



Addressing Proprietary Concerns with Bills of Materials (BOMs)

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Report Documentation Page

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Topics to be Covered

- **Technical Data Responsibilities**
- **Cardinal Rules**
- **Definitions**
- **Non-Disclosure Agreements**
- **Types of Data Rights**
 - Unlimited
 - Government Purpose
 - Limited
- **Technical Data Rights For Obsolescence**
- **BOM Data Requirements**
- **Summary**

“The Secretary of Defense shall require program managers for major weapon systems and subsystems of major weapon systems to assess the **long-term technical data needs** of such systems and subsystems and establish corresponding acquisition strategies that provide for technical data rights needed to sustain such systems and subsystems over their **life cycle**.” (Section 2320 of title 10, United States Code)

10 U.S.C. 2320 requires, to the maximum extent practicable, an identification **prior to delivery** of any technical data to be delivered to the Government with restrictions on use.

Technical Data Responsibilities

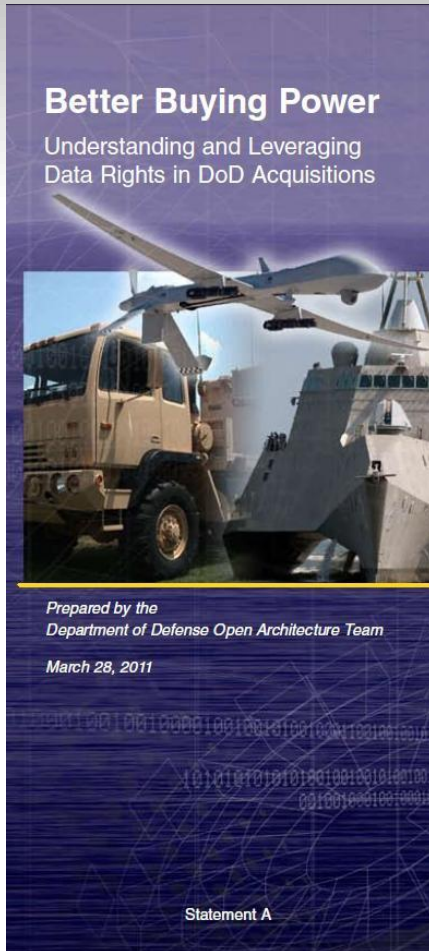
- **Implementation Directive for Better Buying Power - Obtaining Greater Efficiency and Productivity in Defense Spending (USD AT&L Memo Dated Nov 3, 2010)**
 - *Require open systems architectures and set rules for acquisition of technical data rights:*
 - *Effective November 15, 2010, you will conduct a business case analysis, in consort with the engineering tradeoff analysis that will be presented at MS B.*
 - The business case analysis will outline the open systems architecture approach, combined **with technical data rights** the government will pursue in order to **ensure a lifetime** consideration of competition in the acquisition of weapon systems.
 - The results of this analysis will be reported in the Acquisition Strategy Report and in the competition strategy.

- Four cardinal rules:
 - Anticipate and **plan for sustainment** over the **entire system life cycle**
 - Ensure Return on Investment (ROI) for government-funded development
 - Don't make an **unnecessary "grab"** for proprietary data/rights
 - Evaluate data/rights in source selection:
Do it **EARLY and ALWAYS**

- **Technical Data** - Scientific or technical information recorded in any form or presented in any manner
- **Proprietary Data** - Internally generated technical data or documents controlled by a firm to safeguard its competitive edge. Proprietary data may be protected under copyright, patent, or trade secret laws.
- **Obsolescence BOM Data** – A Minimum subset of Technical Data required for proactively managing Obsolescence.

Non-Disclosure Agreements

- **Government employees should not sign non-disclosure agreements without consulting government legal counsel.**
 - Protections are redundant due to the Trade Secrets Act (18 U.S.C. 1905)
 - Provisions violate federal law
 - Some require resolution of disputes in state courts
 - Some require indemnification of the non-government entity



- **Types of Rights:**
 - Unlimited
 - Government Purpose
 - Limited
 - Restricted (Software)
- **Guidance on Data Rights Available at <https://acc.dau.mil/OA>**

Unlimited Data Rights

- **Technical Data** produced or developed **exclusively** with **Government funds**
- **Technical Data** for **Form, Fit, and Function** or corrections or changes to **Technical Data** furnished to the contractor
- **Technical Data** already **publicly available** or has been released or disclosed by the contractor **without restrictions** on further use, release, or disclosure.
- **Technical Data** necessary for **installation, operation, maintenance, or training** purposes

Government Purpose Rights

- **Technical Data** produced or developed with **mixed funding**.
- **Rights are for a five-year period, or other negotiated period, and shall commence upon execution of the Contract.**
 - Upon expiration of the Government Purpose Rights period, the Government shall have unlimited rights to the technical data.
- **The Government shall not release or disclose government purpose rights technical data to another entity unless**
 - The intended recipient is subject to the non-disclosure agreement at 227.7103-7 of the DFARS.
 - The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS 252.227-7025.

Limited Rights

- The Government obtains limited rights to **Technical Data** produced or developed exclusively at **private expense**
- Limited Rights Data **MAY NOT** be **used, released, or disclosed** outside the Government without the permission of the contractor asserting the restriction except for a use, release, or disclosure that is **necessary for emergency repair and overhaul.**

- Identify the Systems and/or Components **Technical Data** will be delivered for per the production Contract.
- Systems and Components **NOT Delivered** with full **Technical Data** in the Contract **AND** are critical for Obsolescence Management need to be identified.
 - A subset of data sufficient for Obsolescence Management should be required by the contract
 - The subset of **Technical Data** will likely have unlimited data rights but may require negotiations with the manufacturer

- Include **Priced Options or CDRLs** in **Contracts for the minimum Technical Data required for Obsolescence Management (i.e. DI-SESS-81656)**.
 - Exercise the **Options** when and if you need the information.
 - Contract may include a caveat limiting data use to OM purposes, not for reproduction, release, etc.
 - Contracts should include **flow-down** requirements to all applicable sub-contactors, likely in the form of Supplier Data Requirements List (SDRLs).
 - Engineering change proposals should be reviewed to ensure that obsolescence does not get designed into systems, replacement part data will be required for OM

BOM Data Requirements

- **There are two main categories of BOM data from an obsolescence perspective:**
 - Automatically tracked piece-parts
 - Manually tracked - Parts requiring phone or email surveys
- **Both levels of data provide part numbers that can be tracked for obsolescence**
- **Ensuring a BOM contains data down to the automatically tracked piece-part level is best because:**
 - It costs less to track these parts than to make periodic vendor phone call surveys
 - It provides the most advanced notice of impending issue identification and provides for the **greatest amount of time for determining a solution**

BOM Data Requirements

- **An effective OM Program requires enough Technical Data in a Bill of Materials from the OEM to be successful.**
- **As defined in DI-SESS-81656 the EBOM Data LRU Component Level BOMs should contain at a minimum the following data fields:**
 - Original Equipment Manufacturer (OEM)
 - OEM CAGE
 - OEM/Source or Specification Control Drawing (SCD) Piece-Part OEM Part Number
 - OEM/SCD Piece-Part Revision Level
 - OEM/SCD Piece-Part Firmware Version
 - OEM/SCD Piece-Part Next Higher Assembly
 - OEM/SCD Piece-Part Nomenclature
 - OEM/SCD Piece-Part Quantity at that location on the platform or system
 - **Actual Manufacturer Piece-Part Number**
 - **Actual Manufacturer Piece-Part CAGE (Or Manufacturer Name)**
 - Known Alternate Piece-Part Numbers and CAGEs
 - National Item Identification Number (NIIN)

Summary

- Program Managers are responsible for requesting timely, accurate, and complete BOM data delivery.
- Industry is required to support data requirements as defined by program **contracts**.
- The level and quality of BOM data obtained by program management is **defined by the contract deliverables** as negotiated between the program and the contractor.
- DMSMS data requirements need to be viewed with the platform lifecycle in mind without infringing on proprietary data rights
- Obsolescence management will be required for the entire platform lifecycle and the earlier in the lifecycle it is addressed the better the platform availability and the less cost over the lifecycle
- Collaboration does NOT end when the system is fielded; government will need contractors and sub-contractors continuously into sustainment phase to ensure platform lifecycle health, to design solutions for future obsolescence.

License to Release

- **DoD acquires a license (not ownership) to use, release, or disclose technical data and computer software data to non-Government employees. Even if DoD funded 100% of the development of that technical data and computer software – that is not ownership.**
- **The license DoD acquires permits DoD to use, release or disclose that technical data and computer software**
 - To specific persons or entities
 - For specific purposes
 - For specific periods of time

- **Defense Federal Acquisition Regulation (DFAR) 227.7102-2:**
 - DoD may use, modify, reproduce, release, perform, display, or disclose data only within the Government. The data may not be used to manufacture additional quantities of the commercial items and, except for emergency repair or overhaul and for covered Government support contractors, may not be released or disclosed to, or used by, third parties without the contractor's written permission.
- **Safeguards**
 - Data should be held on secure servers with proper firewalls
 - Access should be strictly controlled on a need to know basis
- **If data is released illegally**
 - There may be criminal penalties
 - The agency may be required to pay out millions of dollars in damages
 - The program may be forced into a sole-source position for a follow-on acquisition