

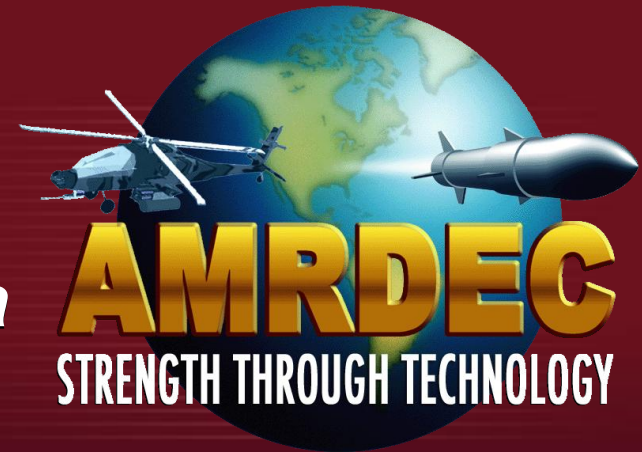
Presented to:

NDIA SE Conference



Something You Should Know About Rights in Technical Data

Distribution A



TECHNOLOGY DRIVEN. WARFIGHTER FOCUSED.

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Provide some practical insight into Rights in Data

Disclaimer: The content of this brief is for informational purposes and represents the presenter's interpretation of regulation, policy and guides. Interested parties are strongly encouraged to refer all formal questions to their responsible organization(s) for responses.

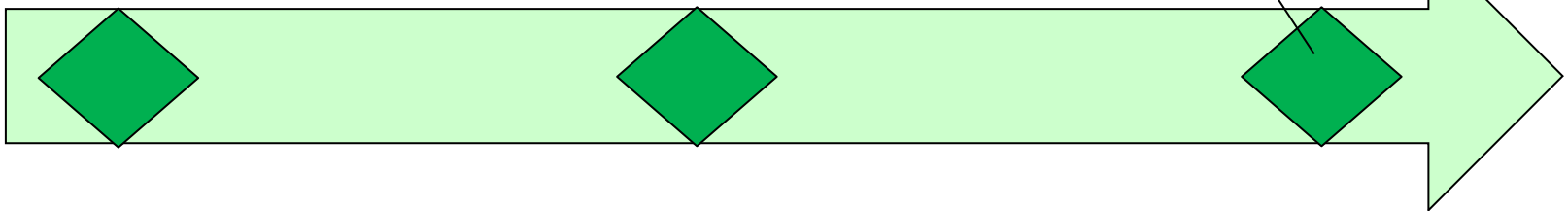
- **Policy Updates**
- **Definitions**
- **Myths and Misunderstandings**
- **Fundamentals (General, Ordering, Asserting, Marking, Delivery)**
- **Rights Categories**
- **Legends**
- **Practical Application (Data [Rights] Management Strategy, Contract Preparation)**
- **General Summary**
- **Questions**

**Pre-Acquisition Reform
Period <1992; USG
secures all (most) RID and
technical data in MS formats**

**Acquisition Reform (AR)
Period; 1992-2007; USG
Actively relinquishes both
RID and technical data in
general**

**Post- Clinton-era
Acquisition Reform (AR)
period >2007; New era of AR
WSARA 2009; USG actively
secures RID and tech data**

**We
Are
Here**



**Paper drawings
Costly updates
Costly transfers
Costly storage
Military Standards
Military Formats**

**Peace Dividend
Mr. Perry's Last Supper
Norm Augustine
Performance the panacea
Non-Government Std's.
Industry knows best**

**System costs ballooning
Sustainment costs ballooning
Sole source rates ballooning
Legacy Systems unsupportable
Efficiencies demanded**



Rights in Data

Recent Policy Changes



- **Requirement to get waivers to use military specifications has been lifted** (OSD 2005)
- **Revitalization of Systems Engineering; Product Baseline Management** (OSD DODI 5000.2, 2008)
 - **Technical data configuration control has re-emerged; Baseline control after CDR**
 - **Importance of Rights in Technical Data has emerged; Data Management Strategy (DMS)**
- **Competition restated as the centerpiece of OSD acquisition policy** (OSD DODD 5000.1, DODI 5000.2, 2008)
- **OMB issues new contracting competition guidelines** (OMB 2009)
- **Acquisition Reform Act 2009 re-establishes need for build to print requirements**
- **USD(ATL) memo – September 14, 2010 requires “Open systems architecture approach and set[s] rules for acquisition of technical data rights.”**

Rights in Data Definitions

- **Technical Data:** Technical data means 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

The most confused term in all rights in data discussions; formally means nearly everything; however in the vernacular means design data and drawings

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- **Computer Software:** Computer software means computer programs, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, repeats or recompiled. Computer software does not include computer databases or computer or computer software documentation. Ref DFARS 252.227-7014
- **Form, Fit, and Function data (FFF):** FFF means technical data 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. Ref DFARS 252.227-7013
- **Meta Data:** Data that must be added to contract delivered data that is USG unique and that assigns a Distribution Statement or Export Control.

MYTH	FACT
“ Costs for Technical Data Rights are high”	The 10 USC 2320, DFARS 252-227-7013, 7014 provides for rights to all publically and some privately funded (FFFIOMT) Technical Data
“Costs for the Technical Data are high”	System development costs and system technical data costs are synonymous. The only legitimate costs may be media, reproduction and meta data costs.
“Rights-in-data agreements of the past bind the DOD in the future”	The rights in data process begins anew with each new contract. Previous agreements represent a starting point.
“Technical Data “access” is sufficient”	Access does not confirm rights, or satisfy delivery Formal delivery (DID/CDRL) is a requirement
“Performance-based acquisition negates the need for Technical Data or build to print data”	Performance management is fine during development, however detailed design control efficiently maintains qualification and life cycle support
“The DOD will use the rights and data it secures to harm those that might have created it.”	The DOD has no interest in harming industry but rather; increasing the industrial base and driving efficiencies into program cost
“Competition is problematic and creates little value” Technology is too complex	Competition can create a 25% savings (minimum) ref. DFARS PGI 217-75. Technology complexity is a real problem; must be proven
“Open architecture can reap huge benefits”	OA while helpful, really offers a costly opportunity to redesign that which has already been designed/qualified
“Credible rights in data “assessments” can be done prior to contract award”	Since the assignments of rights begins with the ordering, asserting, delivery process, such assessments are futile. All pertinent data must be ordered, not assessed

Rights in Data Fundamentals; General

- **The USG does not “own” data; The USG takes rights to data**
- **Assignment of those rights is defined in the DFARS and USC and generally falls to a funding test (who paid for what)**
- **The instant that the contract is signed, the USG is entitled to certain data rights regardless of funding test. (FFFOIMT)**
 - **Form**
 - **Fit**
 - **Function**
 - **Operation**
 - **Installation**
 - **Maintenance (less manufacturing and process data)**
 - **Training**
- **Those automatic data rights and other attending rights may not be known or usable unless the contract calls for a formal delivery of the data.**

Rights in Data Fundamentals; Ordering

- Requirement for formal delivery in the SOW (DID/CDRL) initiates the assertion, marking and justification process defined within the DFARS.
- Contractually required “access” (i.e., “formal”) = “delivery” however must be via the DID/CDRL process.
- If execution of the program requires that DOD see, use, or provide the data to others, that data (being accessed) **MUST** be a formal deliverable (DID/CDRL) under the contract.
- Informal access via technical liaison, even when detailed in the SOW and contract; does not equal “delivery.”



Rights in Data Fundamentals; Assertions



- **Assertion for restrictions on any technical data or software is required; when the contractor will deliver the ordered data with less than Unlimited Rights.**
- **Contractor is required to have internal (contractor's) procedures for use and application of DOD-authorized markings and to have (prior to the assertion) and maintained documentation substantiating the assertions**
- **Pre-award assertions: DFARS 252.227-7017.**
- **Post-award assertions: DFARS 252.227-7013(e)(3)/-7014(e)(3)**
 - **Typically not necessary, unless unusual circumstances**
- **Burden is on the contractor to assert at proper level of detail – Critical Issue.**
 - **Asserting at the wrong level can create a disadvantage**
- **Assertions must avoid FFOIMT restrictions**

Rights in Data Fundamentals; Marking

- Only the markings (legends) authorized by DFARS are conforming markings.
- Non-conforming marking correction – DFARS 252.227-7013(h)(2) / -7014(h)(2) – 60 day notice from the contracting officer.
- However, nonconforming legends should be honored until removed.
- Any restrictive marking on a deliverable that is not supported by an approved/incorporated assertion is an unjustified marking and should be ordered removed immediately.
- Burden is on the contractor to apply markings only to the restricted portions of each page.
- Copyright notice (©), in proper format, is allowed even on Unlimited Rights data /software.

Rights in Data Fundamentals; Delivery

- **The DOD must insure that all deliverables are actually delivered.**
- **The DOD repository is the preferred delivery point**
- **The DOD should be monitoring data development via the Systems Engineering process and reviews; PDR, CDR, etc**
- **The DOD must promptly check for conforming markings and reconcile with approved assertions and legends.**
- **The DOD must promptly instruct correction/removal of non-conforming or unjustified markings.**
- **Challenge unjustified markings, if necessary.**

- **Unlimited rights in technical data and computer software**
 - Exclusive public funding; or FFFOIMT regardless of funding
 - The USG can share with anyone for any reason
 - No marking necessary
 - Copyright is permissible; (© ABCD Industries 2009)
 - Suitable for competition
- **Government Purpose Rights in technical data and computer software**
 - Mixed (private and public) funding
 - Data can be shared with 3rd party via a Non-Disclosure Agreement
 - Only one contractually authorized marking
 - Time limited for 5 years or as may be negotiated, then UR
- **Limited Rights**
 - Exclusively (100%) funded at contractor expense
 - Must exclude the FFFIOMT data; which is assigned to the DOD with UR
 - The USG can view but may not share this data (even SEATA)
 - Only one contractually authorized marking



Rights in Data

Data License Rights Categories



- **Restricted Rights in computer software**
 - Exclusively funded (100%) by contractor
 - Must exclude software documentation delivered under the instant contract
 - Applies only to non-commercial computer software
 - The USG may not share this data (even SEATA)
 - Only one contractually authorized marking
- **Special License Rights**
 - Used when above categories are insufficient
 - Specially negotiated
 - Marking “Special License Rights” ...see contract



Rights in Data

Assertion Table Ref 252.227-7017



Restricted Item*	Basis for assertion **	Asserted Rights Category ***	Name of person asserting restrictions****
List	List	List	List

****If the assertion is applicable to items, components, or processes developed at private expense, identify both the data and each such item, component, or process.***

*****Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data pertaining to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.***

******Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited or government purpose rights under this or a prior contract, or specifically negotiated licenses).***

*******Corporation, individual, or other person, as appropriate.***

Date

Printed Name and Title

Signature

No legend is needed



Rights in Data

GPR Legend *Ref 252.227-7013*



Data delivered or otherwise furnished to the Government with Government Purpose Rights shall be marked with the following legend:

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.

Rights in Data

LR Legend *Ref 252.227-7013*

Data delivered or otherwise furnished to the Government with Limited Rights shall be marked with the following legend:

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.

Data in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

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.



Rights in Data

RR Legend Ref 252.227-7014



Software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

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.

- **Data Management [Rights] Strategy (DMS)**
 - **Genesis in Congressional and GAO investigations**
 - **Required by statute**
 - **Included in the Acquisition Strategy for the program**
 - **Updated at each Milestone or AS update event**
 - **Applicable to all ACAT I and II programs**
 - **Recommended for all programs, regardless of ACAT**
 - **Forward looking, it is a strategy**
 - **Must be closely aligned with the Program's SEP**
 - **Must be closely aligned with the Program's Life-Cycle Sustainment Plan**

Rights in Data

Practical PMO Application

- **Well written Statements of Work (SOW)**
 - The SOW must be clear on the use of contract dollars
 - Development of unique technologies or objectives must be clearly outlined in the SOW
 - The SOW must invoke the use of formal (DID/CDRL) delivery
- **Properly prepared DID/CDRL**
 - DID must be current and properly tailored
 - Must detail approval requirements, format and content
 - Must be IAW credible program schedule
- **DFARS clauses must be included in contract**
- **Astute technical experts to assess assertions must be available**
 - Assertion challenges must have a notional basis in fact
- **SE involvement at technical reviews**
 - SE reviews must reserve time to actually look at the technical data
 - Formal SE audits should be scheduled to determine compliance
- **Secure data delivery**
 - Use of USG repositories considered optimal; negates industry perturbations
- **Use and reuse..**
 - Data deliveries best integrated with; PBL, Core Depot, Maintenance and Overhaul or like uses.



Rights in Data General Summary



- **Myths within the rights in data discussion confuses the topic**
- **The USG initiatives are not about harming industry, but rather creating USG options**
- **The USG does not wish to “own” data; only securing appropriate rights to use....**
- **The USG has unlimited and automatic rights to a significant set of technical data; regardless of funding source**
 - **They include FFFIOMT**
- **The USG has unlimited rights to all technical data for which it funded**
- **The USG has significant rights in data when funding is mixed**
- **The USG must prepare better SOWs, contracts**
- **Formal (DID/CDRL) delivery is a critical part of confirming rights in data**
 - **Delivery validates compliance with the DFARS clauses, assertion and marking process**
- **The contractor must assert and justify the data it wants protected**
 - **This must be done with great detail; for each contract award; and even each document**
 - **Records must be kept**
- **Data must be properly marked, and IAW DFARS (approved assertion) process**
 - **Those markings are provided in the DFARS**
- **A DMS is required by statute and necessarily must address Rights in Data**
 - **Iterative SE baseline management a benefit**

QUESTIONS??

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