ARMY - AMC INTELLECTUAL PROPERTY LAW CONFERENCE

Sponsored by the

U.S. Army Laboratory Command

Ramada Inn and Conference Center
Annapolis, Maryland

3-5 May 1987

Sunday, 3 May 1987

4:00 - 6:00 pm		Early Registration
7:00 pm		Informal Dinner Arrangements

Monday 4 May 1987

7:30 am		Registration
8:00 am		Welcome/Opening Remarks Saul Elbaum, Moderator Chief, Intellectual Property Law Division, LABCOM Anthony Lane Patent Counsel Army Legal Services Agency
8:30 am	Tab A	Non-Evaluation of Royalties John C. Garvin, Jr. Chief, Intellectual Property Law Division MICOM
9:00 am		Royalty vs. Return on Investment Robert W. Poor, Attorney Army Armament, Munitions & Chemical Command Edgewood Area Aberdeen Proving Ground, MD

9:15 am	Tab B	Joint Logistics Commanders' (JLCs) Regulations and Handbook on Data Rights Bob Gibson Patent Attorney, AMC
10:00 am		Break
10:15 am	Tab C	Panel Discussion, DFARS provisions on technical data; Proposed Rule on Non-Disclosure Agreement W. Robert Baylor, Moderator Patent Attorney LABCOM Richard Summerour Chairman for both the DAR Technical Data Committee and the DAR Software Committee Air Force/RDCS Frank G. Nieman Navy member for both committees Staff Attorney Office of Naval Research John Raubitschek Associate Solicitor Patent and Trademark Office (formerly with Army Legal Services Agency)
11:30 am	Tab D	Compensation for Licensing of Competitors - The Nash Approach Frank A. Lukasik Chief, Patent Law Division Air Force Systems Command
12:00 pm		Luncheon
	Tab E	Speaker - Gene T. Fisher Legislative Assistant for Congressman Albert G. Bustamante

1:30 pm		Remarks
		Burton M. Blair AMC Command Counsel
		BG John L. Fugh Assistant Judge Advocate General for Civil Law Department of the Army
1:45 - 4:45 pm		Rights in Computer Software
		Sheldon Kanars Assistant Chief Counsel Intellectual Property Law, CECOM Fort Monmouth, New Jersey
	Tab F	Proposal for a new DoD "Rights in Software" clause
		Pamela Samuelson Professor of Law University of Pittsburgh
		Software Maintenance and Enhancement
		Anne C. Martin Software Licensing Project Software Engineering Institute Carnegie-Mellon University
	Tab G	Model Software Licensing Agreement
		Saul Elbaum Chief, Intellectual Propety Law Division, LABCOM
		PANEL DISCUSSION
		Sheldon Kanars, Leader Pamela Samuelson Anne C. Martin Richard Summerour Jack M. Glandon, Patent Attorney, Army Missile Command
5:00 pm		Reception at Ramada (Cash Bar)
7:00 pm		Dinner (Optional) (Name of restaurant to be announced)

Tuesday, May 5, 1987

7:00 am		Breakfast
8:00 am	Tab H	Initiative to review patents and patent applications for AMC Tech Base Utilization Peter W. Collery Special Project Officer/Attorney, LABCOM Office of Deputy Chief of Staff for Intelligence
9:00 am	Tab I	Trademarks in the Army Major (P) William V. Adams Patent Attorney Army Legal Services Agency
9:30 am		Overview of Intellectual Property Law-Army Wide Anthony Lane Patent Counsel Army Legal Services Agency Army Corps of Engineers Capt. Charles Calkins Patent Attorney, COE Walter Reed Army Medical Center LTC Francis A. Cooch IV Patent Counsel, Center Judge Advocate Office Army Medical R&D Command Paul E. O'Donnell, Jr. Patent Attorney Fort Detrick, Frederick, MD
10:10 - 10:15 am		Break
10:15 - 12:00	Tab J	The Federal Technology Transfer Act of 1986 Norman Latker, Director Office of Productivity, Technology and Innovation, Department of Commerce
	Tab K	Technology Transfer Model Cooperative R&D Agreement Roundtable Discussion: The Impact of Technology Transfer on Patents, SIRS and Contracting Out Saul Elbaum

GOVERNMENT PATENT LAWYERS ASSOCIATION
WASHINGTON, D.C.

Membership Roster (April 1987)

AGRICULTURE, Department of

SILVERSTEIN, Howard M.	Deputy Assistant General Counsel for Patents	447-4866

AIR FORCE, Department of

ALLSHOUSE, Charles C.	Chief, AF/JACPI, WPAFB	(513) 255-2872
BUDOCK, George J.	Patent Attorney, AF/JACP	475-1386
CLEARY, Vincent N.	Patent Attorney, AFSC	(714)962-0823
KALMBAUGH, David S.	Patent Attorney, AF/JACP	475-1386
KUNDERT, Thomas L.	Chief, AF/JACPD, WPAFB	(513) 255-2838
LUKASIK, Frank A.	Chief, Patent Law Div., AFSC	981-5372
PAWLIKOWSKI, Gene	Patent Attorney	475-1386
PETRUNCIO, John M.	Patent Attorney, AF/JACP	475-1386
PRAHINSKI, Theodore	Patent Attorney, AFSC	981-5372
SINGER, Donald J.	Chief, Patents Div., AF/JACP	475-1386
STEVENS, Eugene E.	Patent Attorney, AF/JACP	475-1386
STOLL, Leonard F.	Patent Attorney, AF/JACP	475-1386
WISEMAN, Morris	Patent Attorney, AFSC	981-5372

ARMY, Department of

ADAMS, William V.	Patent Attorney, JALS-PC	756-2430
ALTHERR, Jr., Robert	Patent Attorney, JALS-PC	756-2430
BAYLOR, W. Robert	Patent Attorney, LABCOM	394-1105
BECKER, John E.	Patent Advisor, BRADC, Ft. Belvoir	664-5411
COOCH, Frank, LTCOL	Patent Attorney	576-4369
ELBAUM, Saul	Patent Counsel, LABCOM	394-3790
GARVIN, John C., Jr.	Patent Counsel, MICOM	(205) 876-1121
GIBSON, Robert P.	Patent Attorney	274-8051
GOLDBERG, Edward	Patent Attorney, CECOM Ft. Monmouth	(201) 532-3187
KANARS, Sheldon D.	Ass't. Chief Counsel, CECOM Ft. Monmouth	(201) 532-4112
KENNEDY, Alan J.	Patent Attorney, LABCOM	394-3790
LANE, Anthony T.	Patent Counsel, JALS-PC	756-2430
McDONALD, Thomas E.	Patent Attorney, LABCOM	394-3790
NICHOLSON, Hugh P.	Patent Attorney, MICOM	(205) 876-1121
PHILLIPS, Roger	Patent Adviser, BRADC, Ft. Belvoir	(703) 664-5411
REHBERG, John	Patent Attorney, CECOM	(201) 532-3187
ROBERTO, Muzio B.	Patent Attorney, LABCOM	394-3790
SHEEHAN, William J.	Patent Attorney, AVSCOM	(314) 263-3591

GPLA Membership Roster

ARMY, Department of (continued)

SHORTILL, Joseph	Patent Attorney, LABCOM	394-1105
SOLDERLING, Gail	Patent Attorney, TACOM	(313) 574-8682
STOLARUN, Edward L.	Patent Attorney, LABCOM	394-1105
TISCHER, Arthur H.	Supervisory Patent Attorney, AVSCOM, St. Louis	(314) 263-3591

BRITISH EMBASSY

MUIR, Henry J.	Assistant Director, Intellectual Property Rights	(202) 898-4321

ENERGY, Department of

CONSTANT, Richard E.	Assistant General Counsel for Patents	586-2802
HIGHTOWER, Judson R.	Patent Attorney	586-3499
LIBMAN, George H.	Patent Attorney (Albuquerque, NM)	(505) 844-8231
MARCHICK, Robert J.	Patent Attorney	586-4792
MOSER, William E.	Deputy AGC for Patents	586-2806
REICHERT, Earl T.	Patent Attorney	586-3444

ENVIRONMENTAL PROTECTION AGENCY

BOCHENEK, Benjamin H.	Patent Counsel	382-5460

HEALTH AND HUMAN SERVICES

FERRIS, Thomas G.	Patent Attorney	496-7735
HENDRICKS, Glenna	Patent Attorney	496-7056
RANDALL, Leroy B.	Patent Attorney	496-7735

INTERIOR, Department of

KOLTOS, E. Philip	Patent Attorney	343-4471
ZACK, Thomas	Patent Attorney	343-4471

GPLA Membership Roster

JUSTICE, Department of

BARLOW, Harry E.	Attorney	724-7280
BERL, Herbert	Attorney	724-7283
BUCHAN, B.Frederick, Jr.	Attorney	724-7276
DePIETRO, Vito J.	Director, Commercial Litigation Branch	724-7223
STOKES, James D., Jr.	Attorney	724-7279
TOWLER, Oscar A.	Attorney	724-7282

LIBRARY OF CONGRESS, COPYRIGHT OFFICE

LILLIS, Mark	Attorney for Research Programs	287-8378
MOORE, Waldo H.	Assistant Register of for Registration	287-8378

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

KEMPF, Robert F.	Assistant General Counsel for Patent Matters	453-2411
LAWRENCE, Nina M.	Patent Attorney	453-2417
LUPULOFF, Harry	Patent Attorney	453-2421
MANNING, John R.	Patent Attorney	453-2416
MARCHANT, R. Dennis	Patent Attorney	453-2420
MC COY, Garland T.	Deputy Assistant General Counsel for Patent Matters	453-2412
SANDLER, Ronald F.	Patent Attorney	286-9275
TRESANSKY, John O.	Patent Counsel, Goddard Space Flight Center	286-7351
WOFFORD, Leon	Patent Counsel, Marshall	(205) 544-0024

NATIONAL SECURITY AGENCY

MASER, Thomas O.	Assistant Patent Counsel	(301) 859-6647
UTERMOHLE, John R.	Patent Counsel	(301) 859-6647

NATIONAL TECHNICAL INFORMATION SERVICE

AUBER, Robert P.	Patent Licensing Specialist	487-4732
DEVNANI, Papan E.	Patent Licensing Specialist	487-4739

GPLA Membership Roster

NAVY, Department of

ALLAHUT, Louis	Patent Attorney, NAVAIR	692-2445
BUSCH, James T.	Patent Attorney, ONR	696-4000
DOBYNS, Kenneth W.	Patent Attorney, NAVSEA	692-7077
DYNDA, Frank J.	Patent Attorney, NAVAIR	692-7810
ERICKSON, Roger J.	Patent Attorney, ONR	696-4001
FORREST, John L.	Patent Attorney, NRL	767-3428
FREW, James D.	Patent Attorney, ONR	696-4002
GARVERT, William C.	Deputy Counsel, ONR	696-4000
GOSHORN, Elmer E.	Patent Attorney, OGO	692-7136
HAIRSTON, Kenneth W.	Patent Attorney, JCMP	692-7883
HENDERSON, William R.	Patent Attorney, NAVSEA	692-7077
JACOBS, Kenneth E.	Patent Attorney, NAVSEA	692-7077
JOHNSON, Roger D.	Patent Attorney, NSWC, White Oak	394-2182
KELLY, Brian C.	Patent Attorney, NRL	767-3428
KLEIN, Alan P.	Patent Attorney, NAVSEA	692-7077
KWITNIESKI, A. F.	Patent Attorney, ONR Branch Office, London	(441) 409-4369
LESNIAK, Andrew M.	Patent Attorney, NRL	767-3428
MARSH, Luther A.	Patent Attorney, NSRDC	227-1834
MC CARTHY, William F.	Patent Attorney, ONR	696-4003
MC DONNELL, Thomas E.	Patent Attorney, ONR	696-4016
MC GILL, Arthur A.	Patent Attorney, NUSC, Portsmouth, R.I.	(401) 841-4736
NIEMAN, Frank G.	Principal Advisor	696-4007
O'DWYER, Thomas S.	Patent Attorney, Naval Facilities Engr. Comm.	(415) 877-7641
PECK, Donald G.	Patent Adviser, NAVSEA	692-7077
SHEINBEIN, Sol	Patent Attorney, NAVSYSCOM	692-7077
SLIWKA, Melvin J.	Patent Attorney, SPAWAR	692-8616
TARLANO, John P.	Patent Attorney, SSPO	695-4308
TOWNSEND, W. Cecil	Associate Counsel, SPAWAR	692-8458
WALDEN, Kenneth E.	Patent Attorney, NSWC, White Oak	394-2174
WILLIAMS, Ann C.	Patent Attorney, NAVAIR	692-7810
WOHLFARTH, Robert M.	Patent Attorney, SSPO	695-4308
WYNN, John G.	Patent Attorney, ONR	696-4005

PATENT AND TRADEMARK OFFICE

ALLEN, David B.	Trademark Trial and Appeal Board	557-3551
ARBES, Carl J.	Examiner	557-6509
CAGE, Kenneth L.	Director, Group 220	557-2476
CORCORAN, Robert J.	Office of Quality Review	557-3844
CROYLE, Carlton R.	Supervisory Patent Examiner	557-3464
DAUS, Donald G.	Supervisory Patent Examiner	557-3920
FREEH, William L.	Examiner	557-0900

GPLA Membership Roster

PATENT AND TRADEMARK OFFICE (continued)

GLUCK, Richard	Primary Examiner	557-3128
GOANS, Judy M.	Legislation & International IP Specialist	557-3065
GRAY, Bobby R.	Director, Group 310	557-2921
GRIFFITHS, John E.	Patent Examiner	557-5966
LEVY, Earl	Director, Group 230	557-5088
McCARTHY, Helen M.	Primary Examiner	557-2921
MEYERS, Albert T.	Supervisory Patent Examiner	557-3304
O'KEEFE, Veronica	Examiner	557-2517
OSTRAGER, Allen M.	Primary Examiner	557-5721
RAUBITSCHEK, John	Associate Solicitor	557-4035
SEROTA, Saul I.	Board of Appeals	557-4023
THOMAS, James D.	Supervisory Patent Examiner	557-0375
TUBBESING, Theodore A.	Primary Examiner	557-4918
WEIMER, Elizabeth C.	Patent Examiner	557-0850
WILLIAMS, Archie E., Jr.	Examiner	557-2119

TRANSPORTATION, Department of

WILDENSTEINER, Otto M.	Patent Attorney	366-4710

U.S. POSTAL SERVICE

MAJOR, Theodore	Patent Counsel	245-4062

SOCIAL MEMBERS (and former agency as underlined)

ALVEY, Ralph	Army	
BEERS, Robert F.	Navy	
CRAWFORD, Robert	Navy	524-9781
DEELEY, Harold P., Jr.	DOT	978-7351
EDELBERG, Nathan	AMC	593-2040
FARMER, Herbert E.	DOT	(617) 494-2738
GAPCYNSKI, William G.	Army	525-6809
GLASSMAN, Lawrence	Army	588-9278
HEALD, Randall		920-6968
HELVESTINE, Albert M.	Navy	(301) 849-8467
HODGES, Quinton E.	Navy	622-0167
JARCHO, Harold G.	Air Force	434-8357
KELLY, Edward J.	Army	534-1238
LEES, Frederick J.	NASA	765-8817
MERCHANT, John H.	PTO	368-3519
NEUMANN, O.A.	PTO	881-4053
O'CONNELL, Joseph A.	Navy	965-3889
PARKER, Gayle	NASA	920-8831
PEARSON, George	Navy	(714) 222-7025

GPLA Membership Roster

SOCIAL MEMBERS (continued)

PERRONE, Matthew R.,Jr.	Navy	(312) 658-5140
POSTMAN, Martin S.	AF	946-0456
QUESENBERRY, William O.	Navy	
REED, Richard C.	Navy	(301) 292-5618
RICHWINE, Francis K.	Army	
ROBBINS, David	NBS	
ROSS, Leo	Navy	532-7145
ROTKIN, Irving J.	PTO	
RUSZ, Joseph E.	Air Force	356-5696
SADOWSKY, Gersten	Interior	949-7095
SARAGOVITZ, Harry M.	Army	554-1283
SCIASCIA, Richard S.	Navy	(301) 292-2970
SCOTT, Thomas J.	Justice	393-0177
SIMPSON, Martin P.	DOE	(415) 422-0502
SPECHLER, Arthur I.	Army	(609) 435-4609
SPEVACK, A. David	Justice	(703) 241-1300
STEPHENS, Daren	PTO	548-1618
STERMAN, Milton	PTO	439-0287
TOMPKINS, Raymond I.	Navy	360-3188
WAMSLEY, Herbert C.	PTO	466-2396
WEINSTEIN, Stanton D.	Navy	(213) 797-5085

1. Maj. William V. Adams
   U.S. Army Legal Services Agency
   Falls Church, VA

2. Maj. Robert F. Altherr, Jr.
   U.S. Army Legal Services Agency
   Falls Church, VA

3. W. Robert Baylor
   U.S. Army Laboratory Command
   Adelphi, MD

4. John Becker
   U.S. Army Troop Support Command
   Ft Belvoir, VA

5. Werten F. Bellamy
   U.S. Army Legal Services Agency
   Falls Church, VA

6. Burton M. Blair
   Headquarters, U.S. Army Materiel Command
   Alexandria, VA

7. Kenneth L. Cage
   U.S. Patent and Trademark Office
   Arlington, VA

8. Cpt. Charles Calkins
   U.S. Army Corps of Engineers
   Ft Belvoir, VA

9. Harold H. Card
   U.S. Army Armament, Munitions and Chemical Command
   Dover, NJ

10. Maj Louis D. Carlson
    U.S. Army Office of The Judge Advocate General
    Washington, DC

11. Richard E. Constant
    U.S. Department of Energy
    Washington, DC

12. LTC. Francis Cooch
    Walter Reed Army Medical Center
    Washington, DC

13. James Dalgety
    Defense Data Management Office
    Falls Church, VA

14. COL Joseph Dudzik
    U.S. Army Laboratory Command
    Adelphi, MD

15. Aubery J. Dunn
    U.S. Army Communications/Electronics Command
    Ft Belvoir, VA

16. Saul Elbaum
    U.S. Army Laboratory Command
    Adelphi, MD

17. BG John L. Fugh
    U.S. Army Office of The Judge Advocate General
    Washington, DC

18. William C. Garvert
    Office of Naval Research
    Arlington, VA

19. John C. Garvin
    U.S. Army Missile Command
    Redstone Arsenal, AL

20. Robert P. Gibson
    Headquarters, Army Materiel Command
    Alexandria, VA

21. Jack M. Glandon
    U.S. Army Missile Command
    Redstone Arsenal, AL

22. Mark Goldberg
    U.S. Army Laboratory Command
    Watertown, MA

23. Solomon S. Goldberg
    U.S. Army Test and Evaluation Command
    Aberdeen Proving Ground, MD

24. Howard Goldman
    U.S. Army Corps of Engineers
    Ft Belvoir, VA

25. Max L. Harwell
    U.S. Army Communications/Electronics Command
    Ft Belvoir, VA

26. Darrell Hollis
U.S. Army Corps of Engineers
Ft Belvoir, VA

27. Tigh Hughes
U.S. Army Office of The General Counsel
Washington, DC

28. Sheldon Kanars
U.S. Army Communications/Electronics Command
Ft Monmouth, NJ

29. Robert F. Kempf
National Aeronautics and Space Administration
Washington, DC

30. Alan J. Kennedy
U.S. Army Laboratory Command
Adelphi, MD

31. Kathy Kurke
U.S. Army Corps of Engineers
Ft Belvoir, VA

32. Lawrence E. Labadini
U.S. Army Troop Support Command
Natic, MA

33. Anthony Lane
U.S. Army Legal Service Agency
Falls Church, VA

34. Norman Latker
Department of Commerce
Washington, DC

35. Milton W. Lee
U.S. Army Communications/Electronics Command
Ft Belvoir, VA

36. Frank A. Lukasic
U.S. Air Force Systems Command
Washington, DC

37. Anne C. Martin
Software Engineering Institute
Pittsburgh, PA

38. John Meachum
U.S. Army Armament, Munitions and Chemical Command
Rock Island, IL

39. Thomas E. McDonald
U.S. Army Laboratory Command
Adelphi, MD

40. William E. Mosier
U.S. Department of Energy
Washington, DC

41. Frank G. Neiman
Office of Naval Research
Arlington, VA

42. Paul O'Donnell
U.S. Army Medical Research and Development Command
Ft Detrick, MD

43. Robert Parise
U.S. Army Armament, Munitions and Chemical Command
Dover, NJ

44. Roger F. Phillips
U.S. Army Troop Support Command
Ft Belvoir, VA

45. Robert W. Poor
U.S. Army Armament Munitions and Chemical Command
Aberdeen Proving Ground
Edgewood Arsenal, MD

46. John Raubitschek
U.S. Patent and Trademark Office
Arlington, VA

47. Muzio B. Roberto
U.S. Army Laboratory Command
Adelphi, MD

48. Pamela Samuelson
University of Pittsburgh
Pittsburgh, PA

49. Donald J. Singer
U.S. Air Force/JACP
Washington, DC

50. Laurence Smail
U.S. Army Aviation Systems Command
St. Louis, MO

51. Edward L. Stolarun
U.S. Army Laboratory Command
Adelphi, MD

52. Richard Summercur
U.S. Air Force/RDCS
Washington, DC

53. Peter A. Taucher
U.S. Army Tank Automotive Command
Warren, MI

54. Arthur H. Tischer
U.S. Army Aviation Systems Command
St. Louis, MO

A

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, DC 20310-0103

SARDA

10 JUN 1986

MEMORANDUM FOR DIRECTOR, DAR COUNCIL

SUBJECT: DAR Case 86-921, Evaluation of Royalty Fees Authority to Deviate from FAR 27.204-3/52.227-7

1. PROBLEM: FAR 27.204-3 requires Army contracting officers to use the provision at FAR 52.227-7 when a pre-procurement patent license agreement exists and calls for payment of a royalty fee if the patent is used for competitive (re)procurement. FAR 27.204-3(b) and the provision call for, in part, the contracting officer to add the amount of royalty fee to the offer of a non-patent holder/non-licensee. This is contrary to Army policy as expressed by the Under Secretary of the Army and confirmed in written correspondence to Congress in regard to a specific procurement action.

2. RECOMMENDATION: That the DAR Council authorize the Army to deviate (for a period of three years) from that portion of FAR 27.204-3 and 52.227-7 that seem to require evaluation of patent royalty fees, in those rare situations when a pre-procurement patent license agreement exists, where significant future competitive (re)procurement is anticipated, and when deemed to be in the best interest of the Government.

3. DISCUSSION: Under DAR Case 85-148 the DAR Council rejected an Army proposal to amend the FAR to require such patent royalty fees to be considered as "sunk costs" of an investment in future competition", and therefore not be evaluated, at the discretion of the contracting officer. Directed Army policy does not allow evaluation of such fees except when properly justified and approved at the HQDA level.

The Patent Committee report of 27 Sep 85 under DAR Case 85-148 opined that the FAR 27.204-3 procedures were "designed to give the patent holder or his licensee(s) an equitable advantage in a procurement against non-licensed competitors,...". Nonevaluation of the royalty fees does not harm the patent-holder, nor create any undue advantage or disadvantage, since the patent holder is paid the agreed-upon fee by the Government. The Committee further argued that, since the Government is obligated to pay the royalty and is obligated to award a contract to the lowest responsible, responsive/acceptable

SARDA
SUBJECT: DAR Case 86-921, Evaluation of Royalty Fees Authority to Deviate from FAR 27.204-3/52.227-7

bidder/offeror, price and other factors considered, therefore we must evaluate the royalty fee. This is patently flawed logic in that the language is permissive (it dictates what the Government is allowed to consider in evaluation and source selection, which is then set forth in the pertinent solicitation). There are many costs to the Government in preparing for future competition, or even to assure competition on an instant procurement, which are considered "sunk" costs (e.g., the cost of preparing a competitive specifications or the cost of acquiring a technical data package; the cost of preparing and disseminating competitive solicitation packages, etc.). These are considered as "costs of doing business" under a system that mandates "full and open" competition by statute and that assumes substantial savings due to the forces of competition.

John R. Conklin
Army Policy Representative
DAR Council

FAR 27.204-3 PATENTS - NOTICE OF GOVERNMENT AS A LICENSEE

(a) When the Government is obligated to pay a royalty on a patent because of a license agreement between the Government and a patent owner and the contracting officer knows (or has reason to believe) that the licensed patent will be applicable to a prospective contract, the Government should furnish information relating to the royalty to prospective offerors since it serves the interest of both the Government and the offerors. In such situations, the contracting officer should include in the solicitation a notice of the license, the number of the patent, and the royalty rate recited in the license.

(b) When the Government is obligated to pay such a royalty, the solicitation should also require offerors to furnish information indicating whether or not each offeror is a licensee under the patent or the patent owner. This information is necessary so that the Government may either (1) evaluate an offeror's price by adding an amount equal to the royalty, or (2) negotiate a price reduction with an offeror-licensee when the offeror is licensed under the same patent at a lower royalty rate.

(c) If the Government is obligated to pay a royalty on a patent involved in the prospective contract, the contracting officer shall insert in the solicitation, substantially as shown, the provision at 52.227-7, Patents - Notice of Government Licensee.

FAR 52.227-7 PATENTS - NOTICE OF GOVERNMENT LICENSEE

The Government is obligated to pay a royalty applicable to the proposed acquisition because of a license agreement between the Government and the patent owner. The patent number is 4,000,000 and the royalty rate is 3.0%. If the offeror is the owner of, or a licensee under, the patent, indicate below:

( ) Owner ( ) Licensee

If an offeror does not indicate that it is the owner or a licensee of the patent, its offer will be evaluated by adding thereto an amount equal to the royalty.

FAR 52.227-7 PATENTS - NOTICE OF GOVERNMENT LICENSEE (Deviation; Army Control Number 86-DEV-10)

The Government is obligated to pay a royalty applicable to the proposed acquisition because of a license agreement between the Government and the patent owner. The patent number is 4,000,000 and the roylaty rate is 3.0%. If the offeror is the owner of, or a licensee under, the patent, indicated below:

( ) Owner ( ) Licensee

Notwithstanding the foregoing, royalty fees will not be considered in evaluation of offers.

ARTICLE X. LICENSOR'S RIGHT TO COMPETE

LICENSOR shall be given timely notice of each and every proposed procurement of LICENSED ARTICLES, and for source selection purposes ASPR 1-304.3 shall apply. (Hughes' draft.)

ARTICLE VIII. LICENSOR'S RIGHT TO NOTICE

Subject to security and other regulations or statutes, LICENSOR shall be given timely notice of each and every proposed procurement of LICENSED ARTICLES, and for source selection purposes DAR (ASPR) 1-304.3 or such similiar policy which may be applicable at the time of each procurement shall apply. (Executed License Agreement.)

PROTEST BY HUGHES AIRCRAFT COMPANY
AGAINST U.S. ARMY MISSILE COMMAND
AWARD OF CONTRACT UNDER RFP DAAH01-87-R-0016
GAO PROTEST B-226955

Hughes' protest centers on the provision in Section K-2 of the RFP which recites, in part, that "royalty fees will not be considered in evaluation of offers." Hughes has expounded four grounds for protest.

PROTEST GROUND I. BY ITS EXPLICIT TERMS, THE DEVIATION IS INAPPLICABLE BECAUSE THE PROCUREMENT DOES NOT PRESENT THE PROSPECT OF SIGNIFICANT FUTURE COMPETITIVE (RE)PROCUREMENTS.

Hughes contends that the deviation's explicit terms belie MICOM'S reliance on it in that the deviation is restricted to "those rare situations" when each of the following three conditions are present in the procurement:

1. "when a pre-procurement patent license agreement exists:,

2. "where significant future competitive re(procurement) is anticipated", and

3. "when deemed to be in the best interest of the Government".

PROTEST GROUND II. EVEN IF THE DEVIATION WERE TO APPLY TO PATENT ROYALTIES PAID BY MICOM, IT WOULD NOT APPLY TO ROYALTIES PAID FOR THE USE OF HUGHES' TECHNICAL DATA.

Hughes contends that the deviation does not apply to royalties paid for technical data in that the explicit terms of the deviation and FAR 52.227-7 are restricted to patent royalties, not royalties based upon technical data.

PROTEST GROUND III. IF THE DEVIATION WERE TO APPLY, THE LICENSE AGREEMENT WOULD NOT PERMIT MICOM TO USE THE TECHNICAL DATA AS ITS INTENDS.

Respecting this ground of protest, Hughes contends that:

1. The license agreement does not permit other contrac-

tors to use Hughes' technical data unless they are selected "in accordance with [the Government's] normal practices and procurement regulations."

2. The parties to the license agreement specifically discussed and agreed during negotiations that, for the purpose of evaluating offers for subsequent production contracts, MICOM would follow the normal practice of adding the amount of the royalty to the price proposed by offerors other than Hughes.

3. If Hughes had known that MICOM would not have used the royalties as an evaluation factor, it probably would not have entered into the license agreement or would have at least insisted upon higher royalty rates.

4. Hughes expectation that the royalties would be used as an evaluation factor is "fully supported by the conclusion of the DAR Council's Patent Committee that the procurement regulations at issue in the deviation were 'designed to give the patent holder or his licensee(s) an equitable advantage in a procurement against non-licensed competitors...."

5. MICOM cannot lawfully release or authorize the use of Hughes' Limited Rights data in a manner inconsistent with the license agreement.

PROTEST GROUND IV. THE DEVIATION WOULD BE INVALID IF CONSTRUED AS MICOM URGES.

Respecting this ground of protest, Hughes contends that:

1. The DAR Council has no authority to grant a class deviation involving "major policy" in that regulations require that deviations involving "major policy" must be "approved in advance by the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management)."

2. The deviation on which MICOM relies abandons established policies relating to costs, and rooted in statutes, and are subject to change by Congress only.

B

DEPARTMENTS OF THE AIR FORCE, ARMY, AND NAVY, AND THE DEFENSE LOGISTICS AGENCY

Headquarters Air Force Systems Command
Andrews Air Force Base DC 20334-5000

AFSC REGULATION 800-16

Headquarters Air Force Logistics Command
Wright-Patterson Air Force Base OH 45433-5001

AFLC REGULATION 800-16

Headquarters US Army Materiel Command
5001 Eisenhower Avenue
Alexandria, VA 22333-0001

AMC REGULATION 715-510

Assistant Secretary of the Navy
(Shipbuilding and Logistics)
Washington DC 20350-5000

SECNAVNOTE 4210

Headquarters Defense Logistics Agency
Cameron Station
Alexandria VA 22304-6100

DLA REGULATION 8400.3

1 April 1987

Acquisition Management

ACQUISITION AND MANAGEMENT OF TECHNICAL DATA AND COMPUTER SOFTWARE

Supplements to this regulation are permitted. Send suggestions, changes, and information copies of supplements to this publication, through your command office of primary responsibility, to Headquarters Air Force Systems Command (SDXP).

Purpose. This regulation sets up the Joint Logistics Commanders (JLC) program for planning and conducting the acquisition and management of technical data and computer software. It applies to organizations managing such programs that require an acquisition plan. It does not apply to the Air National Guard or US Air Force Reserve units and members.

Table of Contents

No. of Printed Pages: 15
OPR: HQ AFSC/SDXP
HQ AFLC/MMT
HQ USAMCPP-M
ASN(S&L) (CAG)
DLA-AE

Distribution: (see page 13).

1. Scope: This regulation establishes minimum requirements for planning and conducting the acquisition of technical data and computer software by all Service materiel commands. The provisions of this regulation apply to any program subject to the requirement to prepare an acquisition plan. These provisions may be followed for any other program or project that acquires technical data or computer software.

a. Although the basic principles set forth in this regulation apply to all forms of technical data and computer software, this regulation emphasizes the acquisition of engineering data. Other categories of technical data (for example, technical manuals, provisioning data) may differ from engineering data in terms of format or functional assignment, but these categories share in common with engineering data the need to precisely identify requirements, specify them in contracts, and make sure they are delivered—including appropriate government rights to use the data.

b. Computer software is governed by DOD-STD-2167, Defense Systems Software Development, and related documentation which identify the basic policies and procedures for acquiring and managing software. Since computer software is covered by many of the same contract clauses that cover technical data, this regulation expands on those aspects related primarily to rights in computer software. However, the basic principles and policies that apply to engineering data and other categories of technical data also apply to computer software.

2. Terms Explained. See appendix A.

3. Policy. This regulation establishes uniform procedures for use by Service materiel commands. It is policy that:

a. Service materiel commands assure that technical data delivered to the government are complete in all aspects and meet program objectives. This is to be done by adequate up-front planning, specifying the government's requirements as clearly and completely as possible in contracts, and then vigorously enforcing contract terms and conditions.

b. Due to the criticality of engineering data to meet competition objectives, contracts awarded by Service materiel command components shall contain provisions for engineering data guidance conferences, in-process reviews, and final reviews before acceptance.

c. Contractors performing under contracts issued by Service materiel command components shall have, maintain, and follow written procedures to assure that restrictive markings (that is, so called "proprietary" data) are applied to technical data and computer software in accordance with the terms of their contracts.

d. Program and contracting officials will ensure that prime contractors understand what is expected of them in managing their subcontractors that are generating technical data or computer software for ultimate delivery to the government.

e. Service materiel commands and subordinate activities will safeguard technical data and computer software in their possession when they contain restrictive markings. Commands will follow uniform procedures specified below when contractors' restrictive markings are challenged. The legitimate interests of contractors will be honored; however, an aggressive but practical program will be pursued to challenge restrictive markings that are not in accordance with contract provisions.

f. Service materiel commands will periodically review their implementation of these policies. Individual Service procedures will be followed to ensure that continuing training is provided as needed. The basic requirements of the JLC program to carry out these policies are contained in the paragraphs that follow. Additional guidance is provided in AFSCP 800-18/AFLCP 800-18/AMC-P 715-15/NAVSO P-3650/DLAH 8400.1.

4. Requirements:

a. Technical Data and Computer Software Planning:

(1) Technical data and computer software considerations must begin as the program and acquisition strategies are developed. As an integral part of the routine planning for initiation and conduct of a program to acquire supplies and services, program managers shall develop a plan to acquire technical data and computer software. The plan may be a separate document (for example, an Engineering Data Management Plan or a Computer Resources Life Cycle Management Plan), or it may be a section of another planning document, such as the Acquisition Plan (AP). The plan shall be updated whenever there is a significant change in the program. The purpose of such a plan is threefold: (i) to set forth in general terms the program objectives for the acquisition of technical data and software; (ii) to enhance future competition; and (iii) to identify a plan of action for accomplishing these objectives. The program's acquisition objectives should identify the key elements of data that are to be obtained and should address the intended use of the data. For example, if it is planned to obtain engineering data, the plan will so indicate and should also address whether unlimited rights in such data will be specifically acquired; what alternate methods will be used to ensure the availability of sufficient data to enable competitive reprocurement if unlimited rights are not acquired; or justification for not supporting competitive reprocurements.

(2) Knowledge of contractor and industry prac-

tices is a key factor in implementing sound program or project plans for the acquisition of technical data and computer software. Program managers and contracting officers must work together to obtain information about prospective contractor plans and capabilities for preparing and furnishing technical data and computer software. This should be done by requiring contractors to include information in their proposals about their plans and capabilities; by obtaining information about an individual contractor's capabilities, procedures, and specific contract plans through a preaward survey; or both.

(3) If the program or project will be competed using source selection procedures, specific criteria for technical data and computer software will normally be included as part of the evaluation factors for award.

(4) Specifics on planning are contained in AFSCP 800-18/AFLCP 800-18/AMC-P 715-15/ NAVSO P-3650/DLAH 8400.1. Chapter 3 includes a sample format for an Engineering Data Management Plan. Chapter 4 discusses methods of obtaining information on individual contractors before contract award.

b. Technical Data and Computer Software Managers:

(1) Each program shall have an individual (or individuals) specifically identified to manage the program's acquisition of technical data or computer software.

(2) Depending on the nature of the acquisition and individual Service practices, this individual may be referred to by such titles as Data Manager (DM), Configuration Management Officer (CMO), Software Acquisition Manager (SAM), or Engineering Data Management Officer (EDMO). The title is not as important as the fact that the individual so designated will have primary responsibility for ensuring that technical data or computer software are acquired and managed according to this regulation. The person so designated will, on behalf of the program manager, conduct a technical data and computer software management program to ensure that such data and software delivered to the government are accurate, complete, and not marked with unauthorized or incorrect restrictive markings. For ease of reference, the term "EDMO" is used throughout the remainder of this regulation and AFSCP 800-18/ AFLCP 800-18/ AMC-P 715-15/NAVSO P-3650/ DLAH 8400.1

c. Technical Data and Computer Software Management Program. Service materiel commands shall have a technical data and computer software management program consisting of two major components—a Rights Management Program and a Content Management Program:

(1) Rights Management. This portion of the program is intended to minimize unauthorized and incorrect restrictive markings on data and software submitted to the government. The rights management portion of the program is also intended to alert the program manager as to privately developed items, components, or processes at the time a contractor decides to include them in the system, equipment, or design effort under contract.

(a) Contractor Procedures:

1. Contractors and subcontractors, before delivering data with limited rights, are required by the "Restrictive Markings on Technical Data" clause (DFARS 52.227-7018) to maintain written procedures governing the marking of technical data with limited rights legends. They are also required to maintain quality assurance systems to ensure compliance with their written procedures. Contracting officers will consider a contractor's procedures and systems to be acceptable only if they satisfy the following minimum standards:

a. They must identify by name and title the employees authorized to mark technical data and computer software with restrictive markings.

b. They must make sure that the employees authorized to mark technical data with restrictive markings are trained concerning the procedures and the contractual terms pertaining to marking of technical data and computer software with restrictive markings.

c. They must make sure that employees will mark technical data and computer software with restrictive markings only if the authorized employees have determined that information in the contractor's records support the assertion that the data pertain to items, components, processes, or computer software that have, in fact, been developed at private expense.

d. They must provide for adequate evaluation of subcontractors' procedures and systems for the marking of technical data and computer software with restrictive markings.

2. To obtain uniformity in implementation of DFARS 52.227-7018 regarding contractor's obligations to have written procedures and a quality assurance system which meet these minimum standards, contracting officers should consider incorporating a special contract requirement substantially as set forth in appendix B in all solicitations and contracts which include the "Restrictive Markings on Technical Data" clause.

(b) Evaluation by Administrative Contracting Officer (ACO). In accordance with FAR 42.302(a)(48), the contract administration office is responsible for reviewing the contractor's written procedures for the marking of technical data. The ACO is responsible for documenting the adequacy of contractor procedures, using the standards set forth

in (a) above, and monitoring the contractor's compliance with those procedures. The ACO will, upon request, advise the procuring contracting officer (PCO) whether or not a contractor has acceptable procedures and the degree to which they are being followed. If a contractor's procedures or compliance with them is unacceptable, the ACO will notify affected PCOs and will seek appropriate corrective actions from the contractor. If the contractor does not promptly take appropriate steps to correct the deficiencies, the ACO will ask for PCO assistance. Examples of possible remedies which either the ACO or the PCO should pursue include withholding payment under the contract in accordance with the "Technical Data—Withholding of Payment" clause or reduction or suspension of progress payments.

(c) Prenotification and Postaward Implementation. PCOs shall obtain early information on the rights the government will or will not receive. This is accomplished by using the DFARS provisions, "Prenotification of Rights in Technical Data" (DFARS 52.227-7035) and "Alternate I" to the "Rights in Technical Data and Computer Software" clause (DFARS 52.227-7013). For computer software, DFARS 52.227-7019, "Identification of Restricted Rights Computer Software," is used. Contracting officers should consider supplementing these clauses by incorporating a special contract requirement substantially as set forth in appendix C. That requirement ensures in every situation where the government is to receive less than unlimited rights in the technical data and computer software to be delivered under the contract, or any follow-on contract, that the technical data or computer software is identified in a listing incorporated as a contract attachment.

1. During the period of performance of each contract, the contract administration office shall periodically review the contractor's applications of restrictive markings as well as the records supporting the contractor's determinations that restrictively marked technical data to be delivered under the contract pertain to items, components, or processes that were developed at private expense. The purpose of these reviews is not to reach an affirmative agreement with the contractor that the items, components, or processes were developed at private expense. The purpose is to ensure that the contractor's employees are properly complying with the company's written procedures and to generally assess the reasonableness of the contractor's determinations.

2. Deficiencies in the contractor's compliance with the written procedures may be discovered either by members of the contract administration office, as part of the monitoring of the contractor's compliance with its procedures, or by the EDMO (or other program or project official) as part of in-process reviews. In either case, deficiencies shall be reported in writing to the ACO, who will seek corrective action from the contractor. Deficiencies in the contractor's determinations that items, components, processes, or computer software were developed at private expense shall be reported to the PCO, who, with assistance of appropriate legal and technical advisors, will investigate the contractor's determinations and take action as appropriate to: (a) have the contractor remove the unauthorized restrictive markings, or (b) challenge them.

(d) Acceptance. All technical data and computer software tendered to the government for acceptance must be complete and accurate and must comply with all the requirements of the contract. The basic government policy (FAR 46.102) is to reject nonconforming technical data or computer software. Additional remedies which may be used for any nonconforming technical data include, but are not limited to, the following:

1. Follow the basic procedures in FAR 46.407 to ensure the government's interests are protected (applicable to both technical data and computer software).

2. For technical data submitted under contracts containing the DFARS 52.227-7036 clause entitled "Certification of Technical Data Conformity" (that is, contracts resulting from solicitations issued after October 1985), contact the contractor official who signed the certificate to obtain his or her help in correcting the nonconforming situations.

3. For technical data not delivered within the time specified in the contract or which is deficient upon delivery, pursue reduction of payments otherwise due to the contractor under the "Technical Data—Withholding of Payment" clause (DFARS 52.227-7030). This remedy permits the contracting officer to withhold the amount specified in the contract (up to 10 percent of the total contract price or amount, unless a lesser amount is specified).

4. For technical data delivered under contracts with the "Warranty of Data" clause (DFARS 52.246-7001), exercise the warranty provisions to correct or replace any technical data found to be nonconforming after delivery.

(e) Challenges. The process of questioning a contractor's claim of restrictive rights in technical data can occur before or after acceptance of the data. It can vary in complexity from a simple letter to a fully litigated and appealed federal court case.

1. The government expects that contractors will comply with the terms of their contracts and deliver technical data and computer software with restrictive markings only when authorized under their contracts. Technical data and computer software delivered in the past, however, may not have

been adequately reviewed to ensure that restrictive markings were used properly. Additionally, the passage of time and the rapid pace of technological change may result in contractors changing their position and no longer considering technical data related to items, components, or processes originally developed at private expense to still be subject to restrictive markings. If either of these conditions are present (that is, reasonable probability that data may be mismarked, or considerable elapsed time since original delivery), a simple letter from a competition advocate, manager of a repository, or other official may result in the contractor agreeing to remove the restrictive marking.

2. When information available to the government indicates that there are reasonable grounds to question the validity of a contractor's restrictive marking, and the procedures in 1 above do not result in success, it will be necessary to follow more formal prechallenge and challenge procedures governed by contract clauses and existing case law. If a data rights challenge is to be taken through the contract disputes process, the appropriate official shall apply his or her business judgment before proceeding. Additional details on the government's rights in technical data and specific procedures for assuring that contractors validate the restrictive markings placed on technical data and computer software delivered to the government—as well as sample challenge letters—are contained in AFSCP 800-18/AFLCP 800-18/AMC-P 715-15/NAVSO P-3650/DLAH 8400.1, chapter 6.

(2) Content Management. This portion of the program is intended to ensure that data and software delivered to the government are accurate, complete, legible, and otherwise in accordance with contract requirements. The contents management portion of the program will be tailored for individual acquisition programs or contracts. As a minimum it shall include the following elements:

(a) **Contractor guidance conferences** after award, except where sufficient information exists concerning the contractor's understanding of the requirements and the contractor's satisfactory past performance.

(b) **Periodic in-process reviews** during the preparation of technical data and computer software. In-process reviews of engineering data will be conducted by, or at the direction of, the EDMO for the purpose of ascertaining the accuracy and completeness of the data which the contractor and any subcontractors are preparing under the contract. These reviews and their counterpart computer software design, qualification, and test reviews (DOD-STD-2167) are conducted to ensure that technical data and both deliverable and nondeliverable computer software acquired under the contract will meet contract requirements and be suitable for their intended use.

(c) **Final inspection,** especially the inspection of data packages and drawing sets before they leave the contractor's plant. In the case of computer software, this would include adequate testing before installation in the operational environment.

(d) **Acceptance** at the government delivery destination (for example, a repository) only after checking for legibility, authorized markings, and the resolution of any outstanding deficiencies. For computer software, additional checkout or testing is usually required before acceptance. AFSCP 800-18/AFLCP 800-18/AMC-P 715-15/NAVSO P-3650/DLAH 8400.1, chapter 5, describes procedures for contractor guidance conferences, in-process and final reviews, technical approval, and acceptance of data and computer software.

5. Key Tasks by Program Phase. Systems acquisitions are progressive in nature. This means that specific tasks relating to technical data and computer software must be accomplished during concept exploration and advanced development in order to take delivery of technical data during full scale development and production that will be adequate for future competitions. A recap of tasks by the phase of the acquisition process is contained in appendix D.

6. Responsibilities:

a. Program Manager. Has overall responsibility for:

(1) Planning for the acquisition of technical data and computer software.

(2) Making sure that a Technical Data and Computer Software Management Program is implemented according to these requirements.

(3) Making sure that an individual is assigned primary responsibility for carrying out the Technical Data and Computer Software Management Program.

b. Technical Data and Software Acquisition Manager (or EDMO as used throughout this regulation). Responsible for:

(1) The program's acquisition of technical data and computer software.

(2) Working with the ACO to make sure that the contractor's procedures pertaining to the application of restrictive markings are adequate and followed.

(3) Assisting the program or item manager by establishing and conducting a Technical Data and Computer Software Management Program in accordance with paragraph 4c above.

c. Procuring Contracting Officer. Responsible for:

(1) Assuring that the ACO reviews the contractor's marking procedures for technical data and com-

puter software and notifies the PCO of any procedures not meeting the minimum standards set forth in this regulation.

(2) Taking action to assist the ACO in requiring the contractor to correct data and software marking procedures found unacceptable.

(3) Challenging the propriety of restrictive markings on data and software when appropriate.

d. Administrative Contracting Officer. Responsible for:

(1) Leading the contract administration office efforts to evaluate and monitor contractor procedures (and compliance with such procedures) to apply restrictive markings only when authorized by contract terms.

(2) Taking action to require the contractor to correct deficiencies in its procedures.

(3) Supporting the PCO in the conduct of the programs discussed in this regulation.

e. Competition Advocate. Responsible for:

(1) Advising program and contracting officials on the most effective ways of obtaining competition.

(2) Reviewing existing barriers to competition, such as restrictively marked technical data and computer software, and questioning restrictive markings when appropriate.

APPENDIX A

TERMS EXPLAINED

For the purposes of this regulation, a distinction must be made between technical data, engineering data, and computer software. The following definitions apply:

a. Technical Data. Recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. Technical data includes research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, technical manuals, technical orders, technical reports, catalog item identifications and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

b. Engineering Data. Technical data relating to the design, manufacture, procurement, test, or inspection of hardware items or services. Examples are drawings, associated lists, accompanying documents, manufacturer specifications, manufacturing planning documentation, and specifications prepared by a contractor or government design activity.

c. Computer Software. Computer programs and computer data bases as those terms are defined in DFARS 52.227-7013, "Rights in Technical Data and Computer Software."

d. Restrictive Markings. Markings on technical data or computer software which limit the government's right to use, duplicate, or disclose such data or software. Examples of restrictive markings include the limited rights legends on technical data and the restricted rights legend on computer software authorized by the DFARS clause 52.227-7013.

e. Service Materiel Command. AFLC, AFSC, AMC, and Navy Systems Commands. As used in this regulation, the term includes major subordinate commands as well as Defense Logistics Agency buying centers and Defense Contract Administration Service Management Areas (DCASMA) and Defense Contract Administration Service Plant Representative Offices (DCASPRO), and the Marine Corps centralized logistics activities.

APPENDIX B

MODEL OF A SPECIAL CONTRACT REQUIREMENT TO IDENTIFY MINIMUM CONTRACTOR STANDARDS FOR CONTROLLING RESTRICTIVE MARKINGS ON TECHNICAL DATA

The contracting officer should consider inserting the following in section H of the schedule of contracts containing the DFARS 52.227-7018 clause, "Restrictive Markings on Technical Data":

SPECIAL CONTRACT REQUIREMENT NUMBER _____ .

CONTRACTOR STANDARDS FOR CONTROLLING RESTRICTIVE MARKINGS:

As required by the clause of this contract entitled "Restrictive Markings on Technical Data," the contractor shall have and follow written procedures that, at a minimum, meet certain standards. These standards are as follows:

(a) The procedures shall identify an employee or employees authorized to place restrictive markings on technical data to be delivered to the government. These employees must be directly accessible to the individual who is responsible for completing technical data certificates in accordance with the clause of this contract entitled "Certification of Technical Data Conformity."

(b) The procedures shall identify a program to train employees responsible for marking and/or certifying the conformance of technical data. The training shall cover both the procedures and contract terms regarding placing restrictive markings on technical data.

(c) The procedures shall ensure that only technical data which pertain to items, components, processes, or computer software "developed at private expense" are marked with restrictive markings. In this regard, the contractor shall maintain records which are capable of indicating the following:

(1) That the item, component, process, or computer software to which the technical data refers has actually been developed.

(2) That the item, component, process, or computer software was, in fact, developed at private expense.

(3) That a reasonable audit trail exists for technical data created for the first time under this contract when the technical data pertains to items, components, processes, or computer software that were developed at private expense before this contract. The contractor's procedures must also require the beginning of an audit trail for items, components, processes, or computer software developed at private expense that are selected or used under this contract, if a subsequent requirement for the creation and delivery of technical data to the government is contained in this contract. The contractor official having final responsibility for determining whether technical data may contain restrictive markings must ensure that adequate records exist to support such restrictive markings.

(d) The procedures shall provide for adequate evaluation of subcontractor procedures for controlling the restrictive markings on technical data.

APPENDIX C

MODEL OF A SPECIAL CONTRACT REQUIREMENT TO ESTABLISH A CONTRACT LISTING OF TECHNICAL DATA OR COMPUTER SOFTWARE TO BE DELIVERED TO THE GOVERNMENT WITH LESS THAN UNLIMITED RIGHTS

The contracting officer should consider inserting the following special contract requirement when the solicitation contains the DFARS 52.227-7035 provision "Prenotification of Rights in Technical Data," or DFARS 52.227-7019, "Identification of Restricted Rights Computer Software":

SPECIAL CONTRACT REQUIREMENT NUMBER _____ .

LISTING OF TECHNICAL DATA OR COMPUTER SOFTWARE TO BE DELIVERED TO THE GOVERNMENT WITH LESS THAN UNLIMITED RIGHTS:

(a) With respect to the clauses of this contract entitled "Material Inspection and Receiving Report" and "Rights in Technical Data and Computer Software," the parties agree that technical data or computer software shall not be tendered for delivery to the government with less than unlimited rights unless the technical data or computer software is identified in a listing included in the schedule or attached to this contract.

(b) This listing shall be constructed from the listing of technical data or computer software which the contractor is required to identify to the contracting officer, either before or after award of this contract, that the contractor intends to deliver with less than unlimited rights. The inclusion of technical data or computer software on such a listing in this contract is intended to facilitate acceptance by a government quality assurance representative and does not constitute an "agreement" under either paragraph (b)(2)(i) or paragraph (b)(3)(i) of the "Rights in Technical Data and Computer Software" clause of this contract.

(c) This requirement does not change, waive, or otherwise modify, the rights or obligations of either the government or the contractor as set forth elsewhere in this contract.

APPENDIX D

KEY TASKS BY PROGRAM PHASE

1. General. For preproduction phases of the acquisition process (that is, concept exploration, demonstration and validation, and full scale development (FSD)), there are two groups of tasks relating to the acquisition of technical data and computer software which the EDMO should perform. This appendix illustrates key program tasks by referring primarily to engineering data tasks, but most of the same steps and processes apply to other categories of technical data and computer software.

a. The first group are tasks directly related to the work under contract during that particular phase. During the early phases of the acquisition process, technical data or computer software will rarely be delivered to the government, other than to report the progress during that particular phase. However, many decisions are made that will affect the technical data or computer software to be delivered to the government during later phases. In the discussion below, these tasks are referred to as "Group 1" tasks.

b. The second group concerns the preparation of the Request for Proposals (RFP) for the continuation of the acquisition in the next phase. These are referred to as "Group 2" tasks below. This second set of tasks is significant since it comes during the latter half of the acquisition phase when the typical program or project workload is very heavy and there does not seem to be enough time to apply the lessons then being learned from the current phase to the following phase.

c. Additionally, it is common practice to include options for production in full scale development contracts. When such options are used, the time is advanced when key decisions must be made concerning the work statements and data requirements for technical data and computer software. Advance planning can help facilitate all of the tasks, but the ones that follow are key ones that need to be addressed by the program or project office.

2. Concept Exploration:

a. During this phase, both the prime contractor and subcontractors should clearly understand that the government will competitively procure end items and assemblies throughout the life cycle of the system for which concepts are now being explored. One of the most important ingredients for future competition is the technical data pertaining to items that proceed into the production and deployment phase.

Group 1 Tasks:

b. During the source selection for this and future phases, the contractors' responses to RFPs in areas pertaining to technical data must be evaluated, reconciled where necessary, and negotiated into the contract. The EDMO should make sure that the demonstration and validation phase RFP and resultant contracts include the following guidance:

(1) The statement of work (SOW) and the contract data requirements list (CDRL) will require that any technical data specifically prepared by the contractors and subcontractors during this phase conform to contract requirements. Specifically, specifications shall conform to MIL-STD-490 and engineering drawings shall conform to basic drawing practices and controls in DOD-STD-100, "Engineering Drawing Practices," to reduce the need for redraw or upgrade when the program proceeds to production and deployment.

(2) The SOW will require that new or revised contractor specifications and standards not be developed when a suitable government or national specification or government or industry standard exists.

3. Demonstration and Validation Phase. During this phase, the work becomes decidedly product-oriented. Contractors make initial decisions on the selection of items and components for the system being developed. Although these decisions are usually few in number, the very fact that the items are being selected at this stage usually means that they are a critical part of the system being validated.

Group 1 Tasks:

a. The EDMO should determine whether the contractor intends to deliver technical data with limited rights and should evaluate assertions that items were developed at private expense. If an assertion is apparently supported by available information, begin examining the need for alternate methods of competition (for example, obtaining form, fit, and function data; licensing; dual sourcing) or alternate ways of satisfying the requirement.

b. Before FSD, the plan for the acquisition of technical data will be developed (reference paragraph 4a of this regulation). The plan will include:

(1) The identification of required technical data.

(2) The methods and schedules for accomplishing in-process reviews, audits, or inspections.

(3) The location and method of acceptance of data during the FSD and production contracts.

Group 2 Tasks:

c. The EDMO should make sure that the FSD phase RFP and resultant contract include appropriate tasks to:

(1) Task prime contractors to require subcontractors and vendors to identify claims of technical data subject to limited rights. For items with limited rights data, task the primes to propose alternate methods which would allow eventual government competition.

(2) Task prime contractors to levy on subcontractors and vendors the same contractual requirements for data to develop a level—3 engineering data package in subsequent phases. Make sure that all ordering information required by DOD-D-1000, paragraph 6.2, is included in contract requirements. If delivery of any technical data is required during FSD for design reviews or audits, specify the delivery on the CDRL.

(3) Provide for in-process reviews of prime and subcontractor technical data during FSD at scheduled points in the contract period.

(4) Provide for incorporation of changes to technical data to maintain currency.

(5) If the FSD RFP is to include production options, consider the need for a specific requirement for the contractor—before the exercise of the option—to summarize items, components, processes, or computer software developed at private expense which have been incorporated into the design.

(6) Require the contractor to identify any deviations or differences from DOD-STD-100 requirements in the prime or subcontractor drawing practices. These deviations or differences must be reconciled before contract award.

(7) Require the contractor to hold a guidance conference within 60 days after award of the FSD contract to ensure that the contractor has full understanding of the technical data requirements of the government. This guidance conference may be held in conjunction with the guidance conference of other functional areas.

NOTE: To the extent that technical data pertaining to prototypes of other hardware or computer software are to be delivered during the demonstration and validation phase itself, the tasks in paragraph c above should also be specified in the RFP for the demonstration and validation contract.

4. Full Scale Development Phase. During this phase, the EDMO should:

Group 1 Tasks:

a. Evaluate claims of limited rights to technical data and consider challenging those that are not clearly supported by information provided by the contractor. Finalize and document findings and agreements regarding rights claims. Ensure that any data rights agreements are spelled out in the contract.

b. Hold a guidance conference with the contractor within 60 days after award.

c. Develop review procedures and checklists, and designate responsibilities of each activity to conduct in-process reviews of prime and subcontractors' technical data.

d. Conduct in-process reviews of engineering data with design reviews, functional configuration audits (FCA), physical configuration audits (PCA), or as otherwise scheduled in the contract. Make sure that the technical data package will support all logistics requirements during the production and deployment phase, as well as domestic and foreign co-production when required. Document and control correction of deficiencies noted during reviews.

e. Before the production phase, update the planning documents for acquiring technical data.

Group 2 Tasks:

f. Make sure that the RFP and resultant contract for the production phase include:

(1) Requirements for completion and updating of the technical data tasks started during FSD.

(2) All ordering information required by paragraph 6.2 of DOD-D-1000 in the CDRL and a clear definition of delivery requirements (both "draft" and "final" sets) for engineering data and associated lists.

5. Production and Deployment Phase:

a. Complete the identification and resolution of limited rights technical data subject to limited rights claims for items, components, or processes identified during the production contract or not completed during FSD. Decisions concerning the resolution of the claims and the intent to acquire or not acquire technical data for items with validated claims must be documented.

b. Complete in-process reviews and audits of technical data before delivery. Make sure that deficiencies discovered are documented through the contracting officer and corrected before delivery.

6. Combined Phases. Not all acquisitions follow the traditional acquisition phases. Many systems are acquired using off-the-shelf components or nondevelopment items (NDI). Although the overall engineering tasks may be lessened in these cases, the fact that development has already been completed often means a mix of items developed at private expense and government expense. For these situations, sound judgment is called for, but many of the basic tasks are still required and must be addressed.

OFFICIAL

DENIS R. NIBBELIN, Colonel, USAF
Director of Administration

ABBIE G. CAYWOOD, Lt Col, USAF
Director of Administration

YAULANDA D. POWELL
Acting Chief of Operations Branch

LAWRENCE A. SKANTZE, General, USAF
Commander
Air Force Systems Command

EARL T. O'LOUGHLIN, General, USAF
Commander
Air Force Logistics Command

WILLIAM S. FLYNN, Brig Gen, USA
Chief of Staff
US Army Materiel Command

STUART PLATT, Rear Admiral, USN
Assistant Secretary of the Navy
(Shipbuilding and Logistics)
(Competition Advocate General)

JAMES J. SINGSANK
Colonel, USA
Staff Director, Administration, DLA

DISTRIBUTION:
SPECIAL

Special Distribtuion

DEPARTMENT OF THE AIR FORCE:

HQ AFSC.....200

HQ AFLC.....300
PDO 4000,HQ AFLC/DAPD
Wright-Patterson AFB OH 45433-5280

DEPARTMENT OF THE ARMY.....3,135

HQ US Army Materiel Command
5001 Eisenhower Ave, Alexandria VA 22333-0001
A Distr (45)
B Lead Distr (2,890)
AMCIM-DO-S Stockroom (50)
AMCPP-MW (150)

DEPARTMENT OF THE NAVY.....500

Dr Norman V. Brown
ASN (S&L)(CAG)
CP-5, Room 310
Washington DC 20350-5000

DEFENSE LOGISTICS AGENCY.....1,000
HQ DLA (DLA-XPD), Building 6, Door 21
Cameron Station, Alexandria VA 22304-6100

AFSC—Andrews AFB DC 1987

DEPARTMENTS OF THE AIR FORCE, ARMY, AND
NAVY AND THE DEFENSE LOGISTICS AGENCY

Headquarters Air Force Systems Command
Andrews Air Force Base DC 20334-5000 — AFSC PAMPHLET 800-18

Headquarters Air Force Logistics Command
Wright-Patterson Air Force Base OH 45433-5001 — AFLC PAMPHLET 800-18

Headquarters US Army Materiel Command
5001 Eisenhower Avenue Alexandria VA 22333-0001 — AMC-PAMPHLET 715-15

Assistant Secretary of the Navy
(Shipbuilding and Logistics)
Washington DC 20350-5000 — NAVSO PAMPHLET-3650

Headquarters Defense Logistics Agency
Cameron Station
Alexandria VA 22304-6100 — DLA HANDBOOK 8400.1

1 April 1987

Acquisition Management

USERS' GUIDE FOR THE MANAGEMENT OF TECHNICAL DATA AND COMPUTER SOFTWARE

This publication is a companion document to AFSCR 800-16/AFLCR 800-16/AMC-R 715-510/SECNAVNOTE 4210/DLAR 8400.3. Supplements to this publication are prohibited. Send suggestions or changes to this publication, through your command office of primary responsibility (OPR), to Headquarters Air Force Systems Command (HQ AFSC/SDXP).

Purpose. This publication provides a desk reference for technical, contracting, legal, and engineering specialists to help them understand the complex area of technical data and computer software. It focuses on the government's rights obtained under contracts for the subset of technical data known as engineering data. This publication applies to organizations managing programs that require an acquisition plan. It does not apply to the Air National Guard or US Air Force Reserve units and members.

Table of Contents

No. of Printed Pages: 69
OPR: HQ AFSC/SDXP
HQ AFLC/MMT
HQ USAMCPP-M
ASN (S&L)(CAG)
HQ DLA/AE

Distribution (see page 66).

Chapter 1

OVERVIEW OF THE USERS' GUIDE

1-1. Scope. This publication is a companion document to Joint Command regulation (AFSCR 800-16/ AFLCR 800-16/SECNAVNOTE 4210/AMC-R 715-510/DLAR 8400.3). Responsibilities set forth in the Joint Command regulation are summarized in appendix A. The regulation sets policy for early and continuing planning for the acquisition of technical data and computer software. It also establishes a uniform Technical Data and Computer Software Management Program that focuses on managing both the content and the government's rights to use technical data and computer software. The term "technical data" as defined in the Department of Defense (DOD) Supplement to the Federal Acquisition Regulation (FAR) covers scientific or technical information regardless of form or characteristic. However, since the most significant obstacles to competition often fall in that subset of technical data known as "engineering data," this publication has been written primarily to describe procedures for engineering data. (See appendix B for glossary of terms.) Basic principles (that is, define what the government needs, set it forth in a contract, and make sure it is delivered) apply equally to engineering data as well as to technical data and computer software. Throughout the remaining chapters of this publication, the predominant coverage concerns engineering data. When appropriate, the last two paragraphs of the chapters, however, identify special techniques for technical data and computer software, respectively.

1-2. Introduction:

a. The person working the acquisition and management of engineering data on a day-to-day basis is nominally an engineering data management officer (EDMO) or a specification and data management officer (SDMO) The functions and duties of an EDMO position can and may be performed by a person with another title; for example, technical data management officer. For ease of reference, the term EDMO is used throughout the remainder of this document to refer to the individual—regardless of title—whose function is to manage the acquisition of technical data. The EDMO concept is not meant to usurp the traditional responsibilities of a data management officer (DMO) as prescribed by Service implementation of DODI 5010.12, Management of Technical Data. In some cases, especially in smaller program or project offices, the same person may perform the EDMO functions as well as the traditional DMO functions. However, the complexity of the subject area is increasing rapidly, and most programs of any consequence will require the services of both the specialized EDMO and the generalist DMO. When the functions are separated, the EDMO needs to interface with the DMO as do representatives from other disciplines in the program. The interface includes responding to the "data call" and participating in the Data Requirements Review Board (DRRB) (or Specification and Data Requirements Review Board (SDRRB), which is the term used by the Army) to justify requirements.

b. The purpose of this document is to guide EDMOs and their counterparts through the planning and management process and to provide them with examples of plans and checklists applicable to new and existing programs. In essence, this publication describes a model program for the acquisition and management of engineering data. This model should be useful to other specialized functional areas such as computer software, technical manuals/technical orders. Each of these functional areas share in common the need for proper planning, clear description in contracts, and management attention to the efforts of our contractors.

1-3. General Background:

a. Engineering data acquisition is a very dynamic, time-consuming, and sometimes confusing process even to those who have dealt with it for years. An EDMO will be faced with a variety of tasks, such as developing an engineering data management plan (EDMP) and performing in-process reviews of the contractor's engineering data.

b. Engineering data are prepared as an integral part of design, development, and production efforts. As a system evolves through various acquisition phases, the engineering data should also evolve. When viewed as an evolutionary process, it is easy to see the normal progression in engineering drawings from Level 1 (preliminary drawings) during the conceptual phase to Level 2 (prototype drawings) during the demonstration and validation phase and the full scale development phase (FSD) and finally to Level 3 (full-production drawings) before or during the production phase.

c. Contractors must prepare engineering data for their own use, and that data evolves much like the government requirements for Levels 1, 2, and 3 drawings. Nonetheless, some contractors are reluctant to supply Level 3 engineering drawings. The benefit to the contractor is obvious. If DOD doesn't have complete engineering data for logistics support and competitive reprocurement of the article, we must return to the original contractor for services and parts or resort to difficult and possibly costly

reverse engineering. Other contractors perceive that government requirements are different than their own drafting requirements and that extra drafting effort is needed. This is not always true. Most contractors follow industry drafting standards, and these standards are the basis for DOD-STD-100.

d. The chapters in this publication have been written to be useful to an EDMO on a day-to-day basis:

(1) Chapter 2 identifies the many series of documents that an EDMO may encounter. This chapter would also be of interest to contracting officials.

(2) Chapter 3 focuses on planning and using a team approach to acquire and manage technical data and computer software. Although primarily oriented toward EDMOs, this chapter is also of interest to the contract administration office, logistics support activities, and others who work with an EDMO.

(3) Chapter 4 concentrates on contract formation. Although it is written with an EDMO in mind, contracting officials and all other program/project participants should find it helpful in understanding the relationships among contract requirement documents and contract clauses.

(4) Chapter 5 goes to the heart of the content management program. Its greatest benefit should be to EDMOs and to logistics officials who will be recipients or users of the data. Contracting and quality assurance officials should also find it helpful in carrying out their responsibilities.

(5) Chapter 6 addresses a data rights management program. Although this is a complex legal area, EDMOs, contracting and legal officials, logistics specialists, engineersand software managers should all find this chapter helpful in sorting out the respective rights and obligations of the government and contractors.

1-4. Acronyms. Appendix C is a list of acronyms used in this document.

1-5. Terms Explained. Appendix B is a glossary of terms used in this document.

1-6. Amendment. Address comments and recommendations pertaining to this publication to the appropriate Service OPR:

a. HQ AFSC/SDX, Andrews Air Force Base DC 20334-5000.

b. HQ AFLC/MMT, Wright Patterson Air Force Base OH 45433-5001.

c. HQ AMC/AMCPP, 5001 Eisenhower Ave, Alexandria VA 22333-0001.

d. ASN(S&L)/CAG, Washington DC 20350-5000.

e. HQ DLA-AE, Cameron Station, Alexandria VA 22304-6100.

Chapter 2

ENGINEERING DATA SPECIFICATIONS, STANDARDS, DATA ITEM DESCRIPTIONS (DID), AND REGULATIONS

2-1. Documentation of Engineering Data—General. A number of documents bear on the acquisition of engineering data. Among these are military specifications, military and industry standards, and DIDs that have been expressly designed for contractual application. A number of regulations prescribing policy and assigning responsibilities also bear upon the acquisition of engineering data and, under certain circumstances, may require translation by the EDMO into contractual requirements. This chapter only briefly describes these "tools of the trade" but the EDMO is expected to have a working knowledge of them and have ready access to them.

2-2. Specifications and Standards. Specifications precisely define deliverable products, while standards prescribe procedures or methods for developing the products. Those most pertinent to engineering data are:

a. DOD-D-1000, Drawings, Engineering and Associated Lists. Describes requirements for engineering drawings and associated lists acquired in support of DOD materiel, including definitions of drawing levels (reference DI-E-7031).

b. MIL-D-5480, Data, Engineering and Technical, Reproduction, Requirements for. Covers the minimum requirements for the production, preparation for delivery, and shipment of reproducible and nonreproducible copies of drawings, data lists, and related engineering data.

c. MIL-D-8510, Drawings, Undimensioned, Reproducibles, Photographic and Contact, Preparation of. Covers the preparation of reproducibles (full-size and reduced scale) of undimensioned drawings, tooling, template layout, and master loft lines.

d. MIL-I-45208, Inspection System Requirement. Requires contractors to control quality by having an inspection system focused on in-process inspections as well as final end-item inspections (less stringent than MIL-Q-9858, para e below).

e. MIL-Q-9858, Quality Program Requirements. Requires the contractor to maintain a quality program when complex or critical supplies (including equipments, subsystem, and systems) or services are being procured. (Goes beyond MIL-I-45208 and encompasses all aspects of operations from planning through shipping.)

f. MIL-M-9868, Microfilming of Engineering Documents, 35mm, Requirements for. Details the requirements for microfilming engineering data and preparation of reproduction microfilm on 35mm unperforated roll microfilm (reference DOD- D-1000).

g. MIL-C-9877, Cards, Aperture. Covers the requirements for aperture cards used to mount 35mm microfilm reproductions of engineering data.

h. MIL-D-18300, Design Data Requirements for Avionics Equipment. Covers peculiarities of design data for black boxes!

i. MIL-M-38761, Microfilming and Photographing of Engineering/Technical Data and Related Documents: PCAM Card Preparation, Engineering Data Micro-Reproduction System, General Requirements for, Preparation of. Covers microfilming and photographing of engineering data and related documents for use in the DOD Engineering Data Micro-Reproduction System.

j. MIL-T-60530(AR), Technical Data Packages for AMC Materiel. Covers requirements for a complete technical data package suitable for competitive reprocurement.

k. DOD-STD-100, Engineering Drawing Practices. This standard provides details for preparing engineering drawings and associated lists, including format, content, numbering, revising, etc. Sample drawings are included (reference DI-E-7031).

l. MIL-STD-105, Sampling Procedures and Tables for Inspection by Attributes. Establishes sampling plans and procedures for inspection by attributes. Engineering drawings are individually produced rather than mass- produced like hardware. Therefore, statistical sampling using this standard is a tool that may be used by the EDMO and the government team reviewing engineering data. Until more experience is gained in applying statistical sampling to engineering data in-house by government teams, exercise caution in specifying it contractually.

m. MIL-STD-130, Identification Marking of US Military Property. Provides item marking requirements and methods of identification of items of military property produced, stocked, and issued by or for DOD.

n. MIL-STD-143, Standards and Specifications, Order of Precedence for the Selection of.

o. MIL-STD-275, Printing Wiring for Electronic Equipment. Establishes design requirements for single-sided, double-sided, and multilayered printed wiring boards.

p. DOD-STD-480, Configuration Control—Engineering Changes, Deviations, and Waivers. Delineates configuration control requirements and instructions for submitting proposed changes.

q. MIL-STD-483, Configuration Management Practices for Systems, Equipment, Munitions, and Computer Programs. Prescribes uniform practices and establishes requirements and standards for

configuration management plans and configuration identification. In general, amplifies DOD-STD-480.

r. MIL-STD-490, Specification Practices. Sets forth practices for the preparation, interpretation, change, and revision of program-peculiar specifications.

s. MIL-STD-804, Format and Coding of Tabulating and Aperture Cards for Engineering Data Micro-Reproduction Systems (EDMS). Provides standard formats for tabulating and aperture cards for use in recording engineering documents as defined in MIL-M-9868. Also covers codification and method of data entry into the cards.

t. MIL-STD-961, Military Specification and Associated Documents, Preparation of. Establishes the formats, contents, and procedures for the military specification and its associated documents. Program-peculiar specifications would be prepared using MIL-STD-490.

u. MIL-STD-1519 (USAF), Test Requirement Documents, Preparation of. This standard is used in specifying test requirements for avionics, subsystems, units, and subassemblies. Part A and B of this standard may be delivered to supplement DI-E-7031 to complete the engineering data for reprocurement of avionics (reference DI-ATTS-80041).

v. MIL-STD-1521 (USAF), Technical Reviews and Audits for Systems, Equipments, and Computer Software. This standard identifies the various design reviews (e.g., preliminary design review (PDR), critical design review (CDR)), configuration audits (e.g., functional configuration audit (FCA), physical configuration audit (PCA)), and other reviews used in the systems acquisition process. It emphasizes the review of engineering data in conjunction with these mainstream program reviews. It includes a review checklist for engineering data and a format for communicating deficiencies to contractors.

w. DOD-STD-2167, Defense System Software Development. Establishes a uniform software development process and contractor requirements for mission- critical computer system software.

x. ANSI Y14 Series, Engineering Drawing and Related Documentation Practices. Issued by the American National Standards Institute (ANSI). These ANSI standards have been adopted for DOD use and are invoked by DOD-STD-100. NOTE: Specifications and standards invoke additional specifications or standards by reference, and the EDMO should be familiar with these tiered documents as well. Also see paragraph 4-4 on tailoring.

2-3. Handbooks. The following provide guidance:

a. MIL-HDBK-245, Preparation of statement of work. Provides guidance in preparing a conclusive contract Statement of Work (SOW) for application to any phase of material acquisition.

b. MIL-HDBK-288 (MC), Review and Acceptance of Engineering Drawing Packages. This handbook provides information and recommends a procedure for reviewing and accepting or rejecting engineering data packages.

c. MIL-HDBK-331, Directory of DOD Engineering Data Repositories. Identifies locations of repositories.

2-4. Data Item Descriptions (DID):

a. DOD policy directs that deliverable data products be contractually prescribed by standardized DIDs. DIDs are equivalent to a specification for data. DIDs are maintained in the Acquisition Management Systems and Data Requirements Control List (AMSDL) (DOD 5010.12-L). The AMSDL is controlled by the Defense Data Management Office (DDMO) and is published twice a year. DIDs in use before 1 July 1985 were assigned a functional category as follows:

A—Administrative/Management.
B—Engineering and Configuration Documentation.
F—Financial.
H—Human Factors.
L—Logistics Support.
M—Technical Publications.
P—Procurement/Production.
R—Related Design Requirements.
S—System/Subsystem Analysis.
T—Test.
V—Provisioning.

b. As of 1 July 1985, DDMO began assigning DIDs based on Data Functional Area Assignments. These assignments are based on a four-letter designator that basically equates to the 32 standardization areas published in the DOD Standardization Directory (SD-1). Some examples of these functional area designators are:

Code	Title
ADMN	Administrative Data
ATTS	Automatic Test Technology Standards
CMAN	Configuration Management
DRPR	Drawing Practices
EDRS	DOD Engineering Data Reproduction Systems
EGDS	Engineering Data Systems
ILSS	Integrated Logistics Support Standards
MCCR	Mission-Critical Computer Resources
TMSS	Technical Manual Specifications and Standards

These examples are offered to give the "flavor" of the new designators, but the reader is encouraged to review section B of the AMSDL for the complete list. Existing DIDs are still valid if listed in the AMSDL (and most of the AMSDL contains DIDs

numbered under the old scheme). Thus, DOD contracts will contain DIDs numbered using the older functional categories for a long time into the future. Some of the more common DIDs presently used that involve engineering data are as follows (the source document follows the narrative in parentheses):

(1) DI-E-7031, Drawings, Engineering and Associated Lists. This DID provides information necessary for the acquisition of engineering drawings and associated lists to satisfy government requirements of levels of engineering drawings (DOD-D-1000).

(2) DI-E-30142, Master Engineering Document List (MEDL). The MEDL is a master list of part numbers to engineering documents (drawings, lists, specifications), part number relationships, and the detail or assembly to next higher assembly (or end item) relationship (DOD-STD-100).

(3) DI-E-30143, Punch Card Accounting Machine (PCAM) Cards. This DID provides information necessary for the preparation of PCAM cards (aperture/copy cards) to satisfy DOD requirements (MIL-STD-804).

(4) DI-V-5320A, Source/Vendor List. This list may be used to provide a listing of all sources used by the prime contractor. (Per the AMSDL, the source document is to be determined.)

(5) DI-ATTS-80041 (Formerly DI-T-3734), Test Requirements Documents (TRD). This DID applies to avionics. It is used to identify performance and diagnostic test data and applies to electronics items selected for procurable spares. Parts A and B only shall be acquired for items for which no TRD is being acquired for use in field depot repair (MIL-STD-1519).

(6) DI-DRPR-80035, Source Control Drawing Approval Request. Provides the government with a means for approval or disapproval of intended use of source control drawings for items selected as a tradeoff in design (DOD-D-1000).

(7) DI-E-5349, Engineering Drawing Tree. Identifies the structure and interrelationships of engineering drawings, associated lists, and specifications (source document to be determined).

(8) DI-E-5586, Engineering Documentation. Used to acquire documentation that fully documents all design, build, and test data (DOD-STD- 100).

(9) DI-A-5026A, Contractor Developed Specifications. Gives guidance for preparing specifications (MIL-STD-961).

2-5. Regulations. Regulations establish departmental programs, outline the general policies for the program, and list duties and responsibilities:

a. One of the primary regulations of concern to an EDMO is the Federal Acquisition Regulation (FAR) and its DOD Supplements. DOD FAR Supplement (DFARS), part 27, prescribes basic policies and procedures for "Technical Data, Other Data, (and) Computer Software..." The actual clauses are contained in DFARS, part 52. These are discussed in more detail in chapter 4.

b. The EDMO must have a working knowledge of a number of other departmental regulations. Figure 2-1 identifies basic DOD programs, the implementing directives and, where applicable, Service directives.

2-6. Related Disciplines. The engineering data function interfaces with and often accents other program management functions in activities affecting engineering data and related documents. For example, engineering data-related products, such as configuration items specifications and requests for deviations or waivers, could be considered engineering data but would be the responsibility of the configuration management function or the engineering office supporting the program office. Provisioning and other logistics specialists are also users or producers of engineering data. The EDMO should have working knowledge of these areas and the associated regulations, specifications, standards, and DIDs. For individual programs, knowledge of how the contractor is organized is also useful to the EDMO.

2-7. Other Technical Data. The number of specifications, standards, etc. that apply to technical data other than engineering data is too numerous to discuss here. However, some potential trouble areas require mentioning.

a. Technical Orders (TO) or Technical Manuals (TM). TOs or TMs are required to be delivered with unlimited rights under the basic data rights clause. However, contractors often incorporate engineering data and/or drawings into technical manuals and sometimes mark them with restrictive legends. EDMOs need to work together with the government officials responsible for TMs and should not assume that there will not be problems in this area. The importance of having technical manuals that are releaseable to other contractors is underscored by the growing number of maintenance activities that are competed.

b. Provisioning Data. In addition to the above DIDs and categories, there are others that have potentially the same problems as engineering data. For example, **DI-V-7000,** Supplementary Provisioning Technical Documentation, provides a means to place before the government the descriptive information for support items that may be acquired by the provisioning process. The provisioning data are typically delivered early in the production phase of a systems acquisition and often will include Level 2 engineering drawings developed during the full-scale engineering development phase. Contractors often mark provisioning data with restrictive markings, which

may or may not be correct per contract terms. Provisioning data should generally not be used for procurement due to its preliminary nature, the different method of handling configuration changes, and the lack of validation of restrictive markings. Also, since contractors may satisfy the provisioning data requirements by submitting Level 2 engineering drawings under DID-E-7031, the contract data requirements list (CDRL) must be clear that any such submission is not a substitute for contract requirements for updated Level 2 drawings or any Level 3 drawings. EDMOs should establish working relationships with the logistics or provisioning specialists responsible for MIL-STD-1561, Uniform Department of Defense Provisioning Procedures. Thus, problems with provisioning data can be minimized.

2-8. Computer Software. There is a list of specialized publications that apply to computer software. DOD-STD-2167, Defense System Software Development, covers mission-critical computer resources (MCCR) and is the source document for many data item deliverables affecting software. There is a guidance handbook (MIL- HDBK-287) being developed as well. Although there are many differences between computer software and technical data (including engineering data), there are also a number of shared areas. For example, computer software documentation is actually technical data; contract clause coverage interweaves the two subjects (see chapter 4); and virtually all of the principles concerning the rights of the government and contractors are the same for both subjects. The acquisition community at large has recently recognized that inconsistencies often arise due to the technical subtleties in attempting to treat the two subjects together. For the present, however, EDMOs and their counterparts—software acquisition managers—have much in common and can benefit from keeping the lines of communication open between the two disciplines.

Subject Matter	DOD	AF	Army	Navy	DLA
Management of Data	DODI 5010.12 (Changing to DODD 5010.12)	AFR 310-1 AFR 800-34	AR 700-51	NAVMATINST 4000.15A	DLAR 4185.16
Classified Document Protection	DOD 5200.1-R	AFR 205-1			DLAM 5205.1
Distribution Statements	DODD 5230.24	AFR 80-45, AFP 80-30	AR 70-31	OPNAVINST 5510.1G, Ch 1	
Withholding Tech Data from the Public	DODD 5230.25	AFR 80-34		OPNAVINST 5510.161	
Military Critical Technologies Transfer	DODD 5030.28 DODI 5200.21 DODD 5100.36	AFR 80-5		SECNAVINST 3900.35-C	
Engineering Drawing Systems		AFR 81-10 AFR 81-11			

Figure 2-1, Regulations Affecting Technical Data.

Chapter 3

ENGINEERING DATA PLANNING

3-1. Engineering Data Planning—General Guidance. The acquisition plan is the overall, or top level, document that lays out program objectives and a plan of action to acquire engineering data along with any other contract deliverables. However, for most large acquisitions (e.g., major systems), the acquisition plan would become too long a document if engineering data considerations were included in full detail. Therefore, it is necessary to capture essential planning information in an Engineering Data Management Plan (EDMP). Depending on individual Service procedures, the EDMP may be part of another document such as an Integrated Logistics Support Plan (ILSP) or a Program Management Plan or Project Master Plan (PMP), or it may be separately published.

a. The EDMO assigned to the acquisition activity is the person responsible for pulling together engineering data details for the EDMP. EDMOs should recognize that the value of the EDMP lies not so much in the completed plan but, rather, in going through the planning process to arrive at the point of having a complete EDMP to publish. As with any planning process, the mere requirement to sit down and force oneself to think through all of the engineering data details focuses attention on the issues, choices to be made, identification of things to do, etc. The planning process is analogous to taking a final exam for a course. The final exam is a communicative tool to verify that the course has been taken—it is not the final objective itself. Satisfactorily completing the course is the real objective and the final exam is the objective measure. So too, completion of planning for engineering data acquisition is the objective for the EDMO; the EDMP documents the results and serves as a medium for communicating these results to others.

b. Of course, the EDMO is not the only person involved in the planning that goes into the EDMP. This is done with help from others, especially those who will assume responsibility for the item or the data after delivery. The EDMP must be a team effort with appropriate inputs from business and technical specialists (e.g., functional inputs from those in contracting, financial, engineering, logistics, and legal offices).

c. The EDMP should be primarily based on meeting downstream production and logistics support needs. The government needs to get contractual commitment to furnish data while it has competition between alternate developers. Thereafter, the developing contractors may be reluctant to furnish data that will prevent them from being sole source for future production and maintenance contracts. Unfortunately, while competition exists, the actual components have often not been picked or developed, and the ultimate logistics support and production plans have not been made. The organizations that will be responsible for using and supporting the system typically have few people available to assign to determining future support and data needs. This requires that procuring activities make particular efforts to get inputs from such organizations and anticipate their needs. Additionally, the advice of legal counsel—especially lawyers with experience in intellectual property rights (technical data and patents)—may be helpful in drafting an EDMP. In this way the government should be able to obtain needed data when downstream data needs are fully determined.

3-2. The Engineering Data Management Plan (EDMP):

a. Nature of the EDMP. The EDMP is an essential element of a successful program in that it brings all the players together and starts a dialogue that keeps all organizations informed and aware of engineering data acquisition strategies. The purpose of such a plan is twofold: (1) to set forth in general terms the program objectives for the acquisition of technical data, and (2) to identify a plan of action for accomplishing these objectives. Stated another way, the EDMP should identify where the overall program or project is headed and how engineering data fits into the picture. The plan must identify the EDMO and other participants and their organizations, office symbols or mail codes, and telephone numbers. Thus, when questions or concerns arise from any command, there is a responsible person to contact for resolution of the problems. While no universal pattern of distribution exists, the EDMP would normally be distributed to all activities participating in the program and made available to others on request.

b. EDMP Schedule Requirement. Another key to an effective engineering data acquisition program is the preparation of a milestone schedule chart (MSC), or equivalent, which identifies pertinent engineering data events. This keeps all parties aware of upcoming events and allows enough time to plan for manpower and travel funding resources. The MSC must show both precontract events (e.g., completion of contract requirements packages, request for proposal (RFP) issuance, source selection activity, planned contract award date) for acquisitions not yet on contract and postaward events (e.g., the engineering data guidance conference, in-process reviews, inspections, final acceptance, delivery of engineering data) for all acquisitions.

c. Basic Strategies. Since the EDMO must make sure that engineering data to be delivered with limited rights are identified by the contractor and, if questionable, challenged by the procuring contracting officer (PCO), one of the plan's major topics should be the data rights strategies. The plan should indicate whether unlimited rights in that data need to be acquired, whether license rights will be acquired, or whether an alternate technique (for example, form, fit, and function data; reverse engineering; etc.) will be used to make sure that competition in the future is feasible. Alternate techniques to unlimited rights also include specially drafted contract terms that allow the government the right to use limited rights data for government purposes, such as competition, and options giving the government the right to order data and rights in the future. How contractor proposals will be evaluated needs to be considered early and should also be covered in the EDMP.

d. Criteria for Change. The EDMP should include criteria to determine when Class 1 and Class 2 engineering changes (reference DOD-STD-480) are to be incorporated into the engineering data. These criteria should specify a time period and/or the number of changes allowed to accumulate before incorporation. It is not enough to list the criteria for incorporation of changes in the EDMP; the criteria must also be stated in the contract to ensure contractor awareness and compliance.

e. Evolution of the Plan. At the outset, the EDMP should identify engineering data by DID numbers (including CDRL sequence number when known) and proposed sections of the statement of work (SOW) which cause engineering data to be generated, collected, delivered, and maintained. Once the contract is awarded, the engineering data requirements may be maintained by using an engineering data activity record file (EDARF), since contract changes should also be distributed to other program participants. This contract requirements list in the EDMP should be accompanied by the identification of proposed clauses and provisions that are not standard for all acquisitions. The EDMO should also identify what level of engineering drawings (DOD-D-1000) are being (or will be) acquired by program phase. Approved or planned deviations from individual Service engineering data acquisition procedures and any other information required by regulations must be identified in the EDMP. Since all of this information will not be available at the time the EDMP is initially prepared, the plan is a dynamic document that is updated and revised as additional information becomes available or as acquisition strategies change. Updates should be furnished to those on the distribution list.

f. Sample Engineering Data Management Plan. Appendix D is a sample EDMP. It is structured to illustrate an Air Force program. Paragraph content and headings are for illustration only; actual content and headings will differ for each program. The existence of such samples should not, however, result in stereotyped plans. The following guidance is offered to the EDMO for use in preparing the EDMP:

(1) Analyze the program in terms of technical data requirements. Is this a newly developed weapons system where the government is funding the design and development where we can legitimately expect to receive all technical data with unlimited rights? Is this a modification of an existing weapons system or commercial system where we would expect to receive a few documents applicable to the modification of the contract end item, but not previously procured (existing) data? Are there multiple contractors doing work or developing data? How do they interrelate? Is the prime contractor responsible for all the data maintenance for the life of the system? Are commercial systems or subsystems to be used? Will the contractor support these commercial system acquisitions without restrictive legends on the drawings?

(2) Analyze what the contract requirements will mean. The EDMO should do more than list CDRL and SOW references. The EDMO should analyze the impact these documents have on the government and the life cycle costs they impact. Does the contract specify we will receive complete data on the weapons system, the support equipment, the engines, or other subsystems? Does the requirement flow down to the subcontractors and vendors, and do they understand the requirement? Are the requirements appropriate to the current acquisition phase of the program?

(3) Analyze what management actions need to be taken and indicate the plan of action to be sure they are carried out. Do the contract requirements need to be corrected or expanded? Do actions need to be taken to update the CDRL requirements and SOW as the program moves into new phases? Do the in-process reviews (IPRs) need to concentrate on certain areas—vendor data, associate contractor data, commercial item data, limited rights data? What actions need to be taken to obtain visibility of the contractor's drawing release systems, data management systems, quality control systems? (These should at least be addressed in the contractor guidance conference (paragraph 5-2).) How will IPRs be structured in terms of sampling (paragraph 5-6), and how will they be structured to review drawing practices, completeness, reprocurability, data rights, and control drawings?

3-3. Contract Administration Office (CAO) Participation. In addition to the normal contract administration services, which are listed in FAR subpart

42.3, the CAO may be able to provide other assistance by virtue of its knowledge of specific contractor operations and frequent in-plant location. The EDMO should be aware of this potential capability and coordinate with the PCO to negotiate with the CAO the additional services that may be needed. When appropriate, the agreements should be documented in a memorandum of agreement (MOA) or letter of instruction (LOI) to the CAO. A copy of any such MOA or LOI should be attached to the EDMP. Limitations on any particular CAO's capabilities would also be identified. Overall, the following are tasks that the CAO may be capable of performing:

a. Evaluating the contractor's drawing system for conformance to contract standards.

b. Monitoring contractor's systems to review subcontractor data management.

c. Participating in engineering data reviews.

d. Following up on deficiency correction and detecting deficiency trends.

e. Selecting, or recommending to the EDMO, drawing packages for review.

f. Providing to the contractor the technical approval letters for drawing updates.

g. Ensuring that technical approval letters (see chapter 5) accompany shipments to engineering drawing repositories.

h. Helping resolve rights in technical data problems by examining substantiating evidence in-plant and providing findings to the PCO.

i. Monitoring engineering data delivery schedules.

3-4. Other Technical Data. EDMOs are encouraged to review any separately-published plans (both government and contractor) in allied areas for a better understanding of the way the program is to be managed. Review of documents in other areas is also useful in identifying disconnects or voids between functional areas that can be more easily corrected when discovered early. The EDMP is closely tied to the ILSP. In some instances, it may be published as a part of the ILSP series of documentation, depending on program needs. Another area that is closely aligned with engineering data is configuration management. Plans in the configuration management area delve into engineering release systems, configuration audits (functional and physical), and the contractor's change control process. These areas play a very large part in the success of the data content management program as further indicated in chapter 5. There are other management plans in programs that would also shed light on the way a contractor manages an acquisition, such as the system engineering management plan.

3-5. Computer Software. The counterpart to the EDMO is the software acquisition manager (SAM). In carrying out SAM responsibilities per Service implementation of DODD 5000.29, Management of Computer Resources in Major Defense Systems, SAMs develop the Computer Resources Life Cycle Management Plan (CRLCMP). The CRLCMP is to computer software what the EDMP is to engineering data.

Chapter 4

CONTRACT REQUIREMENTS

4-1. Purpose of This Chapter. This chapter provides guidance concerning the formation of contracts calling for work efforts involving engineering data. The information is presented in summary form to provide a general overview of the subject. The subject is treated serially; that is, each element is described in the same time sequence as the contract is built. First, the basic requirements are discussed. These include the SOW and CDRL and their relationship. Making the SOW and the CDRL pertinent to the specific acquisition involves tailoring, and this subject is discussed. Next, putting together the request for proposals (RFP) involves certain instructions to the potential offers and—in the case of formal source selections—inputs to the source selection plan. Alternatively, preaward surveys can be used to get information about contractors. Finally, the general requirements for contract clauses are covered. This includes a summary of the clauses in the DFARS which pertain to the acquisition of technical data and rights in both technical data and computer software. For a more detailed explanation of the areas covered, EDMOs are encouraged to read the basic documents and examine individual Service or locally approved regulations, directives, and supplements.

4-2. Statement of Work (SOW):

a. The FAR prescribes a uniform contract format (UCF) for government contracts. Under the UCF, the description of supplies or services (and their prices) are set forth in section B of the contract. For simpler procurements, the description in section B may be all that is needed. The UCF also prescribes a section C, description/specifications/work statement, which may be used for longer narratives when the complete description of the work to be performed by contract is to be set forth in the schedule of the contract. For most systems contracts and new developments, however, the complexity of the procurement usually requires more information than can be reasonably set forth in the contract schedule. In addition to specifications that describe the end items being acquired, it is often necessary to write an SOW setting forth the tasks the contractor is to perform in carrying out research and development, engineering a system, or building an end item. When used, an SOW is an amplification of section C of the contract schedule. In many cases, the SOW is used as an attachment to the contract when the work tasks are too lengthy to be easily written into the schedule. MIL-HDBK-245 is the basic document for guidance in preparing SOWs.

b. To illustrate more completely the nature of an SOW, this and the following paragraph describe the SOW from the perspective of a development contract for a system or subsystem. The objective of the SOW is to clearly and succinctly define the work necessary to acquire the system, subsystem, equipment, and service required to meet the specified program objectives. An effective SOW will:

(1) Contain only tasks that are clear, concise, and priceable. They will have statements of requirements written in a style that eliminates the possibility of more than one interpretation.

(2) Provide a realistic balance among elements in keeping with the program acquisition phase (for example, make sure that engineering data requirements are not overly emphasized to the detriment of the system itself).

(3) Make maximum use of federal, military, and nationally recognized industry specifications and standards. (These are already understood by large segments of the defense industry and do not require the learning curve that would be associated with a brand new specification.)

(4) Use tailoring and streamlining effectively to adapt existing specifications and standards to actual program requirements (paragraph 4-4).

(5) Minimize government control, which may preclude a contractor's creativity.

c. In writing the specific SOW tasks involving engineering data, it is not a good practice to write a separate task for **preparation** of engineering data. However, the work effort to **manage** the engineering data can be written into a task statement. The engineering data is a natural by-product of the design engineering and manufacturing effort. Accordingly, engineering data is an integral part of engineering, manufacturing, or other disciplines. If local engineering data policy or practice allows or requires separate tasks for engineering data, care should be taken to make sure the task does not duplicate the design engineering tasks and result in dual charges to the government. Other related tasks for engineering data, such as the contractor's preparation for, and participation in, the guidance conference and in-process reviews, should be contractual requirements and must be levied upon the contractor through appropriate tasking statements in the SOW. Depending on the situation, we may want the contractor not only to host or participate in conferences or reviews, but also to support such conferences by preparing the agenda or minutes. In those cases, the SOW should be clear on the tasking to the contractor.

4-3. Contract Data Requirements List (CDRL):

a. The purpose of the CDRL is to provide a single place in the contract which directs the contractor to format and deliver data and to meet specific approval and acceptance criteria. Data formats are established by DIDs (DD Form 1664, Data Item Description) which—with a few exceptions such as one-time use—are approved by the DDMO and published in DOD 5010.12-L, Acquisition Management System and Data Requirements Control List (AMSDL). Chapter 2 of this publication identifies a number of DIDs that are frequently used for the acquisition of engineering data.

b. The EDMO should use the data call process to make sure the CDRL contains the proper requirements for engineering data, as well as documentation justifying the need for any subsequent examination by a DRRB. The requirements for engineering data should be tailored. Special attention should be given to the ordering information required by DOD-D-1000, paragraph 6.2.1. Normally the type of ordering data required by this paragraph would be included in the remarks section of the appropriate CDRL entries. The DD Form 1423, Contract Data Requirements List, used for the CDRL contains a reference block (block 5), which may be used to refer back to a given paragraph in the SOW. Similarly, SOWs can be constructed to refer to items on the CDRL by identifying the DID as a parenthetical reference at the end of the appropriate tasking paragraphs. These guidelines are general and individual Service procedures should be followed.

c. Since the SOW tasks and engineering data requirements on the CDRL are separately identified in the contract, care should be taken not to duplicate effort between the two. While the SOW tasks lead to contract deliverables, the SOW itself really calls for contractor services and not the actual items or data to be delivered. The CDRL, on the other hand, requires the delivery of the engineering data (while the contract schedule would call for the delivery of the system, or subsystem itself). The separation of contractor work tasks in the SOW and deliverable data in the CDRL is a concept that permits the contractor and the government to define very complicated system developments into manageable parts. Unless the concept is well understood, however, the possibility exists of commingling SOW tasks with the effort to get to CDRL deliverables. For example, design data that are generated during the development phase of a program are usually called for as part of an engineering design task. Therefore, only the costs for formatting to government requirements, reproduction, and shipping would normally be incurred in the production or the deployment phase if engineering data is first required to be delivered in either of those phases.

4-4. Tailoring Requirements Documents:

a. Studies have shown that the misapplication of specifications and standards in contracts often leads to increased costs and delays in delivery. This misapplication can be attributed to past emphasis on achieving maximum performance without regard to cost, to the attitude that specifications and standards were mandatory and had to be totally applied, and to the lack of emphasis on tailoring of these documents to a specific need. Basically, tailoring is nothing more than taking requirements documents (that is, specifications, standards, DIDs, and the SOW) and making them as relevant to the acquisition at hand as possible. Although this is a very basic thought, it is easier said than done. Throughout the tailoring process, judgment must be exercised to achieve the desired balance among competing program objectives. Over-application of specifications and standards may be well-intentioned in terms of getting the maximum in technical performance from the system being developed.

b. An example of tailoring with regard to engineering data is in applying the requirements of DOD-D-1000. For instance, when procuring an item or equipment that is designed using the English system and it interfaces with items or systems that use the English system, the requirement for metric system can be tailored out of DOD-STD-1000, paragraph 3.5. Use caution, however, in tailoring requirements for engineering data. Requirements that are removed may cause negative impacts on the activities that either use or support the item to which the engineering data pertains. Coordination with using and supporting organizations is a must when tailoring requirements.

c. Detailed guidance and information in the selective application and tailoring of specifications and standards is provided in FAR, part 10, and supplements; DOD Directive 5000.43, Acquisition Streamlining; MIL-HDBK-248; as well as in Service directives. Tailoring aspects for contractual engineering data requirements are contained in the appendix to DOD-D-1000. The EDMO should consider any contractor's recommendation regarding changes or deviations from prescribed specifications and standards using the tailoring features of DOD-D- 1000. After contract award, any changes or recommendations of this type would be considered as part of the formal change control process.

4-5. Solicitation Provisions:

a. When the requirements documents discussed in the preceding paragraphs have been written, the EDMO's attention should turn to solicitation provisions. For systems procurements, the solicitation is usually in the form of an RFP issued to potential contractors. The UCF provides for section L of the RFP to set forth instruction, conditions, and notices to offer-

ors or quoters. This section guides the preparation of the proposal so that the contractor can communicate to the government an understanding of the requirements, the proposed technical approach, and individual contractor capabilities. One problem area is that the EDMO will be competing with other functional representatives for space, both in the RFP itself and in any allocation of page limits in the contractor's proposal in response to the RFP. The requirement to develop inputs to the RFP comes quickly after the completion of the requirements documents, and there may be a temptation to take the path of least resistance and not use the solicitation effectively to get feedback from the contractor before award. This could prove very costly later if the contractor failed to understand the contractual technical data requirements or failed to adequately plan to satisfy those requirements.

b. One way to determine if a potential contractor understands and has apparent ability to satisfy the data requirements of a contract is to require each offeror, in response to the RFP, to include information in its proposal which demonstrates its understanding and abilities concerning the contract engineering data requirements. To obtain this type of information, the EDMO should provide the contracting officer (or the project officer pulling the inputs to the RFP together) the specific information that offerors are to provide as part of their proposal. If such information is to be considered as part of a source selection process, the PCO must advise the offeror of this fact and must explain how the information will be evaluated. For many procurements, proposal information concerning engineering data may be appropriately combined with other functional areas. For example, engineering data may be included with either the overall data management function or the configuration management function. For other procurements, such as major systems acquisition, separate coverage on engineering data may be required.

c. Offerors may be asked to explain their proposed management, organization, procedures, and planning for the development of engineering data according to contractual requirements; for example, the SOW and DI-E-7031. Each offeror should provide a description of its change control process and an explanation of its procedures for incorporating Class I and Class II changes into deliverable drawings. Offerors should explain the proposed plan for supporting guidance conferences and in-process reviews, including the procedures for correcting deficiencies resulting from those reviews. If a technical data warranty clause (DFARS 52.246-7001) is included in the RFP, the procedures for warranty administration should be explained. Offerors should explain how they will meet required delivery dates. If the offerors use an engineering data manual, it should be described along with any other drafting room manuals. If such documents do not exist, the offerors should explain how the overall engineering data and drawings are managed. Of particular importance to the EDMO is the contractor's system for controlling the restrictive markings (that is, limited rights legends) placed on engineering data. Although the nuances of this area are discussed in more detail in chapter 6, the information describing the contractor's process for controlling such markings and the contractor's record-keeping system supporting their application should be sought in all instructions to offerors. The offerors should detail their procedures for acquiring all levels of subcontractor and vendor data and their efforts to evaluate and maintain quality control of these data. The offerors should identify the use of computer-aided-design or computer-aided-manufacture (CAD/CAM) equipment and the impact, if any, CAD/CAM will have on delivery of engineering data per contract requirements. Lastly, offerors should identify similar work that they have done under other government contracts. The EDMO should recognize that under source selection procedures, the opportunity for the government to negotiate all of the details of the contract with each prospective offeror is limited. This places a premium on proper planning to get the most out of the contractor's response to the RFP.

d. One other technique to get information about the contractor is through the use of a preaward survey. The preaward survey (PAS) is an evaluation of the contractor's qualifications for a given procurement and—to a lesser extent— its understanding of the requirements. The PAS may be a complete survey (that is, a review of all functional areas: technical capability, production, quality assurance, financial, etc.), or it may be limited to one or a few functional areas. It is performed by the DOD activity (that is, DCASMA/DCASPRO, AFPRO, ARPRO, or NAVPRO) that would be assigned contract administration responsibility for the contract if awarded. FAR 9.106 describes the PAS in general terms and the conditions for use. Basically, a PAS would be appropriate when source selection procedures are not used and information about a contractor is not available to the procuring activity. Under competitive source selection, a PAS may also be appropriate, particularly if a new contractor is involved. Depending on the nature of the PAS (complete or partial survey), the CAO will complete one or more of the following forms: SF 1404, Preaward Survey of Prospective Contractor—Technical; SF 1405, Preaward Survey of Prospective Contractor—Production; SF 1406, Preaward Survey of Prospective Contractor—Quality Assurance; SF 1407, Preaward Survey of Prospective Contractor—Financial

Capability; and SF 1408, Preaward Survey of Prospective Contractor—Accounting System. Of particular relevance to the EDMO are portions of SF 1404 and SF 1406. (The, standard forms used for preaward surveys are illustrated in FAR 53.301-1404 and FAR 53.301-1406, and the EDMO should be able to view them in the contracting office.) One of the major positive features of a PAS is the ability to tailor the survey to the specific needs of the procuring activity. The following approach is recommended for EDMOs who wish to use the PAS:

(1) Ask the PCO to request a PAS that will include engineering data. If one would not otherwise be requested, ask for a partial PAS covering an integrated examination of technical and quality assurance as they relate to engineering data.

(2) Check section III, block 19, of SF 1403 for items A (technical) and C (quality assurance).

(3) Give the PCO a specific statement to include in block 23 (remarks) that will tailor the PAS to the information needed by the EDMO so as to advise the PCO on the contractor's capabilities and plan for the postaward phase of the contract. An example follows:

23. Remarks. Reference blocks 19 A and C: Engineering Data: The procuring activity has not dealt with the ABC Company before and has no information on hand to judge their capabilities to produce level 2 engineering drawings per DOD-D-lOOOB as implemented by CDRL sequence number 999, DI-E-7031. Additionally, due to the anticipated large volume of production (both for end items and spare parts) during the life cycle of System X, the ability to competitively reprocure is critical. Therefore, ABC's procedures for controlling restrictive markings on technical data (reference general provision 99, DFARS clause 52.227-7018) should be examined for adequacy and contractor compliance therewith. Technical point of contact at the procuring activity for this portion of the PAS is the Engineering Data Management Officer, Mr. Doe, phone 555-1111.

During the solicitation phase of the acquisition, the EDMO should be available to help or advise the PCO with any detailed negotiations concerning engineering data and the understanding of the requirement and specific capabilities exhibited by the contractor. By following the techniques in this paragraph, the EDMO should be better equipped to carry out that role.

4-6. Contract Clauses:

a. The FAR and its supplements contain many standard clauses used by DOD on government contracts. This chapter identifies contract clauses normally affecting the acquisition of engineering data. (Since most of the clauses cover both technical data—of which engineering data is a subset—and computer software, the discussion is relevant to both data and software unless otherwise specified.) In general, the EDMO should understand the contents of these clauses, be familiar with their use, and recognize the need for inclusion in solicitation and contracts. Although the subject matter is very complex, the EDMO should have this basic level of understanding in order to carry out EDMO responsibilities. **Without knowledge of both the contractor's and the government's rights and obligations under the contract, it is doubtful that the EDMO can really be an effective member of the acquisition team.**

b. Figure 4-1 contains a synopsis of clauses that should be included in solicitation and contracts which require the generation or delivery of technical data or computer software. Refer to DOD FAR Supplement, subpart 27.4, for the detailed guidance on use of these clauses. EDMOs should be aware that any deviation from the use of a required clause would require approval at the DOD level. Examples of deviations include the modification of any wording, non-use of the clause, or the substitution of a locally-developed clause. Additionally, the one-time deviation authority that is delegated to the head of the contracting activity (typically a major command just below departmental headquarters) does not apply to DFARS, subpart 27.4. Any deviation to this subpart—whether a one-time or a class deviation—would require submission through channels and approval by the Deputy Undersecretary of Defense, Research, and Engineering—Acquisition Management (DUSD(AM)). This is not to say that appropriate deviations should not be pursued; rather, the EDMO should allow adequate time to obtain a deviation if one is to be sought, and a backup plan should exist for coverage if a requested deviation is not approved.

c. With certain exceptions specified in DFARS 27.412(a), the Rights in Technical Data and Computer Software Clause (DFARS 52.227-7013) is required to be included in all contracts (including subcontracts) under which technical data are to be delivered to the government. This clause flows down to subcontractors of all tiers. Figure 4-2 outlines the clause which is referred to hereafter as the "data rights clause."

d. The data rights clause covers only two types of rights that can be acquired in technical data; that is, unlimited or limited. Of the two, only unlimited rights can be used for competitive reprocurement. The government may be able to obtain contractual permission through negotiations—and for consideration—to disclose the technical data to third parties for purposes of reprocurement. Such an arrangement, known as a license, represents a middle

Clause Citation	Title and (Date)	Source Citation	Comment
DOD FAR SUP 52.227-7013 (DAR 7-104.9 (a))	Rights in Technical Data and Computer Software (May 1981)	DOD FAR SUP 27.412 (a)(1) (DAR 9-203; 9-603)	This is the basic data rights clause; see source citation for exceptions when not used in solicitations and contracts. See figure 4-2 for an outline of the clause.
DOD FAR SUP 52.227-7013 (DAR 7-104.9 (b))	Alternate I, (May 1981) Notice of Limited Rights	DOD FAR SUP 27.412 (a)(2); 27-403-2 (g), & (DAR 9-202.2 (g))	Used in conjunction with the prenotification provision to collect continuing information about contractor's use of privately developed items, components or processes.
DOD FAR SUP 52.227-7014 (DAR 7-2003.61)	Predetermination of Rights in Technical Data (Jul 1976)	DOD FAR SUP 27.412 (b); 27.403-2(d) & (DAR 9-202.2 (d)(3))	Included in solicitations. Used to identify, prior to contract award, technical data to be delivered with limited rights. Considerable overlap with the prenotification provision that follows.
DOD FAR SUP 52.227-7035	Prenotification of Rights in Technical Data (Oct 1985)	DOD FAR SUP 27.403.2 (i)	Include in solicitations whenever the basic data rights clause is used. Obtains information before award on whether the data will be delivered with unlimited rights, limited rights, or the rights are undetermined.

Figure 4-1. Contractual Clauses.

Clause Citation	Title and (Date)	Source Citation	Comment
DOD FAR SUP 52.227-7016 (DAR 7-104.9 (j))	Contract Schedule Items Requiring Experimental, Development, or Research Work (Mar 1975)	DOD FAR SUP 27.412 (d) (DAR 9-203 (d))	Inserted in solicitations and contracts where experimental, developmental, or research work is an element of performance.
DOD FAR SUP 52.227-7017 (DAR 7-104.9 (k))	Rights in Technical Data-Major System and Subsystem Contracts (Nov 1971)	DOD FAR Sup 27.412 (e); 27.403-2 (f) (4) (i) thru (iii) (DAR 9-202.2 (f) (4))	Used for major systems and subsystems to facilitate direct purchases from subcontractors.
DOD FAR SUP 52.227-7018 (DAR 7-104.9 (p))	Restrictive Markings on Technical Data (Mar 1975)	DOD FAR SUP 27.412 (f); 27.403-3 (c) (2) (DAR 9-203.3 (c) (2))	Requires contractors to have procedures for controlling restrictive markings on technical data.
DOD FAR SUP 52.227-7019	Identification of Restricted Rights Computer Software (Apr 1977)	DOD FAR SUP 27.412 (g); 27.404-2 (b) (2)	Used in solicitations to identify computer software developed at private expense. If none is identified, it is assumed that all deliverable computer software is unlimited rights.
DOD FAR SUP 52.227-7026 (DAR 7-104.9 (d))	Deferred Delivery Technical Data or Computer Software (Nov 1974)	DOD FAR SUP 27.412 (n); 27.410-1 (b) (DAR 9-502(b))	Used when we know we want data delivered but we don't know when. Requirement is specified on DD Form 1423; there is a time limit on the government taking delivery.

Figure 4-1. Continued.

Clause Citation	Title and (Date)	Source Citation	Comment
DOD FAR SUP 52.227-7027 (DAR 7-107.9 (m))	Deferred Ordering of Technical Data or Computer Software (Nov 1974)	DOD FAR SUP 27.412 (o); 27.410-1(c) (DAR 9-502(c))	Gives the government the right to order data or computer software generated in the performance of the contract. Requirements are added to DD Form 1423 when the need is determined.
DOD FAR SUP 52.227-7028 (DAR 7-2003 .66)	Requirement for Technical Data Certification (Apr 1974)	DOD FAR SUP 27.412 (p); 27.410-2 (DAR 3-501 (b) (3) Sec. K (xii))	Used in solicitations to have the contractor identify any data required to be delivered to the government under other contracts.
DOD FAR SUP 52.227-7029 (DAR 7-104.9 (l))	Identification of Technical Data (Mar 1975)	DOD FAR SUP 27.412 (q); 27.410-3 (DAR 9-503)	Requires contractors to identify the source of technical data.
DOD FAR SUP 52.227-7030 (DAR 7-104.9 (h))	Technical Data-Withholding of Payment (Jul 1976)	DOD FAR SUP 27.412 (r); 27.410-4 (DAR 9-504)	Provides a remedy to the government for contractor's failure to deliver data on time or for data that is deficient. Permits withholding of payments up to 10 percent of the contract price.
DOD FAR SUP 52.227-7031 (DAR 7-104.9 (n))	Data Requirements (Apr 1972)	DOD FAR SUP 27.412 (s); 27.410-6 (DAR 7-104.9) (n))	Requires contractors to deliver only that data listed on the DD Form 1423.
DOD FAR SUP 52.246-7001 (DAR 7-104.9 (o)(1), (2), and (3))	Warranty of Data (Nov 1974)	DOD FAR SUP 27.410-5; 46.708; 46.770 (DAR 1-324.6)	Optional clause to obtain a warranty on technical data. See paragraph 4-7.

Figure 4-1. Continued.

Clause Citation	Title and (Date)	Source Citation	Comment
DOD FAR SUP 52.227-7015 (DAR 7-104.9 (c))	Rights In Technical Data-Specific Acquisition (Mar 1979)	DOD FAR SUP 27.412 (c); 27.403-2 (f) (1), (2), and (3) (DAR 9-203 (c))	Used when all technical data are to be acquired with unlimited rights Requires separate contract item for acquisition of unlimited rights. Requires determination and finding to use this clause.
DOD FAR SUP 52.227-7032 (DAR 7-104.9 (g))	Rights in Technical Data and Computer Software (Foreign) (Jun 1975)	DOD FAR SUP 27.412(t); 27.411 (DAR 9-206)	The preferred clause for use when contracting with foreign sources.
DOD FAR SUP 52.227-7025 (DAR 7-104.9 (q))	Rights In Technical Data and Computer Software (SBIR Program) (Apr 1984)	DOD FAR SUP 27.412(m); 27.409	Used instead of basic data rights clause in contracts awarded under the SBIR program.
DOD FAR SUP 52.227-7036	Certification of Technical Data Conformity (Oct 1985)	DOD FAR SUP 27.412(w); 27.410-2(b)	Used in all contracts resulting from solicitations issued after 19 October 1985 whenever technical data is to be delivered. Requires the contractor to furnish a certificate with the technical data attesting to the fact that the data meets contract requirements. Its value as an implied warranty is unknown at this point.
DOD FAR SUP 52.227-7037	Validation of Restrictive Markings on Technical Data (Oct 1985)	DOD FAR SUP 27.412(x); 27.413	Used in all contracts resulting from solicitations issued after 19 October 1985 whenever technical data are to be delivered. Establishes revised "challenge" procedures questioning the contractor's restrictive markings.

Figure 4-1. Continued.

(a) Definitions

The clause defines 10 key terms: technical data, three types of rights (unlimited, limited, and restricted) and the term computer plus five other terms beginning with the word computer.

(b) Government Rights

(1) Unlimited Rights

(i) Technical data (TD) and computer software (S/W) resulting directly from government (govt) RDT&E.
(ii) S/W originated, developed, or generated in the performance of a govt contract.
(iii) Computer data bases created under govt contract.
(iv) TD necessary for manufacture (unless it pertains to items, components or processes developed at private expense).
(v) TD or S/W constituting changes to govt furnished data or S/W.
(vi) TD that is "form, fit, and function" data.
(vii) Manuals for operation, instruction, or maintenance.
(viii) TD or S/W in the public domain or previously released by the contractor or subcontractor without restrictions.
(ix) TD or S/W specifically agreed to as unlimited.

(2) Limited Rights (applies to TD only)

(i) Specifically agreed to.
(ii) Unpublished and developed at private expense.

(3) Restricted Rights (applies to S/W only)

(i) In a license agreement made part of the contract, or
(ii) Commercial computer S/W so elected by the contractor (this exception also includes related commercial S/W documentation as "restricted rights").

(c) Copyright. Govt obtains a nonexclusive, paid up license in copyrighted works prepared for or acquired by the govt under the contract.

(d) Removal of Unauthorized Markings. Allows govt to correct, cancel, or ignore unauthorized markings. Applies to TD and S/W in past contracts; applies only to S/W in newer contracts containing the clause in DOD FAR SUP 52.227-7037.

(e) Relation to Patents. This clause does not change patent coverage in any way.

Figure 4-2. Outline of DOD FAR Supplement Clause 52.227-7013, Rights in Technical Data and Computer Software, (MAY 1981).

(f) Limitation on Charges for Data and Computer Software. Applies to contract efforts funded with Military Assistance Program funds.

(g) Acquisition of Data and Computer Software from Subcontractors

(1) Requires "flow down" of clause to subcontractors.

(2) Permits direct delivery of limited rights TD from subcontractors to govt.

(3) Prohibits economic discrimination for primes and higher-tier subs by acquiring rights in TD as a condition of awarding subcontracts.

Alternate I, Notice of Certain Limited Rights, requires continuing notification by contractors of limited rights situations after contract award (applies to TD only).

Alternate II, Publication for Sale, contains certain restrictions on the rights of the government to publish data for sale.

Figure 4-2. Continued.

ground between the extremes of limited and unlimited technical data rights:

(1) Contractors may be reluctant to grant a license to the government since they are skeptical of its ability to enforce licensing arrangements. In this case, a direct licensing arrangement with another contractor may provide a viable solution. This approach allows a contractor to make a business decision regarding the licensee (person or firm that would receive the data) and gives the contractor direct control over enforcement of the license though privity of contract (that is, direct contractual arrangement with the licensee). In cases of direct licensing, the requirement to deliver certain information (for example, manufacturing data) to the government may not be necessary.

(2) The use of any licensing arrangement requires a special contract provision or a separate licensing agreement which must be carefully developed to meet the needs of the procurement. This development will involve personnel who are thoroughly conversant with the technical data, contracting policies and procedures, and legal issues. EDMOs who believe that their procurements of engineering data may be appropriate for licensing should begin the dialogue with the PCO and other members of the acquisition team while still in the planning stage. Even if licensing was not considered early in the planning stages for a given procurement, the technique has often proved of value in reaching necessary compromises during negotiation that will permit future reprocurements to be done on a competitive basis.

4-7. Data Warranties. The Warranty of Data clause may be used substantially as set forth in the DFARS or modified for a specific procurement—without having to obtain a deviation. The DFARS coverage is somewhat outdated. This combination of factors gives rise to more extensive and updated treatment here.

a. Considerations for Use. An approach to make sure that the technical data we buy is usable at the time reprocurement packages are put together (or any other use of the data for that matter) is to use a data warranty clause in the contract. DFARS 46.770 sets forth policy concerning the use of the Warranty of Data clause, and 52.246-7001 contains the clause to be used when buying technical data in support of hardware end items and parts. The clause is normally used in firm-fixed price and fixed-price incentive contracts. It may also be used in a cost reimbursable contract. A data warranty is a guarantee by the contractor that all technical data delivered under the contract conforms with the specifications and all

other terms of the contract. Among other things, this would include the removal of unauthorized legends. A data warranty extends beyond the acceptance date by which the government may require the contractor to correct defects found in the data.

b. Basic Clause. The Warranty of Data clause requires the contractor to warrant the data for 3 years after completion of the delivery of the line item of data or any longer period specified in the contract. This period of time should be based on when the data will be needed for reprocurement purposes. For example, if reprocurement will not occur for some time, consideration should be given to specifying a warranty period longer than 3 years beyond delivery of the data. This clause provides the PCO a variety of remedies if nonconforming data is found. These include correction or replacement of the nonconforming technical data, or the government may elect a price or fee adjustment. The use of this clause is recommended, as any costs associated with it should be minimal in that the contractor is only warranting that good usable data will be delivered. It should be noted that the title of the clause does not use the words "technical data." However, the terms of the clause wording apply only to technical data and not to management or administrative data.

c. Extended Contractor Liability. The clause has alternate language that can extend the coverage of the warranty. If this extended coverage is included in the contract, a contractor can be held liable for all damages sustained as a result of breach of warranty. This liability may not exceed 10 percent of the total contract price or 75 percent of the target profit depending on the type of contract. This extended warranty should not be used except when the data we are buying is critical or when the contractor has a known history of delivering deficient data.

d. Example of Warranty of Data Clause. Figure 4-3 is a sample warranty of data clause based on DFARS 46-770.

If a decision is made to provide for a Warranty of Data Clause according to DFARS 46-770, the PCO may insert a clause substantially the same as the one shown below. It should be used in all firm fixed-price or fixed-priced incentive contracts that will require technical data to be furnished. If extended liability is desired, then Alternates I (for a firm fixed-price contract) or Alternate II (for a fixed-price incentive contract) may be added to the basic clause.

WARRANTY OF DATA

(a) Technical data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, product support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design documents, or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(b) Notwithstanding inspection and acceptance by the government of technical data furnished under this contract and notwithstanding any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three (3) years after completion of the delivery of the line item of data (as identified in DD Form 1423) of which the data forms a part; or any longer period specified in the contract.

(c) The Contractor agrees to notify the Contracting Officer in writing immediately of and breach of the above warranty which the Contractor discovers within the warranty period.

(d) The following remedies shall apply to all breaches of the above warranty provided that the government notifies the Contractor of the breach in writing within the warranty period.

(1) Within a reasonable time after the Contracting Officer notifies the Contractor of a breach of warranty, he/she may:

(i) by written notice, direct the Contractor to correct or replace at his/her expense the nonconforming technical data promptly; or

Figure 4-3. Warranty of Data Clause.

(ii) if he/she determines that the government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the government, inform the Contractor by written notice that the government elects a price or fee adjustment in lieu of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under (1)(i) above, the Contracting Officer may, within reasonable time of such refusal or failure:

(i) by contract or otherwise, correct or replace the nonconforming technical data and charge the Contractor the cost occasioned to the government thereby: or

(ii) elect a price or fee adjustment in lieu of correction or replacement.

(e) The remedies set forth in this clause represent the exclusive means by which the rights conferred on the government by this clause may be enforced.

(f) The provisions of this clause apply anew to that portion of any technical data which is corrected or furnished in replacement under (d)(1)(i) above.

(End of Clause)

Alternate I (Optional for Use Under Fixed Price Incentive Contract)

(3) In addition to the remedies specified under (d)(1) and (2) above, Contractor shall be liable to the government for all damages sustained by the government as a result of breach of warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 75% of the target profit. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by a subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-price or cost-plus-incentive-fee type contract. Damages due the government under the provisions of this warranty shall not be considered as an allowable cost. The additional liability specified in this paragraph (3) shall not apply:

(i) With respect to the requirement for data for reprocurement of spare parts, provided that the data furnished by the Contractor was current, accurate at the time of submission and did not involve a significant omission of data necessary to comply with such requirements; or

Figure 4-3. Continued.

(ii) with respect to specific defects as to which the Contractor discovers and gives written notice to the government before the error is discovered by the government.

[End of Alternate I]

Alternate II (Optional for Use Under Firm Fixed-Price Contract)

(3) In addition to the remedies specified under (1) and (2) above, the Contractor shall be liable to the government for all damages sustained by the government as a result of breach of the warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 10% of the total contract price. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by a subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-priced or cost-plus-incentive-fee type contract. The additional liability specified in this paragraph (3) shall not apply:

(i) With respect to the requirement for data for reprocurement of spare parts, provided that the data furnished by the Contractor was current, accurate at time of submission and did not involve a significant omission of data necessary to comply with such requirements;

or

(ii) With respect to specific defects as to which the Contractor discovers and gives written notice to the government before the error is discovered by the government.

[End of Alternate II]

Figure 4–3. Continued.

Chapter 5

ENGINEERING DATA REVIEWS

5-1. Engineering Data Reviews—General:

a. Engineering data reviews are conducted in various forms with various names. Included among these are in-process reviews, technical reviews, completeness reviews, preacceptance reviews, configuration audits, and legibility reviews. This chapter describes elements of those reviews which are essential to ensure the accuracy, adequacy, and completeness of the engineering data being acquired by the government. Taken together, these elements constitute the government's Data Content Management Program.

b. Two primary responsibilities of the EDMO are making sure the contractor understands what the government requires and making sure the contractor is fulfilling those requirements. These two functions should be accomplished through engineering data guidance conferences and engineering data reviews.

5-2. Engineering Data Guidance Conferences:

a. Before the contractor begins developing the engineering data (usually within 60 days after contract award), a guidance conference should be held. This conference is a joint government—contractor review of the contractual engineering data requirements to make sure both parties agree on what data are required for delivery and to review the contractor's approach to filling those requirements. This conference should be held in conjunction with other guidance conferences, such as the postaward conference. The requirement for the contractor to support this conference should be contained in the SOW.

b. The acquiring activity's EDMO should chair the engineering data guidance conference. A representative from the technical OPR for each item of data to be discussed (the office listed in block 6 of the CDRL ordering the data), the cognizant government contracting offices, and any other involved activities (other EDMOs, reviewing activities, etc.) should be in attendance.

c. The format for the engineering data guidance conference is left up to the discretion of the chairperson. However, as a minimum the following topics should be addressed:

(1) The CDRL requirements, applicable DIDs, and applicable specifications and standards.

(2) Engineering data review requirements and schedules.

(3) Engineering data delivery requirements and schedules.

(4) The contractor's drafting practices and data formats.

(5) The contractor's numbering system for its drawings, part numbers, and engineering documentation.

(6) The contractor's quality assurance procedures relating to engineering data, including quality control of subcontractor and vendor data.

(7) The contractor's data rights marking procedures and policies.

(8) The role of subcontractors or vendors that will deliver data under the contract.

(9) The contractor's configuration management system, including methods for releasing data, approving data, and incorporating changes into the data.

(10) Identification of contract end items and the engineering data trees associated therewith.

(11) The contractor's organization for developing, releasing, and controlling engineering data (for data in digital form, include data update and transfer methodologies and identification of the data exchange protocols used by the contractor).

(12) Review samples of engineering data, if available.

(13) Other topics for discussion are identified in MIL-HDBK-288 (MC), Review and Acceptance of Engineering Drawing Packages.

d. All topics discussed during the guidance conference should be documented in a set of minutes. Any areas that are not resolved or that require changes to the contract should be brought to the attention of the appropriate government program manager and PCO.

5-3. Engineering Data Reviews:

a. Reason for Reviews. From its initial development through its final delivery to the government and often beyond, engineering data are normally very dynamic sets of documents. As a program progresses, design changes are made, requirements change, manufacturing difficulties are encountered, technology changes, and documentation errors are located. All of these events require changes to the engineering data. Regardless of the reason for the changes, the data must be reviewed as it is prepared to make sure it will fulfill the government's needs.

b. Review Cycle. IPRs are performed throughout the engineering data preparation and development cycle. These reviews are performed by a team which may be composed of the review activity assigned by the office that requested the data, if different; the technical OPR for the data (identified in block 6 of the CDRL entry for the engineering data); the designated accepting activity for the data (the first addressee in block 14 of the CDRL); the acquiring activity EDMO; the using activity EDMO; other ap-

propriate logistics centers (for example, Defense Logistics Agency (DLA) buying centers); and the CAO. MIL-HDBK-288 (MC) may be used as a guide in conducting IPRs. When feasible, IPRs should be conducted in conjunction with other scheduled reviews and audits. MIL-STD-1521 was recently changed and has now integrated engineering data requirements into the major reviews and audits.

(1) These reviews are conducted to verify that the data is in compliance with contractual requirements, to point out discrepancies in the data and recommend corrective action, and to ensure previously noted discrepancies are being corrected and are not reccurring. During the IPR the government team evaluates the technical presentation of a documented configuration to ensure that all data is present to manufacture an identical item. Anything on the drawings that is not per the contract is a discrepancy; so, too, is anything that is not on the drawing but should be per the contract. The focus of IPRs is to determine whether the drawing practices make the drawing usable to another manufacturer and whether everything the second manufacturer needs to know to make the part is included or referenced on the drawing and included in the data submittal.

(2) It is essential that an active engineering data review program begin early in the acquisition program. That way technical or managerial problems are brought to light early, avoiding costly and time-consuming errors. One of the first steps in an IPR cycle should be a review concentrating on the contractor's engineering data practices, including the standards the contractor has levied on subcontractors. By making sure that the contractor's practices are per the contract and understood by the government people that will be conducting IPRs, many problems can be corrected before large numbers of drawings are created under the contract. Depending on the nature of the procurement, this review may be done as part of the guidance conference or as the first of the IPRs. With a data sample prepared by the contractor, it may even be feasible to conduct this review—or the majority of it—at government sites. If done as a separate review, it should be limited to an examination of the data format and method of preparation and appropriateness of restrictive markings, rather than try to get into detail on the content of the data at a point in time when the contractor's basic drawing practices may not be well understood.

(3) The next step in the IPR cycle should be the in-process technical reviews. These reviews are conducted by larger, more technically oriented, government teams as the contractor develops enough engineering data to enable technical analyses of its contents. The acquiring activity EDMO should chair these reviews and is responsible for making sure the appropriate government activities are represented. These reviews should be held as specified in the contract (see paragraph 5-4). The in-process technical reviews may be either conducted at the contractor's facility or at a government site. No matter where they are held, the procedures for in-process technical reviews as as follows:

(a) Identify and notify review team members:

1. The reviews are a team effort. The EDMO should set up the review team membership based upon the type of review to be performed.

2. Tell the review team if the data will be delivered to them for review or if they are expected to review the data at another location. Completion dates for in-house reviews should also be specified. (An in-house data review is a review held at a government site, without contractor participation.)

3. Provide adequate lead time to allow members to prepare for the IPR. Distribute in advance the proposed review procedures with an explanation of the focus of that particular review.

(b) Notify the contractor if the IPR, or the meeting following an IPR conducted in-house, is scheduled to be held at the contractor's facility. At least 2 weeks before the scheduled meeting, a message, letter, or memo should be sent through the PCO (with notice to the CAO) to the contractor, identifying the exact dates, the focus of the review, what engineering data is to be made available, and any required visit notification or security clearances. This allows the contractor time to make paper copies. The EDMO will review a listing of all available data in order to identify which data the contractor should make available. The CAO is also a possible source of recommendations for drawings. If data lists will not be available for this purpose, the EDMO must have previously required that the CDRL (for DI-E-7031 or some other item) require delivery of some substitute means to identify what engineering data may be available. Data lists used to identify the engineering data available at an IPR should be delivered about 3 weeks before each IPR.

(c) If the IPR will be conducted at a government site, with data provided by the contractor, the CDRL must specify when and where the data is to be delivered (paragraph 4-3). The EDMO must make sure the data is made available on time or must initiate action through the administrative contracting officer (ACO) or PCO to notify the contractor of the delinquency and any required action through the contracting officer.

(d) The IPR should begin with a meeting of all government team members. The purpose of this meeting is to achieve a unified government posture and to allow the EDMO to brief the team regarding the review procedures. The EDMO must also instruct the team members on how to use the IPR

guidance and checklists (figures 5-1 and 5-2) and how to document any discrepancies.

(e) A meeting is then held with the contractor. The contractor should brief the government review team on the status of the engineering data effort. The chairperson of the government review team should introduce the government team and tell the contractor what the team plans to review and accomplish, and reiterate that the IPR will not constitute changes to the contract.

(f) The discrepancies noted during the IPR should be provided to the contractor through the PCO. All discrepancies should be reexamined or sampled after the contractor has taken the necessary corrective action. The following is a suggested procedure for handling discrepancies:

1. Discrepancy forms should be filled out describing each discrepancy or group of minor irregularities (figure 5-3).

2. Mark all discrepancies in red on all engineering data reviewed.

3. Review prior red-lined drawings for earlier discrepancies.

4. After the IPR is completed, the EDMO consolidates the discrepancies as noted by the review team.

5. Provide marked-up prints to the contractor. Communicate the results of the IPR formally by a letter from the PCO. If classified drawings are involved, it is unlikely that they will be removed from the IPR location; therefore, require the contractor to maintain the copies of the prints marked at the IPR for comparison at the next review.

(g) When the review is complete, those discrepancies requiring correction in order to meet the contractual requirements should be clearly explained and furnished to the contractor through a letter signed by the PCO. If not already specified in the contract, the letter should state a reasonable timeframe to make necessary engineering data corrections and should include instructions to correct similar discrepancies throughout the data package. MIL-HDBK-288 (MC) provides a sample method for documenting discrepancies found during IPRs.

(h) Send copies of minutes, discrepancies, and contractor tasking to each review team member. (Contractors are typically tasked to distribute minutes of meetings they host. See paragraph 5-4a(4).)

(i) Make maximum use of CAO in ensuring discrepancies are corrected.

(j) Prepare for future IPRs:

1. At the next IPR, review similar engineering data. This is a check to make sure that the contractor is actually correcting the system, rather than simply fixing one mistake at a time and waiting for the government to find the errors. For example, if the contractor was written up during the first review for an incorrect limited rights legend on a drawing, additional samples of limited rights drawings should be reviewed during the next review to ensure the use of the correct legend.

2. Inform the contractor on details of next meeting.

c. Configuration Audit. The contractor should be tasked to provide or make available a copy of all the required engineering data 60 days before the physical configuration audit (PCA). This engineering data requires an indepth government review. A sample guideline for engineering data reviewed 60 days before PCA follows:

(1) Review 100 percent of all items identified for spare parts. If this is not practical due to the number of such items, use provisioning lists and the results of the supporting activity's analyses of annual buy values (reference DAR Supplement 6, DOD Replenishment Parts Breakout Program) to select a sample of high-dollar spares that covers at least 75 percent of the dollar value.

(2) Review all data rights claims (chapter 6).

(3) Perform random sample of the remaining data.

(4) Examine the completeness of any intended data package for reprocurement or logistics support. (Is the package coming together?)

(5) Take marked-up copies or consolidated lists of discrepancies to the PCA to assist in performing that audit.

d. Post PCA. After completion of the PCA, the contractor should submit copies of all new and revised engineering data for government review. The review team should verify that all previously noted discrepancies, as well as all discrepancies revealed during the PCA, have been corrected. If the data is found acceptable, the EDMO shall notify the program manager in writing. If discrepancies still exist, the procedures detailed in paragraph 5-3b(3)(g) above should be followed to notify the PCO and contractor that problems still exist.

e. Final Technical Approval. After the last review, the system program manager, or a designated representative, will sign a letter to the PCO for transmittal to the contractor indicating technical approval of the engineering data. Figure 5-4 is a sample approval letter. Formal acceptance of engineering data will not be made until such approval has been given. The ACO will require the contractor to attach a copy of this letter to the DD Form 250, Material Inspection and Receiving Report, for engineering data delivery.

f. Final Review:

(1) The contractor will make the final delivery of the engineering data according to the requirements of the CDRL. This submittal shall not occur until final technical approval of the data has been

I. PRE-REVIEW PREPARATION:

A. Select the government review team.

B. Provide the following information to the government review team:

1. Identification of members of the review team.

2. The purpose of the review.

3. The time and place of the review.

4. If any engineering data will be provided to government team members beforehand.

5. Contract requirements.

6. Review the intended uses for the engineering data.

C. ARRANGE MEETINGS AND REVIEWS:

1. Notify the contractor (if IPR will be held at the contractor's facility).

2. Make sure data is delivered on time (if IPR to be performed at a government site).

3. Brief the team on the review procedures.

4. Discuss corrective action procedures.

II. CONDUCT IPR:

A. Use a checklist (figure 5-2, MIL-STD-1521, MIL-HDBK-288, or a combined or tailored checklist) to conduct the review.

B. Use the sample Engineering Data Discrepancy Sheets (figure 5-3) to document the findings of the IPR.

C. The EDMO will then consolidate the IPR Findings.

III. IPR FOLLOW-UP:

A. The EDMO presents the consolidated IPR findings to the PCO.

B. The PCO formally submits the IPR findings to the contractor for corrective action.

Figure 5-1. Sample Guidance for Engineering Data In-Process Reviews.

GENERAL CONSIDERATIONS

_____ 1. Drawing number
_____ 2. Sheet number
_____ 3. Contract number on drawing
_____ 4. Approved title
_____ 5. Code identification, Federal Supply Code for Manufacturers (FSCM)
_____ 6. Limited rights legend(s)
_____ 7. Scale noted
_____ 8. Approval signatures and dates
_____ 9. "Used On" column
_____10. "Next Assy" column
_____11. Parts list complete
_____12. Notes (general and specific)
_____13. Standard abbreviations (MIL-STD-12)
_____14. Spelling correct
_____15. Part identification marking
_____16. Projections and views
_____17. Line weights
_____18. Dimension arrows
_____19. Legibility (suitable for aperture cards)
_____20. Correctness of format
_____21. Frame identification blocks
_____22. Hardness critical item/ process symbol
_____23. Revision status block for multisheet drawings
_____24. Specifications/standards referenced
_____25. Documentation of Class I and II changes
_____26. Interchangeability marking
_____27. Dimensioning complete
_____28. Minimum lettering size requirement met (for reducing to aperture card)

DETAIL DRAWINGS

_____29. Material and spec (process)
_____30. Bend, corner, and fillet radii
_____31. Dimensioning and tolerance block
_____32. Tolerances
_____33. True position
_____34. Concentricity
_____35. Surface, texture, sharp edges
_____36. Drilled hole sizes and tolerance
_____37. Edge distance for holes
_____38. Counterbore, countersink, properly specified
_____39. Screw threads
_____40. Heat treatment spec

ASSEMBLY DRAWINGS

_____48. Parts List (DOD-STD-100-CH600)
_____a. Sequence of entries
_____b. Item (find) numbers
_____c. Quantities
_____d. Description
_____e. Dash number (when applic)
_____f. Vendor item FSCMs
_____g. Complete hardware callouts
_____49. Welding symbols and specs
_____50. Design values and acceptance criteria
_____51. Overall dimensions
_____52. Mounting dimensions

Figure 5-2. Checklist for Engineering Drawing Review.

____41. Finish or plating (specification, grade, and class)	____53. Torque values
____42. Grain direction (if critical)	____54. Protective finish
____43. Draft angle (for castings)	____55. All items called out
____44. Inspection procedures or performance requirements	____56. If Detail assy drawing, see also, Detail Drawings
____45. Complete manufacturing dimensions	____57. Process specifications referenced in general notes
____46. Contour data identified (if required)	____58. Related drawings (schematic, wiring, entered in notes)
____47. Tube bend data	____59. Bonding/patting/adhesive date/processes
	____60. Contour data identified (if required)
	____61. Does acceptance test require use of next higher assembly?

WIRING DIAGRAM (DOD-STD-100C, 201.7.2)	ELECTRICAL SCHEMATIC
____62. Related equipment phantomed	____69. Symbols
____63. Point-to-point wiring	____70. Reference designations
____64. Reference designations	____71. Shielding
____65. Wiring coding	
____66. Shielding	
____67. Wire length matrix	
____68. Hardness pattern/pegboard undimensioned data	

SPECIFICATION CONTROL DRAWING (OR ENVELOPE CONTROL DRAWING) *
(DOD-STD-100C, 201.4.2)

____72. "Specification Control Drawing" notation above title block.
____73. Required *NOTE:* "Identification of the suggested source(s) of supply hereon is not to be construed as a guarantee of present or continued availability as a source of supply for the item(s)."

____74. Configuration	____82. Interface characteristics
____75. Size and shape (envelope dimensions)	____83. Schematic connection diagram
____76. Mounting and mating dimensions	____84. Functional characteristics (electrical, electronic, and mechanical)

Figure 5-2. Continued.

____77. Special requirements (if any)

____78. Acceptance testing data
____79. Environmental requirements
____80. Suggested sources of supply

____81. Supplier item identification (part) number

FOR ENVELOPE DRAWING (Next 3)

____85. Evolutionary drawing developed to disclose design
____86. Performance specification
____87. Complete and adequate for reprocurement on an interchangeable item name by open competition

____Name
____FSCM (Code Identification Number - or address if no known FSCM)

*NOTE: DRAWING SHALL NOT HAVE LIMITED RIGHTS BY DEFINITION

SOURCE CONTROL DRAWING
(DOD-STD-100C, 201.4.3)

____88. Special requirements (if any)
____89. Acceptance testing data
____90. Environmental requirements
____91. Interface characteristics
____92. Schematic connection diagram
____93. Functional characteristics (electrical, electronic and mechanical)
____94. "SOURCE CONTROL DRAWING" notation above title block
____95. Required NOTE: "Only the item described on this drawing when procured from the vendor(s) listed hereon is approved by (name and address of cognizant design activity) for use in the applications(s) specified hereon. A substitute item shall not be used without prior approval by (name of cognizant design activity) or by (name of government procuring activity)."
____96. Required NOTE: "Identification of the approved source(s) of supply hereon is not to be construed as a guarantee of present or continued availability as a source of supply for the item described on the drawing."
____97. Configuration
____98. Size and shape (envelope dimensions)
____99. Mounting and mating dimensions
____100. Approved source of supply and FSCM or address
____101. Supplier item identification (part) number
____102. Electrical/electronic characteristics
____103. (Reserved)
____104. Interface characteristics
____105. Schematic wiring diagram
____106. Reliability testing
____107. Performance specifications
____108. Disclosure requirements identical to Spec Control Drawings

Figure 5-2. Continued.

UNDIMENSIONED DRAWING
(DOD-STD-100C, 201.9.7)

_____109. Drawn on or photographically transferred to polyester per MIL-D-8510, Type II
_____110. Precise scale
_____111. Sharp, clear lines
_____112. Required General NOTE: "For manufacturing purposes, this drawing shall not be reproduced to or from a reproducible that is made from other than a stable base material."
_____113. Recommended General NOTE: "Undimensioned drawing to be used as master artwork. Full size, stable base, duplicate may be obtained from the design activity or Air Force data repository."

PRINTED WIRING MASTER PATTERN DRAWING
(DOD-STD-100C, 201.9.8 and .9)

_____114. Drawn on or photographically transferred to polyester, per MIL-D-8510, Type II
_____115. Vertical and horizontal register marks with dimensions
_____116. Appropriate NOTES:
  _____a. NOTE 94
  _____b. NOTE 95
  _____c. NOTE 96
  _____d. Necessary General NOTE: "This printed wiring board and drawing shall comply fully with MIL-STD-275."
_____117. Circuit side identification
_____118. Component side identification
_____119. Recommended NOTE on face of drawing: "Master artwork, handle with extreme care to prevent cracks and abrasions. Do not roll drawing.
_____120. Identify multi-layer boards/silk screen/solder mask

RIGHTS IN TECHNICAL DATA
(DOD FAR SUP 52.227-7013)

_____121. Limited Rights or other restrictive markings
_____122. Contractually required legend on drawing

DISTRIBUTION STATEMENTS, EXPORT CONTROL WARNING, AND DESTRUCTION NOTICES
(DODD 5230.24)

_____123. Will data be applicable
  _____DD Form 1423 requirements compatible
  _____Aperture card column 50 explained (codes)
  _____Overlay for required statement, warning and destruction notices

Figure 5-2. Continued.

ALTERED ITEM DRAWING
(DOD-STD-100C, 201.4.4)

_____124. "Altered Item Drawing" notation above title block
_____125. Reidentification marking requirements in notes on drawing
_____126. "Make From" information in notes on drawing
_____127. Complete details of alteration
_____128. Identity of name (and address, if known), and manufacturer's FSCM number of the source of the original part if commercial or vendor developed item.

SELECTED ITEM DRAWING
(DOD-STD-100C, 201.4.5)

_____129. "Selected Item Drawing" notation above title block.
_____130. Reidentification marking requirements in notes
_____131. Fit, tolerance, performance, or reliability information in notes
_____132. Identity of name (and address), and manufacturer's FSCM number of the source of the original part if commercial or vendor developed item.
_____133. Acceptance/test criteria in notes
_____134. Identity of item prior to its delimited selection, including original part number.

Figure 5-2. Continued.

granted by the government. Upon receipt of the final deliverable, the receiving activity will inspect the data for format, legibility, and completeness. (See MIL-HDBK-288 (MC), paragraph 4-8, for instructions on performing the completeness check.) Upon verification that the engineering data is acceptable, the designated accepting activity (the first addressee listed in block 14 of the CDRL) shall be notified in writing. Copies of the signed DD Form 250 shall be provided to the EDMO.

(2) Nonconforming technical data will be rejected and appropriate notice furnished to program participants (paragraph 6-6). The ACO will make sure that corrections are made and the data resubmitted.

5-4. Contractor Support of Engineering Data Guidance Conferences and Reviews:

a. The EDMO must make sure the contract SOW clearly tasks the contractor to host the engineering data guidance conference as well as host and participate in the in-process reviews if it is determined to hold the reviews at the contractor's plant. The tasking statement must specify the following:

(1) Approximate number of IPRs (include the guidance conference).

(2) Approximate schedule for the meetings.

(3) Hosting activity (government or contractor) for the meetings.

(4) Materials the contractor is to make available for inspection; for example, copies of engineering data, copies of minutes (remember, any data required to be delivered to the government must be on the CDRL).

(5) Contractor personnel expected to attend (i.e., program manager (PM), data manager, drafting manager, administrative support, etc.).

b. Since not all IPRs require the contractor's participation, the EDMO must make sure the technical OPR distinguishes between the reviews that will be performed strictly by the government and the reviews that require joint participation.

(1) It is of utmost importance that the EDMO include a schedule for in- process reviews in the EDMP so that other organizations can plan ahead for manpower and travel fund resources to support the reviews.

(2) To ensure active support of data reviews by the CAO, it is essential to specify the requirements in an MOA or LOI and in the EDMP.

Sheet ___ of ___

(PROGRAM NAME and CONTRACT NUMBER)

Engineering Data Discrepancy Sheet

PRIME AND SUBCONTRACTOR OR VENDOR NAME: _____

TYPE OF REVIEW: _____

REVIEWER'S NAME DRAWING/DOCUMENT NUMBER REF

DATE:

DISCREPANCIES:

ACTION REQUIRED/COMPLIANCE DUE DATE _____

PROGRAM OFFICE EDMO (or Team Chief) SIGNATURE _____

LOGISTICS SUPPORT ACTIVITY EDMO SIGNATURE _____

ACTION AGENCY: ____ CONTRACTOR ____ PROGRAM OFFICE

____ CONTRACT ADMINISTRATION OFFICE ____ OTHER

This block to be used by Action Agency

DISCREPANCIES CORRECTED BY: _____
(SIGNATURE) (DATE)

After resolution, return to the Program Office EDMO.

(May be used with the Review Checklist to Document Discrepancies)

Figure 5-3. Engineering Data Discrepancy Sheet.

FROM:

SUBJECT: Technical Approval of Engineering Data

TO: Contracting Officer, XYZ Program

1. A sample of the engineering data required to be delivered by CDRL _____, Contract Number _____ has been reviewed by the XYZ Program Office and the _____ Air Logistics Center. It is determined that the engineering data appears to be technically complete and adequate.

2. This letter is to be transferred to the ACO who will send it to the contractor. The contractor may then microfilm (or other media required by contract) and deliver the engineering data. A copy of this letter must be attached by the contractor to the DD Form 250 along with engineering data being delivered.

3. This technical approval is based on sampling of available data and shall not be construed by the government or the contractor to be a final determination of 100 percent confidence in the technical content of the engineering data. Notwithstanding this approval, all appropriate correction of deficiency clauses and warranties remain effective for the time periods stated in the contract.

(Signature)
EDMO
XYZ Program

Figure 5-4. Sample Technical Approval Letter.

5-5. Subcontractor and Vendor Data. At each IPR, subcontractor and vendor, engineering data shall be reviewed. The prime contractor is responsible for maintaining quality control of lower tier subcontractor and vendor data according to DOD-D-1000, paragraph 4.1.1. The prime is also responsible for ensuring the engineering data is available and the subcontractors and vendors comply with the contract and make necessary corrections identified by the review team. The subcontractors' and vendors' contracts may need to be reviewed to make sure the contracts contain the same engineering data requirements and rights-in-data clauses as in the prime contract. Subcontractors and vendors who do not want to submit engineering data with limited rights to the prime may submit it directly to the government (DFARS 52.227-7013).

5-6. Sample Sizes for Data Reviews. On some contracts, the EDMO and the review team will find it physically impossible to review 100 percent of the engineering data prepared by the contractor, subcontractors, and vendors. These situations call for sampling. EDMOs should make sure that sampling covers a cross section of the entire drawing package. While there is no requirement to review a particular sample size, the different types of drawings (that is, assembly drawings, detail drawings, control drawings, lists, etc.) should all be covered. The EDMOs must use discretion as to the frequency and size of the reviews. Figure 5-5 provides an example of a sampling technique. The example includes the application of MIL-STD-105, but a distinction must be made between its use internally by the government IPR team and specifying it contractually as the inspection technique for engineering data. Used internally, it is a tool that can provide the IPR team confidence in the overall quality of the engineering data or drawings based on sampling. Since the contents vary from drawing to drawing, the results of sampling per MIL-STD-105 may or may not indicate that the process the contractor uses to generate the drawings is flawed. Until more experience is gained using sampling techniques, specifying MIL-STD-105 as the contractual method for inspecting engineering drawings or data is probably unwise. Regardless of the sampling method used, all discrepancies discovered during IPRs should be brought to the contractor's attention for correction.

1. Ground Rules for Selection:

a. To attempt to perform 100 percent inspection of the engineering data for a major system is a physical impossibility. If it were possible, human fallacy would inject an intolerable error factor. Experience has shown that inspection by sampling is expeditious and can ensure delivery of an acceptable product.

b. MIL-STD-105 may be used to measure the results of sampling. However, this standard by itself normally does not provide enough information to project an accurate picture. Therefore, the following additions, as a minimum, should be considered:

(1) An example of each type of engineering data prepared by each design activity should be reviewed. For example, in the case of engineering drawings, an assembly drawing, a specification control drawing, a source control drawing, a selected item drawing schematic, a printed wiring board drawing, etc., should be reviewed. In the case of specifications being reviewed, an "A" specification, a "B" specification, etc. should be looked at. This would provide horizontal coverage of each type of engineering data.

(2) An example of the entire engineering data package for one complete configuration item (CI) should be reviewed. For example, the entire drawing package for the CI from the assembly drawing to the piece part drawings, plus all associated specifications should be reviewed as a package. This would provide vertical coverage of one product.

(3) One subassembly representing each type of item or system making up the contract end item should be reviewed. For example, structural, electrical, electronic, mechanical, hydraulic and optical. This would provide functional coverage across the product line.

c. Each lot of engineering data presented for review will be evaluated for engineering data techniques. Review of subcontractor and vendor design activity lots will include a review of the applicable data list and index list prepared by the major contractor to determine if the tabulation includes the subcontractor and vendor data.

2. Inspection Parameters:

a. Governmental goals and limitations. The government desires accurate and all-inclusive engineering data, which is required to support the contract end item through its useable life. Much of this data is in a format that is unique to the government activity which will make use of the data. Thus, specialists are required to perform evaluations. The quantity of data required to be evaluated is physically beyond the ability of the manpower available. Thus, inspection by attributes IAW MIL-STD-105 is suggested.

Figure 5-5. Example of a Technique for Selection of Samples of Engineering Data for IPRs.

b. Acceptance levels. The following is one example of an approach to using MIL-STD-105 for the government IPR team to assure itself of the quality of the engineering data reviewed:

(1) The engineering drawings should be assembled into identifiable lot for review purposes. Each lot should, as far as pracitcable, consist of drawings of the same category and composition, that is, have been produced under essentially the same conditions and at essentially the same time. Drawings of all types produced at essentially the same time may be grouped as one lot for review of general considerations (that is, items 1 through 28 of the checklist contained in figure 5-2). Drawings grouped by type (for example, all assembly drawings), or drawings grouped by top level assembly (for example, all drawings pertaining to one configuration item) would be grouped in separate lots. The same drawing could be a part of multiple lots, depending on how the lots were formed and what is being reviewed for each lot.

(2) Accuracy of the engineering data evaluated is directly dependent upon the classification of the defects found in each lot of data. The following three paragraphs apply to the lot being reviewed with a decision to accept or reject based on statistical sampling. For this example, the lot size is between 281 and 500 drawings and normal inspection based on a single sample of 50 drawings is being used to judge the quality of the entire lot for either critical, major, or minor defects. The accept/reject threshholds are based on Table I and sampling plan "H" from MIL-STD-105. The acceptable quality level (AQL) is the maximum percent defective that, for purposes of sampling inspection, can be considered satisfactory as a process average. The AQL is judgmental and need not be the same for all procurements.

(3) Critical Defects. Those defects which defeat the purpose for which the engineering data is procured.

Parameters: (50 unit sample size, AQL 0.25 percent)

Accept 0 Defects; Reject 1 Defect

(4) Major Defects. Those defects which reduce materially the use of the engineering data.

Parameters: (Sample Size 50, AQL 1.5 percent)

Accept 2 Defects; Reject 3 Defects

(5) Minor Defects. Those defects which have only a low probability of affecting the use of the engineering data.

Parameters: (Sample Size 50, AQL 4.0 percent)

Accept 5 Defects; Reject 6 Defects

Note: In cases where defects are noted but the number is low enough to consider the lot acceptable, the contractor should still be notified to fix the defects.

Figure 5-5. Continued.

3. Inspection Criteria:

a. Critical Defects:

(1) Critical defects shall be limited to inconsistencies that are not technically feasible or those that do not comply with the system specification.

(2) Restrictive markings (limited rights legends), applied to drawings in violation of FAR or DoD FAR Supplement (DFARS) clauses or other contractual requirements. (Unauthorized limited rights legends.)

b. Major Defects:

(1) The following possible major defects are evaluated against the requirements of the contract:

(a) Are limited rights legends on drawings worded correctly per the DFARS requirements? (Limited rights legends appear to be authorized by contract terms but the legend itself is incorrectly worded or applied.)

(b) Are the data lists and index lists required for delivery available? Are they prepared according to the contractual requirement?

(c) Are the approved engineering changes incorporated on the applicable drawings and specifications according to the contractual requirements?

(d) Does the assembled engineering documentation appear to fully support the level of data documentation required by the contract?

(2) The following possible major defects determine the extent and depth of the data delivered:

(a) Are the documents, shown as a reference on the drawings, to be delivered as a portion of the data set?

(b) Are the documents, shown as a reference on the drawings, available for evaluation?

(3) The following possible major defects determine to a great extent the adequacy of document preparation:

(a) Is the delineation shown on the drawings prepared in a clear and concise manner (leaving no doubt or confusion)?

(b) Is the document legible and suitable for microfilming?

(c) Reference the requirements of MIL-M-9868.

(d) Does each document show the following identification?

Figure 5-5. Continued.

1. If required, the contract number requiring preparation of the drawings and, if different, the contract number requiring delivery of the drawings.

2. Identification IAW paragraph 402 of DOD-STD-100.

(e) Are all dimensions and tolerances included and do they comply with the fundamental rules shown in paragraph 1.4 of the specified version of ANSI Y14.5?

(f) Are control drawings prepared as specified in the appropriate subparagraphs of 201.4 of DOD-STD-100?

(g) Are materials and processes fully identified on the drawings (government and industry specifications are preferred - reference MIL-STD-143)?

(h) Are symbols, reference designations, and abbreviations used according to DOD-STD-100C, paragraph 102?

(i) Are hardness critical items properly identified?

(j) Is the document properly marked to depict the security classification, when applicable?

(k) Are hazardous material warning notes shown where applicable?

(4) Except when otherwise identified during an IPR, all other deviations from the requirements of DOD-1000 and DOD-STD-100 will be noted as minor defects.

Figure 5-5. Continued.

4. Summary Table. This summary table is for illustration only. It shows how identified defects change in importance as a contract progresses. It is not recommended as a basis for identification of major or minor defects without specific analysis for applicability to other programs or project.

IPR NUMBER	1		2		3	
PERCENT OF DRAWINGS COMPLETED	10		40/50		100	
	MAJ	MIN	MAJ	MIN	MAJ	MIN
IDENTIFICATION						
Drawing Numbers	X		X		X	
Part Numbers	X		X		X	
Material or Process		X	X		X	
Contract Numbers		X		X	X	
Next Assembly Numbers		X	X		X	
Used On		X	X		X	
Proprietary Legends	X		X		X	
DELINEATION						
Sufficient Views	X		X		X	
Fully Dimensioned		X	X		X	
Adequate Tolerancing		X	X		X	
Design Disclosure to Piece Part Level	X		X		X	
Data Lists and Index Lists		X	X		X	
CONTROL DRAWINGS						
Specification Control						
Two Vendors' Names and Addresses		X	X		X	
Each Vendor's Part Number Shown		X	X		X	
Source Control						
Test Evaluation		X	X		X	
Vendor's Name and Address		X	X		X	
Vendor's Part Number		X	X		X	

Figure 5-5. Continued.

Chapter 6

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE: THE DATA RIGHTS MANAGEMENT PROGRAM

6-1. Understanding the Data Rights Management Program:

a. One of the most complex aspects of government procurement is the acquisition of technical data and computer software. The acquisition of useful technical data requires the combined efforts of the technical, contracting, and legal members of the government's acquisition team. All members play an important role in all phases of the acquisition. This chapter discusses the acquisition of rights in technical data and computer software and provides the basic outline of the government's Data Rights Management Program. It must be remembered that the government cannot, as a practical matter, exercise its rights in technical data and computer software unless the technical data and computer software are available to the government. Further, policy and guidance regarding the acquisition of rights in technical data and computer software are provided in part 27 of the FAR and DFARS.

b. There are five parts to the government's Data Rights Management Program. They are: (1) review of contractor's in-house procedures for marking technical data and computer software, (2) prenotification (preaward) procedures, (3) notice (postaward) procedures, (4) review of rights in technical data at delivery, and (5) challenge procedures. All five of these parts are discussed in this chapter.

c. In order to understand all five parts, it is first necessary to have a basic knowledge of the rules regarding the allocation of rights in technical data and computer software. The next paragraph reviews these basic rules.

6-2. Rights in Technical Data and Computer Software:

a. Rights Identified. Virtually every contract that requires the delivery of technical data or computer software will contain the clause entitled Rights in Technical Data and Computer Software, DFARS 52.227-7013, which is referred to in this document as the data rights clause. The data rights clause contains DOD's policy regarding the criteria for determining when technical data or computer software may be delivered to the government with restrictions on their use. This policy, based on an accounting test, holds that the party who paid for the development of the item, component, or process to which the technical data refers (or the party who paid for development of the computer software) has the right to determine the limitations on the use of the data or software. Thus, paragraph (b)(2) of the basic data rights clause permits contractors to deliver data with limited rights legends that limit the government's rights to use the data by stating that the government shall have limited rights in:

> . . . *unpublished technical data pertaining to items, components, or processes developed at private expense and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in (b)(1)(i), (v), (vi), (vii), and (viii). The word unpublished, as applied to technical data and computer software documentation, means that which has not been released to the public or furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of limited rights technical data to or for the government under a contract does not, in itself, constitute release to the public.*

This clause excludes any reference to legal concepts, such as trade secrets, and bases the determination of the proprietary nature of data on accounting concepts. Thus, the key phrase in this determination is developed at private expense. Due to the importance of this concept, it is discussed in detail in the following paragraph:

b. Developed at Private Expense. There are two elements to the test of developed at private expense. These are (1) developed and (2) at private expense. The following paragraphs describe this from the government's point of view:

(1) The first element of the test is that a contractor must demonstrate that development of the item, component, process, or computer software is complete. There currently is no DFARS definition of the term **developed.** However, there are certain key requirements that must be met before an item, component, or process can be considered to be developed. First, there must be a physical embodiment of the item, component, or process (e.g., it must be in **being** for development to be complete). Second, the item, component, or process must have been tested to demonstrate that it works in its intended environment. Stated another way, for an item, component, process, or computer software to have been developed it must be **in being** and its **workability** must have been demonstrated.

(a) **In being** means that an item or component must have been constructed, a process practiced, and computer software used. (In rare cases an exception may be made for an item, component, or process that is so simple and its workability so obvious

from its design that fabrication of a prototype is unnecessary to demonstrate workability.) The type of information to show that an item, component, process, or computer software is in being includes, but it is not limited to, the following:

1. Part number, identifying number, and/or drawing number of item, component, process, or computer software to which the assertion applies.

2. Identification of next higher assembly. A copy of basic (first issue) drawing or other appropriate documentation showing date of preparation.

(b) **Workability** must be demonstrated by either testing or analysis sufficient to demonstrate to reasonable persons skilled in the applicable art that there is a high probability the item, component, process, or computer software will work as intended for the purpose. Types of information that support determinations of workability include, but are not limited to, engineering or scientific notes and test reports.

(2) The second element of the test is that a contractor must provide information that would substantiate that the item, component, process, or computer software was developed at **private expense.** This means that it was developed without government funds (except independent research and development (IR&D) as defined by FAR 31.205-18) and at a time when no government contract required performance of the work. If the development work is completed with a mixture of government and private funds, the government is entitled to unlimited rights in all data pertaining to the item, component, process, or computer software. (It should be noted that the contractor may disagree with the government's position on this matter.) The contractor's accounting records showing the source of funding for the development work may be presented as evidence of the private expense. This includes, but is not limited to, the following:

(a) Time cards, bills of material, and other corporate records establishing the expenditure of corporate funding.

(b) Identification of the other private funding used by the contractor.

NOTE: Independent Research and Development (IR&D). There is one area where the government reimburses—through indirect charges—portions of contractor expenditures for research and development and yet allows the contractor to retain rights to the resultant information. This is the area of IR&D. As implied by the name, the contractor works independently in carrying out research and development in areas of potential value to the government. Products or studies are not specified in IR&D arrangements so the government is not contracting for data to satisfy a stated need. Purpose of these IR&D arrangements is to advance the technology by providing monetary incentives to contractors. The problem that arises in subsequent contracts is sorting out the research and development (R&D) done on a basic contract from that done through IR&D. The EDMO can best resolve questions of this nature by working closely with the contracting officer who, in turn, can work with the triservice activity assigned for that contractor to obtain technical plans and other documentation supporting the IR&D agreements.

c. Nonprotectable Technical Data. The rights in data clause provides that certain types of data are excluded from the protections granted the contractor by the **developed at private expense** test. Paragraph (b)(1) of the clause establishes nine categories of technical data and computer software in which the government always obtains unlimited rights. These categories include such data as technical manuals; form, fit, and function information; and information that is in the public domain. The complete list should be reviewed to obtain a further understanding of the types of technical information that are not protectable.

6-3. Review of Contractor Procedures for Marking Technical Data and Computer Software:

a. Clause Requirements. The DFARS requires contractors and subcontractors to maintain procedures governing the marking of technical data and computer software. Specifically, all contracts that require the delivery of technical data and computer software and that include the data rights clause are also required to include the clause at DFARS 52.227-7018 entitled "Restrictive Markings on Technical Data." This clause requires the contractor to **have, maintain, and follow** written procedures sufficient to ensure that restrictive legends are included on technical data and computer software to be delivered to the government only when authorized by the terms of the contract under which the data and software are to be delivered. The contractor is also required to maintain a quality assurance system to ensure compliance with such procedures.

b. Record Keeping. DFARS 52.227-7018 specifies two record-keeping requirements for the contractor. The clause requires records to show how the contractor's procedures were applied in determining that restrictive markings were authorized. The clause also requires contractor records as part of the supporting evidence that the data were developed at private expense.

c. Evaluation of Contractor Procedures. The clause also provides for the contracting officer's evaluation and verification of the contractor's procedures to determine their effectiveness. According to FAR 42.302(a)(48), the ACO is normally responsible for such evaluations. Contracting officers will consider a contractor's procedures and systems to be

acceptable only if they satisfy the following minimum standards:

(1) Identify by name and title the employees authorized to mark technical data and computer software with restrictive markings.

(2) Provide that the employees authorized to mark technical data with restrictive markings will be trained concerning the procedures and the contractual terms pertaining to marking of technical data and computer software with restrictive markings.

(3) Provide that employees will mark technical data and computer software with restrictive markings only if the authorized employees have determined that information in the contractor's records support the assertion that the data pertain to items, components, processes, or computer software that have, in fact, been developed at private expense.

(4) Provide for adequate evaluation of subcontractors' procedures and systems for the marking of technical data and computer software with restrictive markings.

d. Uniform Requirements. To obtain uniformity in implementation of DFARS 52.227-7018 regarding contractor's obligations to have written procedures and a quality assurance system that meet these minimum standards, a special contract requirement substantially as set forth in appendix E is provided for consideration for incorporation in all solicitations and contracts which include the "Restrictive Markings on Technical Data" clause.

6-4. Prenotification (Preaward) Procedures To Be Used in the Acquisition of Technical Data Packages. The EDMO, on behalf of the PM, should make sure technical data that are to be delivered to the government: (1) are technically accurate, adequate, and complete; and (2) comply with contractual requirements regarding any restrictive legends a contractor may place on them. In this regard, the following procedures apply to the acquisition of all technical data packages to be delivered to the government. In addition, these procedures may be applied to other deliverable technical data or computer software:

a. In acquisitions in which the contractor will deliver to the government a technical data package, the FAR and DFARS provisions regarding technical data and computer software will be implemented to require that the offeror or contractor submits at least the following type of information:

(1) Pursuant to the solicitation clause entitled "Prenotification of Rights in Technical Data," DFARS 52.227-7035, offerors shall be required to identify to the maximum practicable extent in their response to solicitations such privately developed items, components, or processes, or computer software (ICOPS) and the technical data pertaining thereto which they:

(a) Intend to deliver with limited/restricted rights;

(b) Intend to deliver with unlimited rights; or

(c) Have not yet determined will be delivered with limited/restricted rights or unlimited rights.

(2) This provision also covers technical data pertaining to design, development, or production of privately developed items, components, or processes that have been or are to be offered for sale, lease, or license in significant quantities to the general public. However, identification need not be made as to technical data which relates to standard commercial items which are manufactured by more than one source of supply. For standard commercial items, obtain the names of the suppliers and the salient performance characteristics to enable the government to substitute an equivalent item.

b. If in its proposal, an offeror asserts restrictive rights to any technical data or computer software to be delivered under the contract, to be in compliance with DFARS 52.227-7035, "Prenotification of Rights in Technical Data," the offeror must provide—upon the written request of the contracting officer—for each assertion, evidence which supports that the item, component, process, or computer software to which the restrictive assertion refers was developed at private expense. In this regard, the contractor must provide evidence which supports that all of the elements of the developed at private expense test, discussed above, are met.

c. Those ICOPS, and the technical data pertaining thereto, which the offeror intends to deliver to the government marked with a restrictive legend, must be identified before contract award. Those items, components, processes, and computer software and the technical data pertaining thereto, which the offeror has identified in the prenotification procedures discussed above and which the offeror, if requested, has substantiated were developed at private expense will be included on a Data Rights List made part of the contract at the time of award. The list must include information that (1) identifies the item, component, process, or computer software; and (2) describes the rights which the government will obtain in the technical data pertaining thereto. Items, components, processes, and computer software or the technical data pertaining thereto for which the offeror has not provided the information described above will not be included on the list. Inclusion of an item, component, process, computer software, or technical data pertaining thereto on the list shall not be construed to constitute an agreement by the government with respect to any assertion by an offeror regarding rights. See figure 6-1 for an example of a format for a Data Rights List.

d. The special contract requirement in appendix F has been written to facilitate the continuing identifi-

	Item, Component, Process, or Computer Software	Drawing/Document Number (When Available)	Title	Next Higher Assembly/ Used on (As Applicable)	Rights
1.					
2.					
3.					
.					
.					
.					

Figure 6-1. Format for Data Rights List.

cation of technical data or computer software to be delivered with less than unlimited rights. This requirement should be considered for inclusion in all solicitations and contracts containing DFARS 52.227-7035 on prenotification. The special contract requirement is a mechanism that requires the inclusion of the data rights list in the contract.

e. In establishing or updating the Data Rights List, special attention must be paid to computer software.

(1) The basic data rights clause states that the contractor may not place a restrictive legend on **noncommercial computer software** unless the restrictions regarding that software are set forth in a license or agreement made part of the contract prior to the delivery date of the software. Computer software, other than commercial computer software, should not be included in the Data Rights List until such a license or agreement has been negotiated and made part of the contract.

(2) **Commercial computer software** should be placed on the Data Rights List only if the terms of the license comply with the minimum requirements established for commercial computer software in the basic data rights clause. In some cases the needs of the government may require flexibility to be able to transfer the computer software to another host computer due to a transfer of function. If so, the government's rights must be greater than the minimums set forth in the basic data rights clause which provides that the government has the right to physically transfer the host computer to another location, but these minimums cover transfer of software only for a backup computer. The license or agreement (typically enclosed in the shrink wrap with the other documentation) should be carefully reviewed—before contract award if possible—to understand the rights the government will have in the commercial computer software.

6-5. Notice (Postaward) Procedures To Be Used in the Acquisition of Technical Data. As noted previously, the EDMO makes sure that technical data packages and other appropriate data and computer software delivered to the government are (1) technically accurate, adequate, and complete; and (2) comply with the contractual terms concerning restrictive legends that are placed on the delivered data or software. In this regard, the following procedures should be followed during the life of any contract that requires delivery of any such data or software.

a. During the life of the contract, the Data Rights List must be periodically updated. These updates will accomplish two objectives. First, as the technical data package matures, the Data Rights List is revised to indicate the specific drawings that will be delivered with a restrictive legend. Second, those privately developed ICOPS and the technical data pertaining thereto which, during performance of the contract, the contractor notifies that it intends to use may be added to the list. These periodic updates must be accomplished with enough frequency and with enough detail to ensure that all technical data and computer software, which will be delivered with a restriction on its use, are included on the Data Rights List before delivery.

b. The contract clauses that require the contractor to notify the government when it intends to use a privately developed ICOPS which would result in delivery of technical data with limited rights is entitled "Notice of Certain Limited Rights." DFARS 52.227-7013 (Alternate I). The terms of this clause require the contractor to promptly notify the contracting officer, in writing, of the intended use by the contractor, or any subcontractor, in the performance of the contract of any ICOPS for which technical data or computer software would be delivered marked with restrictive rights. This notification need not be made for technical data which relates to standard commercial items which are manufactured by more than one source of supply.

c. The contractor may be required, with regard to each restrictive rights assertion made during the performance of the contract, to provide the information described above which substantiates that the ICOPS were developed at private expense. The contracting officer shall review each of the contractor's assertions. If appropriate, the Data Rights List may be revised to identify the applicable restrictive legend regarding the technical data or computer software.

d. Contractor and subcontractor technical data and computer software will be periodically reviewed as they are prepared throughout each acquisition phase to make sure they are technically accurate, adequate, and comply with contractual requirements. At the completion of each of these reviews, the Data Rights List will be revised to update and identify the specific drawings and other technical data which may be delivered to the government marked with a restrictive legend. The revised list will be made part of the contract by a bilateral contract modification.

6-6. Review of Rights in Technical Data and Computer Software at Delivery. All technical data and computer software delivered to the government for acceptance must comply with all the requirements of the contract. Where applicable, these contract requirements include the mandatory listing of technical data on the data rights list which requires that before delivery, the data is identified as technical data which may be delivered with restrictive markings. Before delivery and acceptance of technical data, the ACO or government representative shall review all drawings with restrictive markings and compare them with the data rights list contained in the contract. If an item does not appear on the list, or if it appears on the list and is marked with an unauthorized legend, it will be immediately questioned prior to acceptance. The contractor will either remove the legend, correct it, or produce sufficient evidence that the item was developed at private expense. Should the contractor delay in complying with these requirements and fail to meet required delivery schedules, the ACO will apply remedies spelled out in the contract. These remedies include, but are not limited to, the following:

a. Reject the Data. It is government policy to reject nonconforming technical data or computer software at the time of delivery (FAR 46.102). If nonconforming technical data or computer software is delivered by a contractor, then the procedures outlined in FAR 46.407 shall govern.

b. Discussion with Certifying Official. At the time of delivery, the contractor is required to submit a "Certification of Technical Data Conformity" (DFARS 52.227-7036) which certifies that the technical data is complete, accurate, and complies with all the requirements of the contract. The contractor is also required to identify, by name and title, the individual authorized to sign the certificate and to permit direct contact by the government with that individual. In the event that nonconforming technical data or computer software is delivered to the government, then the certifying official should be contacted immediately. The problems regarding the technical data or computer software may be resolved with the help of the contractor's certifying official.

c. Withhold Payment. The contract clause entitled "Technical Data —Withholding of Payment" entitles the government to withhold payment to the contractor of up to ten percent (10%) of the total contract price until the nonconforming technical data is accepted. This amount may be withheld if the technical data is not delivered within the time specified in the contract or if it is deficient upon delivery (including having restrictive markings not specifically authorized by the contract). If it is determined that the technical data delivered to the government does not conform with the contract requirements, then the ACO or PCO must be contacted immediately to take action to withhold contract payments until the data are accepted by the government.

6-7. Questioning Claims of Limited Rights in Technical Data and Restricted Rights in Computer Software:

a. The government expects contractors to comply with the terms of their contracts and deliver technical data and computer software with restrictive markings only when authorized under their contracts. Technical data and computer software delivered in the past, however, may not have been adequately reviewed to ensure that restrictive markings were used properly. Additionally, the rapid pace of technological change may result in contractors changing their position and no longer considering technical data related to items, components, or processes originally developed at private expense to still be subject to restrictive markings. If either of these conditions are present (i.e., reasonable probability that data may be mismarked or considerable time has elapsed since original delivery), a simple letter

from a competition advocate, manager of a repository, or other official may result in the contractor agreeing to remove the restrictive marking. While there are no universal conditions that can be specified for these letters, good business practices and concerns of retaining the cooperation of industry dictate that the government use good faith and good judgment in sending such letters.

b. When information available to the government indicates that there is serious doubt as to the validity of a contractor's restrictive marking, and there is no agreement to remove the legend, it will be necessary to follow more formal (and complicated) prechallenge and challenge procedures governed by contract clauses and existing case law. Such challenge activity may result in contract disputes. Therefore, if a data rights challenge is to be taken through a lengthy disputes process, the responsible government officials (for example, PCO, EDMO) should examine the situation early (that is, lead time away from the intended use of the data), taking all pertinent factors into account.

6-8. Procedures for Questioning Claims. There are two sets of rules that govern questioning contractors' claims of rights in technical data and computer software. The first set of rules, entitled "Removal of Unauthorized Markings," was set out in the Rights in Technical Data and Computer Software clause, DFARS 52.227-7013, in paragraph (d). This rule held that the government could correct, cancel, or ignore any unauthorized marking provided the contractor failed to respond or failed to substantiate its claim within 60 days of the government's written inquiry into the matter. In either case, the government would give written notice to the contractor of the action taken. The second set of rules results from the enactment of 10 U.S.C. 2321, entitled "Validation of Proprietary Data Restrictions." These procedures apply only to technical data (not computer software) delivered under contracts solicited on, or after, 18 October 1985. These contracts contain the provision entitled "Validation of Restrictive Markings on Technical Data," DFARS 52.227-7037. The validation provision established an extremely complex challenge procedure that can involve a contract dispute which is fully litigated and appealed through the federal courts.

The remainder of this chapter discusses the specific procedures that may be used to question and challenge a contractor's claim regarding restrictive rights in technical data and computer software. These procedures are not mandatory for contracts resulting from solicitations issued before 18 October 1985. In brief, these procedures include:

(i) **Informal Request.** This is an optional procedure to be used, if appropriate. It is not part of the formal challenge procedure.

(ii) **Prechallenge Review.** This is an optional procedure which was established by the DFARS 52.227-7037, and may be made part of a formal challenge.

(iii) **Formal Challenge.** This is a mandatory procedure for technical data delivered under contracts which contain the validation, DFARS 52.227-7037 provision. It can be adopted for use in challenges of restrictive legends placed on both computer software and technical data delivered under a contract which does **not** contain DFARS 52.277-7037. It must be noted however, that in those cases where the procedure is not mandatory, any erroneously marked technical data or computer software being challenged may be used by the government without restriction after the PCO has determined that the restrictive markings were unauthorized. There is no need to wait for a contractor to appeal. See paragraph 6-8(e)(3).

a. Informal Request (Optional):

(1) Initial Letter. This procedure has been called the Postage Stamp Persuasion Program. This letter may be used before any challenges when it is determined that limited or restricted rights legends are an impediment to breakout. The competition advocate (or the program office) will issue a letter to the contractor advising that the items in question are considered candidates for competitive reprocurement. The letter will ask the contractor to voluntarily remove the limited or restricted rights legend. (See figure 6-2 for example.)

(2) Followup Letter. If the contractor fails to positively respond to the initial letter, a followup letter may be appropriate. This letter is similar to the initial letter, except it is worded a little stronger and it advises the contractor of the government's rights to challenge. Figure 6-3 is an example of a followup letter.

NOTE: In these and the remainder of the procedures in this paragraph, the reference to contractor would also apply to subcontractors. All correspondence or other actions for a subcontractor would be through, or at least with the knowledge of, the prime contractor.

b. Prechallenge Review.

(1) The contracting officer may request the contractor to furnish a written statement of facts justifying the restrictive markings asserted by the contractor on the right of the United States or others to use technical data. (Figure 6-4 contains a sample letter for this purpose. The help of the appropriate legal office should be sought in drafting this letter.) The contractor shall furnish such written statement of facts to the contracting officer within 30 days after receipt of a written request or within such longer

FROM:

SUBJECT: Removal of Restrictive Markings on Engineering Data (Insert contract number if available)

TO: (Name of company)

1. _____ has in its possession drawings prepared by your company which contain limited rights legends. The drawing numbers are listed on the attached sheet.

2. We have reviewed the drawings and believe that they contain adequate technical information to permit a new source to manufacture the items depicted. As part of our ongoing efforts to improve the Government's manufacturing support base, we would like to distribute the drawings to prospective bidders under a formal procurement.

3. Because of the limited rights legends, however, we request your written authorization to use the drawings for that purpose. This is not a challenge to the propriety of your legends, but merely a request that the legends be removed at no cost or obligation to the Government.

4. Your expeditious reply will be appreciated.

Figure 6-2. Sample Informal Request: Initial Letter.

period as may be authorized in writing by the contracting officer. If the contracting officer receives advice (from any source) that the validity of restrictive markings on technical data is questionable, the contracting officer shall ask the the individual raising the question to provide written rationale for the assertion. The contracting officer should also request information and advice from the cognizant government activity having control (or to be assigned control) of the data on the validity of the markings.

(2) If the PCO, after reviewing the contractor's written response and any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the marked technical data relates, the contracting officer shall review the validity of the marking.

(3) As a part of the review, the PCO may request the contractor to furnish information from its records or otherwise in its possession of the validity of any restrictive marking on technical data delivered or required to be delivered under the contract or subcontract. The PCO may request the contractor to furnish additional information such as a statement of facts accompanied by supporting documentation adequate to justify the validity of the marking. The contractor shall furnish such information to the contracting officer within 30 days after receipt of a written request or within such longer period as may be authorized in writing by the contracting officer. If the contractor fails to provide the requested information, within 30 days after receipt of the contracting officer's written request or within such longer period as may be authorized in writing by the contracting officer, the PCO should pursue a formal challenge.

c. Formal Challenge:

FROM:

SUBJECT: Removal of Restrictive Markings on Engineering Data (Insert contract number if available)

TO: (Name of company)

1. Reference is made to _____ letter of _____, which requested that your company authorize removing the limited rights legends from drawings listed as an attachment to the letter. We also reference your negative reply of _____. Copies of this correspondence are attached.

2. The purpose of this letter is to emphasize the fact that to retain limited rights legends on these drawings is costly to the United States and to your company. As you know, a restrictive marking is authorized only on data which pertains to items, components, or processes developed at private expense, which are not already in the public domain.

3. The Government requests that you review the desireability of retaining limited rights legends noted on Drawing_____, Revision_____. If you decide that the restrictive markings may be cancelled please so advise in writing. If you decide that the restrictive markings should remain in whole or in part on the drawings, you are requested to identify by circling (or by providing a note regarding) those portions of the drawing to which you claim limited rights.

4. If the Government formally challenges these limited rights legends, your company would have to furnish the necessary financial information to show that no Government funds were used in your product's development and that it was not developed under any other Government contract. In addition, clear and convincing evidence would have to be provided to the Government to show that your product was made before the specific contract was awarded which called for delivery of the drawings. Further, evidence would then be required to show that the product was actually made and was successfully used in the environment for which it was intended.

5. If you have any questions concerning this matter do not hesitate to contact_____on (XXX) XXX-XXXX.

Figure 6-3. Sample Informal Request: Followup Letter.

FROM: SEND CERTIFIED MAIL, RETURN RECEIPT

SUBJECT: Removal of Restrictive Marking on Engineering Data;

Contract (insert contract no.)

TO: (Name of company)

1. The following engineering drawings/specifications contain a limited rights legend. These documents were furnished on contract _____ and are applicable to the _____System/Aircraft.

Document Number	No.	Revision	Date	Nomenclature

2. Please advise us if limited rights are still claimed by your company or if the limited rights legend can be removed. If limited rights are still claimed, please furnish us, in accordance with the provisions of the [Rights in Technical Data and Computer Software Clause (insert clause no.) (or) (a previous clause) (or) (Validation of Unauthorized Restrictive Markings on Technical Data Clause) (insert clause no.)], a written statement of the facts justifying the restrictions asserted on the right of the United States Government to use the aforementioned data. Please furnish this justification within 30 days of receipt of this letter.

3. Submit all information to this office in an organized package with all documentation pertaining to an item, component, or process being separated from documentation for other items, components, or processes. References must be made to each area that justifies your position that the items, components, or processes were developed at private expense. All development efforts must be directly traceable to private funding or independent research and development (IR&D) with no infusion of other government funds.

4. Send the name, phone number, and address of your focal point for this evaluation along with the justification. Should you require additional information, please contact the undersigned at_____ ,telephone number_____.

Figure 6-4. Sample Prechallenge Letter.

(1) If after completion of the review, the PCO determines that a challenge to the restrictive marking is warranted, the PCO should send a written challenge notice to the contractor. Such notice shall include (a) the grounds for challenging the restrictive marking, (b) a requirement for a written response within 60 days after receipt of the written notice justifying by clear and convincing evidence the current validity of the restrictive marking, (c) a notice that a written response will be considered a claim within the meaning of the Contract Disputes Act of 1978 and must be certified in the form prescribed in FAR 33.207, regardless of dollar amount, and (d) a notice that failure to respond to the challenge notice will constitute agreement by the contractor with government action to strike or ignore the restrictive legends. (Figure 6-5 contains a sample letter. The assistance of the appropriate legal office should be sought in preparing this letter.)

(2) The PCO can extend the time for response as appropriate if the contractor submits a written request showing the need for additional time to prepare for a response.

(3) If contractor has received challenges to the same restrictive markings from more than one contracting officer, the contractor is to notify each contracting officer of the existence of more than one challenge. The notice shall also indicate which unanswered challenge was received first by the contractor. The contracting officer who initiated the first unanswered challenge is the one who will take the lead in establishing a schedule for the resolution of the challenges to the restrictive markings. This lead contracting officer shall coordinate with all the other contracting officers, formulate a schedule for responding to each of the challenge notices, and distribute such schedule to all interested parties. The schedule shall provide to the contractor a reasonable opportunity to respond to each challenge notice. All parties agree to be bound by this schedule.

d. Final Decision When Contractor Fails to Respond. If the contractor fails to respond to the challenge notice within 60 days, the PCO will then issue a final decision that the restrictive markings are not valid and that the government will correct, cancel, or ignore the invalid restrictive markings. The failure of the contractor to respond to the challenge notice constitutes agreement with the government action to strike or ignore the restrictive legends. The final decision shall be issued as a final decision under the Disputes clause at FAR 52.233-1. The final decision is to be issued within 60 days after the expiration of the time. Following the issuance of the final decision, the contracting officer may then strike or ignore the invalid restrictive markings.

e. Final Decision When Contractor or Subcontractor Responds:

(1) In contracts which were solicited before 18 October 1985 and which do not contain the DFARS 52.227-7037 clause, restrictive markings may be removed if the contractor has not provided clear and convincing evidence.

(2) If, after reviewing the response from the contractor, the PCO determines that the contractor has justified the validity of the restrictive marking, the PCO shall issue a final decision to the contractor sustaining the validity of the restrictive marking, and stating that the government will continue to be bound by the restrictive markings. Before making the final decision, the PCO is obligated to verify the contractor's claim that the development of the item, component, or process was not an element of performance of any government contract. In this regard, the PCO should check with other government agencies (e.g., NASA, Army, Air Force, Navy, etc.) known to have developed (or are developing) similar items, components, or processes. **The final decision recognizing the contractor's claim should not be issued unless the contracting officer reasonably believes that the efforts of other government agencies will not be undermined.** The final decision should be issued within 60 days after receipt of the contractor's response to the challenge notice, or within such longer period if the PCO has notified the contractor of the longer period that the government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice.

(3) If, after reviewing the response from the contractor, the PCO determines that the validity of the restrictive marking is not justified; the PCO shall issue a final decision to the contractor per the Disputes clause in FAR 52.233-1. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within 60 days after receipt of the contractor's response to the challenge notice, or within such longer period that the PCO has notified the contractor of the longer period that the government will require. The notification of a longer period for issuance of a final decision shall advise the contractor of the rights of appeal under the Contract Disputes Act.

(4) In contracts which were solicited after 18 October 1985 and that contain the DFARS 52.227-7037, the government will continue to be bound by the restrictive marking for a period of 90 days from the issuance of the contracting officer's final decision. The contractor, if it intends to file suit in the United States Claims Court, must provide a notice of intent to file suit to the contracting offi-

FROM: SEND CERTIFIED MAIL, RETURN RECEIPT

SUBJECT: Removal of Unauthorized Restrictive Markings on Technical Data; Contract (insert contract no.)

TO: (Name of company)

1. Pursuant to the provisions of Contract Number _____, I hereby challenge the propriety of the limited rights legends that you have placed on the technical data listed below:

Document Number	Revision	Date	Nomenclature
(insert doc. number)	(insert revision)	(insert date)	(insert nomenclature)

2. These technical data were delivered to the Government under the above noted contract. The restrictive markings are being challenged for the following reason:

(Note: In this section list the PCO's grounds for challenging the restrictive markings. These grounds may fall into one, or both, of the following classifications.

Classification I: "NonProtectable Technical Data". (See paragraph 6-2(c)) The grounds for challenging technical data which falls into this classification are that the technical data fall into one, or more, of nonprotectable categories of technical data listed in paragraph (b)(1) of the Rights in Technical Data and Computer Software clause, DFARS 52.227-7013.

Classification II: "Not developed at Private Expense". (See paragraph 6-2(b)) The grounds for challenging data which fall into this category are that the data pertains to ICOPS which were not developed at private expense.

3. You are required to respond to this challenge, in writing, within 60 calendar days after receipt. You are required to justify the validity of the restrictive markings by clear and convincing evidence.

4. Your response to this challenge which asserts the validity of a restrictive marking will be considered a claim within the meaning of the Contract Disputes Act of 1978 and must be certified in the form prescribed in Federal Acquisition Regulation 33.207, regardless of dollar amount. Failure to respond to this challenge notice will constitute an agreement by you with the Government's actions to strike or ignore the restrictive legends.

5. Should you require additional information in this matter, please contact the undersigned at _____.

Figure 6-5. Sample Formal Challenge Letter.

cer within 90 days from the issuance of the PCO's final decision. If the contractor fails to appeal, file suit, or provide a notice of intent to file suit to the contracting officer within the 90-day period, the government may cancel or ignore the restrictive markings, and the failure of the contractor to take the required action constitutes agreement with such government action.

(5) The government will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the contracting officer within 90 days from the issuance of the final decision. The government will no longer be bound and may strike or ignore the restrictive markings if the contractor fails to file its suit within 1 year after issuance of the final decision. Notwithstanding the foregoing, where the head of any agency determines, on a nondelegable basis, that urgent or compelling circumstances significantly affecting the interest of the United States exist, the agency may, following notice to the contractor, cancel and ignore such restrictive markings as an interim measure pending filing of the suit. However, such agency head determination does not affect the contractor's right to damage against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(6) The government will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency (for example, one of the Service secretaries) determines, on a nondelegable basis, that: (a) the contractor has failed to diligently prosecute its appeal; or (b) that urgent or compelling circumstances significantly affecting the interest of the United States will not permit awaiting the decision by such a Board of Contract Appeals or the United States Claims Court; the agency may, following notice to the contractor, cancel and ignore such restrictive markings as an interim measure pending final adjudication. However, such agency head determination does not affect the contractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

f. Appeal or Suit:

(1) If the contractor appeals or files suit and if, upon final disposition, the PCO's decision is sustained; the restrictive markings on the technical data shall be canceled, corrected, or ignored. If, upon final disposition, it is found that the restrictive marking was not substantially justified; the contracting officer shall determine the government's cost of reviewing the restrictive markings and the fees and other expenses incurred by the government in challenging the marking. The contractor is then liable to the government for payment of these costs unless the contracting officer determines that special circumstances would make such payment unjust.

(2) If the contractor appeals or files suit and if upon final disposition the contracting officer's decision is not sustained, the government shall continue to be bound by the restrictive markings. Additionally, if the challenge by the government is found not to have been made in good faith, the government shall be liable to the contractor in defending the validity of the marking.

g. Right to Challenge. The government's right to challenge the validity of a restrictive marking is without limitation as to time and without regard as to final payment under the contract under which the data was delivered. However, if a contracting officer issues a decision sustaining the validity of a restrictive marking, the validity of a restrictive marking shall not again be challenged unless additional evidence not originally available to the contracting officer becomes available that would indicate the restrictive marking is invalid. The technical data (or computer software) should be annotated to indicate that a final decision has been made and that the limited rights legend for technical data (or restricted rights legend for computer software) has previously been challenged by the government.

h. Notice to Others. When the results of challenge activity are made final, the challenging activity should notify the cognizant CAO and is encouraged to notify other repositories or activities that may be recipients of the data.

APPENDIX A

TASKS BY POSITION

POSITION	TASKS
Program manager	1. Designates EDMO and or counterparts to provide day-to-day management of the acquisition of technical data.
	2. Makes sure acquisition strategies are developed that will satisfy program requirements for technical data (or computer software).
	3. Approves program plans.
	4. Makes tradeoffs and resolves issues arising during the program regarding technical data (or computer software).
Engineering data management officer (EDMO), software acquisition manager (SAM), or other position as described in paragraph 1-2a.	1. Is responsible to the program manager for the acquisition and management of technical data (or computer software).
	2. Drafts appropriate program plans.
	3. Assists developers and users in describing technical data (or computer software) requirements.
	4. Arranges for and conducts guidance conference after contract award.
	5. Arranges for and conducts in-process reviews during contract performance.
	6. Keeps records on requirements, costs, status, and deliveries.
Procuring contracting officer (PCO) (or computer software).	1. Makes sure contract provisions fit program requirements for technical data.
	2. Provides contractual advice to program officials in acquiring technical data.
	3. Issues appropriate challenges to disputed restrictive markings on technical data (or computer software).
Administrative contracting officer (ACO)	1. Oversees administration of technical data (or computer software) provisions in contractor's plant.
	2. Provides guidance as to contractor-specific situations (unique contractor systems, past performance history, etc.)
	3. Makes sure prime contractors administer their subcontracts with respect to technical data (or computer software).
	4. Evaluates contractor systems for marking technical data (or computer software).

Appendix A—continued.

POSITION	TASKS
Data users	1. Identify and describe technical data requirements.
	2. Identify detailed requirements for acquisition data packages.
	3. Participate in guidance conferences and in-process reviews as appropriate.
	4. When assigned, inspect or accept technical data per contract provisions.
Competition advocates	1. Help program officials identify and carry out program strategies that will promote competition.
	2. Issue informal letters of persuasion when restrictive markings are the sole impediment to competition.
Holders of data	1. Comply with restrictions on the government's use of technical data (or computer software) as evidenced by restrictive markings applied per contract.
	2. Identify (and help investigate) restrictive markings believed to be erroneously applied by contractors.
	3. Participate in guidance conferences and in-process reviews when required.
	4. For existing technical data, develop time-phased efforts to ensure the validity of restrictive markings.

APPENDIX B

GLOSSARY OF TERMS

Acceptance. The act of an authorized representative of the government by which the government assumes for itself, or as an agent of another ownership of existing and identified supplies tendered, or approves specific services rendered, as partial or complete performance of the contract on the part of the contractor. Acceptance is documented by either a DD Form 250 *(delivery of data)* or a letter of transmittal *(for accomplishments)*.

Acquisition Streamlining. Any action that results in more efficient and effective use of resources to develop, produce, and deploy quality defense systems and products. This includes ensuring that only cost-effective requirements are included, at the most appropriate time, in system and equipment solicitations and contracts.

Administrative Contracting Officer (ACO). The contracting officer assigned to a contract administration office, such as an Air Force Plant Representative Office (AFPRO), or a Defense Contract Administration Services (DCAS) activity responsible for the functions assigned under FAR 42.302 related to the administration of contracts. (See contract administration office.)

Aperture Card. A processable card of standard dimensions with rectangular openings specifically prepared for the mounting or insertion of microfilm.

Competition Advocate. A designated individual or office at each major activity chartered to review noncompetitive actions and promote ongoing efforts to improve competition.

Computer Data Base. A collection of data in a form capable of being processed and operated on by a computer.

Computer Program. A series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations.

Computer Software. Computer programs and computer data bases.

Configuration Identification The currently approved or conditionally approved technical documentation for a configuration item as set forth in specifications, drawings, and associated lists, and documents referenced therein.

Configuration Item (CI). An aggregation of hardware and/or software, or any of its discrete portions, which satisfies an end use function and is designed by the government for configuration management. CIs may vary widely in complexity, size, and type, from an aircraft, electronic, or ship system to a test meter or a round of ammunition. During development and initial production, CIs are only those specification items that are referenced directly in a contract (or an equivalent in-house agreement). During the operation and maintenance period, any reparable item designated for separate procurement is a CI.

Contract Administration Office (CAO). An office that performs assigned postaward functions related to the administration of contracts and assigned preaward functions. Examples include Air Force plant representative office (AFPRO), Naval plant representative office (NAVPRO), Army plant representative office (ARPRO), and Defense Contract Administration Service Management Area or Plant Representative Office (DCASMA or DCASPRO).

Contract Data Requirements List (CDRL). A list of data requirements that is authorized for a specific procurement and made a part of the contract. This list is prepared on DD Form 1423, Contract Data Requirements List, or equivalent.

Contract Line Item Number (CLIN). A sequential number assigned to items of supply, service, data, or computer software identified in an invitation for bids (IFB), requests for proposal (RFP), or contracts for which the bidder must bid a separate price.

Critical Design Review (CDR). Review conducted on each CI at the time when detail is essentially complete. The purpose of a CDR is to determine if the design satisfies the requirements of the specifications.

Data Call. The formal procedure used by the data management officer to identify the data requirements for a given contract, program, or project from appropriate participating government activities and to ensure the requirements tailored from contractually imposed specifications, standards, or handbooks are not reentered with their implementing data item descriptions (DID).

Data Item Descriptions (DID). A complete form that defines the data required of a contractor and specified on DD Form 1664, DID. This form specifically defines the data content, preparation instructions, format, and intended use. DIDs are listed in the acquisition management systems and requirements control list (AMSDL).

Appendix B—continued.

Data Management. The process of applying policies, systems, and procedures for identification and control of data requirements; for timely and economical acquisition of such data for its intended use; for the distribution or communication of the data to the point of use; and for analysis of how the data is used.

Data Management Officer (DMO). The person chosen to manage the data acquisition from the contractors for a given procurement or program.

Data Repository. The place where engineering data is stored until it is needed for its intended purpose.

Data Requirements Review Board (DRRB). An ad hoc board that may be established at command, subcommand, program, or project level to review and recommend approval or disapproval of data requirements for a specific program. The board is normally comprised of representatives from the functional areas having significant data requirements.

Deferred Delivery. The practice of delaying the submittal of technical data until a firm operational need can be determined. Under this technique, the data requirement is listed on DD Form 1423, and the time and place of delivery is listed on DD Form 1423 but is revised by contract amendment to establish the time and place of delivery.

Deferred Ordering. A situation in which the government may defer selection and delivery of all or any portion of the data generated by the contractor during the execution of the contract until the actual requirements can be economically determined. The requirements for data under this circumstance are not listed on DD Form 1423 until the specific need is determined.

Deferred Requisitioning. A procedure under which the contract specifies the range and kinds of engineering data the contractor is obligated to deliver when ordered by the government. This procedure permits the contractor to retain the master engineering data temporarily, in the prescribed format, and the contractor is required to deliver the copies directly to the user at the time they are specifically requisitioned under prescribed ordering conditions and pricing terms.

Distribution Statement. A statement used in marking a technical document to denote the extent of its availability for distribution, release, and disclosure without additional approvals and authorizations (DODD 5230.24).

Engineering Change. An alteration in the configuration of an item delivered, or to be delivered, or is under development, after formal establishment of its configuration identification.

Engineering Change Order (ECO). ECOs are used to document engineering drawing changes or changes to parts with or without an engineering drawing change.

Engineering Change Proposal (ECP). A term that includes both a proposed engineering change and the documentation by which the change is described and suggested.

Engineering Data. Technical data relating to the design, manufacture, procurement, test, or inspection of hardware items or services. Examples are drawings, associated lists, accompanying documents, manufacturer specifications, manufacturing planning documentation, and specifications prepared by a contractor or government design activity.

Engineering Data Activity Record File. A file that will contain all records relating to engineering data requirements.

Engineering Data Management Officer (EDMO). The person designated to manage the engineering data acquisition.

Engineering Data Management Plan (EDMP). A plan created for managing the acquisition of engineering data. It may be stand alone or be part of another program plan.

Engineering Data Warranty. The contractor warrants that all engineering data delivered under this contract will at the time of delivery conform with the specifications and other requirements of the contract.

Federal Acquisition Regulation (FAR). This is the primary regulation for use by all federal executive agencies in their acquisition of supplies and services with appropriated funds. The FAR supersedes the DAR (Defense Acquisition Regulation) which superseded the ASPR (Armed Service Procurement Regulation).

Handling and Destruction Notice. A notice that must be marked on all technical documents marked with distribution statements B, C, D, E, F, or X. (See DODD 5230.24, Distribution Statements on Technical Documents.)

Implementing Command. The command assigned the responsibility to manage the acquisition or modification of a system or item of equipment for inventory or security assistance program (Air Force).

Appendix B—continued.

Inspection. The examination of engineering data to determine its conformance to specified requirements before formal acceptance by the government.

Letter of Instruction (LOI). A letter from the procuring contracting officer (PCO) designed to cover contract administration functions assigned to the ACO or retained by the PCO. Functions required beyond those identified in FAR 42.3 should have mutual agreement. This document may contain more than quality assurance considerations.

Level of Engineering Data. Levels (1, 2, 3) of engineering data differentiate engineering data as to purpose:

a. Level 1. Discloses engineering design information sufficient to evaluate an engineering concept and may provide information sufficient to fabricate development hardware.

b. Level 2. Discloses a design approach suitable to support the manufacture of a production prototype and limited production models.

c. Level 3. Provides engineering definition sufficiently complete to enable a competent manufacturer to produce and maintain quality control of items to assure interchangeability with items of the original design.

Memorandum of Agreement (MOA). A bilateral agreement between the purchasing office and the contract administration setting forth changes, clarification, or special support services not enumerated under the normal contract administration services listed in FAR 42.3.

Microfilm. A fine-grain, high-resolution film used to record images reduced in size from the original.

Physical Configuration Audit (PCA). A technical examination of a designed CI to verify that the CI "as built" conforms to the technical documentation which defines the CI. Part matches the drawing.

Procuring Contracting Officer (PCO). A contracting officer whose primary responsibility is to enter into contracts.

Program Management Responsibility Transfer (PMRT). The transfer of program management for a system or equipment from the implementing command to the supporting command. PMRT includes transfer of engineering responsibility and configuration management responsibility (Air Force).

Restrictive Markings. Markings on technical data or computer software which limit the government's right to use, duplicate, or disclose such data or software. Examples of restrictive markings include the limited rights legends on technical data and the restricted rights legend on computer software authorized by the DFARS clause 52.227-701.

Service Materiel Commands. AFLC, AFSC, AMC, and Navy Systems Commands. As used in this publication the term includes major subordinate commands as well as Defense Logistics Agency buying centers and DCASMAs and DCASPROs, and the Marine Corps centralized logistics activities.

Source Selection. Process to select source (contractor) whose proposal is most advantageous to the government (price and other factors considered).

Statement of Work (SOW). A section of the RFP and contract whose purpose is to define and communicate, clearly and concisely, the tasks that the contractor is to perform. It is the document that establishes the scope of effort required.

Supporting Command. The command assigned the responsibility for providing logistics support and designated to assume responsibility from the implementing command.

Tailoring. The process of evaluating individual potential requirements to determine their pertinence and cost effectiveness for a specific system or equipment acquisition, and modifying these requirements to ensure that each contributes to an optimal balance between need and cost. The tailoring of data requirements shall consist of determining the essentiality of potential CDRL items and shall be limited to the exclusion of information requirement provisions.

Technical Data. Recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. Technical data includes research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, technical manuals, technical orders, technical reports, catalog item identifications and related information, and computer software documentation. Technical data does not include computer software, or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

Warning (Export Controlled Technical Data). A warning notice that must be placed on all technical documents that are determined to contain export-controlled technical data. (See DODD 5230.24 for the complete warning notice.)

APPENDIX C

LIST OF ACRONYMS

ACO—administrative contracting officer
AFLC—Air Force Logistics Command
AFPRO—Air Force plant representative office
AFSC—Air Force System Command
ALC—air logistics center
AMC—Army Materiel Command
AMSDL—acquisition management systems and data requirements control list
AQL—acceptable quality level
ARPRO—Army plant representative office
ASN—Assistant Secretary of the Navy
CAD—computer-aided design
CAG—competition advocate general
CAM—computer-aided manufacture
CAO—contract administration office
CCB—configuration control board
CDR—critical design review
CDRL—contract data requirements list
CI—configuration item
CIDR—configuration item development record
CLIN—contract line item number
CLS—contractor logistics support
CO—contracting officer
CRLCMP—computer resources life cycle management plan
DAR—Defense Acquisition Regulation
DCASMA—Defense Contract Administration Services Management Area
DCASPRO—Defense Contract Administration Services Plant Representative Office
DDED—deferred delivery of engineering data
DDMO—Defense Data Management Office *(previously DMSSO)*
DFARS—DOD FAR Supplement
DID—data item description
DLA—Defense Logistics Agency
DM—data manager
DMO—data management officer
DOD—Department of Defense
DODISS—Department of Defense Index of Specifications and Standards
DOED—deferred ordering of engineering data
DPML—deputy program manager for logistics
DRED—deferred requisitioning of engineering data
DRRB—data requirements review board
EC—engineering change
ECO—engineering change order
ECP—engineering change proposal
EDARF—engineering data activity record file
ED—engineering data
EDMO—engineering data management officer
EDMP—engineering data management plan
EDRD—engineering data requirements document (USAF)
EDSC—engineering data service or support center
EO—engineering order
FAR—Federal Acquisition Regulation
FCA—functional configuration audit
FSCM—federal supply code for manufacturers
FSD—full scale development
ICD—interface control drawing
ICOPS—items, components, or processes, or computer software
ICS—interim contractor support
ILS—integrated logistics support
ILSM—integrated logistics support manager
ILSP—integrated logistics support plan
IM—item manager
IOC—initial operational capability
IPR—in-process review
IR&D—independent research and development
LOI—letter of instruction
MAJCOM—major command
MCCR—mission critical computer resource
MEDL—master engineering document list
MIL—military
MOA—memorandum of agreement
MSC—milestone schedule chart
NAVPRO—Navy plant representative office
OPR—office of primary responsibility
PAD—program action directive (Air Force)
PAS—preaward survey
PCA—physical configuration audit
PCAM—punch card accounting machine
PCO—procuring contracting officer
PDR—preliminary design review
PM—program manager
PMD—program management directive (Air Force)
PMP—program management plan
project master plan
PMRT—program management responsibility transfer (Air Force)

Appendix C—continued.

R&D—research and development
RDT&E—research, development, test, and evaluation
RFP—request for proposal
SAIP—spares acquisition integrated with production
SAM—software acquisition manager
SDMO—specification and data management officer (Army)
SDRRB—specification and data requirements review board (Army)
SOW—statement of work
SPD—system program director
SPM—system program manager
SPO—system program office
SSEB—source selection evaluation board
SUP—supplement
SW—software (also S/W)
TD—technical data
TM—technical manual
TO—technical order
TRD—test requirements document
UCF—uniform contract format

APPENDIX D

SAMPLE ENGINEERING DATA MANAGEMENT PLAN (EDMP)

FOR THE *(PROGRAM NAME)*

(DATE)

(Signature)
DEPUTY PROGRAM MANAGER
FOR LOGISTICS (DPML)

(DPML Office Symbol and Telephone Number)

(Signature)
PROGRAM OR PROJECT MANAGER

(Program or Project Manager Office Symbol and Telephone Number)

(Signature)
Supporting Command EDMO or Logistics Support Activity

(Signature)
Implementing Command EDMO

Appendix D—continued.

TABLE OF CONTENTS

DISTRIBUTION LIST

(Distribution of the EDMP will vary from program to program. However, copies should be given to program participants, including the ultimate recipient of the engineering data.)

REVISION PAGE

(Each time the EDMP is revised, the date of the revision will be listed on a revision page identifying, whenever possible, the nature of the change, revision number, etc.)

PURPOSE

This engineering data management plan (EDMP) describes the management strategy of the *(name of program)* office for acquiring complete, accurate, and adequate engineering data and supporting documentation to support the *(name of system)*. The EDMP is designed to provide all participating agencies with necessary direction to ensure that engineering data requirements and schedules are understood and preparatory actions are taken in phase with other program events.

AUTHORITY

This EDMP is published by the _____ Program/Project Office as part of the program documentation for XXXXX. *(If appropriate, cite any Service directives or publications as well.)*

Appendix D—continued

RESPONSIBILITY

The EDMP is the responsibility of the *(name of system)* program manager and will become the responsibility of the AFLC system management office upon transfer of program management responsibility from AFSC to AFLC.

(Identify specific EDMO responsibilities and engineering data responsibilities of other participating organizations.)

PART I—GENERAL

1.1 System Description. *(Briefly describe the system being acquired).*

1.2 Program Management. *(name of major command)* has been designated the implementing command for the *(name of program)* by HQ USAF and *(name of product division, etc.)* has been designated the lead division by *(name of major command)*. Within *(name of product division, etc.)*, program management responsibility has been assigned to the *(name of program office and office symbol)* and a *(name of system)* program manager is responsible for the management and direction of all implementing and participating command efforts in the *(name of system)* acquisition. In accordance with AFR 800-34, an EDMO has been identified to manage the various efforts needed to acquire engineering data (see attachment 1). The EDMO reports to *(identify EDMO's place in the program office chain of command).*

1.3 Applicable Documents. Identify the governing documents for the program or project. Cite the program charter, program management directive (PMD), program action directive (PAD), or other authority for the program by number and date, including revisions. Also identify other applicable documents; for example, *(program name)* system specification *(name and date)* contract *(number and date)* or Strategic Defense Initiative (SDI) work package directive (WPD) *(number and date)* for Strategic Defense Initiative Programs (SDIP).

PART II—CONCEPTS AND STRATEGY

2.1 Acquisition Strategy. *(Briefly describe acquisition strategy for the system pertinent to engineering data; for example program phase, contracting techniques, competition, tailoring.)*

2.2 Maintenance Concept. *(Briefly describe maintenance concept for the system pertinent to engineering data. For example, levels used, interim contractor support (ICS), contractor logistics support (CLS), etc.)* See the integrated logistics support plan (ILSP) and the contents of paragraph 3.5 of the system specification.

2.3 Contractual Requirements for Engineering Data:

2.3.1 Levels of Engineering Drawings. *(Level 1, 2, or 3)* engineering drawings are required to be prepared by the contractor during the *(program phase)* of the contract. *(Level 3 engineering drawings data will be required if and when the contract proceeds to production. When program direction or planning documents specify that the production contract for a single design is to be competed, Level 3 engineering data must be contractually required and delivered during full scale development (FSD). Justification should be provided and appropriate approval obtained if less than a full Level 3 engineering drawing package is to be acquired.)*

2.3.2 Delivery of Preliminary and Final Engineering Data. *(Describe the method, media, and timing for each delivery of engineering data to the US Air Force. For example, deferred delivery, 60 days before initial operational capability (IOC), increment shipments, etc. If deferred ordering, or deferred delivery are used, specify how the engineering data are to be ordered. State the media of engineering data (Microfilm, aperture cards, blueline, CAD/CAM, etc.) delivery.)*

2.3.3 Engineering Data Contract Provisions. *(Identify by name and number clauses other those in the DOD FAR SUP; for example, Expiration of Limited Rights, Air Force FAR SUP 52.227-9000.)*

2.3.4 Other Contractual Requirements. The statement of work (SOW) task(s) which direct(s) the contractor as to engineering data *(is, are) (provide contract SOW references)*. The data item description(s) (DIDs) requiring delivery of engineering data *(is are)*, on contract under contract data requirements list (CDRL) sequence number(s) *(cite all CDRL items and associated DID numbers involving format and delivery of engineering data).*

Appendix D—continued

2.4 Engineering Data Guidance Conference. An Engineering Data Guidance Conference *(will be, was)* held *(number of)* days after *(program phase)* contract award.

2.5 In-Process Review. In-process reviews (IPR) *(will be, have been)* performed to make sure the contractor's engineering data *(will meet, have met)* contractual requirements. These reviews *(will be, have been)* conducted *(state when and where to the extent not shown in the milestone schedule charts).*

2.5.1 The acquiring program office EDMO *(will, has)* schedule(d) each IPR with the *(name of program)* program manager and *(will, has)* inform(ed) the contractor and review team members of the actual dates. The ALC and the contract administration office (CAO) *(will, have)* assist(ed) in each review. Additional team members *(will be, have been)* chosen from *(for example engineering, manufacturing, acquisition logistics, etc.).* The names, office symbols, and telephone numbers of these team members are included in attachment 1, Identification of Participants. The EDMO *(will, has)* review(ed) the engineering data for discrepancies and ensure(d) these discrepancies *(are, have been)* noted. The contractor *(will be, has been)* tasked through the procurement contracting officer (PCO) to correct the engineering data, and a copy of the write-up *(will be, has been)* provided to the CAO.

2.5.2 The ALC EDMO *(will, has)* support(ed) the IPRs by ensuring the availability of manpower and travel funding resources, participating in review of engineering data, and documentation of the discrepancies. The ALC EDMO is assisted by the following ALC organizations: *(for example CR, MM, etc.)*

2.5.3 The CAO *(will, has)* provide(d) a team member for each review. The contractor *(will be, has been)* officially tasked to make the required changes to the engineering data, and the CAO *(will, has)* inform(ed) the PCO of the contractor's changes. *(Reference MOA, attachment 2)*

2.6 Acceptance of Engineering Data. *Ensure that the contract contains procedures so that after the last IPR, the (name of program) program manager and the ALC system program manager or their designated representatives (will, have) sign(ed) a joint letter to the PCO for transmittal to the CAO for delivery to the contractor, indicating technical approval of the engineering data. Formal acceptance of the engineering data (will not be, was not) made until such approval (has, had) been given. The CAO (will, has) require(d) the contractor to attach a copy of this letter to the DD Form 250 for engineering data delivery. For revisions of delivered engineering data, the CAO will be responsible for furnishing the approval letters. The USAF Engineering Data Support Center (2750 ABW/ED) or appropriate ALC EDSC will, upon receipt of the engineering data, inspect it for format, density, and legibility. If necessary, they will obtain necessary corrections (format, density, and legibility only) from contractors, and when acceptable, will provide final acceptance signature on the DD Form 250.)*

PART III—PERTINENT MILESTONE SCHEDULE CHARTS

(Milestone charts will be different for each program, but in every case, they need to depict two types of information:

1. Major program events; *for example, contract award dates, preliminary design review (PDR), critical design review (CDR), physical configuration audit (PCA), initial operational capability (IOC), program management responsibility transfer (PMRT), etc.*

2. Major engineering data management events; *for example, guidance conferences, IPRs, engineering data ordering dates, engineering data delivery dates, etc.).*

ATTACHMENT 1 TO THE EDMP, IDENTIFICATION OF PARTICIPANTS

(This list may vary in format and level of detail but should include the name, office symbol, and telephone number of the implementing and supporting commands EDMOs and any other pertinent participants.)

ATTACHMENT 2, MEMORANDUM OF AGREEMENT (MOA) AND LETTERS OF INSTRUCTIONS (LOI)

(If any MOAs, LOIs, or similar documents exist for engineering data acquisition, these should be provided as attachment 2 to the EDMP.)

APPENDIX E

MODEL OF A SPECIAL CONTRACT REQUIREMENT TO IDENTIFY MINIMUM CONTRACTOR STANDARDS FOR CONTROLLING RESTRICTIVE MARKINGS ON TECHNICAL DATA

The contracting officer should consider inserting the following in Section H of the Schedule of contracts containing the DFARS 52.227-7018 clause, "Restrictive Markings on Technical Data":

SPECIAL CONTRACT REQUIREMENT NUMBER _____.

CONTRACTOR STANDARDS FOR CONTROLLING RESTRICTIVE MARKINGS

As required by the clause of this contract entitled "Restrictive Markings on Technical Data," the contractor shall have and follow written procedures that, at a minimum, meet certain standards. These standards are as follows:

(a) The procedures shall identify an employee or employees authorized to place restrictive markings on technical data to be delivered to the government. This employee(s) must be directly accessible to the individual who is responsible for completing technical data certificates in accordance with the clause of this contract entitled "Certification of Technical Data Conformity."

(b) The procedures shall identify a program to train employee(s) responsible for marking and/or certifying the conformance of technical data. The training shall cover both the procedures and contract terms regarding placing restrictive markings on technical data.

(c) The procedures shall ensure that only technical data which pertains to items, components, processes, or computer software "developed at private expense" are marked with restrictive markings. In this regard the contractor shall maintain records which are capable of indicating the following:

(1) That the item, component, process, or computer software to which the technical data refers has actually been developed.

(2) That the item, component, process, or computer software was, in fact, developed at private expense.

(3) That a reasonable audit trail exists for technical data created for the first time under this contract when the technical data pertains to items, components, processes, or computer software that were developed at private expense prior to this contract. The contractor's procedures must also require the beginning of an audit trail for items, components, processes, or computer software developed at private expense that are selected or used under this contract, if a subsequent requirement for the creation and delivery of technical data to the government is contained in this contract. The contractor official having final responsibility for determining whether technical data may contain restrictive markings must ensure that adequate records exist to support such restrictive markings.

(d) The procedures shall provide for adequate evaluation of subcontractor procedures for controlling the restrictive markings on technical data.

APPENDIX F

MODEL OF A SPECIAL CONTRACT REQUIREMENT TO ESTABLISH A CONTRACT LISTING OF TECHNICAL DATA OR COMPUTER SOFTWARE TO BE DELIVERED TO THE GOVERNMENT WITH LESS THAN UNLIMITED RIGHTS

The contracting officer should consider inserting the following special contract requirement when the solicitation contains the DFARS 52.227-7035 provision "Prenotification of Rights in Technical Data," or DFARS 52.227-7019, "Identification of Restricted Rights Computer Software":

SPECIAL CONTRACT REQUIREMENT NUMBER _____.
LISTING OF TECHNICAL DATA OR COMPUTER SOFTWARE TO BE DELIVERED TO THE GOVERNMENT WITH LESS THAN UNLIMITED RIGHTS

(a) With respect to the clauses of this contract entitled "Material Inspection and Receiving Report" and "Rights in Technical Data and Computer Software," the parties agree that technical data or computer software shall not be tendered for delivery to the Government with less than unlimited rights unless the technical data or computer software is identified in a listing included in the Schedule or attached to this contract.

(b) This listing shall be constructed from the listing of technical data or computer software which the contractor is required to identify to the Contracting Officer, either prior to or after award of this contract, that the Contractor intends to deliver with less than unlimited rights. The inclusion of technical data or computer software on such a listing in this contract is intended to facilitate acceptance by a Government quality assurance representative and does not constitute an "agreement" under either paragraph (b)(2)(i) or paragraph (b)(3)(i) of the "Rights in Technical Data and Computer Software" clause of this contract.

(c) This requirement does not change, waive, or otherwise modify, the rights or obligations of either the Government or the Contractor as set forth elsewhere in this contract.

OFFICIAL

DENIS R. NIBBELIN, Colonel, USAF
Director of Administration

LAWRENCE A. SKANTZE, General, USAF
Commander
Air Force Systems Command

ABBIE G. CAYWOOD, Lt Col, USAF
Director of Administration

EARL T. O'LOUGHLIN, General, USAF
Commander
Air Force Logistics Command

YAULANDA D. POWELL
Acting Chief of Operations Branch

WILLIAM S. FLYNN, Brig Gen, USA
Chief of Staff
US Army Materiel Command

STUART PLATT, Rear Admiral, USN
Assistant Secretary of the Navy
(Shipbuilding and Logistics)
(Competition Advocate General)

JAMES J. SINGSANK
Colonel, USA
Staff Director, Administration, DLA

DISTRIBUTION:
SPECIAL

Special Distribtuion

DEPARTMENT OF THE AIR FORCE:

HQ AFSC 200

HQ AFLC 300
PDO 4000.HQ AFLC/DAPD
Wright-Patterscn AFB OH 45433-5280

DEPARTMENT OF THE ARMY 3,135

HQ US Army Materiel Command
5001 Eisenhower Ave, Alexandria VA 22333-0001
A Distr (45)
B Lead Distr (2,890)
AMCIM-DO-S Stockroom (50)
AMCPP-MW (150)

DEPARTMENT OF THE NAVY 500

Dr Norman V. Brown
ASN (S&L)(CAG)
CP-5, Room 310
Washington DC 20350-5000

DEFENSE LOGISTICS AGENCY 1,000
HQ DLA (DLA-XPD), Building 6, Door 21
Cameron Station, Alexandria VA 22304-6100

AFSC—Andrews AFB DC 1987

BRIEFING FOR AIA CONFERENCE

REGARDING

TECHNICAL DATA RIGHTS

APRIL 1987

BACKGROUND

. Key Concerns

.. Implement P.L. 99-500

.. Balance Conflicting Interests

.. Make Regulation Easier to Use

. Parallels Prior Approach

.. Source of Development Funding

.. Category of Data

. Basis for New Policy

.. Encourage Private Development

.. Increase Competition

.. Small Business Programs

. Effective Date 18 May 87

PUBLIC LAW 99-500

- **Definitions for "Developed" & "Private Expense"**
  - .. Need for Uniformity
  - .. Less Stringent than "Reduced to Practice"
  - .. IR&D & B&P Costs
- **Mixed Funding Situations**
- **Prohibition Against Requiring Rights as a Condition of Award**
- **Validation**
  - .. Thorough Review
  - .. Three Year Challenge Period
- **Guidance in Conference Report**

PROPOSED RULE

. Primary Thrust on New Policy

.. Obtaining Only Data & Rights to Satisfy Minimum Needs in Least Obtrusive Manner

.. Emphasis on Early Identification

.. New Category of Rights, Government Purpose License Rights

. Recognized that Procedures could be Impacted by Comments

SUMMARY OF PUBLIC COMMENTS & DISPOSITION

. Wide Range of Differing Points of View

. "50 Percent Rule"

. Government Purpose License Rights

. Identification Process, Clarifications

. Subcontracting, All Rights Flow Down to Sub-tiers

. Deleted Additional "Limited Rights", and Clarified "Standard Government Rights" to Avoid Confusion

. "Developed" & "Private Expense" Required Clarification

. Validation

. Other Issues

.. Direct Licensing
.. Expiration of Rights
.. Rights in Data Not Delivered
.. Software Policy

IN SUMMARY

. The Final Rule is Responsive to Major Concerns of Different Interests

.. Government Needs Do Not Negate a Contractor's Rights

.. Mechanism Needed to Ensure Access to Data while Protecting a Developing Contractor's Rights

.. Flexibility has been added to "50 Percent Rule"

.. Sub-tier Contractor Rights have been Clarified

. Focus Now on Implementation

.. Rights in Technical Data Extremely Complex

... In Each Case, Difficult Choices are Faced
... All Potential Problems Cannot be Solved or Avoided by a Regulation

.. Will Continue to Listen & Observe

. Software Policy Under Review

. Uniform FAR Coverage

RIGHTS IN TECHNICAL DATA

A major revision to the DFARS coverage concerning Rights in Technical Data was published in the Federal Register as a final rule on April 16, 1987 to implement Section 953 of the Defense Acquisition Improvement Act of 1986 (P.L. 99-500). These changes are in in addition to those required by the Defense Procurement Reform Act of 1984 (P.L. 98-525), which was implemented by interim rule published in October 1985. Also considered in developing the new coverage were recommendations of the President's Blue Ribbon Commission on Defense Management (the Packard Commission).

A summary of the key requirements in P.L. 99-500 concerning technical data rights follows:

The major thrust is to establish a balance between the Government's need to pursue competition by obtaining rights in technical data and its conflicting need to encourage private development and innovation by protecting proprietary data rights. To this end, DoD is required to define the legitimate interest of the Government and of contractors or subcontractors in technical data pertaining to an item, component or process. P.L. 99-500 provides a basis for allocating rights in technical data that parallels the approach previously contained in the DFARS. That is, the Government's rights result from paying the development costs of the item, component or process. Similarly, the contractor's right to restrict the government's ability to release or disclose technical data to third parties results from developing the item at private expense. Of particular concern in defining these interests, is the need to address the "mixed funding case", that is when the development cost is funded in part by the Government and in part by the contractor.

Certain categories of data are provided in which the Government is entitled to unlimited rights, regardless of the source of development funding. These include form, fit or function data; manuals and instructional materials (except detailed manufacturing or process data) and data that is in the public domain.

The Government is prohibited from requiring a contractor or subcontractor to sell or relinquish its rights in technical data as a condition for award of a contract. The Government is given flexibility to negotiate for additional rights in limited rights data, if it is needed for competition or to establish additional sources of supply and to waive unlimited rights, provided the Government receives a royalty-free license to use the data for Government purposes (including the right to reprocure).

Finally, DoD is required to establish definitions for "Developed" and "Private Expense". In so doing, Congress recognized

that efforts to define these terms have been ongoing since at least since 1962 without success, but pointed out that common definitions are nevertheless needed to establish a uniform approach throughout DoD.

A proposed rule was published in the Federal Register on January 16, 1987. A summary of the key points in the proposed rule follows. The terms "Developed" and "Private Expense" were defined generally as recommended in the Conference Report to P.L. 99-500. The regulation was revised to provide greater flexibility to the contracting officer to obtain only minimum rights needed. A new category of data rights was established called Government Purpose License Rights for use in mixed funding situations.

Numerous comments were received verbally at a public hearing held on January 30, 1987 and, subsequently in writing. These comments were submitted by trade associations representing contractors who principally are interested in protecting privately developed items and processes; small businesses who need access to such data in order to compete for Government contracts; prime and higher-tier subcontractors who are called upon to implement the DoD policy in dealing with their subcontractors; and universities and non-profit organizations who are interested in protecting their proprietary positions. Several individual companies representing each of these points of view also responded, as did several Government offices.

While all of the comments were obviously submitted to enhance the interests of one of the groups mentioned above, they were nevertheless very useful in identifying the key issues. They also pointed out portions of the proposed rule that required clarification. A summary of the key issues follows.

The "50 Percent Rule" was addressed by more commenters than any other issue. Almost every commenter disagreed with the 50 percent threshold of private development for Government Purpose License Rights, but for widely different reasons. Those who support support protecting private development stated that it was much too high and those who support access for the competing small businesses stated that it was much too low. In considering this issue the Council recognized that, while 50 percent is perhaps arbitrary, any other number would be as well. Further, given that the 50 percent level applies to large businesses, this basic policy was retained.

However, the Council agreed with several commenters that the proposed rule lacked flexibility and could result in inequity in the case of a company that had contributed many millions of dollars toward development of an item but still fell short of 50 percent. Also, the proposed rule did not recognize nonfinancial contributions to development. To address these concerns, the final rule provide greater flexibility and guidance in considering waivers in order