F. Post-Award Data & Data Rights License Agreement Storage & Use

It is important to keep track of all data and data rights license agreements throughout the life cycle of a program and beyond. The data rights markings and license agreements are the main source of information describing rights restrictions and how they affects the distribution and use of the data.

The license agreement terms of use should be understood and available to anyone that may be sharing or releasing data to support development, manufacturing, and product support efforts. Data rights are normally granted to the Government as a whole rather than a specific organization or program. As such, other Government organizations may wish to use the Technical Data or Computer Software acquired by another program and will need to understand the terms of use. To facilitate this information sharing and reuse, data repositories should be configured to link license agreements and the subject data as shown in Figure 46.

Figure 46 - Data and Data Rights License Agreement Linkage



There are significant financial impacts to the Government as a whole and possible jail time for Government employees if data is distributed to unauthorized parties in violation of data or data rights

license agreements. Awareness of these terms of use will avoid misunderstandings regarding what information can be shared outside of the Government and items can be competitively procured.

RECOMMENDATION:

Maintain records of all data and data rights license agreements and link them to the applicable data.

G. Sole Source Data & Data Rights License Agreement Negotiations

Reserved for Future Use.

207. DATA DELIVERY, VERIFICATION, AND ACCEPTANCE

This section discusses the need to have data delivered and the range of inspection and verification steps needed before the Government accepts any data.

A. Data Delivery

Programs **should take delivery** of all Technical Data and Computer Software ordered as part of a contract.

As a practical matter, it is simply the best way to confirm possession, quality, and data rights status of the acquired data. Some acquisition professionals believe merely having “access” to the data is sufficient. This is not true! To enforce the data rights marking requirements and empower the Government to validate and/or challenge restrictions on data, data must be properly required to be delivered. Merely requiring access does not secure the Government's license rights.

The time and resources spent to perform inspection and acceptance of data items are small compared to the potential disagreements and costs avoided. Additionally, data stored only in a contractor repository has the risk that the Government may be denied access to the data should there be a disagreement between the two parties.

RECOMMENDATION:

Verify Technical Data and Computer Software data ordered as part of a contract is actually delivered or otherwise furnished.

B. Data Rights Marking Verification

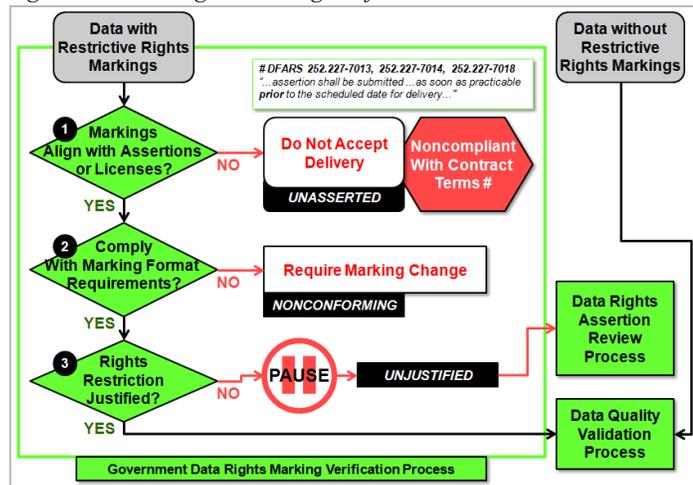
Any data delivered to the Government with restrictive markings should have those markings verified before acceptance. The process shown in Figure 47 is derived from applicable content of DFARS clauses 252.227-7013, 252.227-7014, and 252.227-7018.

Noncommercial data delivered **without** any restrictive data rights markings is treated as having Unlimited Rights and the rights marking verification process is not needed.

The three verification steps are (1) assertion alignment, (2) markings format conformance, and (3) rights restriction justifiability. Each of these steps is discussed in the following sections.

Although this verification process is focused on Technical Data associated with a noncommercial item, noncommercial Computer Software, and SBIR data, the assertion alignment step is also applicable to commercial data.

Figure 47 - Data Rights Marking Verification Process



i. Assertions Alignment Verification

The first step is to check that the data rights markings align with the contractor Data Rights Assertion Provision (RFP - Section K), the Data Rights Attachment (RFP - Section J), or Post-Award Data Rights Assertions.

The DR Attachment is especially useful for this step because it defines the data rights assertion for each CDRL item as shown in Figure 48. The data rights markings should align with the rights listed in the DR Attachment.

Any data delivered with a data rights marking that does not align with a previously asserted data right is noncompliant with the terms of DFARS clauses 252.227-7013, 252.227-7014, or 252.227-7018 which require an “...assertion shall be submitted ...as soon as practicable **prior** to the scheduled date for delivery...”

Consequently, the data delivery cannot be the first time an additional data rights restriction is disclosed to the Government. Any data delivered with restrictive markings and without a corresponding data rights assertion should not be accepted.

Figure 48 - Data Rights Attachment and Data Rights Markings

CDRL	DID Number	Data Item Title	Asserted Rights
A001	DI-MGMT-8145	LIST (DAL)	Special
A002	DI-MGMT-8146	STATUS REPORT	Special
A003	DI-CMAA	STATUS ACCOUNT	UL
A004	DI-IPSC-81174	FREQUENCY ALLOCATION DATA ALLOCATION AND ASSIGNMENT DATA	UL
A005	DI-SESS-81000C	PRODUCT DRAWINGS/ MODELS AND ASSOCIATED LISTS	GP
A005A	DI-SESS-81000C	PRODUCT DRAWINGS/ MODELS AND ASSOCIATED LISTS - Subcomponent X	Special
A005B	DI-SESS-81000C	PRODUCT DRAWINGS/ MODELS AND ASSOCIATED LISTS - Subcomponent Y	Special
A006	DI-IPSC-81441A	SOFTWARE PRODUCT SPECIFICATION (SPS)	GP
A007	DI-SESS-80294B	MAINTENANCE TEST AND SUPPORT EQUIPMENT REQUIREMENT STATEMENT	GP
A008	DI-NDTI-80603A	TEST PROCEDURE	UL
A009	DI-CMAN-80639C	ENGINEERING CHANGE PROPOSAL (ECP)	UL
A010	DI-FACR-80976	FACILITIES PLAN FACILITY REQUIREMENT PLAN	UL
A011	DI-MISC-80564	VULNERABILITY ANALYSIS REPORT	GP
A012	DI-MGMT-80004A	MANAGEMENT PLAN ENGINE LIFE MANAGEMENT PLAN	UL
A013	DI-IJSS-80095	INTEGRATED LOGISTICS SUPPORT PLAN ILSP	GP

REF: Data Rights Attachment (RFP - Section J) [§ 205.K, p 65]; Data Rights Assertion Provision (RFP - Section K) [§ 205.L, p 67]; Post-Award Data Rights Assertions [§ 207.C, p 77];

ii. Format Conformance Verification

The second step is to check the data rights markings for conformity with the marking formats defined in the applicable DFARS clause included in the contract.

Markings for Technical Data associated with a noncommercial item or noncommercial Computer Software must conform to the formats required by DFARS clauses 252.227-7013, -7014, or -7018. This issue generally involves a contractor using terms like “All Rights Reserved,” “XYZ Proprietary,” or “XYZ Company Confidential” to mark this type of data rather than the exact wording specified in these clauses. The Contracting Officer has the authority to order these nonconforming markings be removed and corrected. Contractors typically have 60 days to make the corrections and resubmit the data.

Note the DFARS does not specify any marking requirements for Technical Data associated with a commercial item. If this type of data is received without any restrictive markings, the Government is relieved of any liability for releases of such data.

Also, note that the DFARS does not address marking requirements for commercial Computer Software. These markings must be specified in the associated license.

REF: Data Markings Fundamentals [§ 104, p 23]; Data Markings Details [§ 302, p 93];

iii. Rights Restriction Justification

The third verification step focuses on the justification of the data rights assertion on which the restrictive rights marking was based. This step is primarily applicable to Technical Data associated with a noncommercial item, noncommercial Computer Software, and SBIR data.

The contractor data rights assertions or DR Attachment included in the awarded contract is not an indication that the Government has accepted the assertion. As discussed in the [Data Rights Assertions Review](#) section [§ 207.D, p 78], these assertions may be subjected to post-award challenge procedures.

If the validity of the assertion is questioned, the associated data should not be accepted until a data rights assertion review has been completed. Note Government representatives must honor the applied rights markings until the assertion review process is complete.

REF: [Data Rights Assertions Review](#) [§ 207.D, p 78];

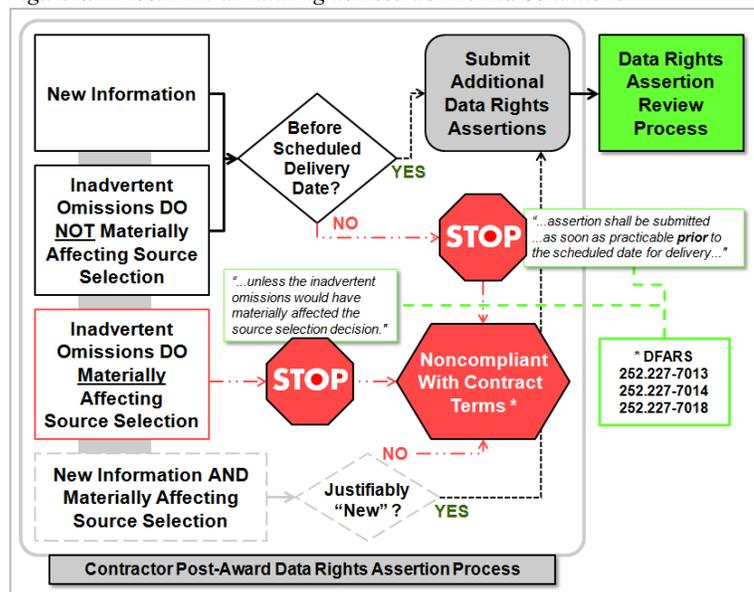
C. Post-Award Data Rights Assertions

It is possible for a contractor make additional data rights assertions after award under certain circumstances. DFARS clauses 252.227-7013, 252.227-7014, and 252.227-7018 state “...other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision.”

These clauses further state “Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable **prior to the scheduled date for delivery** of the technical data or computer software, in the following format, and signed by an official authorized to contractually obligate the Contractor.” (Underlining added). The “following format” mentioned in the quoted text is a table format like that in the data rights assertion provision 252.227-7017 used in RFPs.

The process for post-award data rights assertions is shown in Figure 49. In summary, post-award data rights assertions are permitted if they relate to new information or inadvertent omissions that would not have materially affected the source selection decision. The term “new information” is not clearly defined in the DFARS. However, if a post-award assertion can be tied to a change made by the Government, it would be reasonable to call it new information. In either case, these assertions must be submitted to the Government before the scheduled data delivery date. Assertions that meet these requirements, are subsequently reviewed using the [Data Rights Assertions Review](#) process [§ 207.D, p 78].

Figure 49 - Post-Award Data Rights Assertion Terms/Conditions



Post-award assertions for inadvertent omissions that would have materially affected the source selection decision, or submitted after scheduled data delivery date, do not comply with the terms of the above mentioned clauses. In such cases, the Government is not obligated to evaluate or accept the new assertions.

Contractor post-award assertions, allegedly based on new information that is not the result of a Government change, and, would have materially affected the source selection decision, should be thoroughly scrutinized by the Government. A typical case occurs when a new subcontractor is selected and has the right to assert new data rights restrictions. The Government must determine if selection of the new subcontractor is justified or was planned or intended by the prime contractor as a means to conceal data rights assertions during the source selection process. If the assertion is justifiably “new,” the program should consider negotiating for an equitable adjustment to the contract price if the assertion review process determines the assertion to be justified.

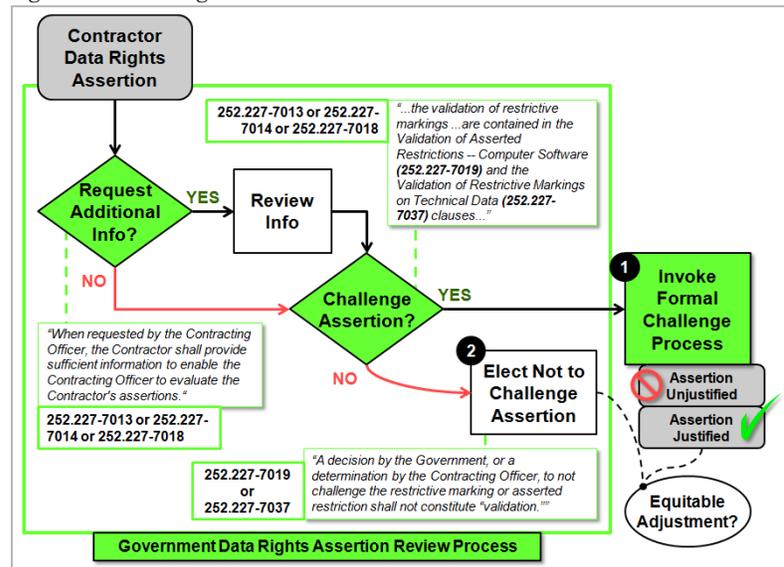
D. Data Rights Assertions Review

The Government data rights assertion review can involve a request for additional information and/or the formal and protracted “challenge” process as shown in Figure 50.

If the program is interested in obtaining additional information to evaluate a contractor data rights assertion, language from DFARS 252.227-7013(e)(4), 252.227-7014(e)(4), and 252.227-7018(e)(4) permit such a request without invoking the formal challenge process. The language states, “When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor’s assertions.” The program team can then use the requested information to determine whether to invoke the formal challenge process.

The formal data rights assertion challenge processes are defined in DFARS clauses 252.227-7019 (Validation of Asserted Restrictions--Computer Software) and 252.227-7037 (Validation of Restrictive Markings on Technical Data). Each clause prescribes a multitude of stringent steps both the Government and contractor must follow before the contracting officer determines whether the assertion is justified or unjustified.

Figure 50 - Data Rights Assertion Review Process



The results of the data rights assertion review process is a Government determination to: (1) invoke the formal challenge process, (2) elect not to challenge the assertion.

The election not to challenge an assertion is not an indication the Government accepts the assertion. DFARS 252.227-7019 and 252.227-7037 state “A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute

“validation.”“ This determination is basically a decision not to challenge an assertion and may be a viable option depending the program circumstances at the time.

If the Government determines a post-award assertion to be justified, or elects not to challenge it, and the assertion would have materially affected the source selection decision, there are circumstances where it is reasonable to negotiate with the contractor for an “equitable adjustment” to the price of the contract. This type of assertion will likely lead to unforeseen increases in sustainment costs for the Government. As such, some amount of cost sharing between the contractor and the Government may be appropriate.

Throughout the assertion review process, Government representatives must honor the applied rights markings until the process is complete.

REF: Data Rights Assertion Provision (RFP - Section K) [§ 205.L, p 67]; Commercial License Review & Approval [§ 206.B, p 71]; License Agreement Resolution [§ 206.D, p 72];

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208. DATA MANAGEMENT AND USE

Most, if not all, of the Technical Data and Computer Software associated with a product will need to be maintained and used throughout its life cycle. This section discusses the need to maintain and use data and then discusses the processes and infrastructure necessary to perform these functions.

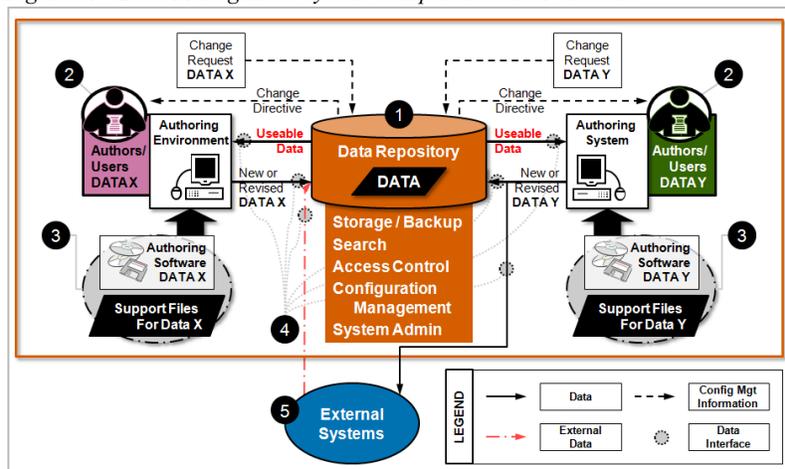
A. Data Management System Components & Functions

Effective data management and use is best described in the context of a typical data management system.

This system exists to support the creation, revision, storage, and sharing, and protection of the data it stores. A range of components and processes are needed to accomplish this task as shown in Figure 51.

These include the data repository system itself (Item 1), data authors and users (Item 2), data authoring environments (Item 3), data interfaces (Item 4), and external data systems (Item 5). Each of these components is discussed in the following sections.

Figure 51 - Data Management System Components and Functions



B. Data Repository

The data repository (Figure 51, Item 1) provides storage for a variety of data items. It should support data searching, configuration management, access or modification control, and restoration.

i. Storage, Backup, & Restoration

The data repository system must be capable of storing, backing up, and recovering all the data items it stores. The system should be able to restore any data items lost due to accidental deletion, file corruption, or disaster.

ii. Search Function

The data repository should support user or system searches to locate specific data items. The extent to which a data item can be located within a system is directly related to the quantity and quality of Metadata elements assigned to them. Inclusion of the proper metadata element values should be verified before an item is accepted into the repository. These metadata values will greatly enhance a user's ability to find that data item.

REF: Repository Metadata Requirements [§ 202.I, p 40];

RECOMMENDATION:

Define and publicize metadata requirements for each data repository; require applicable metadata element values be properly entered before accepting data items into repository.

iii. Configuration Management

Once a product's design and support concepts are approved for release, a Product Baseline should be established and placed under Configuration Management (CM). CM is a process for establishing and maintaining consistency of a product's attributes with its requirements, design and operational information throughout its life.

A single set of “master” Product Configuration Documentation should be established as the authoritative source for all subsequent copies of that data to be used. CM ensures that modifications to the product and its associated documentation are reviewed and approved before any change is made to the defined master data.

CM processes ensure that baselines are defined, only approved changes are made to the product data, and the physical product configurations are updated accordingly. When a proposed change to a configuration item is approved, there are usually corresponding modifications required to the data and documentation associated with the configuration-managed item.

Traditional CM processes would require these changes be approved by an authorized individual known as the Configuration Approval Authority before the master set of data can be altered. Once the data is changed, traditional CM processes would require the Configuration Approval Authority confirm that all the changes were done correctly.

The Approval Authority then “releases” the new versions of the data into the data management system, with new identifiers (usually a revision level or date marking), to differentiate it from any prior versions. An audit trail must be kept describing each change to the product configuration or configuration describing data, the data to be changed, the approver of the change, when the change was made to the associated data, and when the change was incorporated into physical configurations of the item.

The data repository must prevent unauthorized modification to the master set of Product Configuration Documentation and be capable of identifying who users are, control what data they have access to, and control what functions they are allowed to perform with that data. While many people may have permissions to view and copy from the master set of product data, only a very limited number of users should have the ability to modify the master data. Any data modifications should be done in accordance with the program's CM procedures.

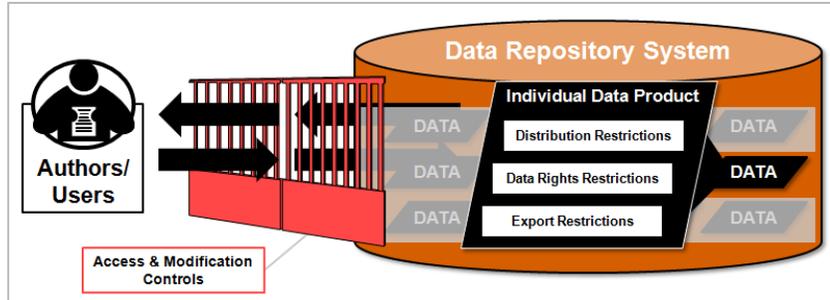
RECOMMENDATION:

Place data associated with product configurations under Configuration Management control.

iv. Access Controls

Data users must know of any restrictions regarding access to or distribution of each data product and the data management system must be configured accordingly. Distribution Statement, Data Rights Marking, and Export Control information are all methods to ensure proper access control and must be known about each data product as shown in Figure 52. This information should be included in the data product content and defined as metadata element values.

Figure 52 - Users and Access/Modification Control



As discussed in the Post-Award

Data & Data Rights License Agreement Storage & Use section [§ 206.F, p 73], unauthorized release or disclosure to a third party of any data with access restrictions can have a significant financial impact to the Government. It can also result in criminal penalties for Government employees involved per 18 U.S.C. § 1832. [Theft of trade secrets](#) and 18 U.S.C. § 1905. [Disclosure of confidential information generally](#). Proper marking of the data combined with data management system capabilities and user education can avoid these situations.

To ensure full compliance with data access restrictions, yet allow maximum data sharing and use, the data management system should have detailed business rules and user roles requirements to control access to specific data. This is a complex task and the system should minimally determine proper access to individual data objects for each user based on the combination of distribution statement and data rights marking.

Government personnel can usually access and use Limited and Restricted Rights data for purposes other than manufacture. Contractor access to Limited and Restricted Rights data will require that the recipient's contract include DFARS 252.227-7025 or a non-disclosure agreement (NDA) between the user requesting the data and the data originator. An NDA binds the user from disclosing the restricted data without authorization from the data originator or owner.

[DFARS 227.7103-7 Use and Non-Disclosure Agreement](#) provides a standard form for a non-disclosure agreement. Inclusion of DFARS clause 252.227-7025 in a contract can also serve as a Government NDA that a contractor agrees to with acceptance of the contract.

A distinction must be made between a generic Contractor and the special case of a Covered Government Support Contractor (CGSC) relative to the need for an NDA. Contractors directly furnish an end item or service to accomplish a Government program or effort. CGSCs work directly with the Government to support the management and oversight of a program or effort. CGSCs can generally have data access permissions similar to DoD and Government employees without the need for an additional NDA **provided** the support contract contains DFARS clause 252.227-7025 **and** the contractor meets all the requirements to be a covered Government support contractor.

RECOMMENDATION:

Control data access based on Distribution Statement designation, Data Rights Restrictions, License Agreements, and Export Controls.

v. Repository System Administration

Any data repository system will require administration of the entire system including infrastructure and hardware updates, user accounts, backups, and repository software updates.

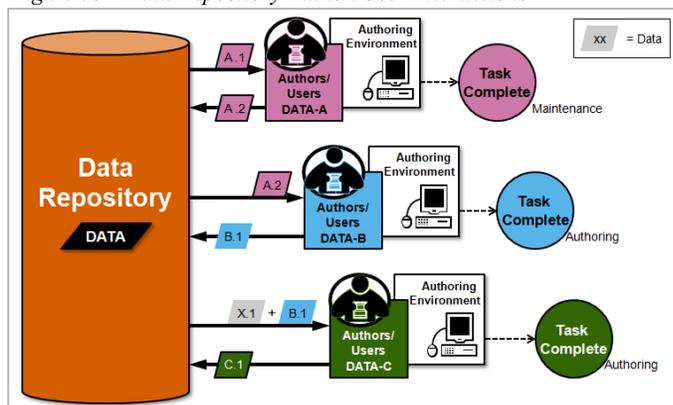
REF: Data Repository System Choices [§ 202.H, p 39];

C. Data Repository Author/User Interactions

Data users (Figure 51, Item 2), typically retrieve information from the data repository to accomplish a task. That task can involve either revision of existing data (data maintenance) or authoring new data.

These tasks require specific data for input and frequently involve the creation of new (or derivative) data. Figure 53 depicts a scenario where one user has the task to update data product A.1 to create data product A.2. Other users may require the A.2 data to accomplish their task, which leads to more derivative data (B.1). This scenario is repeated throughout a program while users maintain and create data to support the effort.

Figure 53 - Data Repository Author/User Interactions

**D. Data Authoring Environments**

Data Authoring Environments (Figure 51, Item 3) are the tools and supporting data needed to create or modify a specific set of data stored in the repository system. Data authors using these environments will need to interact with the data repository system in order to retrieve and modify or submit new data.

REF: Computer Aided Design (CAD) Authoring Environment [§ 205.B.ii, p 54]; Computer Software and Authoring Environment [§ 205.B.iii, p 55];

E. Data Interfaces

The ease with which data can be shared or exchanged (Figure 51, Item 4) can significantly affect program success. A typical acquisition program data management system performs data interactions where data products are transferred from one system to another. These interactions require exchange protocol definitions and metadata requirements. Data system interface requirements are specific to the systems involved and beyond the scope of this guide. Program teams should contact the repository system administrator to understand the repository data exchange protocols.

F. External Systems

It is likely the data management system will need to supply data to and receive data from other systems (Figure 51, Item 5). These interactions can be highly efficient but care must be taken to prevent unauthorized access to data or user information. In general, external systems should comply with all of the user access requirements before any transactions are begun.

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209. DATA & DATA RIGHTS PROGRAM CHECKLIST

This program checklist is a compilation of the key recommendations that should be followed to have a robust program from a data and data rights perspective. The checklist recommendations are hyperlinked to the relevant Guide section.

201. Intellectual Property Strategy

- ✓ Develop a comprehensive Intellectual Property Strategy and use it to govern data and data rights related program activities.

202. Life Cycle Data and Data Rights Requirements

- ✓ Synchronize the Program Plans and Strategies to have aligned program objective(s), development concept, and sustainment concept, before gathering data and data rights requirements.
- ✓ Gather short- and long-term data and data rights requirements from every subject matter expert that will support the development, test, manufacture, operation, or support of the product.
- ✓ Utilize a Government enterprise data repository to store and manage delivered data.

203. Data & Data Rights Related Life Cycle Costs

- ✓ Analyze costs and benefits of acquiring additional data rights, if offered.
- ✓ Include data and data rights related Research & Development costs in the program life cycle cost estimate.
- ✓ Include data and data rights related Investment (procurement) costs in the program life cycle cost estimate.
- ✓ Include data and data rights related Operating and Support costs in the program life cycle cost estimate.

204. Data & Data Rights Potential Risks

- ✓ Assess potential data & data rights risks and take steps to mitigate them.

205. Request for Proposal and Source Selection Plan

- ✓ Order a complete Technical Data Package for product baselines (Allocated, Functional, and Product) during development of a noncommercial product.
- ✓ Order a complete set of the native Computer Aided Design files, including all standard library components, and require full documentation of the authoring tool(s) used in their creation.
- ✓ Order executable program, source code, supporting library files, and related documentation for noncommercial Computer Software.

- ✓ Discuss the impacts to product development, manufacture, and competitive or organic life-cycle support, with the appropriate subject matter experts before deciding not to acquire requested data.
- ✓ Update and resynchronize the relevant program strategies if the decision is made not to acquire any requested data.
- ✓ Order and take delivery of all required data regardless of data rights restrictions.
- ✓ Include contract option to acquire needed/desired additional data rights.
- ✓ Incorporate a Data Rights Attachment in research & development Requests for Proposal and contracts.
- ✓ Include DFARS provision 252.227-7017 in Section K of research & development Requests for Proposal.

206. Proposal Evaluation and Data & Data Rights License Agreements

- ✓ Maintain records of all data and data rights license agreements and link them to the applicable data.

207. Data Delivery, Verification, and Acceptance

- ✓ Verify Technical Data and Computer Software data ordered as part of a contract is actually delivered or otherwise furnished.

208. Data Management and Use

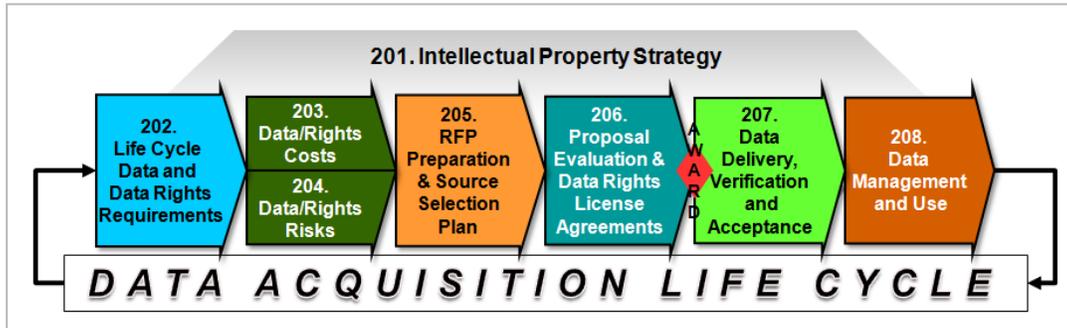
- ✓ Define and publicize metadata requirements for each data repository; require applicable metadata element values be properly entered before accepting data items into repository.
- ✓ Place data associated with product configurations under Configuration Management control.
- ✓ Control data access based on Distribution Statement designation, Data Rights Restrictions, License Agreements, and Export Controls.

300. DETAILED INFORMATION

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	102. Data Fundamentals		302. Data Markings Details
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301. DATA RIGHTS DETAILS

Additional information for topics discussed in the Data Rights Fundamentals [§ 103, p 13] section.

A. Unlimited Data Rights Entitlement Details

Table 14 lists the four DFARS clauses that identify certain types of data or conditions under which the Government is entitled to Unlimited Rights to the data. Table 15 lists the conditions or types of data, a summary of the Unlimited Rights entitlement, and indicates (“X”) which of the four clauses contains that provision.

Table 14 - DFARS Unlimited Rights Entitlements Table Legend

Table Heading	Clause Title	DFARS Clause
*7013 TD	Rights in Technical Data--Noncommercial Items	252.227-7013
*7014 CS	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation	252.227-7014
*7015 Com TD	Technical Data--Commercial Items	252.227-7015
*7018 SBIR	Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program	252.227-7018

Table 15 - DFARS Unlimited Rights Entitlement Details

Condition / Type of Data	Entitlement Summary	*7013 TD	*7014 CS	*7015 Com TD	*7018 SBIR
Funding Source	The Government is entitled to Unlimited Rights to Computer Software or data pertaining to an item, component, or process, or which has been or will be developed exclusively with Government funds.	X	X		
Type of Data (Studies, Analyses, Test Data)	The Government is entitled to Unlimited Rights to studies, analyses, test data, or similar data produced for the contract, when the study, analysis, test, or similar work was specified as an element of performance.	X			
Type of Data (FFF)	The Government is entitled to Unlimited Rights to Form, Fit, and Function Data. Form, Fit and Function data is data that describes the overall physical, functional, and performance characteristics of an item.	X		X	X

Condition / Type of Data	Entitlement Summary	*7013 TD	*7014 CS	*7015 Com TD	*7018 SBIR
Type of Data (OMIT)	The Government is entitled to Unlimited Rights to Operation, Maintenance, Installation and Training Data.	X		X	X
Type of Data (Computer Software Documentation)	The Government is entitled to Unlimited Rights to Computer Software Documentation required to be delivered under the contract.		X		
Source of Data	The Government is entitled to Unlimited Rights to corrections or changes to Technical Data or Computer Software originally furnished to the Contractor by the Government.	X	X	X	X
Data Availability	The Government is entitled to Unlimited Rights to any data that is publicly available or that has been released to third parties without restrictions on its use.	X	X	X	X
Previous/Other Agreements	The Government is entitled to Unlimited Rights to any data, which was obtained, with Unlimited Rights under another Government contract or as a result of negotiations.	X	X	X	X
Rights Restriction Expiration	The Government is entitled to Unlimited Rights to data originally furnished with rights restrictions when the terms of the restrictive condition(s) has/have expired.	X	X		X
Government Purpose Rights Restriction Expiration	The Government is entitled to Unlimited Rights to data originally furnished with Government Purpose Rights when the Contractor's exclusive right to use such data for commercial purposes has expired.	X	X		
Mixed Funding Source	The Government is entitled to Government Purpose Rights to data associated with items, components, or processes developed with a combination of Government and private funding.	X	X		

302. DATA MARKINGS DETAILS

Additional information for topics discussed in the Data Markings Fundamentals [§ 104, p 23] section.

A. Data Rights Markings Details

Technical Data associated with noncommercial products or noncommercial Computer Software provided by contractors must have DFARS compliant data rights markings. The specific markings for the data rights are defined in DFARS clauses 252.227-7013 and 252.227-7014. The following tables duplicate the information contained in these clauses as it pertains to: (A) Technical Data (Noncommercial Product) (Table 16), (B) Noncommercial Computer Software (Table 17), and (C) SBIR contract Technical Data and Computer Software (Noncommercial Product) (Table 18).

Table 16 - Technical Data (Noncommercial Product) Data Rights Markings

(A) Data Markings - TECHNICAL DATA NONCOMMERCIAL PRODUCT		
Rights Legend	Legend Text	DFARS Clause
GOVERNMENT PURPOSE RIGHTS Contract No.: Contractor Name: Contractor Address: Expiration Date:	“The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Technical Data-Noncommercial Items clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.”	252.227-7013 Rights in Technical Data-Noncommercial Items
LIMITED RIGHTS Contract No. Contractor Name: Contractor Address:	“The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(3) of the Rights in Technical Data--Noncommercial Items clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data, must promptly notify the above named Contractor.”	252.227-7013 Rights in Technical Data-Noncommercial Items
SPECIAL LICENSE RIGHTS	“The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. (Insert contract number), License No. (Insert license identifier). Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.”	252.227-7013 Rights in Technical Data-Noncommercial Items

Table 17 - Noncommercial Computer Software Data Rights Markings

(B) Data Markings - NONCOMMERCIAL COMPUTER SOFTWARE		
Rights Legend	Legend Text	DFARS Clause
GOVERNMENT PURPOSE RIGHTS Contract No.: Contractor Name: Contractor Address: Expiration Date:	“The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(2) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.”	252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation
RESTRICTED RIGHTS Contract No. Contractor Name: Contractor Address:	“The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software, must promptly notify the above named Contractor.”	252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation
SPECIAL LICENSE RIGHTS	“The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. (Insert contract number), License No. (Insert license identifier). Any reproduction of computer software, computer software documentation, or portions thereof marked with this legend must also reproduce the markings.”	252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation

Table 18 - SBIR Data Rights Marking

(C) Data Markings - SBIR Contract TECHNICAL DATA and COMPUTER SOFTWARE NONCOMMERCIAL PRODUCT		
Rights Legend	Legend Text	DFARS Clause
SBIR DATA RIGHTS Contract No. Contractor Name Contractor Address Expiration of SBIR Data Rights Period	“The Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted during the period shown as provided in paragraph (b)(4) of the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.”	252.227-7018 Rights In Noncommercial Technical Data And Computer Software--Small Business Innovation Research (SBIR) Program

B. DFARS Clause Data Rights Marking Format versus Validation Details

Data rights marking definitions and related validation processes are defined by DFARS clauses included in the contract. Table 19 shows how these DFARS clauses apply.

Table 19 - Data Marking Related DFARS Clauses

DFARS Clause	Title	Marking Format Definition	Marking Validation
252.227-7013	Rights in Technical Data--Noncommercial Items	X	
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation	X	
252.227-7018	Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program	X	
252.227-7019	Validation of Asserted Restrictions--Computer Software		X
252.227-7037	Validation of Restrictive Markings on Technical Data		X

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303. LIFE CYCLE DATA & DATA RIGHTS REQUIREMENTS DETAILS

Additional information on topics discussed in the Life Cycle Data and Data Rights Requirements [§ 202, p 33] section.

A. Metadata Standards

Table 20 identifies some Government and private industry standards that address metadata.

Table 20 - Metadata Standards (Partial List)

Type of Data	Standard
Technical Data package (TDP) Computer Aided Design data, TDP Data Management products	Military Standard MIL-STD-31000A “Technical Data Packages”
Logistics Information	ANSI GEIA-STD-0007-A, “Logistics Product Data”
Configuration Management Information	ANSI EIA-836-2002, “Configuration Management Data Exchange and Interoperability”

B. Sample Metadata Elements

Metadata elements are normally defined within the data management system. Table 21 lists sample metadata elements and characteristics that would be used with data objects stored in the system.

Table 21 - Sample Metadata Elements

Type	Metadata Element Name	Description	Type	Length
CAD	part_number	Item part number	Numeric	10 characters
CAD	revision_level	Design Revision Level	String	4 Characters
CAD	data_rights_code	Data Rights Designation	String	10 Characters
LOG	end_item_acronym_code	End Item Acronym Code	String	10 Characters
LOG	mean_time_between_failures_operational	Mean Time Between Failures	String	10 Characters
LOG	maximum_time_to_repair	Maximum Time To Repair (MAXTTR)	Decimal	Numbers from 0-999.99

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304. REQUEST FOR PROPOSAL PREPARATION DETAILS

Additional information for topics discussed in the Request for Proposal and Source Selection Plan, [§ 205, p 51] section.

A. Uniform Contract Format Details

Figure 54 shows page 1 of Standard Form 33 and descriptions of the content for each section.

Figure 54 - Uniform Contract Format (page 1) and Section Descriptions

Section	Description
Section B	Brief description of line items being purchased.
Section C	The Statement of Work or performance work statement describing the effort being contracted.
Section D	Packaging and Marking requirements associated with the contract effort.
Section E	Inspection and Acceptance criteria for the work being performed and data/items being delivered under the contract.
Section F	Defines the time, place, and method(s) to perform the effort required by the contract.
Section G	Defines the Government obligation and contractor requirements for the administration of the contract effort.
Section H	Describes provisions unique to the specific contract effort.
Section I	Lists the general clauses (FAR, DFARS, etc.) required by law, regulation, or specific to the contract in question.
Section J	Lists all exhibits and attachments to the contract followed by the actual items.
RFP Only	
Section K	Addresses information to be provided by offerors to show compliance with various provisions or requirements of the Request for Proposal.
Section L	Describes how offerors should prepare their offers to be considered "responsive" to the Request for Proposal.
Section M	Addresses specifically how proposals will be evaluated by the Government; includes the evaluation criteria and order of importance to the Government.

B. Competition

The Defense Acquisition University [Glossary of Defense Acquisition Acronyms and Terms](#) defines competition as “An acquisition strategy whereby more than one contractor is sought to bid on a service or function; the winner is selected based on criteria established by the activity for which the work is to be performed.” Competition benefits the Government by lowering costs and increasing the likelihood of efficiencies and innovations. The Competition in Contracting Act as implemented in FAR Part 6 and DFARS Part 206 sets the standard of competition for Federal contracts. The Government needs certain data **and** the appropriate rights to support competitive procurements.

Anecdote: Competition

“Though many of the defense industry's characteristics make competition difficult, most previous reports strongly encourage DoD to sustain competition to the maximum extent possible. Competition costs money at the front end, but in the long run can save the government money and improve contractor performance. Most experts agree that competition throughout a program's life cycle requires careful front-end planning to ensure that the government has access to the Technical Data Packages (TDP) necessary to compete a program at a reasonable price. Program characteristics typically requiring consideration include economies of scale, structure of Operations & Support (O&S) costs, and steepness of the contractor's learning curve.”

- “Army Strong: Equipped, Trained and Ready” Final Report of the 2010 Army Acquisition Review, Chartered by the Secretary of the Army, January 2011, p. 27

C. Data Item Descriptions (DIDs) Details

i. DID Resources

The official source of DIDs is the Defense Logistics Agency [ASSIST Quick Search Document Database](#) (ASSIST). Users are able to locate available DIDs for a particular subject area (e.g. “software”) but ASSIST does not offer any recommendations for which to use.

The Department of Defense (DoD) Standardization Program publishes a directory each fiscal quarter with a list of all DoD Standardization Area assignments and points of contact. The information contained in the [DoD Standardization Directory - 1](#) can be used to find contact information for the Approval Authority for any DID.

If no existing Data Item Descriptions (DIDs) provide sufficient content requirements or a new requirement is identified, a one-time DID can be created in accordance with [MIL-STD-963 \(Data Item Descriptions\)](#). One-time DIDs are approved for a unique data requirement applicable to a single contract, or to multiple contracts associated with a single acquisition program.

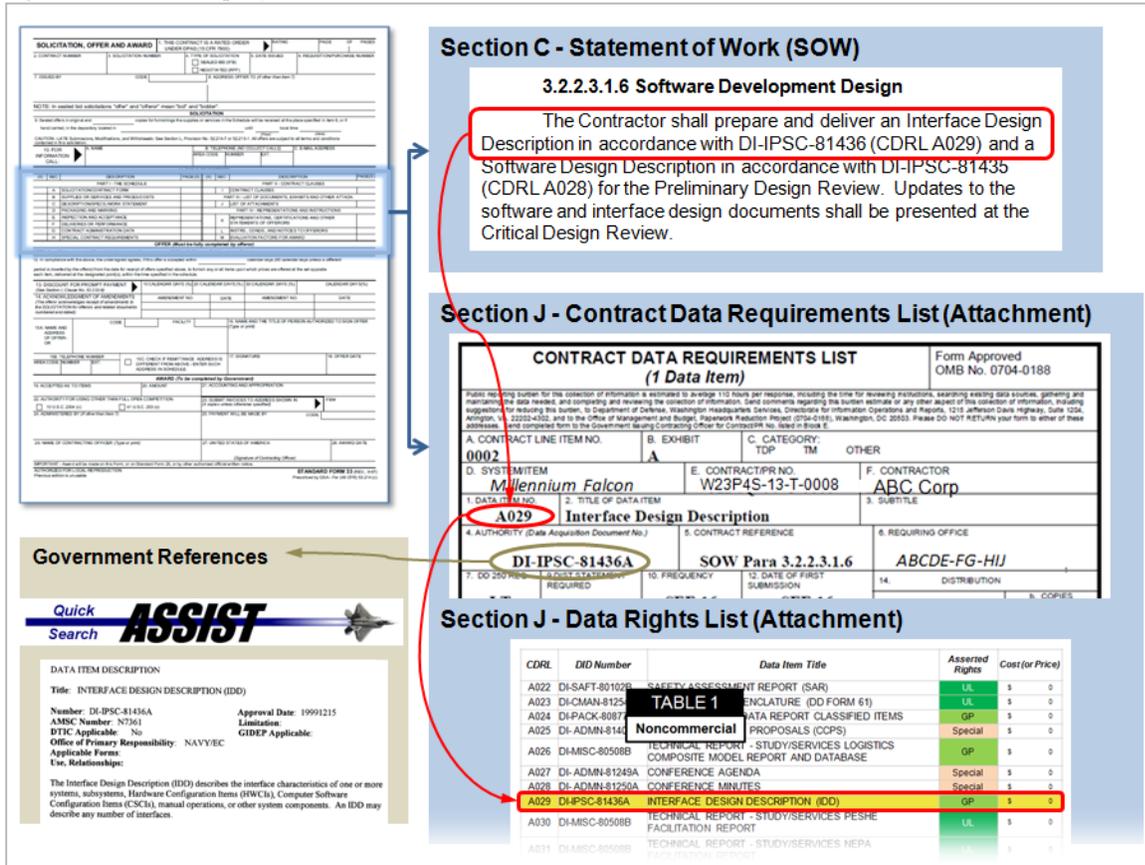
Another resource is the [ASSIST Online](#) DIDs Section which includes a DID Selector tool based on research done by the Air Force. The selector is focused on product and software data useful for competition, spare parts, operations & support, upgrades, production, etc. Contract Administration (e.g., financial, schedule, program management) DIDs are **not** addressed in this tool.

The selector tool displays DIDs based on the selection criteria chosen by the user. Information about each DID is then presented including priority, considerations, and information from ASSIST. The DID Selector tool is part of the [Air Force Product Data Acquisition Portal](#) web site contained in the Air Force equivalent of Army Knowledge Online. The pages are accessible by DoD Common Access Card registration and contain a great deal of reference information regarding data acquisition.

ii. Sample DID

A sample DID for Interface Design Description is shown in [Figure 55](#).

Figure 56 - Relationships of SOW, CDRL, DR Attachment, and DIDs



E. Contract Data Requirements List Details

The CDRL is the mechanism used to place data and delivery requirements on contract and is the bridge between the SOW and the Data Item Description (DID). While data should be inherently generated by a work task, recording and delivering the data in a specific format are cost drivers that must be considered when preparing the SOW and CDRL. The CDRL provides a contractual method to direct the contractor to prepare and deliver data that meets specific approval and acceptance criteria.

The offerors are asked in a CDRL to provide a price estimate for each data requirement. The Government requiring activity uses the price estimates to decide whether the need for the data is worth the dollars the data will cost. If the activity concludes that it still needs and can afford the data, the requirement stays on the list; if it concludes that the price may be too high, it modifies or deletes the requirement. DFARS clause 215.470 “Estimated data prices” defines the requirement to use a CDRL when data are required to be delivered pursuant to a contract.

Example content of a CDRL is shown in Figure 57.

Figure 57 - Example CDRL Content

CONTRACT DATA REQUIREMENTS (1 Data Item)											
Public reporting burden for this collection of information is estimated to average 110 hours per response, including reviewing the instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188), Washington, DC 20503.											
A. CONTRACT LINE ITEM NO. 0002		B. EXHIBIT A		C. CATEGORY: TDP TM OTHER							
D. SYSTEM/ITEM Millennium Falcon				E. CONTRACT/PR NO. W23P4S-13-T-0008		F. CONTRACT Area 51 L					
1. DATA ITEM NO. A029		2. TITLE OF DATA ITEM Interface Design Description				3. SUBTITLE					
4. AUTHORITY (Data Acquisition Document No.) DI-IPSC-81436A				5. CONTRACT REFERENCE SOW Para 3.2.2.3.1.6		6. REQUIRING ABCDE-FG-HIJ					
7. DD 250 REQ LT		9. DIST STATEMENT REQUIRED B		10. FREQUENCY SEE 16		12. DATE OF FIRST SUBMISSION SEE 16					
8. APP CODE A				11. AS OF DATE N/A		13. DATE OF SUBSEQUENT SUBMISSION SEE 16					
14. DISTRIBUTION a. ADDRESSEE SEE BLOCK 16 b. COPIES											
<p>Block 8/10/12/13: Government approval/disapproval within 30 days after receipt. Contractor resubmission, if required, NLT 15 days after Government comment. Submission to Government shall be a draft copy 20 working days prior to PDR. A baseline copy shall be submitted 20 working days prior to SCDR and 20 working days prior to TRR. Final submission to the Government shall be 20 working days prior to PQR.</p> <p>Bi: rized to U.S. Government agencies only; Reason: Critical Technology; Date of Determination: 7 May 03. Other requests for this document shall be referred to U.S. Army Space Vehicle Command, ABCDE-FG-HIJ, Space Arsenal, HI 12345 5000.</p> <p>Export - Control Act Warning - Not Required.</p> <p>Block 14: Notification/Distribution to: Han.solo.civ@mail.mil</p> <p>Contractor format is acceptable.</p>											

Data Acquisition Document or Data Item Description Reference

Data Acquisition Document or Data Item Description

Tasking statement of work paragraphs

Delivery requirements

Content Tailoring Instructions**

** Tailoring can also be accomplished using other contract attachments.

F. Sample Contract Line Items for Data & Data Rights

Item 0002 in Figure 58 depicts a contract line item for all of the data to be delivered in accordance with the CDRLs. Historically, a single contract line item is used for delivery of all the data requirements defined by the contract data requirements list. Often, the single line item for data is not separately priced.

Item 0025 in Figure 58 depicts a contract line item to acquire the additional data rights listed in the offeror submitted DR Attachment. This option is critical to analyzing the cost-effectiveness of acquiring data rights for specific data deliverables.

Figure 58 - Sample Contract Line Item for Data

Section B - Supplies or Services and Prices/Cost			
0002		1	Lot
<i>Noun:</i>	DATA AND REPORTS		
<i>NSN:</i>	N - Not Applicable		
<i>DD1423 is Exhibit:</i>	A		
<i>Contract type:</i>	V - COST PLUS INCENTIVE FEE		
<i>Inspection:</i>	DESTINATION		
<i>Acceptance:</i>	DESTINATION		
<i>FOB:</i>	DESTINATION		
<i>Descriptive Data:</i>	The contractor shall provide data and reports in accordance with Exhibit A, Contract Data Requirements List (CDRL) dated * attached hereto and made a part hereof . The cost of this CLIN is included in the costs of CLINs 0001, 0004, 0006 and 0007 (and Option CLINs 0011-0020, 0023 and 0024 if exercised).		
	Not Separately Priced.		
	* To be inserted by the Offeror.		
ITEM	SUPPLIES OR SERVICES	Qty Purch Unit	Unit Price Total Item Amount
0025	OPTION CLIN (supply)		
<i>Noun:</i>	RIGHTS IN DATA (INCLUDING TECHNICAL DATA, COMPUTER SOFTWARE AND COMPUTER SOFTWARE DOCUMENTATION)		
<i>NSN:</i>	N - Not Applicable		
<i>Contract type:</i>	J - FIRM FIXED PRICE		
<i>Inspection:</i>	DESTINATION		
<i>Acceptance:</i>	DESTINATION		
<i>FOB:</i>	DESTINATION		
<i>Descriptive Data:</i>	In the event this option is exercised in accordance with SMC-B003 'Option Exercise Dates', the contractor shall deliver rights in technical data, computer software, and computer software documentation in accordance with Attachment 13 'Technical Data/ Computer Software Rights' dated *		
	* To be inserted by the Offeror.		

G. FAR and DFARS Details (RFP Section I)

i. Noteworthy FAR Clauses

Table 22 lists some of the patent related Federal Acquisition Regulation (FAR) clauses that should be included in RFPs and contracts as applicable. The table includes the clause numbers, titles, and summarization of the rights and/or obligations contained therein. Each clause has a set of prescriptions or “rules” regarding its use defined in DFARS 227.70.

REF: Data Related DFARS Provisions & Clause Fundamentals [§ 103.C, p 14]; Patents [§ 201.B.i, p 30]

Table 22 - Patent Related FAR Clauses (Partial List)

FAR Ref	Title	Rights or Obligations	Complete Text Link
52.227-1	Authorization and Consent.	To extend the Government's limited waiver of sovereign immunity for U.S. patent infringement to its contractors.	LINK
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement.	To notify the Government of a patent infringement lawsuit that the Government must defend.	LINK
52.227-3	Patent Indemnity.	Ensures that the Government purchases items that otherwise incorporate commercially available components, free and clear of any patent claims or liability.	LINK
52.227-6	Royalty Information	To obtain royalty payment information in proposals to ensure the Government is not paying a royalty to which it otherwise has a license.	LINK
52.227-9	Refund of Royalties	To ensure that the Government does not overpay royalties.	LINK
52.227-10	Filing of Patent Applications- Classified Subject Matter.	To prevent classified information from entering the public domain through patent applications.	LINK
52.227-11	Patent Rights-Ownership by the Contractor.	To ensure that inventions developed by small business firms and domestic nonprofit organizations, with federal funding, are utilized for the public benefit.	LINK

ii. Noteworthy DoD DFARS Clauses/Provisions

Table 23 lists most of the data, data rights, and Intellectual Property related DFARS clauses and provisions that should be included in RFPs and contracts as appropriate. The table includes the reference numbers, titles, summarization of the rights or obligations contained therein, and a hyperlink to the clause text. Each clause has a set of prescriptions or “rules” regarding its use defined in DFARS 227.71 and 227.72.

REF: Data Related DFARS Provisions & Clause Fundamentals [§ 103.C, p 14]; Intellectual Property Assets, Rights, and Protection Methods [§ 201.B, p 30]

Table 23 - Data, Data Rights, and Intellectual Property Related DFARS Clauses & Provisions (Partial List)

DFARS Ref	Title	Rights or Obligations	Complete Text Link
252.227-7013	Rights in Technical Data-- Noncommercial Items	Defines respective rights to noncommercial Technical Data delivered pursuant to the contract.	LINK
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation	Defines respective rights to noncommercial Computer Software and Computer Software documentation delivered pursuant to the contract.	LINK

DFARS Ref	Title	Rights or Obligations	Complete Text Link
252.227-7015	Technical Data--Commercial Items	Defines Government rights in commercial item Technical Data delivered pursuant to the contract.	LINK
252.227-7016	Rights in Bid or Proposal Information	Defines Government ability to use information submitted in bids or proposals.	LINK
252.227-7017	Identification and Assertion of Use, Release, or Disclosure Restrictions (Provision in Solicitation only)	Identifies data to be delivered with other than "unlimited rights." (Assertion List Provision)	LINK
252.227-7018	Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program	Identifies the scope of data rights to be delivered as part of the Small Business Innovation Research (SBIR) program.	LINK
252.227-7019	Validation of Asserted Restrictions--Computer Software	Defines validation methods used to evaluate the contractor's asserted restrictions for noncommercial Computer Software.	LINK
252.227-7021	Rights in Data--Existing Works	Specifies the Government license rights to distribute and use the works called for under the contract for Government purposes.	LINK
252.227-7025	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends	Defines limitations of contractor use of Government-furnished information having third party restrictive legends.	LINK
252.227-7026	Deferred Delivery of Technical Data or Computer Software	Defines Government's ability to defer delivery of Technical Data or Computer Software from the contract. Data must be listed as Deferred in contract.	LINK
252.227-7027	Deferred Ordering of Technical Data or Computer Software	Defines Government ability to defer ordering of Technical Data or Computer Software as part of the contract.	LINK
252.227-7028	Technical Data or Computer Software Previously Delivered to the Government	To identify all Technical Data and Computer Software that previously has been delivered to the Government, and that the contractor intends to deliver with less than Unlimited Rights.	LINK
252.227-7030	Technical Data--Withholding of Payment	To have leverage in enforcing the contract.	LINK
252.227-7037	Validation of Restrictive Markings on Technical Data	Defines validation methods used to evaluate the contractor's asserted restrictions for noncommercial Technical Data.	LINK

DFARS Ref	Title	Rights or Obligations	Complete Text Link
252.227-7038	Patent Rights—Ownership by the Contractor (Large Business)	Defines Contractor and Government obligations associated with patent rights.	LINK
252.227-7039	Patents--Reporting of Subject Inventions	To require reporting of, and preserve the Government's rights in, inventions developed as part of the contract.	LINK
252.246-7001	Warranty of Data	Defines terms for Technical Data warranty delivered under contract.	LINK

iii. Clause Recommendations by Product

The following tables depict the data related FAR (Table 25) and DFARS clauses or provisions (Table 26) which should be included in a RFP/contract depending on the product being developed. Table 24 describes the formatting and terminology used in both tables.

If the product being developed is expected to include commercial and noncommercial content, DFARS 227.7102-4 [Contract clauses](#) prescribes both DFARS 252.227-7013, Rights in Technical Data—Noncommercial Items, and DFARS 252.227-7015, Technical Data-Commercial Items, be included in the contract in order to govern each portion of Technical Data.

Table 24 - FAR and DFARS Clause Recommendations Legend

	LEGEND		LEGEND
**Com	Commercial Item (In accordance with FAR 2.101)	**Non Com	Noncommercial Item, Component, or Process (Product)
**Non Com SW	Noncommercial Computer Software	**SBIR	Small Business Innovation Research
YES	Mandatory to Include in Solicitation and Contract.	YES+	Limited mandatory use in sealed bidding for “commercial” supplies or services & construction.
YES*	Mandatory to include in Solicitation and Contract if 52.227-11 is NOT used.	Y [r]	Strongly recommended for inclusion in Solicitation and Contract.
YES#	Mandatory to include in Solicitation and Contract if effort may result in patent.	N/A	Not applicable.

Table 25 - FAR Clause Recommendations by Product

Clause #	FAR Clause Title	**Com	**Non Com	**Non Com SW	**SBIR
52.227-1	Authorization and Consent.	YES	YES	YES	YES
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement.	YES	YES	YES	YES
52.227-3	Patent Indemnity	YES#	N/A	N/A	N/A
52.227-6	Royalty Information	YES	YES	YES	YES
52.227-9	Refund of Royalties	YES	YES	YES	YES
52.227-10	Filing of Patent Applications-Classified Subject Matter.	YES+	YES+	YES+	YES+

Table 26 - DFARS Clause & Provision Recommendations by Product

Clause #	DFARS Clause Title	**Com	**Non Com	**Non Com SW	**SBIR
252.227-7013	Rights in Technical Data-Noncommercial Items ##	N/A	YES	N/A	N/A
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation	N/A	N/A	YES	N/A
252.227-7015	Technical Data-Commercial Items	YES	Y [r]	Y [r]	Y [r]
252.227-7016	Rights in Bid or Proposal Information	Y [r]	YES	YES	Y [r]
252.227-7017	Identification and Assertion of Use, Release, or Disclosure Restrictions (<i>Provision in Solicitation only</i>)	Y [r]	YES	YES	Y [r]
252.227-7018	Rights in Noncommercial Technical Data and Computer Software-Small Business Innovation Research (SBIR) Program	N/A	N/A	N/A	YES
252.227-7019	Validation of Asserted Restrictions-Computer Software	Y [r]	Y [r]	YES	Y [r]
252.227-7025	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends	Y [r]	Y [r]	Y [r]	Y [r]
252.227-7026	Deferred Delivery of Technical Data or Computer Software	Y [r]	Y [r]	Y [r]	Y [r]

Clause #	DFARS Clause Title	**Com	**Non Com	**Non Com SW	**SBIR
252.227-7027	Deferred Ordering of Technical Data or Computer Software	Y [r]	Y [r]	Y [r]	Y [r]
252.227-7028	Technical Data or Computer Software Previously Delivered to the Government	Y [r]	YES	YES	Y [r]
252.227-7030	Technical Data-Withholding of Payment	Y [r]	YES	Y [r]	Y [r]
252.227-7037	Validation of Restrictive Markings on Technical Data	YES	YES	Y [r]	Y [r]
252.227-7038	Patent Rights-Ownership by the Contractor (Large Business)	YES*	YES*	YES*	YES*
252.227-7039	Patents-Reporting of Subject Inventions	YES	YES	YES	YES
252.246-7001	Warranty of Data	Y [r]	Y [r]	N/A	Y [r]

Include clause if contract is for product expected to contain both commercial and noncommercial content.

iv. Sample Clause Listings

Figure 59 shows clauses incorporated into a RFP by reference. Figure 60 shows a full text clause incorporated into a RFP.

Figure 59 - Clauses Referenced by number and title

SECTION I - CONTRACT CLAUSES			
This document incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:			
http://farsite.hill.af.mil/VFFARA.HTM or http://farsite.hill.af.mil/VPDFARA.HTM or http://farsite.hill.af.mil/VFAPARA.HTM			
If the clause requires additional or unique information, then that information is provided immediately after the clause title.			
	Regulatory Cite	Title	Date
I-1	52.202-1	DEFINITIONS	JUL/2004
I-2	52.203-3	GRATUITIES	APR/1984
I-3	52.203-5	COVENANT AGAINST CONTINGENT FEES	APR/1984
I-4	52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT	SEP/2006
I-5	52.203-7	ANTI-KICKBACK PROCEDURES	JUL/1995
I-6	52.203-8	CANCELLATION, RECISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY	JAN/1997
I-7	52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY	JAN/1997
I-8	52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	SEP/2007
I-9	52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT	DEC/2008
I-10	52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER	AUG/2000
I-11	52.204-7	CENTRAL CONTRACTOR REGISTRATION	APR/2008
I-12	52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL	SEP/2007
I-13	52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	SEP/2006
I-14	52.211-5	MATERIAL REQUIREMENTS	AUG/2000
I-15	52.211-15	DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS	APR/2008

Figure 60 - Clauses listed as full text

I-121	52.219-28	POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION	APR/2009
(a) Definitions. As used in this clause--			
<p>"Long-term contract" means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.</p>			
<p>"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause. Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.</p>			
(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of			

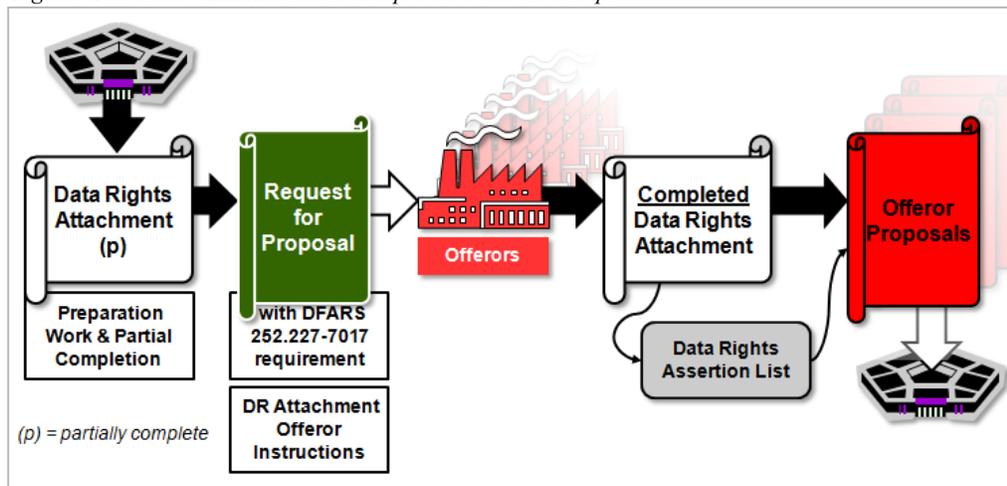
305. DATA RIGHTS ATTACHMENT DETAILS

NEW This section addresses specifics about the Data Rights Attachment (DR Attachment) introduced in the Data Rights Attachment (RFP - Section J) [§ 205.K, p 65] section. It addresses how the attachment can be used to define the data rights for each contract data deliverable.

A. General DR Attachment Process

The basic process for the Government to use a DR Attachment is shown in Figure 61. The process involves some preparation work, partial completion of each table, and inclusion of the attachment and DFARS provision 252.227-7017 in the RFP before it is issued. Offerors receive the RFP and complete the DR Attachment tables as part of the proposal preparation. If an offeror wishes to assert any restrictions on the Government's ability to use, release, or disclose any CDRL to third parties outside the Government, it must document the assertion using the table format of 252.227-7017.

Figure 61 - General DR Attachment Preparation and Use Steps



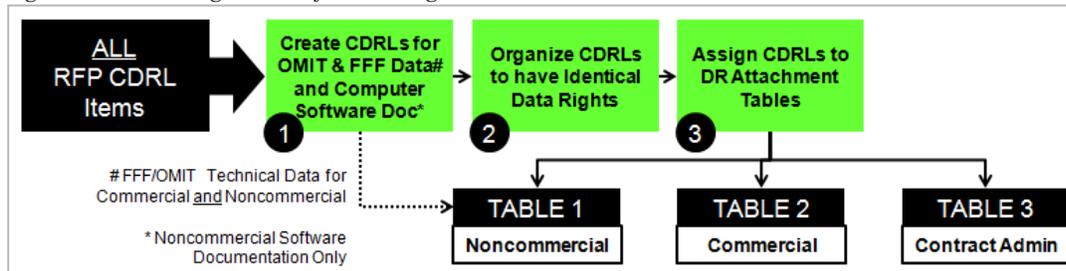
B. Government Preparation of DR Attachment

The program team must complete some preparation work before the DR Attachment will be ready for inclusion in the RFP. The following sections discuss this preparatory work.

i. CDRL Organization Details

The program team must first organize the RFP CDRLs before the Government portion of DR Attachment tables can be filled in. This work involves both grouping and categorizing the CDRLs as shown in Figure 62.

Figure 62 - CDRL Organization for Data Rights Attachment



Step 1 is to create specific CDRLs requiring Form, Fit, and Function Data (FFF), Operation, Maintenance, Installation and Training Data (OMIT) data, and Computer Software Documentation. These CDRLs will be assigned to Table 1 of the DR Attachment. The Government is entitled to Unlimited Rights to FFF and OMIT Technical data associated with commercial and noncommercial products and software documentation associated with noncommercial Computer Software only. The Government is not entitled to these rights for FFF and OMIT associated with commercial Computer Software. Commercial Computer Software Documentation is acquired under the licenses customarily provided to the public.

Step 2 is to identify and separate CDRLs such that the delivered data for each will have identical data rights to the maximum extent practicable. While the DFARS clauses contemplate and permit mixed levels of rights in a given CDRL or document, as a practical matter, having identical data rights entitlements for each CDRL should minimize data marking confusion, which can occur during the delivery and acceptance phase of the contract.

Step 3 is to assign each CDRL to the appropriate DR Attachment table according to the table content criteria. CDRLs for Technical Data associated with noncommercial products and noncommercial Computer Software go in Table 1. CDRLs for Technical Data associated with commercial products and commercial Computer Software go in Table 2. CDRLs for Contract Administration (cost, financial, schedule) information and data that does not fall within the DFARS definitions of Technical Data or Computer Software go in Table 3.

ii. Table 1 Government Fill In Details

The program team must fill in the Government portions of each row in the DR Attachment tables before releasing the RFP. Table 1 of the DR Attachment requires CDRL and data rights information as shown in Figure 63. The “desired” rights for each CDRL are determined by what data rights are needed to support the program strategies. These desired rights must be equal to, or less restrictive than, the DFARS standard rights. Unlimited or Government Purpose rights enable a program to follow DoD policies regarding competition.

Inclusion of DFARS provision 252.227-7017 in an RFP requires offerors to identify any data intended by each offeror to be delivered to the Government with restrictive data rights. Offerors meet this requirement by filling out an assertion table as described in the DFARS clause. Though the clause requests general categories of information, offerors should be instructed to provide the appropriate level of detail for each restricted data item to ensure the Government can clearly understand what data and software the offeror plans to deliver with rights restrictions.

An example of a DR Attachment Table 1 filled in by the Government is shown in Figure 64.

Figure 63 - Table 1 Government Fill Ins

Government Fill ins			Offeror Fill ins	
CDRL Number	Data Item Information	Desired Rights	Offered Rights	Cost to Grant Desired Rights
A 005	DI-SESS-81000 PRODUCT DRAWINGS/MODELS AND ASSOCIATED LISTS	Unlimited	---	\$
A 006	DI-CMAN-80639 ENGINEERING CHANGE PROPOSAL	Govt Purpose	---	\$

CDRL Number	Data Item Reference Number and Title	Desired Rights
1	2	3

Desired Rights >= DFARS Standard Rights	Unlimited	Govt Purpose
---	-----------	--------------

Figure 64 - Example Government Fill In of DR Attachment Table 1

TABLE 1			
CDRL	DID Number	Data Item Title	Desired Rights*
A004	DI-MISC-81174	FREQUENCY ALLOCATION DATA ALLOCATION AND ASSIGNMENT DATA	--UL--
A005	DI-SESS-81000C	PRODUCT DRAWINGS/MODELS AND ASSOCIATED LISTS	GP
A006	DI-CMAN-80639C	ENGINEERING CHANGE PROPOSAL (ECP)	--UL--
A009	DI-SESS-80284B	MAINTENANCE TEST AND SUPPORT EQUIPMENT REQUIREMENT SE/TMDE	GP
A010	DI-NDTI-80603A	TEST PROCEDURE	--UL--
A011	DI-FACR-80976	FACILITIES PLAN FACILITY REQUIREMENT PLAN	--UL--
A012	DI-MISC-80564	VULNERABILITY ANALYSIS REPORT	GP
A013	DI-MGMT-80004A	MANAGEMENT PLAN ENGINE LIFE MANAGEMENT PLAN	--UL--
A014	DI-ILSS-80085	INTEGRATED LOGISTICS SUPPORT PLAN ILSP	GP
A015	DI-MGMT-81024	SYSTEMS ENGINEERING MANAGEMENT PLAN (SEMP) SYSTEMS ENGINEERING PLAN (SEP)	--UL--
A017	DI-MGMT-81026	TEMPEST CONTROL PLAN	GP
A018	DI-PACK-80120B	PRESERVATION AND PACKING DATA	--UL--
A019	DI-ALSS-81529	LOGISTICS MANAGEMENT INFORMATION (LMI) DATA PRODUCT PROVISIONING TECHNICAL DOCUMENTATION (PTD)	--UL--
A020	DI-ALSS-81557	SUPPLEMENTAL DATA FOR PROVISIONING (SDFP)	GP
A021	DI-ILSS-80134A	PROPOSED SPARE PARTS LIST	--UL--
A022	DI-ALSS-81530	LOGISTICS MANAGEMENT INFORMATION (LMI) SUMMARIES	--UL--
A023	DI-SAFT-80102B	SAFETY ASSESSMENT REPORT (SAR)	--UL--
A024	DI-CMAN-81254A	REQUEST FOR NOMENCLATURE (DD FORM 81)	--UL--
A025	DI-PACK-80877A	TRANSPORTATION DATA REPORT CLASSIFIED ITEMS	GP
A027	DI-MISC-80508B	TECHNICAL REPORT - STUDY/SERVICES LOGISTICS COMPOSITE MODEL REPORT AND DATABASE	--UL--

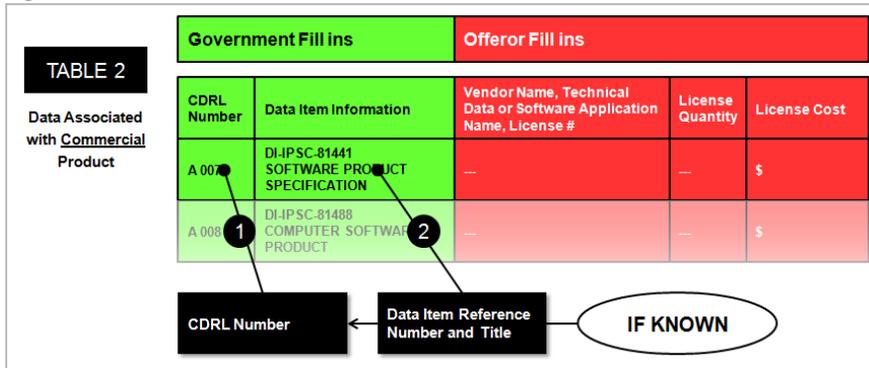
iii. Table 2 Government Fill In Details

Table 2 of the DR Attachment requires CDRL and data item information as shown in Figure 65. When the RFP is being prepared, the program team may not know whether a CDRL will result in commercial or noncommercial items. In this case, these CDRLs should be listed in Table 1 and Table 2 should be left blank for offerors to fill in with proposed commercial items.

There is no listing for desired rights in Table 2. The Government is entitled to a range of standard rights for commercial product data as described in sections 103.E.iii (p 18) and 103.H (p 20). In many cases, these standard rights are all that is needed for commercial products. If less restrictive rights are needed, the Government can request additional rights for commercial product data through negotiation per DFARS 7102-2(b).

Each offeror should be required to submit a copy of the license for each CDRL item as part of its proposal. The specific content and terms of these licenses should be evaluated by Government legal counsel during the proposal evaluation phase as discussed in the Commercial License Review & Approval [§ 206.B, p 71] section.

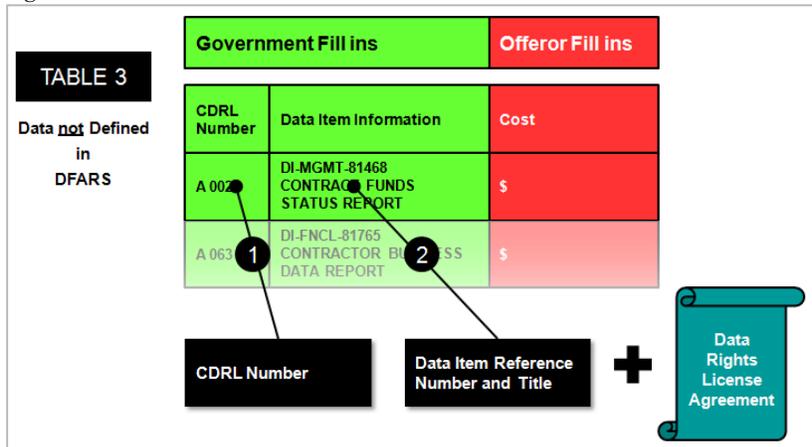
Figure 65 - Table 2 Government Fill Ins



iv. Table 3 Government Fill In Details

Table 3 of the DR Attachment requires CDRL and data item information along with wording of a data or data rights license agreement as shown in Figure 66. The CDRLs in Table 3 would generally be for cost, financial, contract administration, and other data not covered by the standard FAR and DFARS license terms. As such, the Government must create a Specifically Negotiated License Rights agreement for this data and include it with the table or in the RFP. The contents of the agreement will vary by program but would likely include which companies the Government will be entitled to release the data, for

Figure 66 - Table 3 Government Fill Ins



what purposes, and for what length of time. Such agreements must comply with [FAR 9.505-4 -- Obtaining Access to Proprietary Information](#).

v. DR Attachment Instructions to Offerors

Instructions must be provided to offerors to explain how to complete the DR Attachment, data rights assertions per DFARS provision 252.227-7027, and related proposal content.

C. Offeror Fill In of DR Attachment

Offerors are required to fill in the remaining portions of each DR Attachment table in accordance with the instructions provided by the Government. Each of the three tables must be filled forming a complete DR Attachment that should be included in the technical proposal.

i. Table 1 Offeror Fill In Details

The DR Attachment Table 1 requires offerors to sub-divide CDRLs to have a common data rights level and specify the data rights that will be granted to the Government at no additional cost for each CDRL (Figure 67, Item 1) associated with a noncommercial product. **The offered rights must be equal to, or less restrictive, than the DFARS standard rights for that data deliverable.** If the offered rights for any CDRL are more restrictive than Unlimited Rights, offerors must complete the assertion list requirements of DFARS provision 252.227-7017. If the offered rights are more restrictive than the desired rights, offerors can list the cost to grant the desired rights or enter the phrase “Decline” to indicate a refusal to grant the desired rights at any cost (Figure 67, Item 2).

If the offered rights for any CDRL are more restrictive than Unlimited Rights, offerors must complete the assertion list requirements of DFARS provision 252.227-7017. If the offered rights are more restrictive than the desired rights, offerors can list the cost to grant the desired rights or enter the phrase “Decline” to indicate a refusal to grant the desired rights at any cost (Figure 67, Item 2).

Figure 67 - Table 1 Offeror Fill Ins

Government Fill ins			Offeror Fill ins	
CDRL Number	Data Item Information	Desired Rights	Offered Rights	Cost to Grant Desired Rights
A 005	DI-SESS-81000 PRODUCT DRAWINGS/MODELS AND ASSOCIATED LISTS	Unlimited	—	\$
A 006	DI-CMAN-80639 ENGINEERING CHANGE PROPOSAL	Govt Purpose	—	\$

TABLE 1
Data Associated with Noncommercial Product

Offered Rights (at no cost)

- Unlimited
- Govt Purpose
- Limited or Restricted
- Special

Cost to Grant Desired Rights

- \$ 0.00 If Desired and Offered Rights are equal
- \$ xxx Cost To Grant Desired Rights
- DECLINE If Unwilling to Sell Desired Rights

Offered Rights >= DFARS Standard Rights

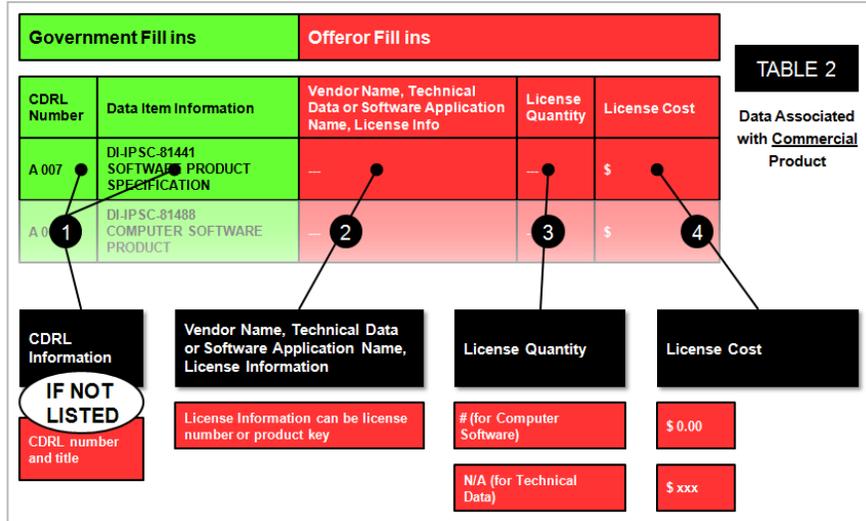
Table 1 will be reviewed during the proposal evaluation phase for data rights assertion requirements and any data rights “gaps.” A gap would exist anywhere the offered data rights are more restrictive than the desired rights. The offeror will be considered responsive if

A data rights gap is allowable as long as the offered rights are equal to, or less restrictive, than the standard rights for that data deliverable. A gap is less significant if the offeror proposes a cost for to acquire the desired additional rights. A gap is more significant if the offer declines to list a cost to acquire the desired additional rights.

ii. Table 2 Offeror Fill In Details

The DR Attachment Table 2 requires offerors to list information about any Technical Data associated with commercial products or commercial Computer Software as shown in Figure 68. This information includes the CDRL information (if not already listed), name of the vendor, Technical Data or Computer Software application name, license information, license quantities, and costs.

Figure 68 - Table 2 Offeror Fill Ins



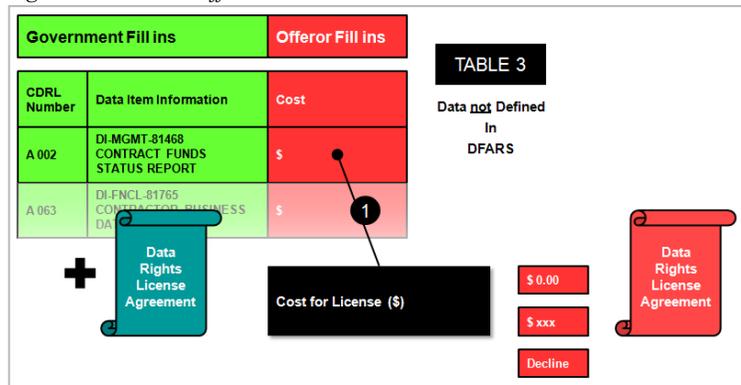
The license terms of use should be evaluated by Government legal counsel during the proposal evaluation phase as discussed in the Commercial License

Review & Approval [§ 206.B, p 71] section. The license quantity would be a specific number of licenses (“1-x” or “Unlimited”) for Computer Software and (“N/A”) for Technical Data. Note the Government is entitled to “unrestricted use” certain types of data associated with a commercial product per DFARS 227.7102 and 252.227-7015 [§ 103.E.iii, p18 and § 103.H, p 20].

iii. Table 3 Offeror Fill In Details

The DR Attachment Table 3 requires offerors to fill in any costs required to provide the data in accordance with the Specifically Negotiated License rights agreement specified by the Government as shown in Figure 69.

Figure 69 - Table 3 Offeror Fill Ins



Offerors may object to the terms of the license agreement during discussions and/or enter “DECLINE” in the appropriate cell.

D. Example Review of Offeror Submitted Table 1

This section lists some typical results from the Government review of an offeror submitted DR Attachment Table 1. The example Table 1 is shown in Figure 70 and the Government inspection results are listed in Table 27.

Table 27 - Sample Table 1 Government Review Results

Item 1	The offeror divided CDRL A005 into separate CDRLs because the deliverables for each “sub-CDRL” would have a distinct data rights from the other sub-CDRLs.
Item 2	The offered rights for A005 and A006 align with the desired rights.
Item 3	The offered rights for CDRLs A005 A-D are more restrictive than the desired rights.
Item 4	The offeror proposed costs for the Government to acquire the desired rights for CDRLs A005 B-D.
Item 5	The offeror declined to list a price to grant the desired rights for A005 A.
Item 6	The offered rights are more restrictive than Unlimited Rights. Offeror must assert data rights for these CDRLs using the format prescribed by DFARS provision 252.227-7017.

Figure 70 - Example Offeror Submitted DR Attachment Table 1

Government Fill ins		TABLE 1	Offeror Fill ins		Assertions List 252.227-7017 (Offeror X)
CDRL Number	Data Item Information	Desired Rights	Offered Rights	Cost to Grant Desired Rights	
A 005A	DI-SESS-81000 PRODUCT DRAWINGS/MODELS AND ASSOCIATED LISTS (not listed below)	Unlimited 2	Unlimited	\$0.00	Nothing Required
S E P A R A T E D	005B DI-SESS-81000 PRODUCT DRAWINGS/MODELS AND ASSOCIATED LISTS - Signal Input Sub-System	Unlimited	Limited	\$ DECLINE 5	Assertion Entry Required IAW DFARS 252.227-7017
	005C DI-SESS-81000 PRODUCT DRAWINGS/MODELS AND ASSOCIATED LISTS - Interface Sub-System	Unlimited 1	Government Purpose 3	\$150,000.00	Assertion Entry Required IAW DFARS 252.227-7017
	005D DI-SESS-81000 PRODUCT DRAWINGS/MODELS AND ASSOCIATED LISTS - Housing Sub-System/Housing Shell	Unlimited	Limited 4	\$175,000.00 6	Assertion Entry Required IAW DFARS 252.227-7017
	A 005E DI-SESS-81000 PRODUCT DRAWINGS/MODELS AND ASSOCIATED LISTS - Signal Output Sub-system	Unlimited	Limited	\$350,000.00	Assertion Entry Required IAW DFARS 252.227-7017
A 006	DI-CMAN-80639 ENGINEERING CHANGE PROPOSAL	Govt Purpose 2	Govt Purpose	\$0.00	Assertion Entry Required IAW DFARS 252.227-7017

E. DR Attachment Table 1 Changes before Contract Award

The “Desired Rights” column should be removed before the DR Attachment becomes part of the awarded contract. Since the contract describes what the contractor agrees to, there is no value in identifying desired rights. This column deletion is depicted in Figure 71.

HOWEVER, any discrepancies between the desired and granted rights should be documented for use in future updates to the program Intellectual Property Strategy.

Figure 71 - Table 1 Change before inclusion in Contract

Government Fill ins		Offeror Fill ins		
CDRL Number	Data Item Information	Desired Rights	Offered Rights	Cost to Grant Desired Rights
A 005	DI-SESS-81000 PRODUCT DRAWINGS/MODELS AND ASSOCIATED LISTS	Use	—	\$
A 006	DI-CMAN-80639 ENGINEERING CHANGE PROPOSAL	Grant Purpose	—	\$

TABLE 1
Data Associated with Noncommercial Product

Delete Column Before including Table 1 in Contract

306. DATA RIGHTS OPTIONS DECISION DETAILS (CONCEPT)

Additional information about topics discussed in the Additional Data Rights Cost versus Sole Source Premium Cost [§ 203.C, p 42] and Post-Award Data Rights Options Decisions (Concept) [§ 206.E, p 73] sections.

A. Overview

CONCEPT The data rights options cost information included in the contract DR Attachment can be used to determine what, if any, data rights options should be exercised.

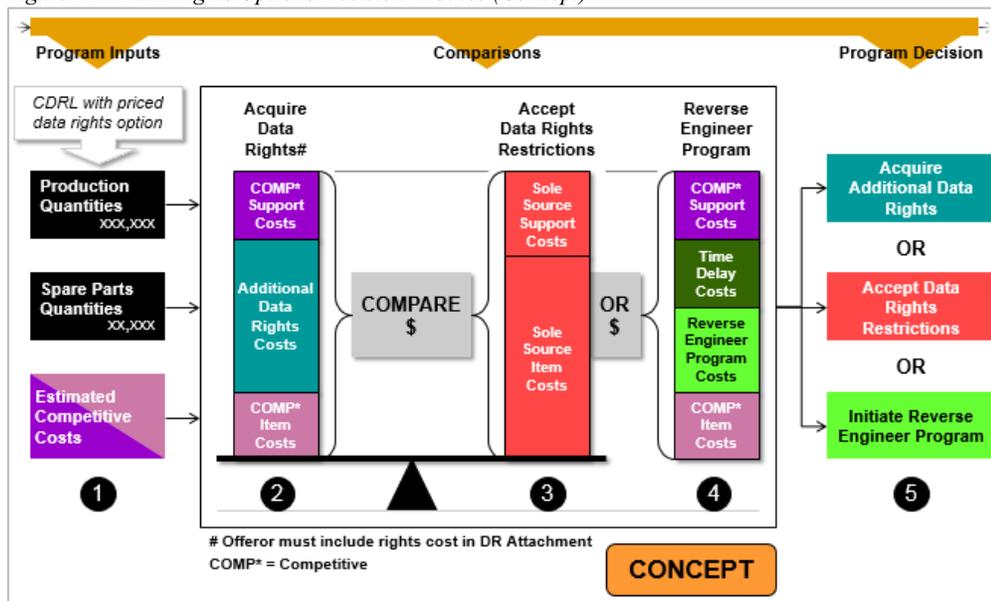
The life cycle costs calculations and the subsequent data rights option decision can lead to three potential paths:

- Acquire the Additional data rights and competitively purchase and support the item (2)
- Do not acquire the additional rights and procure the item and support using the sole source (3)
- Embark on a reverse engineering program to replace the restricted rights item (4)

The first step is to gather relevant information about the program (Figure 72, Item 1), then compare the potential program paths (Figure 72, Items 2, 3, 4) and finally, make a determination which to follow (Figure 72, Item 5).

The calculations described in this section do not take into account financial variables such as the time value of money, etc. Nor does the section describe **how** to estimate the competitive costs for specific items or their support.

Figure 72 - Data Rights Options Decision Process (Concept)

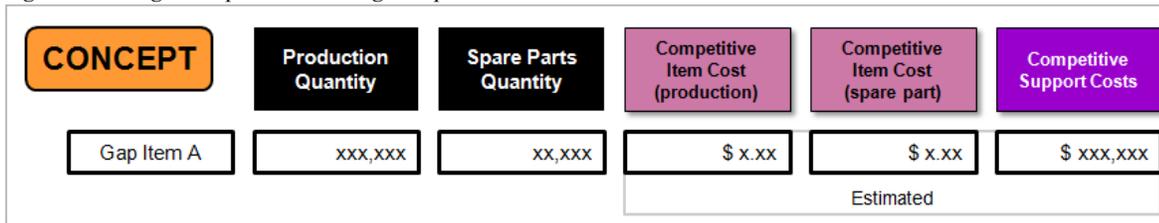


B. Program Inputs and Cost Estimates

CONCEPT For each CDRL item with additional data rights offered, a range of program inputs and estimates are needed (Figure 72, Item 1). These include the estimated life cycle production and spare part quantities, estimated competitive production and spare part procurement costs, and estimated competitive support costs as shown in Figure 73.

There are a number of estimating methods to calculate competitive acquisition costs. Program teams should refer to cost estimating subject matter experts in addition to [DoD 5000.4-M, DoD Cost Analysis Guidance and Procedures](#) and [DoD Operating and Support Cost-Estimating Guide, October 2007](#).

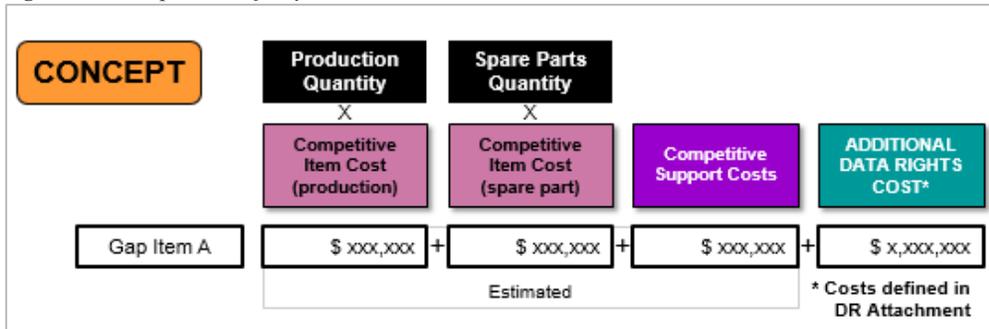
Figure 73 - Program Inputs to Data Rights Option Decision



C. Acquire Data Rights Costs

CONCEPT The life cycle costs to acquire the additional data rights and competitively purchase and support the item involve the program inputs and estimates and the data rights acquisition cost as shown in Figure 74. The resulting cost estimate can be compared with the other program paths (Figure 72, Item 2).

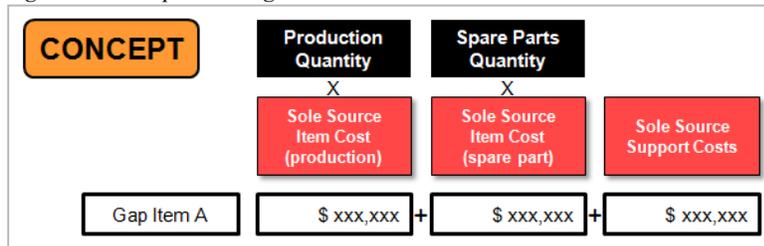
Figure 74 - Competitive Life Cycle Costs Calculation



D. Accept Data Rights Restriction Costs

CONCEPT The life cycle costs of accepting the data rights restrictions involve the estimated sole source costs for production, spare parts, and support of the item as shown in Figure 75. The resulting cost estimate can be compared with the other program paths (Figure 72, Item 3).

Figure 75 - Accept Data Rights Restriction Costs Calculation



E. Reverse Engineering Costs

CONCEPT Another potential program path is to embark on a reverse engineering effort to replace the restricted rights item with another having few or no data rights restrictions.

This would be separate but concurrent effort from the awarded contract. However, reverse engineering involves risk, time, and money. It is usually more cost-effective to acquire the data and data rights from the originator or accept the data rights restrictions than pursue a reverse engineering effort.

The reverse engineering process involves taking existing Computer Software or a hardware item and redeveloping the necessary information to competitively procure or support it. Acquiring Form, Fit, and Function data for the proprietary technology can be valuable to support a reverse engineering effort.

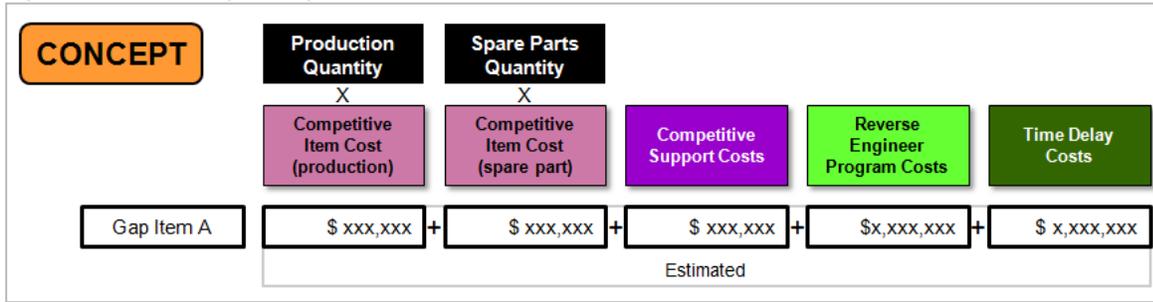
Reverse engineering of Computer Software usually involves “decompiling” a software program from machine language into human readable source code. The process of decompiling is relatively easy but is generally **illegal** and is not an option for DoD programs. The Government is specifically prohibited from decompiling noncommercial Computer Software by the Restricted Rights terms of DFARS clause 252.227-7014. License agreements for commercial Computer Software will most likely have similar provisions as well. Programs would generally have to start over from the requirements and redevelop the software from scratch. This effort would require careful isolation of any Restricted Rights information and should only be undertaken after consulting with IP counsel.

Reverse engineering of a hardware product and its associated Technical Data may be more difficult than Computer Software but is generally legal. The DFARS [PGI 217.7504 Acquisition of parts when data is not available](#) addresses policy regarding spare parts acquisition in this situation. Otherwise, two paths can be taken; either create and fully document a replacement design, or, compartmentalize the proprietary technology into a modular element defined by performance specifications and interface requirements. (Reference [Sub-System Design Documentation Approaches](#) [§ 202.C, p 34]).

The viability of either solution depends on its ability to pass the same qualification testing as the original, and, existence of competitive sources of supply that can provide the product.

The life cycle costs of a reverse engineering program involve the quantities of production and spare parts, their estimated competitive costs, estimated competitive support costs, and the costs to develop and quality the new design as shown in [Figure 76](#). The resulting cost estimate can be compared to other program paths ([Figure 72](#), Item 4).

Figure 76 - Reverse Engineering Costs Calculation



F. Program Decision

CONCEPT The program team can compare the life cycle cost estimates for each path and determine the best course of action (Figure 72, Item 5). The steps to take after a program decision is made are shown in Figure 77.

If acquiring additional data rights is determined to be the best path, the program team must identify which desired data rights options to exercise to the contracting officer. If accepting the data rights restriction is determined to be the best path, the program team should review and revise any program strategies, which planned on competitive procurement and/or support of the affected technology or process. If reverse engineering is the best path, the program team must obtain approval and funding to begin the effort.

Figure 77 - Data Rights Option Decision & Next Steps

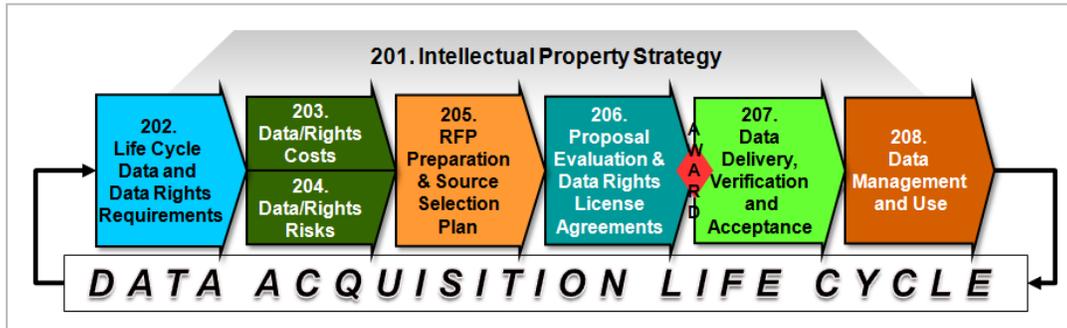


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401. ACKNOWLEDGEMENTS

The contents of this Guide are the result of a collaborative effort by the Army Materiel Command Product Data & Engineering Working Group and other Department of Defense Service representatives. This Guide simply would not exist without the contributions and assistance from the people listed in Sections A and B. Their assistance is gratefully acknowledged.

A. Subject Matter Expert Acknowledgements

The individuals listed in Table 28 are subject matter experts on data and data rights. They contributed significant content and assisted with development of the concepts discussed herein. “(PEWG)” indicates an Army Product Data & Engineering Working Group representative. * identifies the lead author. ## identifies the lead reviewer.

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B. Contributor Acknowledgements

The individuals listed in Table 29 provided valuable feedback during the Guide drafting process. Their feedback helped ensure the content was correct, understandable, and applicable, for typical acquisition professionals. “(PEWG)” indicates an Army Product Data & Engineering Working Group representative.

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402. GLOSSARY & ACRONYMS

A. Glossary

Key words or phrases used in this guide are listed here along with their definitions and the source of that definition. Newly defined words or phrases are identified with (D&DR Guide Context) as the source of their definition.

CAUTION: Definitions of terminology are binding in Government contracts when mandated by statute or regulation or agreed upon by the parties in a contract. For example, FAR 2-101 provides definitions and the 252.227-7013 clause defines certain terms. In the glossary of this Guide, where there are no clear authoritative sources, some terms are explained with reference to third party definitions. References to these definitions are meant to be illustrative and informative, but their inclusion should not be taken as official endorsement or as meaning that such definitions will be binding in Government contracts. Where the meaning of terminology is critical, it may be important for the parties to a contract to expressly agree upon definitions in the contract itself.

Acquisition	The conceptualization, initiation, design, development, test, contracting, production, deployment, logistics support (LS), modification, and disposal of weapons and other systems, supplies, or services (including construction) to satisfy DoD needs, intended for use in, or in support of, military missions. Source: DAU Glossary
Acquisition Strategy (AS)	A business and technical management approach designed to achieve program objectives within the resource constraints imposed. It is the framework for planning, directing, contracting for, and managing a program. It provides a master schedule for research, development, test, production, fielding, modification, post-production management, and other activities essential for program success. The acquisition strategy is the basis for formulating functional plans and strategies (e.g., Test and Evaluation Master Plan (TEMP), Acquisition Plan (AP), competition, Systems Engineering Plan (SEP), etc.). Source: DAU Glossary
Allocated Baseline	(Also known as Allocated Configuration Documentation) The documentation describing a CI's functional, performance, interoperability, and interface requirements that are allocated from those of a system or higher level configuration item; interface requirements with interfacing configuration items; and the verifications required to confirm the achievement of those specified requirements. Source: MIL-HDBK-61A and MIL-STD-3046(ARMY)
Associated Information	Information that includes configuration control information, verification information, and other associated information not categorized as definition or operational information. Examples include change requests, configuration control board decisions, audit and test reports, and obsolete part notifications. Source: D&DR Guide PEWG Data Group - Associated Information

Commercial	(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and— (i) Has been sold, leased, or licensed to the general public; or (ii) Has been offered for sale, lease, or license to the general public; <i>(abridged definition) Complete definition at FAR Definitions</i>
Competition	“An acquisition strategy whereby more than one contractor is sought to bid on a service or function; the winner is selected based on criteria established by the activity for which the work is to be performed.” Source: DAU Glossary
Competition in Contracting Act	1984 Federal law requiring the use of competition for Government acquisitions. Source: Federation of American Scientists (fas.org) presentation: Competition in Federal Contracting: An Overview of the Legal Requirements , DPAP Memo (24 Nov 10): Improving Competition in Defense Procurements , DPAP Memo (27 Apr 11): Improving Competition in Defense Procurements - Amplifying Guidance
Component	In logistics, a part or combination of parts having a specific function, which can be installed or replaced only as an entity. Source: Joint Publication 1-02, Department of Defense Dictionary of Military and Associated Terms
Computer Aided Design (CAD)	Any of a class of computer software programs used to design manufactured or constructed objects, such as buildings, power plants, vehicles, weapons systems or their subsystems or components. Source: MIL-STD-31000
Computer Software	Information consisting of “...computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.” Sources: DFARS 227.72, 252.227-7013, -7014, -7015, and -7018
Computer Software Documentation	“...owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.” Source: DFARS 252.227-7014
Configuration	The functional and physical characteristics of existing or planned hardware, firmware, software or a combination thereof, as detailed in requirements and technical documentation and ultimately achieved in a product. Source: MIL-STD-3046 (ARMY)
Configuration Approval Authority	“The organization or person authorized to approve: 1) A configuration change to a product, 2) Changes to product definition information and other related documents, 3) Release (or cancellation) of documents for use anywhere or in a specific program and 4) Commitment of resources.” Source: ANSI/EIA-649-B 2011. <i>Also known as change approval authority, configuration change management authority, change control board chairperson, decision authority, configuration manager</i>

<p>Configuration Management (CM)</p>	<p>A process for establishing and maintaining consistency of a product's performance, functional and physical attributes with its requirements, design and operational information throughout its life. The five elements of Configuration Management and their descriptions are listed below.</p> <p>Configuration Management Planning - The planning and preparation for all CM activities to be performed for the program.</p> <p>Configuration Identification - The selection and identification of Configuration Items and the associated documentation and data that describes the item configuration.</p> <p>Configuration Change Control - The control of changes to the configuration of an item to assure that only beneficial changes are made, and that all associated documentation is also changed accordingly to reflect the actual item configuration change.</p> <p>Configuration Audits - Verification that the item meets its performance requirements and that the associated documentation and data matches the item configuration.</p> <p>Configuration Status Accounting - The historical record of the original product configuration and all approved changes that have occurred since. Source: MIL-HDBK-61A(SE) Configuration Management Guidance</p>
<p>Contract Clause</p>	<p>“Contract clause” or “clause” means a term or condition used in contracts or in both solicitations and contracts, and applying after contract award or both before and after award. FAR 2.101 Definitions</p>
<p>Contract Data Requirements List (CDRL)</p>	<p>A list of contract data requirements using DD Form 1423 that are authorized for a specific acquisition and made a part of the contract. Source: DAU Glossary</p>
<p>Contract Line Item Number (CLIN)</p>	<p>“Separately identifiable contract line and sub line items shall include a description of the item or service being procured, the associated Product Service Code, the quantity, a unit of measure, defined acceptance and inspection locations and requirements, and the delivery schedule or performance period.” Source: PGI 204.7103</p>
<p>Contractor</p>	<p>Any individual or other legal entity that --</p> <p>(1) Directly or indirectly (<i>e.g.</i>, through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or</p> <p>(2) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor. Source: FAR 9.403</p>
<p>Controlling Office</p>	<p>The DoD activity that sponsored the work that generated the technical document for the DoD and has the inherently Governmental responsibility for determining the distribution of a document containing such technical information. ... Only the controlling office or higher authority may authorize distribution beyond the distribution statement. Source: DoD Instruction 5230.24</p>

<p>Covered Government Support Contractor (CGSC)</p>	<p>A contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—</p> <p>(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and</p> <p>(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. Source: DFARS 252.227-7013</p>
<p>Data</p>	<p>Recorded information, regardless of form or the media on which it may be recorded. The term includes Technical Data and Computer Software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information. Source: FAR 52.227-14</p>
<p>Data Acquisition Document</p>	<p>A collective term for DIDs, specifications, and standards that contain requirements for the preparation of data products or for recordkeeping. With the exception of one-time DIDS, these documents require the Office of Management and Budget (OMB) clearance and must be listed in the AMSDL. Source: DoD 5010.12-M (1993)</p> <p>The Acquisition Management System and Data Requirements Control List (AMSDL) was cancelled in 2001. The Acquisition Streamlining & Standardization Information System (ASSIST) is now the official source of all Defense Standardization Program documents.</p>
<p>Data in Hand</p>	<p>Data in possession of the Government with defined terms of use. Source: D&DR Guide Sources to Meet Data and Data Rights Requirements</p>
<p>Data Item Description (DID)</p>	<p>A completed document that defines the data required of a contractor. The document specifically defines the data content, format, and intended use. Source: MIL-STD-963</p>
<p>Data Rights Attachment (DR Attachment)</p>	<p>A RFP or contract attachment containing three tables that list all of the CDRLs and the Government desired rights (RFP) or the agreed to data rights (Contract). The three tables are for (1) Technical Data associated with noncommercial products and noncommercial Computer Software, (2) Technical Data associated with commercial products and commercial Computer Software, and (3) contract administration information such as cost/financial/schedule data. Source: D&DR Guide Data Rights Attachment (RFP - Section J)</p>
<p>Defense Federal Acquisition Regulation Supplement (DFARS)</p>	<p>Department of Defense supplement to Federal Acquisition Regulation. Contains additional regulations specific to DoD acquisition needs. Source: D&DR Guide FAR and DFARS Overview</p>

Development	The process of working out and extending the theoretical, practical, and useful applications of a basic design, idea, or scientific discovery. Design, building, modification, or improvement of the prototype of a vehicle, engine, instrument, or the like as determined by the basic idea or concept. Includes all efforts directed toward programs being engineered for Service use but which have not yet been approved for procurement or operation, and all efforts directed toward development engineering and test of systems, support programs, vehicles, and weapons that have been approved for production and Service deployment. Source: DAU Glossary
Disposal Costs	Consists of costs associated with demilitarization and disposal of a military system at the end of its useful life. Costs associated with demilitarization and disposal may include disassembly, materials processing, decontamination, collection/storage/disposal of hazardous materials and/or waste, safety precautions, and transportation of the system to and from the disposal site. Systems may be given credit in the cost estimate for resource recovery and recycling considerations. The disposal cost category is used in a life-cycle cost estimate so that design and other decisions made early in a program consider the effects on the long-term costs that can be attributed logically to the program. Note that demilitarization and disposal costs may also be incurred during the sustainment phase prior to formal entry into a distinct disposal phase. Any disposal expenses anticipated during the sustainment phase (due to combat losses, other destruction of systems beyond economical repair, or unique demilitarization activities) are nevertheless considered part of disposal costs. Source: OSD Cost Assessment and Program Evaluation Guide, March, 2014
Evaluation Factors/Sub-Factors	Information used in competitive source selections to "...represent those specific characteristics that are tied to significant RFP requirements and objectives having an impact on the source selection decision and are expected to be discriminators, or are required by statute/regulation. They are the uniform baseline against which each offeror's proposal is evaluated allowing the Government to make a best-value determination." Source: DoD Source Selection Procedures
Evaluation Notice	Primary Contractor Officer's written notification to the offeror for purposes of clarifications, communications, or in support of discussions. Source: DoD Source Selection Procedures
Federal Acquisition Regulation (FAR)	The principal set of rules governing Federal acquisitions of supplies and services. It contains 53 parts and more than 1,800 pages of standardized policies and procedures used or referenced in federal contracts. Source: D&DR Guide FAR and DFARS Overview
Firmware	The combination of a hardware device and computer instructions or computer data that reside as read-only software on the hardware device. The software cannot be readily modified under program control. Source: DAU Glossary
Form, Fit, and Function Data (FFF)	Information that describes "...the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items." Sources: DFARS 252.227-7013, -7014, -7015, -7018

Functional Baseline	(also known as Functional Configuration Documentation) The documentation describing the system's functional, performance, interoperability, and interface requirements and the verifications required to demonstrate the achievement of those specified requirements. Sources: MIL-HDBK-61A and MIL-STD-3046 (ARMY)
Government Purpose Rights	The rights to reproduce, modify, perform, display, use, disclose or release the Technical Data or Computer Software without restrictions within the Government and outside the Government to third parties (if the recipient's contract contains DFARS clause 252.227-7025 or the recipient has an approved non-disclosure agreement) for Government purposes. The Government can release Government Purpose rights data for further competitions on another Government contract but cannot release the data for any commercial purpose. Sources: DFARS 252.227-7013 and -7014
Integrated Product Team (IPT)	A team composed of representatives from appropriate functional disciplines working together to build successful programs, identify and resolve issues, and make sound and timely recommendations to facilitate decision-making. There are three types of IPTs: Overarching IPT that focus on strategic guidance, program assessment, and issue resolution; Working-level IPT that identify and resolve program issues, determine program status, and seek opportunities for acquisition reform; and Program-level IPT that focus on program execution and may include representatives from both government and industry after contract award. Source: DAU Glossary
Intellectual Property (IP)	Intellectual (i.e., intangible) assets include products of the human intellect—such as inventions, discoveries, technologies, creations, developments, or other forms of expressing an idea—whether or not the subject matter is protectable under the laws governing the different forms of intellectual property. Intellectual property is that subset of intellectual assets that can be legally protected, and is defined by the forms of protection that have been enacted into law. Source: The Federal Laboratory Consortium for Technology Transfer Technology Transfer Desk Reference . Creations of the mind - creative works or ideas embodied in a form that can be shared or can enable others to recreate, emulate, or manufacture them. There are four ways to protect intellectual property - patents, trademarks, copyrights, or trade secrets. Source: United States Patent and Trademark Office Glossary
Investment Costs	Consists of procurement and related activities from the beginning of low rate initial production (LRIP) through completion of deployment. Investment typically includes costs associated with producing and deploying the primary hardware; systems engineering and program management; product support elements (i.e., peculiar and common support equipment, peculiar training equipment/initial training, technical publications/data, and initial spares and repair parts) associated with production assets; interim contractor support that is regarded as part of the system procurement and is included in the scope of the Acquisition Program Baseline (APB); and military construction and acquisition-related O&M associated with production and deployment activities (e.g., site activation). Source: OSD Cost Assessment and Program Evaluation Guide, March, 2014
Key CDRLs	CDRLs determined by a program to be important for successful execution of the program strategies (acquisition, sustainment, etc.) including those pertaining to key components or key interfaces of the system. Source: D&DR Guide

Life Cycle Cost	Life-cycle cost can be defined as the sum of four major cost categories, where each category is associated with sequential but overlapping phases of the system life cycle. Life-cycle cost consists of (1) research and development costs, associated with the concept refinement phase, technology development phase, and the system development and demonstration phase, (2) investment costs, associated with the production and deployment phase, (3) O&S costs, associated with the sustainment phase, and (4) disposal costs, occurring after initiation of system phase-out or retirement, possibly including demilitarization, detoxification, or long-term waste storage. Source: Operating and Support Cost-Estimating Guide, Office Of The Secretary Of Defense Cost Analysis Improvement Group October 2007
Life Cycle Sustainment Plan (LCSP)	Documents the Program Manager and Product Support Manager's plan for formulating, implementing, and executing the sustainment strategy, and is part of the overall Acquisition Strategy of a program. The LCSP describes the approach and resources necessary to develop and integrate sustainment requirements into the system's design, development, testing, deployment, and sustainment phases. The LCSP evolves from a strategic outline to a management plan describing the sustainment efforts in the system design and acquisition processes to achieve the required performance and sustainment outcomes necessary to ensure required Warfighter capabilities. It evolves at Milestone B into a detailed execution plan for how the product support package is to be designed, acquired, sustained, and how sustainment will be applied, measured, managed, modified, and reported from system fielding through disposal. By Milestone C, the LCSP describes the implementation status of the product support package (including any sustainment related contracts, e.g. Interim Contractor Support, Contractor Logistics Support) to achieve the Sustainment key performance parameters or key system attributes. Source: ACQuipedia Article
Limited Rights	(Applies to Technical Data associated with Noncommercial product): The Government may use the technical data within the Government but not release the technical data outside of the Government except in limited circumstances (e.g., emergency repair or overhaul, or to Covered Government Support Contractors). The Government may not use the data for manufacturing additional quantities of the item. In order to assert that the Government will only have Limited Rights in Technical Data, the contractor must be prepared to present evidence that the product itself was developed exclusively at private expense. Source: DFARS 252.227-7013
Manufacturing or Process Data	Information that describes, "the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process." Sources: DFARS 252.227-7013, -7014, -7015, -7018
Metadata	Information describing the characteristics of data; data or information about data; or descriptive information about an entity's data, data activities, systems, and holdings. For example, discovery metadata is a type of metadata that allows data assets to be found using enterprise search capabilities. Source: DoDD 8320.02 Data about data, properties (title, document number, creation date, etc.) used to identify or define a data item. Source: ANSI/EIA-649-B 2011

Model	A representation of an actual or conceptual system that involves mathematics, logical expressions, or computer simulations that can be used to predict how the system might perform or survive under various conditions or in a range of hostile environments. Source: DAU Glossary
Noncommercial	The FAR does not specifically define noncommercial. Anything that does not qualify as commercial should be considered noncommercial. “Noncommercial computer software” means software that does not qualify as commercial computer software under paragraph (a) (1) of this clause. Source: DFARS 252.227-7014
Non-Disclosure Agreement (NDA)	A legal contract between two or more parties that signifies a confidential relationship exists between the parties involved. The confidential relationship often will refer to information that is to be shared between the parties but should not be made available to the general public. Source: Investopedia.com
Open Systems Architecture (OSA)	The organized decomposition, using carefully defined execution boundaries, layered onto a framework of software and hardware shared services and a vibrant business model that facilitates competition. OSA is composed of five fundamental principles; <ol style="list-style-type: none"> 1. Modular designs based on standards, with loose coupling and high cohesion, that allow for independent acquisition of system components; 2. Enterprise investment strategies, based on collaboration and trust, that maximize reuse of proven hardware system designs and ensure we spend the least to get the best; 3. Transformation of the life cycle sustainment strategies for software intensive systems through proven technology insertion and software product upgrade techniques; 4. Dramatically lower development risk through transparency of system designs, continuous design disclosure, and Government, academia, and industry peer reviews; 5. Strategic use of data rights to ensure a level competitive playing field and access to alternative solutions and sources, across the life cycle. Source: Open Systems Architecture - Acquisition Community Connection, DoD Open Systems Architecture Contract Guidebook
Operating & Support Costs	Consists of sustainment costs incurred from the initial system deployment through the end of system operations. Includes all costs of operating, maintaining, and supporting a fielded system. Specifically, this consists of the costs (organic and contractor) of personnel, equipment, supplies, software, and services associated with operating, modifying, maintaining, supplying, and otherwise supporting a system in the DoD inventory. O&S costs are composed of the following lower-level elements: Unit-Level Manpower, Unit Operations, Maintenance, Sustaining Support, Continuing System Improvement, Indirect Support Source: OSD Cost Assessment and Program Evaluation Guide, March, 2014
Operation, Maintenance, Installation and Training Data (OMIT)	Information that is “necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data).” Sources: DFARS 252.227-7013, -7014, -7015, and -7018

order ordering ordered	To contractually require delivery of data to the Government. At a minimum, ordering requires a clear statement of the data to be delivered with a reference to a Data Acquisition Document that has a control number assigned by the Office of Management and Budget. Source: D&DR Guide
Procedures, Guidance, and Information (PGI)	A companion resource to the Defense Federal Acquisition Regulations Supplement (DFARS). Procedures, Guidance, and Information (PGI) is a web-based tool for simply and rapidly accessing guidance and information relevant to FAR and DFARS topics. The DFARS remains the source for regulations, which include the implementation of statutes and DoD-wide contracting policies, authorities, and delegations. The PGI contains both mandatory and non-mandatory internal DoD procedures, guidance, and supplemental information. Source: ACQuipedia (DAU) . See also Defense Federal Acquisition Regulation Supplement and Procedures, Guidance, and Information
Process	A set of interrelated or interacting activities which transforms inputs into outputs. Source: ISO 9000:2005(E)
Product	The result of research, development, test, and evaluation (RDT&E) in terms of hardware or software being produced (manufactured). Also known as an end item. Source: DAU Glossary A product can be an item, component, or process. Source: D&DR Guide Product Data Hierarchy
Product Baseline	(also known as Product Configuration Documentation) The written performance and detailed design documentation, which define an item. The Product Configuration Documentation (PCD) incorporates performance, interoperability, and interface requirements and the verifications required to confirm the achievement of those specified requirements. The PCD also includes detailed design documentation, ranging from form, fit, and interface information to a complete detailed design disclosure package. Once approved, serves as the official record of the product baseline. (For example, a production level (3) TDP per MIL-STD-31000 would constitute the PCD for an item.) Sources: MIL-HDBK-61A and MIL-STD-3046(ARMY)
Product Data	All data created as a consequence of defining (requirements), designing, testing, producing, packaging, storing, distributing, operating, maintaining, modifying and disposing of a product. Source: D&DR Guide Product Data Hierarchy
Product Data & Engineering Working Group (PEWG)	In April 2004, the Assistant Secretary of the Army for Acquisition, Logistics and Technology (ASA(ALT)) issued a Delegation of Authority (DOA) to Headquarters, Army Materiel Command (HQ AMC) giving them responsibility for management of Value Engineering (VE), Reduction in Total Ownership Cost (RTOC), Configuration Management (CM), Data Management (DM) and engineering, technical and product data throughout the Army. The Army Product Data & Engineering Working Group (PEWG) was formed in March 2005 and chartered by HQ AMC to help them address the DOA data related issues including contractual ordering of data using Data Item Descriptions and a Contract Data Requirements List, Configuration Management and Configuration Status Accounting, Data Management and data repositories. The PEWG mission can be divided into the categories of: Product Data Definitions, Product Data Acquisition, Product Data Management, Product Data Exchange and Use, and Product Data and Data Rights Education.

Product Definition Information	The product's requirements, documents the product's design and attributes, and the authoritative source for configuration definition. Examples include requirements trace matrices, drawings, specifications, computer aided design models, analyses, trade studies, and manufacturing information. Source: D&DR Guide PEWG Data Group - Product Definition Information
Product Operational Information	Information that includes logistics support or sustainment, and operation information. Examples include technical manuals, packaging, preservation, and transportation information, maintenance records, and field feedback information. Source: D&DR Guide PEWG Data Group- Product Operational Information
Program Acquisition Cost	The estimated cost of development research, development, test, and evaluation (RDT&E); procurement; and system-specific military construction necessary to acquire the defense system. RDT&E costs are accumulated from the point in time when the DoD acquisition program is designated by title as a program element (PE) or major project within a PE. Military construction costs include only those projects that directly support and uniquely identify with the system. Source: DAU Glossary
Provision	“Solicitation provision or provision” means a term or condition used only in solicitations and applying only before contract award. FAR 2.101 Definitions
Request for Proposal (RFP)	A solicitation document used in negotiated procurements to communicate Government requirements to prospective contractors and to solicit proposals or offers from them. RFPs must have the information necessary to enable prospective contractors to prepare proposals properly. Source: DAU Lesson
Research and Development Costs	Consists of costs of materiel solution trade studies and advanced technology development; system design and integration; development, fabrication, assembly, and test of hardware and software for prototypes and/or engineering development models; system test and evaluation; systems engineering and program management; and product support elements associated with prototypes and/or engineering development models. For some programs, this may include additional development costs associated with follow-on builds or increments. Source: OSD Cost Assessment and Program Evaluation Guide, March, 2014
Restricted Rights	Government may not release noncommercial Computer Software outside of the Government except in limited circumstances (e.g., correction of defects and emergencies, or to Covered Government Support Contractors) and only after notice is provided to the owner. The Government may only run the software on one computer at a time, and may make only the minimum copies needed for backup. In order to assert that the Government will only have Restricted Rights in Computer Software, the contractor must be prepared to present evidence that each software module was developed exclusively at private expense. Source: DFARS 252.227-7014
Small Business Innovation Research (SBIR)	“a program under which a portion of a Federal agency's research or research and development effort is reserved for award to small business concerns through a uniform process...” Source: 15 U.S.C. 638

Small Business Innovation Research Data Rights	Government may not release data for manufacturing without contractor approval or previous agreement except for emergency repair. If a product was developed as part of the Small Business Innovation Research (SBIR) program, the Government is entitled to SBIR Data Rights, which are generally equivalent to Limited/Restricted Rights. These rights apply to both Technical Data associated with a noncommercial product and noncommercial Computer Software. If the SBIR contract includes the March 2011 or later version of DFARS 252.227-7018, SBIR Data Rights revert to Unlimited Rights after five years. Source: DFARS 252.227-7018
Sole Source Premium Cost	The additional cost to obtain end items, spare parts, or support from a sole source rather than obtaining the same using competition. Source: D&DR Guide Additional Data Rights Cost versus Sole Source Premium Cost
Source Selection Evaluation Board (SSEB)	A group of military and/or government civilian personnel, representing functional and technical disciplines, that is charged with evaluating proposals and developing summary facts and findings during source selection. Source: DAU Glossary
Source Selection Plan (SSP)	<p>A plan that describes how the source selection will be organized, how proposals will be evaluated and analyzed, and how source(s) will be selected. Source: DoD Source Selection Procedures</p> <p>Written by the program office (PO) and approved by the Source Selection Authority (SSA). Typically, the SSP consists of two parts. The first part describes the organization and responsibilities of the source selection team. The second part identifies the evaluation criteria and detailed procedures for proposal evaluation. Source: DAU Glossary</p>
Specifically Negotiated License Rights	Rights when a standard license rights arrangement (commercial or DFARS) is modified by mutual agreement of the contractor and the Government. The exact terms of the new agreement are spelled out in a unique Specifically Negotiated License Rights agreement. Sources: DFARS 252.227-7013, -7014, -7015, -7018.
Standard Data Rights	Minimum data rights the Government is legally entitled to as determined by the FAR and DFARS clauses included in the contract and applicable statutes and regulations. The specific “standard” rights entitlements are dependent upon many factors such as the type of data, the type of item the data is associated with, and who paid for the development of the item and data. Standard rights include Government entitlements to Unlimited Rights for FFF and OMIT data. Source: D&DR Guide DFARS Data Rights Entitlement Determinations - Funding Source , and DFARS Data Rights Entitlement Determinations - Unlimited Rights .
Statement of Objectives (SOO)	A Government-prepared document incorporated into the solicitation that states the overall performance objectives. It is used in solicitations when the Government intends to provide the maximum flexibility to each offeror to propose an innovative approach. That portion of a contract that establishes a broad description of the government's required performance objectives. Source: DAU Acquimedia
Statement of Work (SOW)	That portion either of a contract that establishes and defines all non-specification requirements for contractor's efforts directly or with the use of specific cited documents. Source: DAU Acquimedia

Support Contractor	See Covered Government Support Contractor.
Sustainment	Sustainment involves the supportability of fielded systems and their subsequent life cycle product support - from initial procurement to supply chain management (including maintenance) to reutilization and disposal. It includes sustainment functions such as initial provisioning, cataloging, inventory management and warehousing, and depot and field level maintenance. Source: Acquisition Community Connection - Sustainment The provision of logistics and personnel services required to maintain and prolong operations until successful mission accomplishment. Source: JP 1-02
Systems Engineering Plan (SEP)	A roadmap for the technical execution of a program. It describes the overall technical approach and details the activities, work products, schedule, risks, contracting requirements, contracting plans, resource and funding requirements for the system development effort. Source: Systems Engineering Plan (SEP)
Technical Data	Information that is "...recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information." Sources: DFARS 227.71, 252.227-7013, -7014, -7015, and -7018.
Technical Data Package (TDP)	A technical description of an item adequate for supporting an acquisition strategy, production, and engineering and logistics support. The description defines the required design configuration or performance requirements, and procedures required to ensure adequacy of item performance. It consists of applicable Technical Data such as models, drawings, associated lists, specifications, standards, patterns, performance requirements, quality assurance provisions, software documentation and packaging details. Source: MIL-STD-31000A
Test and Evaluation Master Plan (TEMP)	Documents the overall structure and objectives of the Test and Evaluation (T&E) program. It provides a framework within which to generate detailed T&E plans, documents schedule, and resource implications associated with the T&E program. The TEMP identifies the necessary Developmental Test and Evaluation, Operational Test and Evaluation, and Live Fire Test and Evaluation activities. It relates program schedule, test management strategy and structure, and required resources to: Critical Operational Issues, Critical Technical Parameters, objectives and thresholds documented in the Capability Development Document, evaluation criteria, and milestone decision points. For multi-Service or joint programs, a single integrated TEMP is required. Component-unique content requirements, particularly evaluation criteria associated with COIs, can be addressed in a component-prepared annex to the basic TEMP. Source: DAU Glossary
Unlimited Rights	The rights to use, modify, reproduce, perform, display, release, or disclose data in any manner, and for any purpose whatsoever, and to have or authorize others to do so. The Government may freely use or disclose the data to third parties for any purpose whatsoever (absent any separate security classification or export control restriction). Sources: DFARS 252.227-7013, -7014, -7018

B. Acronyms

AMC	Army Materiel Command
AS	Acquisition Strategy
ASA(ALT)	Assistant Secretary of the Army (Acquisition, Logistics and Technology)
CAD	Computer Aided Design
CDRL	Contract Data Requirements List
CGSC	Covered Government Support Contractor
CLIN	Contract Line Item Number
CM	Configuration Management
DAU	Defense Acquisition University
DFARS	Defense Federal Acquisition Regulation Supplement
DID	Data Item Description
DoD	Department of Defense
DPAP	Defense Procurement Acquisition Policy
DTIC	Defense Technical Information Center
FAR	Federal Acquisition Regulation
FFF	Form, Fit, and Function Data
FSC	Federal Supply Class
GAO	Government Accountability Office

GEIA	Government Electronics & Information Technology Association
IDE	Integrated Digital Environment
IP	Intellectual Property
IPT	Integrated Product Team
LCSP	Life Cycle Sustainment Plan
NDA	Non-Disclosure Agreement
OMB	Office of Management and Budget
OMIT	Operation, Maintenance, Installation and Training Data
OSA	Open Systems Architecture
OSD	Office of the Secretary of Defense
PDUSD(AT&L)	Principal Deputy Under Secretary of Defense for Acquisition, Technology and Logistics
PEWG	Product Data & Engineering Working Group
PGI	Procedures, Guidance, and Information
QAP	Quality Assurance Provision
RFP	Request for Proposal
SBIR	Small Business Innovation Research
SEP	Systems Engineering Plan
SOO	Statement of Objectives

SOW	Statement of Work
SSEB	Source Selection Evaluation Board
TDP	Technical Data Package

TEMP	Test and Evaluation Master Plan
U.S.C.	United States Code
UCF	Uniform Contract Format

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