



Today's Agenda

TOPIC / DISCUSSION	SPEAKERS	TIME
Opening Remarks	John Burrow	0900 - 0915
Status of Naval Open Architecture (OA)	CAPT Shannon	0915 - 1015
Morning Break		1015 - 1030
OA in the Business Environment		
□ Increasing Competition in Acquisition Strategies	Nick Mirales	1030 - 1045
□ Data Rights in Acquisition Strategies	Art Samora	1045 - 1100
□ OA Award Fee/Award Term Incentives	Robert Jackson	1100 - 1115
□ Changes in OA Contract Language	Rick Goff	1115 - 1130
□ Peer Reviews / Integrated Product Teams	John Stapleton	1130 - 1145
Questions for Business Panel Speakers		1145 - 1215
Aligning Technical Standards	Gary Minor	1215 - 1230
Questions & Wrap Up	CAPT Shannon	1230 - 1245



Data Rights in Acquisition Strategies



***OA Industry Day
14 February 2006***

Statement A: Approved for public release; distribution is unlimited.

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Office of the Counsel, NAVSEA Code OOL53***



Data Rights As Part of the Acquisition Process

- Navy programs determine their future needs for data rights in a structured and focused manner
- Navy's Goal: Identify opportunities or requirements for data and data sharing and incorporate these requirements into the acquisition strategy
- Acquisition strategy includes cross-domain and enterprise-wide review of component "marketplace"



Data Rights Analysis

- Are there pre-existing government rights in data or other deliverables that permit the Contractor to leverage data in a new acquisition?
- Emphasis for new deliverables will be government purpose rights (GPR) or greater
- Navy acquisition strategy will include the right to modify (update, correct, enhance, etc.) the data/deliverables now and in the future
- Navy will maintain configuration control over the data/deliverables

Source: Alan, Kannis, "Acquiring All that You Need to Maintain Your Software," Defense AT&L, March-April 2005.



Points to Ponder about Data Rights

- Unnecessary limitations in data rights prevent the Navy from using deliverables in the most optimal way
- Data rights impact the entire life cycle of the program, i.e., maintenance and repair – over 30 or more years of a system's life

Source: Alan, Kannis, "Acquiring All that You Need to Maintain Your Software," Defense AT&L, March-April 2005.



Acquisition Strategy for Contracts

- Applicable FAR/DFARS technical data/software provisions:

FAR 52.227-11, 52.227-12 (Patent Rights);

DFARS 252.227-7013 (Rights in Non-Commercial Technical Data);

DFARS 252.227-7014 (Rights in Non-Commercial Software); and

DFARS 252.227-7015 (Rights in Commercial Items);



DFARS Data Rights Definitions

- “Unlimited rights” means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so

- “Limited rights” means the right to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without permission, release or disclose the technical data outside the Government, use the technical data for manufacture, or permit the technical data to be used by another party, except:
 - When necessary for emergency repair and overhaul;
 - When used for evaluation or informational purposes by foreign governments;
 - Subject to prohibitions on further reuse;
 - When the contractor asserting the restriction is notified of such use



DFARS Data Rights Definitions (Continued)

- “Restricted rights” applies only to noncommercial software and describes the Government’s rights to use the computer software:
 - With one computer at a time
 - To transfer the program to another computer subject to restrictions
 - To make minimum copies for safekeeping, modification or backup
 - To modify the software for the above purposes
 - To permit contractors or subcontractors performing services in support of this or a related contract to use the software to diagnose and correct deficiencies or to respond to urgent tactical situations, subject to non-disclosure and restrictions against reverse engineering and other restrictions
 - To permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul or to modify the software to reflect the repairs/overhaul, subject to non-disclosure and restrictions against reverse engineering



DFARS Data Rights Definitions

- “Government Purpose Rights” means the rights to:
 - Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and
 - Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States Government Purposes
 - “Government purpose” means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so



Government Data Rights Requirements

- Is the software/technical data a viable Reuse Candidate?
- For inclusion in the Asset Reuse Repository, the Navy must have at least Government Purpose Rights



Acquisition Strategy Legal Review Before Award

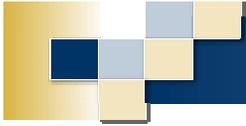
- Review contactor's "-7017 data rights list" and "-7028 list" to determine if applicable
 - Lists are compared to the data rights deliverables and are reviewed by Contracts/Legal/Program
 - For OA purposes GPR or greater is acceptable
 - Special License rights must include at least GPR in order to be placed in the OA Repository
 - Offeror will be responsible for reviewing the list of reusable software assets and identifying those assets in its proposed solution



DFARS 252.227-7017

CS and TD To Be Furnished With Less Than Unlimited Rights: The following table identifies all Non-Commercial Computer Software (CS), and Non-Commercial Technical Data (TD) that I.M. Contractor, Inc. and its subcontractors assert should be delivered with other than unlimited rights:

<i>Computer Software to be Furnished with Less Than Unlimited Rights</i>	<i>Basis for Assertion</i>	<i>Asserted Rights Category</i>	<i>Name of Person Asserting Restriction</i>
Weapon System Software Version X.Y	Developed Exclusively at Private Expense	Restricted Rights	I.M. Contractor



DFARS 252.227-7028

Other Program Noncommercial CS and TD To Be Furnished With Less Than Unlimited Rights: The following table identifies all noncommercial CS and TD that I.M. Contractor, Inc. and its subcontractors assert should be delivered with other than unlimited rights that are identical or substantially similar to CS or CSD that I.M. Contractor, Inc. or its subcontractors have delivered to, or are obligated to deliver to, the Government under other Government contracts or subcontracts:

<i>Computer Software or Computer Software Documentation to be Furnished with less than Unlimited Rights</i>	<i>Contract Number Under Which the Data or Software Were Produced</i>	<i>Limitations on the Government's Rights to Use or Disclose the Data or Software, Including, When Applicable, Identification of the Earliest Date the Limitations Expire</i>	<i>Contract Number Under Which, and the Name and Address of the Organization to Whom, the Data or Software Were Most Recently Delivered or Will be Delivered</i>
Software Name and Version	Old Contract No.	Government Purpose Rights	Old Contract No.



Asset Reuse Guidelines

- Appropriate DFARS data/software Contract Clauses are to be included
- Contractors will submit '7017 and '7028 Lists for review and validation
- To the extent artifacts are to be reused, the artifacts will be subject to an asset reuse license agreement



Asset Reuse License Highlights

- Grant of user to grant Non-Exclusive Patent Rights in Modifications
- Requires user to grant at least GPR to the Navy in any Modifications regardless of funding
 - Requirement for execution of a Non-Disclosure Agreement (NDA)
- Must not change Other Parties' Markings
- Must not add markings other than to their own Modification
- No OSS without express written permission



Asset Reuse License and Patent Rights

- Accounts for the fact that software can be patented

- Once you establish a Modification to an OA Asset, if you pursue patent coverage, the Asset Reuse License requires that you:
 - Grant an irrevocable, royalty-free, non-exclusive, worldwide license to all future users of your Modification



Open Source Software

- Definition: Found at www.opensource.org
 - License has been certified by the Open Source Initiative (OSI)
 - Promulgates the “copyleft” concept

- Not all Open Source Software is appropriate for incorporation into an Asset for Reuse

- Offerors must identify Open Source Software proposed for use



Contractor's OA Asset Management At Asset Checkout

- Ensure review of patent and data rights associated with each Asset at checkout
- Execution of Asset Reuse License
- Execution of Non-Disclosure Agreement (NDA)
- At check-in, Navy will check deliverables for unjustified/non-conforming markings
- Navy will not accept assets with unjustified/ non-conforming markings and cannot place Assets in the OA Repository unless they are at least GPR



QUESTIONS?