OSD Open Architecture Panel SBIR Beyond Phase II

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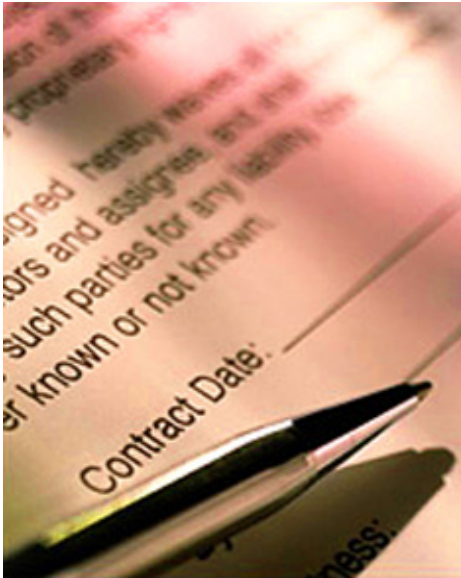
Naval Open Architecture

- Not
  - A program
  - A one size fits all solution
  - A change to the procurement regulations
  - Just about data rights
  - Open Source
  - Just an IP attorney issue
- Is
  - A CNO / ASN(RDA) priority item
  - OSD area of activity
  - A new way of doing business

The key to this new model is changing contracts…

"Our contracts need to be written where we have the ability to have the integrator that is designing the architecture in an open way so we can do competition for various pieces. So [that it is] easier to update with new functionality later on."

- ASN (RDA), Defense Daily , 10 October 2006

We must negotiate to:
- Employ modular architectures
- Allow for components to be decoupled and reused
- Secure appropriate data rights
- Allow for sharing of design artifacts
- Increase the use of peer reviews
- Facilitate tech insertions

"The goal now is to write open architecture requirements into contracts and provide companies incentives to meet the goals."

- ASN (RDA), Defense News , 01 November 2006

…obtaining and enforcing Intellectual Property Rights…

ISSUES WITH INTELLECTUAL PROPERTY RIGHTS

- Programs do not anticipate long-term or enterprise-wide implications when developing their acquisition strategies that address Intellectual Property Rights (IPR)

- Funding is not aligned to build and maintain "families of components" and acquire the appropriate IPR, hindering reuse

- The full impact of IPR often does not manifest itself until programs attempts to upgrade systems, at which point the they learn how IPR restricts upgrade options

- The lack of a clearly defined IPR strategy before contract award complicates system certification. Procurement documents must clearly specify how the Navy will get access to source code and related information and that these materials must reside with the government for an unlimited amount of time to allow for system certification and other purposes.

We strive for Government Purpose Rights (GPR) in contracts to facilitate movement towards common solutions and reuse among systems …

… However, we will accept more restrictive rights when the business case warrants and allow proprietary solutions to ride on the Navy-owned architecture.

Government/Contractor Collaboration by IP Escrow

- Legal construct Escrow Agreements enable parties with differing goals to collaborate while still protecting their own property interests

- Example from Real Property Law—Buyer/Seller different goals

- Contractor/Government each seeks to protect proprietary interest and property for future use/advantage

- Escrow enables Contractor and Government to cooperate by depositing proprietary information under the control of a third party Escrow Agent that determines what information may be needed and disclosed after both Contract/Government have revealed information to the Escrow Agent rather than to an interested party

Duties of Escrow Agent in a "Knowledge IP Escrow"

- Act as Fiduciary to both Contractor/Government by holding in trust proprietary information, trade secrets, key interface tech data

- Determine the adequacy of the proprietary information, trade secrets or tech data to carry out the goal of the procurement; determine the need to selectively disclose the needed information so as not jeopardize either party's other interests.

- Require each party to make the needed contributions to the Escrow so that the agreement and procurement will be successful.

- Distribute the needed interface information or trade secret information as required by the procurement, so that each party (the Contractor and the Government) gets access to the proprietary information of the other in order to achieve an open architecture system.

Naval Open Architecture Take Away

- Working Groups needed to increase awareness of:
    - ☐ IPR for the gov't acquisition team
    - ☐ Knowledge/Technology Escrow
- Proprietary Solutions can be built to an open architecture
- Will limit breadth of Major System sole-source contracts
- Open Architecture is not Open Source
- Naval OA Web site: https://acc.dau.mil/oa