SW Lethality Directive FAQs

The following FAQs address implementation of the Secretary of Defense's **Directing Modern Software Acquisition to Maximize Lethality** Directive.

Applicability

Q1. What does this Directive apply to? Are there any exceptions?

A: The intent of the Directive is that the SWP can be used for every system type in the DoD, and any combat, combat support, or business system program. Programs on the SWP are delivering a range of capabilities: command and control, decision support, cyber, business, and weapon systems. Weapon systems also include application and cloud native system types such as C2, Intel, Decision Support, and Cyber.

In general, this Directive applies to all system types, given the SWP has specific sub-paths for applications, embedded systems, and business systems. As such, the Directive and the SWP have applicability to all warfighting and system domains. Hybrid acquisitions combining the use of SWP with other pathways can be used to de-couple hardware and software acquisition, as applicable and appropriate.

Particularly for DBS systems, SWP should not be limited to purely custom development but also building new workflows, configuration, robotic process automation, low-code/no-code, etc. This includes modifications of a type customarily or not customarily available in the commercial marketplace to meet DoD requirements.

The Directive recognizes that the DoD must reframe acquisition and the force to be software-centric in an era of software-defined warfare. Software acquisition and development for business and weapons systems, and discussed above, will be conducted using the SWP.

Q2. What is the applicability of this Directive to programs currently planning or executing software developing using other AAF pathways?

A: Commander's intent is to "think, act, and do differently." The intent per the SecDef memo, is that the Software Acquisition Pathway can be used for every system type in the DoD, and any combat, combat support or business system program.

Programs in planning (prior to signed Acquisition Strategy (AS)) should transition to SWP or adopt hybrid pathway approaches. Programs currently executing (post signed AS) and delivering capabilities to the Warfighter should continue executing. However, those

programs should identify a plan to transition the software development components to the SWP, in accordance with the Directive*.

Pathway	Directive Applicability
SWP in Planning (prior to signed AS)	• **SWP applicability:** Required to execute IAW the Directive. • **CSO/OT applicability:** Adopt CSO processes and OT authorities as directed.
SWP in Execution (post signed AS)	• **SWP applicability:** Required to execute IAW the Directive. • **CSO/OT applicability:** At any point when contracts need to be recompeted or Periods of Performance end, programs shall adopt CSO process and OT awards to leverage commercial developers/solutions and infuse innovation from the industrial base.
DBS in Planning (prior to signed AS)	• **SWP applicability:** Adopt SWP IAW with the Directive*. • **CSO/OT applicability:** Adopt CSO processes and OT authorities as directed.
DBS in Execution (post signed AS)	• **SWP applicability:** Transition to SWP at the next logical point (e.g., annual recertification, major updates) IAW with the Directive*. • **CSO/OT applicability:** At any point when contracts need to be recompeted or Periods of Performance end, programs shall adopt CSO process and OT awards to leverage commercial developers/solutions and infuse innovation from the industrial base.
MTA (SW Development Components) in Planning (prior to signed AS)	• **SWP applicability:** Adopt SWP or leverage hybrid acquisition pathway approach (MTA + SWP) IAW with the Directive*. (note: HW can be acquired IAW 10 U.S.C. §3603) • **CSO/OT applicability:** Adopt CSO processes and OT authorities as directed.
MTA (SW Development Components) in Execution (post signed AS)	• **SWP applicability:** Transition to SWP at the next logical point (e.g., MTA program expiration, fielding) IAW with the Directive*. • **CSO/OT applicability:** At any point when contracts need to be recompeted or Periods of Performance end, programs shall adopt CSO process and OT awards to

	leverage commercial developers/solutions and infuse innovation from the industrial base.
MCA (SW Development Components) in Planning (prior to signed AS)	• **SWP applicability:** Adopt SWP or leverage hybrid acquisition pathway approach (MCA + SWP) IAW with the Directive*. • **CSO/OT applicability:** Adopt CSO processes and OT authorities as directed.
MCA (SW Development Components) in Execution (post signed AS)	• **SWP applicability:** Transition to SWP at the next logical point (e.g., MS-B, LRIP, Full Rate Production or Sustainment) IAW with the Directive*. Programs deploying Commercial Off the Shelf (COTS) Non-Developmental Items (NDI), or Government Off the Shelf (GOTS) hardware should transition to managing these elements through the SWP. Programs with custom hardware solutions should move to a hybrid model. • **CSO/OT applicability:** At any point when contracts need to be recompeted or Periods of Performance end, programs shall adopt CSO process and OT awards to leverage commercial developers and infuse innovation from the industrial base.
UCA (SW Development Components) in Planning (prior to signed AS)	• **SWP applicability:** Adopt SWP or leverage hybrid acquisition pathway approach (UCA + SWP) IAW with the Directive*. • **CSO/OT applicability:** Adopt CSO processes and OT authorities as directed.
UCA (SW Development Components) in Execution (post signed AS)	• **SWP applicability:** Transition to SWP after capability deployment IAQ the Directive*. • **CSO/OT applicability:** Adopt CSO processes and OT authorities as directed during transition to SWP.
Programs (regardless of current pathway) developing military use only software in Planning (prior to signed AS)	• **SWP applicability:** Adopt SWP IAW with the Directive*. • **CSO/OT applicability:** Adopt CSO processes as directed. OT awards should be utilized unless the statutory OT criteria cannot be satisfied.
Programs (regardless of current pathway)	• **SWP applicability:** Transition to SWP at the next logical point (e.g., MCA programs pre-MS B, UCA programs in

developing military use only software in Execution (post signed AS)	Pre-Development, MTA programs prior to signed Execution ADM, DBS programs prior to Acquisition ATP) IAW with the Directive*. • **CSO/OT applicability**: Adopt CSO processes as directed. OT awards should be utilized unless the statutory OT criteria cannot be satisfied.
***Component Acquisition Executives and their delegated Decision Authorities should require justification for programs not using or transitioning to the SWP.**	

Q3: What is required for an existing program to transition to the SWP?

A: Programs that intend to transition, in whole or in part, from another AAF pathway to the SWP should update their acquisition strategy and have a Decision Authority (DA) approved transition plan before the transition is executed via a signed Acquisition Decision Memorandum (ADM) signed by their DA authorizing use of the SWP.

The intent for SW programs currently in development that transition to the SWP is to continue delivering software capabilities. The intent is NOT to pause the program to redo and staff many program documents for approval. Programs should reuse existing artifacts as much as is reasonable and allow programs to continue delivering software capabilities during the transition. Programs should reuse existing artifacts as much as is reasonable and allow programs to continue delivering software capabilities during the transition.

Program Managers, in partnership with their DA and key stakeholders, should lay out a transition plan which may include developing and/or updating key documents within a set timeframe. The purpose of the transition plan is to ensure a program is set-up to successfully deliver software capabilities leveraging modern software development processes and SWP acquisition best practices. Transition plans should reflect the program's consideration of the extent to which its strategies, processes, and artifacts will be updated to reflect SWP requirements and a pivot to modern software practices, e.g. Agile, DevSecOps, and Lean.

The DA should ensure that programs being considered for transition to the SWP from another AAF pathway, in whole or in part, are prepared and that this preparation is reflected in their artifacts. The DA may decide to have the program enter the SWP Planning Phase to update strategies, designs, and more. The DA may approve the program to enter the SWP via the Execution Phase if it has the required information (or equivalent documents), with expectations on updating strategies, designs, and processes while continuing to develop and deliver software.

Per DODI 5000.87, Section 3.2.b: “Programs using the software acquisition pathway will be identified in component and DoD program lists and databases within 60 calendar days of initiating the planning phase in accordance with DoD’s implementation of Section 913 of Public Law 115-91 on acquisition data analysis.”

Impacts

Q4. Doesn’t this cause a lot of overhead and rework for existing programs that are already in execution?

A: Programs currently executing and delivering capability are not required to immediately switch to the SWP or change contracts. However, programs should pursue immediate opportunities to improve software delivery processes and leverage commercial developers/solutions through CSO processes and OT awards and transition to the SWP at the next logical point, in accordance with the Directive and as addressed by the Applicability questions.

Q5. How will this directive improve the DoD’s current software development process to ensure military readiness or effectiveness?

A: The SWP is designed to facilitate rapid and iterative delivery of software capability to the user. It is based on commercial product delivery and purpose-built for rapid innovation cycles that give our Warfighters competitive advantage on the battlefield. The SWP model includes leveraging flexible contracting strategies that create opportunities for non-traditional contractors to contribute innovative capabilities to larger program objectives.

Acquiring software development solutions requires flexibility in business arrangements in structure to reduce barriers to entry for viable commercial providers. Leveraging CSOs and OTs lowers barriers and enables faster more flexible solicitation processes and awards.

- SWP Contracting: https://aaf.dau.edu/aaf/software/contracting-strategy/

Q6. How does the Department plan to balance rapid software delivery with the need for compliance, cybersecurity, and interoperability across defense systems?

A: We are aligning our acquisition strategies to ensure rapid delivery is not achieved at the expense of security or interoperability.

Contractors will be required to adhere to applicable DoD cybersecurity frameworks and undergo testing to confirm compliance with DoD standards. The SWP policy has an intense focus on cybersecurity.

- SWP Cybersecurity: https://aaf.dau.edu/aaf/software/cybersecurity/

The DoD Software Cadre within A&S championed the API Strategy for DoD that will be required for software pathway programs. PMs will plan how they expose their data and services to ensure data exchange and rapid integrations of software and analytics.

- SWP API Strategy: https://aaf.dau.edu/aaf/software/architecture-and-interoperability/
- SWP Enterprise Services and DevSecOps: https://aaf.dau.edu/aaf/software/enterprise-services-devsecops/

Q7. How can Other Transactions be used to improve SWP program execution?

A: Effective and successful SWP programs are driven by the skill and expertise of program teams executing modern software development practices and SWP processes combined with flexible contractual agreements. Leveraging modular contracting strategies resulting in OT awards enables programs to award to multiple contractors and provides flexibility to pivot to another solution provider if a contractor is not delivering capability agreed to by both parties. This flexibility ultimately reduces long-term costs and inefficiencies and mitigates program risk by not reducing reliance on a single contractor.

- SWP Contracting: https://aaf.dau.edu/aaf/software/contracting-strategy/

The SWP model is based on commercial product delivery best practices and modern software development. Some of these elements include:

Government management of Program Roadmaps and Backlogs along with continuous collaboration with contractor development teams to execute DevSecOps and Agile software development practices provides insight into the progress of development teams to deliver working capability desired by users

- SWP Execution: https://aaf.dau.edu/aaf/software/execution-phase/
- Agile 101 Primer: https://aaf.dau.edu/storage/2023/05/Agile-101-Primer-v2.0_16May2023.pdf

Programs will develop and track program management metrics to provide leadership, the Product Owner, team members, and other key stakeholders information and insights into the development effort to guide technical/programmatic decision-making, continuous improvement efforts, and remediation of blockers/impediments. The program will

continue to update its cost estimates and software data reporting from the planning phase throughout the execution phase.

- SWP Metrics and Reporting: https://aaf.dau.edu/aaf/software/metrics-and-reporting/

Value Assessments measure the program's progress toward meeting user needs and enable the program to determine if the cost of the software development effort is commensurate with the value it provides.

- Value Assessment: https://aaf.dau.edu/aaf/software/value-assessment2/

Q8. Will DOD programs and companies need to invest in new technical infrastructure to use the software pathway?

A: Not necessarily. Over the last several years, the Department has made extensive investments in the infrastructure needed to implement DevSecOps and related modern software practices, including Software Factories and trusted container repositories.

Acquisition programs can get access to technical solutions that provide tailored resources for key warfighting domains and make those solutions available to their contractors. In addition, an expanding commercial ecosystem offers access to services for contractors directly to develop their software.

- Enterprise Services and DevSecOps: https://aaf.dau.edu/aaf/software/enterprise-services-devsecops/

Q9. How does this affect small businesses and non-traditional contractors?

A: This Directive is designed to foster competition and provide opportunities for non-traditional contractors. By using processes like Commercial Solutions Openings (CSO) and issuing Other Transaction (OT) awards, the Department is making it easier for non-traditional contractors, including small businesses, to bring their solutions to the Department without the need to navigate burdensome bureaucracy. Using software acquisition models that use commercial practices reflects how commercial companies prefer to develop products – and adopting CSOs and OTs offer a faster, more flexible way for non-traditional contractors to bring their solutions to the Department.

Hardware

Q10. Are hybrid pathway approaches recommended for programs that have significant hardware?

A: In general:

- Congress elevated the SWP HW to guidance into **10 U.S.C. §3603** and emphasized that HW buys on the SWP are to be expected:

  "(1) Applications. -The applications pathway shall provide for the use of rapid development and implementation of applications and other software or software improvements operated by the Department of Defense, which may include applications and associated procurement of covered hardware (including modifications of a type not customarily available in the commercial marketplace to meet Department requirements), commercially available cloud computing platforms, and other non-developmental items."

- SWP does not preclude contracting for hardware. There is no threshold for procurement of hardware items in direct support of development, testing, training, and fielding activities.
- The Software Acquisition Pathway supports the integration and deployment of software components into both applications and embedded systems.

Given the above, programs (e.g., autonomous systems) using pre-built hardware can be fully acquired on the SWP. Programs that require the use of pre-built hardware may manage both software and hardware components under the Software Pathway, especially when integration is critical for functionality.

In terms of hybrid acquisition, this is warranted in certain situations. (Note: the DoD Software Cadre is releasing its Weapons Ignite toolkit with detailed guidance on this approach; we will update this FAQ and our website when it is released.)

Programs deploying Commercial Off the Shelf (COTS) hardware non-developmental items (NDI) hardware, or Government Off the Shelf (GOTS) hardware should transition to the SWP at the next milestone review (e.g., MS-C, LRIP, Full Rate Production or Sustainment) in accordance with the Directive.

- Procuring HW on the SWP: https://aaf.dau.edu/aaf/software/planning-phase/

Programs with custom hardware solutions should move to a hybrid acquisition pathway approach with the hardware and full system integration executed under the MCA/MTA pathway and software under the SWP using the Embedded Software sub-path IAW with the Directive.

- SWP (General Procedures toggle): https://aaf.dau.edu/aaf/software/

Q11. With software, comes hardware. How will this impact the hardware component?

A: Congress elevated the SWP HW to guidance into 10 U.S.C. §3603 and emphasized that HW buys on the SWP are to be expected: "(1) *Applications.-The applications pathway shall provide for the use of rapid development and implementation of applications and other software or software improvements operated by the Department of Defense, which may include applications and associated procurement of covered hardware (including modifications of a type not customarily available in the commercial marketplace to meet Department requirements), commercially available cloud computing platforms, and other nondevelopmental items*."

SWP does not preclude contracting for hardware. Programs (e.g., acquiring autonomous systems) that require the use of non-developmental, COTS, or GOTS hardware may manage both the software and hardware components under the Software Pathway when integration is critical for functionality. 10 U.S.C. §3603 addresses covered hardware as part of software acquisition pathways. Covered hardware is defined as:

- Hardware that is a commercial product (as defined in 41 U.S.C. §103) or a nondevelopment item; and
- Hardware in which software acquired under section 3603 is embedded.

Congress was encouraged by the Directive that directs all DOD components to use the SWP as the *"preferred pathway for all software development"* to include weapon systems programs. The Directive notes, *"DOD has struggled to reframe its acquisition process from a hardware-centric approach to a software-centric approach" and as a result, "it is the warfighter who pays the price."* They want to see the memo and SWP applied to accelerate software acquisition – particularly within autonomous systems. The SWP includes guidance for appropriate use of the pathway for hardware.

- Procuring HW on the SWP: https://aaf.dau.edu/aaf/software/planning-phase/

Commercial Solutions Opening and Other Transactions

Q12. The Directive cites the 10 U.S.C. §3458 Commercial Solutions Opening (CSO) process. Why is the DIU CSO process the recommended CSO approach?

A: The 10 U.S.C. §3458 CSO process is implemented in DFARS 212.70 and thereby introduces FAR requirements (e.g., Competition in Contracting Act (CICA) compliance) and limits resultant Prototype OT awards to fixed-price and fixed-price incentive arrangements. OTs are ultimately the preferred approach – as amplified in Executive Order 14265 Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial

Base, which includes *"a first preference for commercial solutions and a general preference for Other Transactions Authority…"*.

DIU's CSO process (different from the 10 U.S.C. §3458 CSO process implemented in the DFARS) was developed specifically to award 10 U.S.C. §4022 Prototype OTs and is defined in the DoD OT Guidebook. DIU's CSO process satisfies the maximum extent practicable competition requirement for 10 U.S.C. §4022 Prototype OTs (CICA is N/A) while providing maximum flexibility in award selections, to include fixed-price or expenditure-based arrangements.

- DoD OT Guidebook: https://www.acq.osd.mil/asda/dpc/cp/policy/docs/guidebook/TAB%20A1%20-%20DoD%20OT%20Guide%20JUL%202023_final.pdf
- DIU: https://www.diu.mil/work-with-us

At its core, the DIU CSO is a competitive solicitation process with three phases focused on being "fast, flexible, and collaborative for innovative prototyping projects. DIU's CSO three-phase competitive process includes: prepare a solution brief, pitch, and complete written proposal.

- **Phase 1 Solution Briefs**: Solution briefs are either a paper no more than 5 pages or a presentation no longer than 15 slides. The solution brief should detail the technology concept and provide information on the company.
- **Phase 2 Pitch Session**: The pitch is the second phase of the CSO process. This step mirrors how a start-up would pitch a venture capital firm for funding, or a vendor would attempt to secure a contract from another commercial firm. Companies invited to Phase 2 pitch additional details on project rough order of magnitude cost, schedule, as well as discuss data rights.
- **Phase 3 Request for Prototype Proposal (RPP):** This phase applies to the companies DIU determined had potentially meritorious proposed solutions. Companies invited to Phase 3 will submit proposals to be reviewed and negotiated by the Government.

Other similarly innovative OT processes can be used to accelerate solicitation and award.

Q13. What is a CSO, and how is it different from OT or FAR-based contracts?

A: A CSO is a solicitation process designed to streamline the acquisition of innovative commercial products, services, and technologies. It allows government agencies to engage with industry partners and issue Prototype OT awards without the rigid requirements of traditional acquisition methods.

Other Transaction (OT) agreements and FAR-based contracts are awards, of which both are possible under the 10 U.S.C. §3458 CSO process. OTs are ultimately the preferred approach – as amplified in the Executive Order 14265 Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which includes "a first preference for commercial solutions and a general preference for Other Transactions Authority…".

See previous question for additional information re: CSOs.

Q14. What special authority, if any, do DoD entities need to leverage CSOs?

A: No special authority is required to leverage CSO processes.

Q15. What is the CSO and OT process?

A: The CSO solicitation process is designed to streamline the acquisition of innovative commercial products, services, and technologies and award Prototype OTs under 10 U.S.C. §4022. Successfully completed Prototype OT projects can follow-on to non-competitive production OTs or FAR contracts pursuant to 10 U.S.C. §4022(f).

- Prototype OT: https://aaf.dau.edu/aaf/contracting-cone/ot/prototype/
- DoD OT Guidebook: https://www.acq.osd.mil/asda/dpc/cp/policy/docs/guidebook/TAB%20A1%20-%20DoD%20OT%20Guide%20JUL%202023_final.pdf

Q16. When is it appropriate to use a CSO and OT?

A: The Directive establishes the CSO and OT process as the default solicitation and award approaches for acquiring software capabilities using the SWP.

Q17. Why are CSOs and OTs good for competition?

A: The use of CSOs and OTs lowers the barriers to entry for companies that don't traditionally work with the DoD. The DoD must leverage the entire American innovation ecosystem to provide the most innovative capabilities possible to our Warfighters. We are in an era of software-defined warfare. The innovation ecosystem is particularly strong for software-based capabilities including cyber, autonomy, and AI-enabled systems.

CSO processes can be leveraged to award Prototype OT agreements. The competitive nature of CSO processes satisfies the "competition to maximum extent practicable" requirement for Prototype OTs and enables non-competitive follow-on production

agreements or contracts for successfully completed prototypes pursuant to 10 U.S.C. §4022(f).

- Prototype OT: https://aaf.dau.edu/aaf/contracting-cone/ot/prototype/
- DoD OT Guidebook: https://www.acq.osd.mil/asda/dpc/cp/policy/docs/guidebook/TAB%20A1%20-%20DoD%20OT%20Guide%20JUL%202023_final.pdf

Q18. Are CSOs and OTs only intended to allow non-traditional contractors to participate?

A: No. CSO is a competitive solicitation process that is not restricted to non-traditional contractors. However, there are criteria to award Prototype OTs (10 U.S.C. §4022) to traditional contractors that include non-traditional contractor or small business participation or cost-sharing arrangements.

- Prototype OT: https://aaf.dau.edu/aaf/contracting-cone/ot/prototype/
- DoD OT Guidebook: https://www.acq.osd.mil/asda/dpc/cp/policy/docs/guidebook/TAB%20A1%20-%20DoD%20OT%20Guide%20JUL%202023_final.pdf

Q19. Can CSOs scale to a follow-on contractual vehicle?

A: CSO is a solicitation process, not a contractual vehicle. The CSO process can be leveraged to award Prototype OTs which scale to follow-on Production OTs or FAR contracts pursuant to 10 U.S.C. §4022(f).

- Prototype OT: https://aaf.dau.edu/aaf/contracting-cone/ot/prototype/
- DoD OT Guidebook: https://www.acq.osd.mil/asda/dpc/cp/policy/docs/guidebook/TAB%20A1%20-%20DoD%20OT%20Guide%20JUL%202023_final.pdf

Q20. Why the OT Authority?

A: The Prototype OT authority (10 U.S.C. §4022) allows agencies to acquire solutions separate from FAR/DFARS evaluation and source selection procedures to streamline award timelines and negotiate terms and conditions that more closely align with the commercial marketplace to deliver capabilities to warfighters more efficiently. Successfully completed Prototype OT projects can follow-on to subsequent non-competitive production OT awards or FAR contracts pursuant to 10 U.S.C. §4022(f).

The use of OTs lowers the barriers to entry to companies that don't traditionally work with the DoD. The DoD must leverage the entire American innovation ecosystem to provide the

most innovative capabilities possible to our Warfighters. We are in an era of software-defined warfare. The innovation ecosystem is particularly strong for software-based capabilities including cyber, autonomy, and AI-enabled systems. The use of OTs supports our goal to streamline the acquisition of innovative commercial products, services, and technologies.

- Prototype OT: https://aaf.dau.edu/aaf/contracting-cone/ot/prototype/
- DoD OT Guidebook: https://www.acq.osd.mil/asda/dpc/cp/policy/docs/guidebook/TAB%20A1%20-%20DoD%20OT%20Guide%20JUL%202023_final.pdf

Q21. Why are CSO and OT done on a project-by-project basis vs. a consortium?

A: Programs are not precluded from leveraging existing OT Consortia to award Prototype OT agreements. Awarding OTs on a project by project basis provides a competitive environment where all companies can compete. OT Consortia competitions are limited to members of the selected consortium.

- SWP Contracting: https://aaf.dau.edu/aaf/software/contracting-strategy/
- Prototype OTs: https://aaf.dau.edu/aaf/contracting-cone/ot/prototype/
- DoD OT Guidebook: https://www.acq.osd.mil/asda/dpc/cp/policy/docs/guidebook/TAB%20A1%20-%20DoD%20OT%20Guide%20JUL%202023_final.pdf
- Existing OT Consortia: https://aida.mitre.org/ota/existing-ota-consortia

Q22. How will the Department ensure that companies with no prior defense experience can compete fairly under the CSO and OT models? How will technical data (TD), computer software (CS), other data, and associated rights be addressed?

A: The SWP calls for a modular contracting strategy that enables a SWP program to establish contracts with different objectives to best meet the requirements and objectives throughout a program's lifecycle. Modular contracting is an approach that divides an acquisition into smaller increments with the intended outcomes of reducing program risk, continuously acquiring rapidly changing technology, and enabling flexibility for programs to scale, as well as creating opportunities for non-traditional contractors to contribute innovative capabilities to larger program objectives.

- SWP Contracting: https://aaf.dau.edu/aaf/software/contracting-strategy/

The DoD should identify Government core intellectual property (IP) use cases early and negotiate detailed terms and conditions focused on the specific intellectual property and data rights specific to the program and mission needs. In a collaborative contracting

environment like the CSO process, it is especially critical that the Government independently understands its IP needs and employs the best practices identified in the IP Guidebook.

- Intellectual Property Guidebook for DoD Acquisition: https://www.acq.osd.mil/asda/dpc/api/docs/intellectual%20property%20guidebook%20for%20dod%20acquisition%20signed.pdf

Q23. Will there be guidance on intellectual property rights and data ownership under OTs given industry concerns over proprietary technologies?

A: Data rights and IP rights can and should be specifically negotiated under OTs. SWP OT agreements should include IP arrangements that allow companies to retain ownership where appropriate, while ensuring that the DoD can maintain and operate critical capabilities over time. There are no standard license rights granted in OTs. Each OT agreement should have its own specific rights framework negotiated between the parties. It is recommended to NOT templatize rights assertion, especially where software services and licenses are combined.

Programs should develop unique and tailored IP agreements for rights in technical data (TD), computer software (CS), and any other necessary data. As non-FAR based contracts, the standard DFARS data rights categories and rules do not apply to OTs. Instead, it is the Government's responsibility to plan for and craft TD, CS, and license rights necessary to meet its short and long-term mission goals and objectives.

Additionally, Government funding of technology under an OT does *NOT* count as Government investment for purposes of applying the funding rule for DFARS data rights in future FAR-based contracts. This makes it more critical for DoD to be a good steward of taxpayer dollars by ensuring that the Government acquires the TD, CS, and rights embodying any Government funded technology development to meet DoD needs.

- SWP IP Strategy: https://aaf.dau.edu/aaf/software/ip-strategy/
- SWP Contracting: https://aaf.dau.edu/aaf/software/contracting-strategy
- Intellectual Property Guidebook for DoD Acquisition: https://www.acq.osd.mil/asda/dpc/api/docs/intellectual%20property%20guidebook%20for%20dod%20acquisition%20signed.pdf
- DoD IP Cadre: https://www.acq.osd.mil/asda/dpc/api/ip-cadre.html

Help and Resources

Q24. What training resources are available to DoD employees? What new resources do you expect to implement?

A: DoD has developed an implementation plan for the SW Lethality Directive that is led by the DoD Software Cadre and includes acquisition workforce training in collaboration with the Defense Innovation Unit, Defense Acquisition University, and other applicable organizations. The Software Cadre will provide SME support to programs seeking to adopt or transition to the SWP.

Request support from the DoD SW Cadre Director and team:

- Email the Director sean.p.brady.civ@mail.mil and SWP team osd.mc-alex.ousd-a-s.mbx.osd-sw-pathway@mail.mil
- Request a SWP Roadshow: https://aaf.dau.edu/aaf/software/roadshowrequest/

Additional training resources:

- DIU: https://www.diu.mil/work-with-us
- DAU Software Acquisition Training: https://www.dau.edu/aaf/swa/resources

The SWP website also provides extensive resources and guidance for SWP adoption and best practices.

- SWP: https://aaf.dau.edu/aaf/software/

The SWP includes a "getting started" page to help the acquisition workforce navigate the resources that are available.

- SWP Quick Start Primer: https://aaf.dau.edu/aaf/software/getting-started/