

Abstract

Intellectual property and intellectual property rights play an important role in the Department of Defense's ability to ensure major weapon systems are affordable. The DOD has placed increased emphasis on improving how the DOD procures intellectual property and intellectual property rights and understanding the complex issues behind intellectual property that exist between the DOD and industry. The research in this paper seeks to evaluate recent DOD efforts to improve the acquisition of intellectual property (specifically technical data and computer software) and intellectual property rights. Additionally, the research looks at past acquisitions to evaluate the intellectual property strategies developed during the acquisition planning and contract award phases of four Air Force major weapon system programs. The paper seeks to utilize the research findings to identify "best practices" that can be readily applied to future acquisitions when procuring technical data and computer software rights.

Methods

- Review of statutory acts, federal regulations, Department of Defense policies, congressionally mandated panel reports, Government Accountability Office reports, third-party studies, articles, books, and other information resources.
- Analysis of four United States Air Force ACAT I programs: UH-1N Replacement, T-7A Advanced Pilot Trainer, Combat Rescue Helicopter, and KC-46 Pegasus Tanker. Analysis included review of intellectual property strategy development in acquisition planning and the use of special section H contract clauses to define operation, maintenance, installation, and training data requirements.

Results

1. Is the United States Air Force sufficiently addressing intellectual property in the acquisition planning of major weapon systems?

Across the four AFLCMC programs, the IP Strategy met or exceeded the the DoD acquisition planning requirements for an IP Strategy under DFARS regulation. Over time, AFLCMC has strengthened the IP Strategy with each new acquisition to create actionable IP strategies that identify what data is required, how rights in data will be verified, how data will be managed, and how data will be stored. Creating strategies that address these meaningful considerations ensure weapon systems adequately address intellectual property issues in acquisition planning.

2. What contract clauses are contracting officers using to acquire intellectual property and data rights?

Across the four AFLCMC programs, Contracting officers are using both standard and non-standard data rights clauses. Standard DFARS data rights clauses are being used for both commercial and non-commercial items, as applicable. In addition to the standard clauses, for OMIT data, contracting officers are using special contract requirements, described in section H of the contract. These customized section H clauses are being used to define what the program considers to be OMIT data for the weapon system.

3. How does the Air Force ensure adequate deliverables and license rights are obtained in operation, maintenance, installation, and training data within contracts?

Air Force programs are using clauses in Section H of weapon system procurement contracts to define operation, maintenance, installation, and training data. Due to the customizable nature of these clauses, the definition of OMIT data has evolved over time as newer procurements learn from previous weapon system acquisition efforts. There is no standardized definition of OMIT data from either the FAR or the DFARS, and the Air Force has the potential to take the lead by defining OMIT through AFFARS guidance.

4. What factors create friction between the Air Force and contractors in negotiating data rights?

When determining the long-term needs in technical data and computer software, two of the main considerations are what type of data is required and what level of license rights in the data are required to support future competition in sustainment and affordable weapon systems. While the Air Force addresses these issues in each acquisition, contractors consider how the DoD's strategy protects their IP and meets their interests. Based on our research, three contributing factors that create issues between the Air Force and contractors when dealing with IP occur in requirements determination, the assertions process, and the lack of an OMIT definition in statute and DFARS policy.

Recommendations

- Develop contract section H "fill-in" clause to define operation, maintenance, installation and training (OMIT) data requirements.
- Formulize definition of OMIT data in acquisition regulation to alleviate issues between government and industry and to ensure weapon systems acquire necessary data and license rights to meet OMIT requirements.
- Increase acquisition planning requirements for intellectual property strategy development to improve program assessment of data requirements, how data will be managed, how data will be stored, and verifying rights in data.
- Increase education and training requirements for acquisition workforce on the acquisition of intellectual property and managing issues across the entire product life cycle.