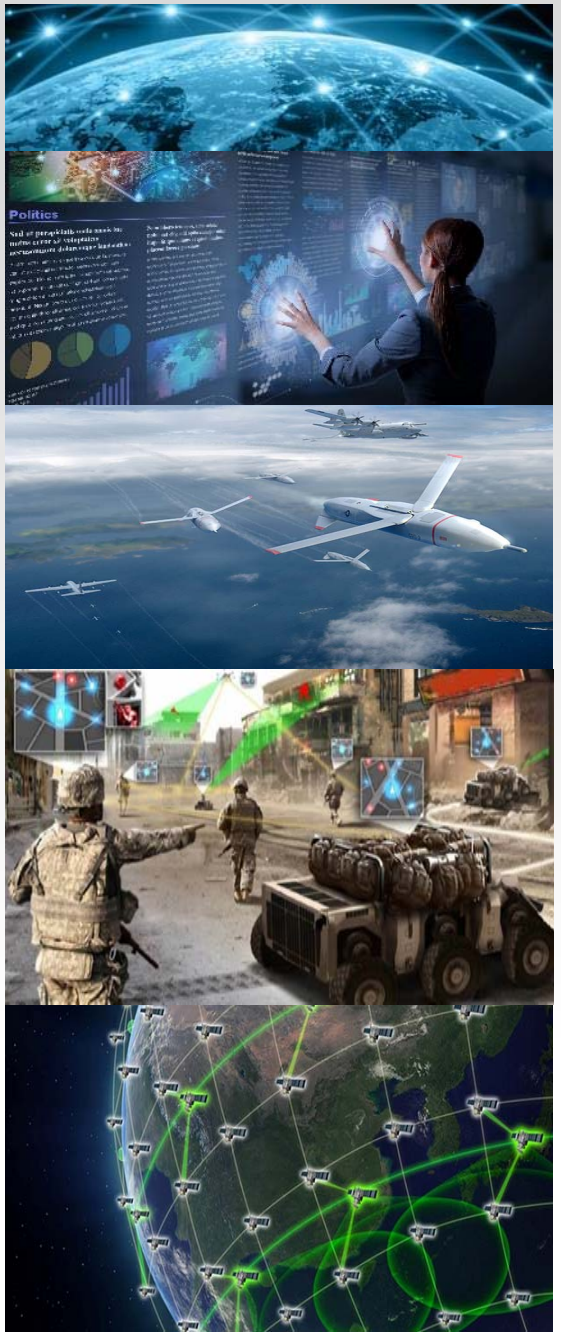
DoD Data Rights Policy Efforts

Philomena Zimmerman
Acting Director, Engineering, Policy and Systems, OUSD(R&E)

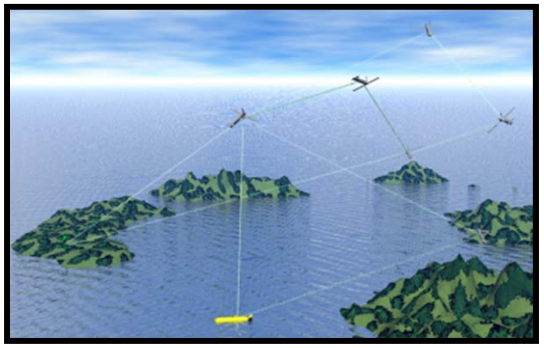
David McKeeby
Contractor Support
Engineering Policy and Systems, OUSD(R&E)

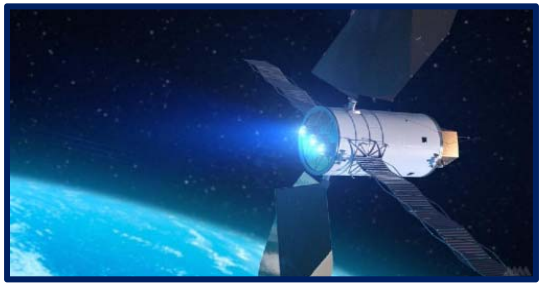
22nd Annual Systems and Mission Engineering Conference
Tampa, FL | 23 October 2019



USD(R&E) Mission

- **Ensure Technological Superiority for the U.S. Military**
  - Set the technical direction for the Department of Defense (DoD)
  - Champion and pursue new capabilities, concepts, and prototyping activities throughout the DoD research and development enterprise
- **Bolster Modernization**
  - Pilot new acquisition pathways and concepts of operation
  - Accelerate capabilities to the Warfighter





"Our mission is to ensure that we, if necessary, reestablish and then maintain our technical advantage." – Under Secretary Griffin, April 2018

USD(R&E) Modernization Priorities

"We cannot expect success fighting tomorrow's conflicts with yesterday's weapons or equipment." – *National Defense Strategy*

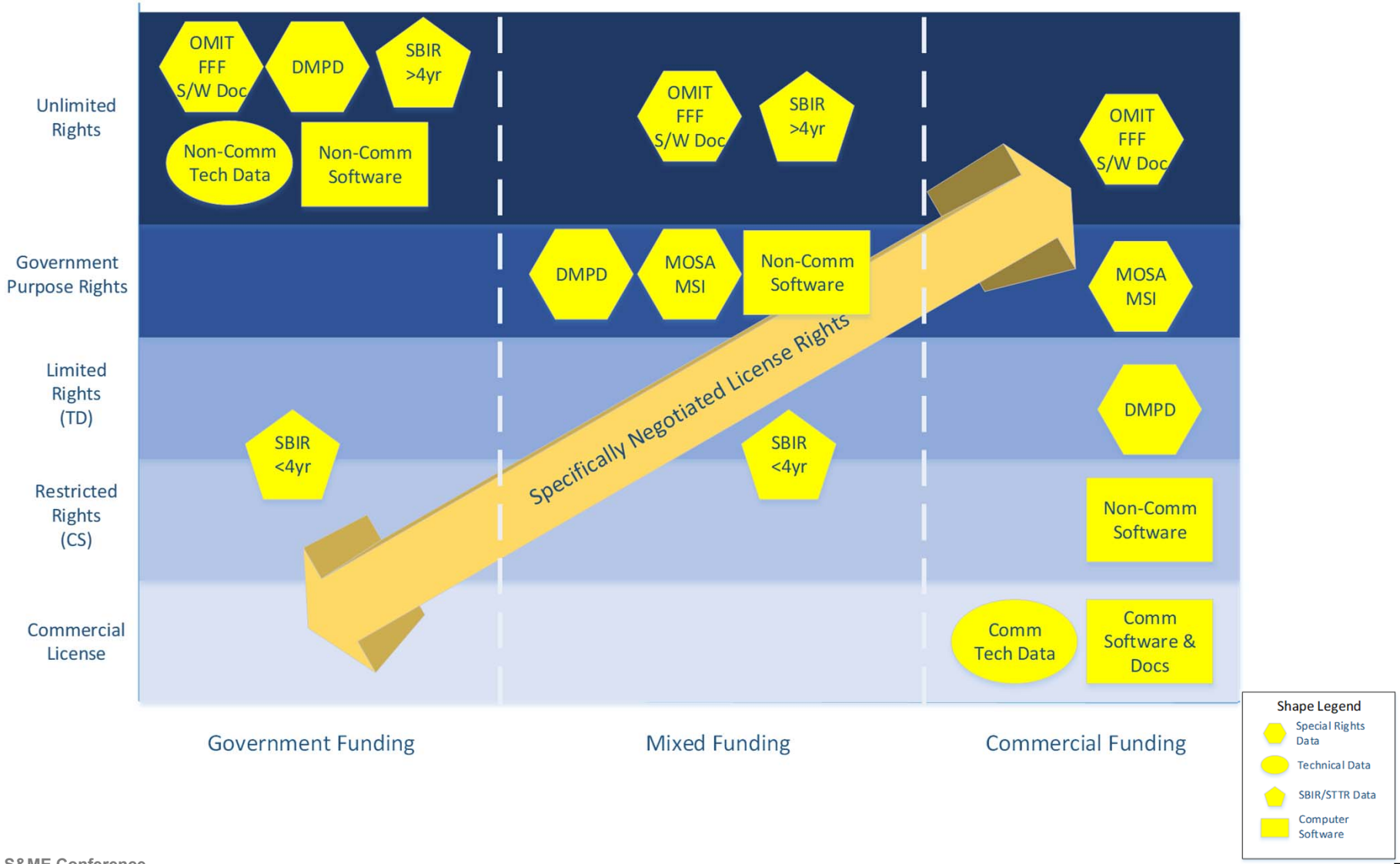
- Hypersonics
- Fully Networked Command, Control, and Communication
- Directed Energy
- Cyber
- Space
- Quantum Science
- Machine Learning / Artificial Intelligence
- Microelectronics
- Autonomy
- Biotechnology
- 5G

For each priority area, a Portfolio Manager (Assistant Director) is responsible for establishing the DoD-wide, mission-focused strategy and execution plan

Motivation

- **2016 National Defense Authorization Act (NDAA) Section 813**
  - Formed Government/Industry panel to provide recommendations on rights in intellectual property (IP) (Title 10 USC §2320 & §2321)
- **2017 NDAA Section 805**
  - Modular Open Systems Approach (MOSA) requirements for Major Defense Acquisition Programs
  - Major System Interface Data Rights
- **2018 NDAA Section 802**
  - Develop a policy on acquisition or licensing of IP
  - Establish a cadre of IP experts

Data Rights Driven by Funding Source



Rights from Contract/Agreement Type

Default Rights or Negotiated Rights	Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) Rights	Commercial License	Independent of Agreement (Unlimited)
Government Funding = Unlimited	< 4 Years Gov't Purpose / Restricted Rights	Commercial License	MOSA Major Systems Interface (MSI)
Mixed Funding = Government Purpose	> 4 Years Unlimited Rights		Operations, Maintenance, Installation & Training (OMIT)
Private/Commercial Funding = Limited / Restricted			Form Fit Function (FFF)
Specifically Negotiated License Rights			Software Documentation

The Problem Space


NEWS WIRE
Company News
22h ago
F-35 Spare Parts Funding at Risk as Pentagon Seeks Data Rights
Tony Capaccio and Roxana Tiron, Bloomberg News

- **The rules are not straightforward**
  - DFARS 227.7013, 7014, 7015 clauses grant *automatic potential* Rights In Data (RID)
  - Government must do the following to attach the RIDs:
    - Pay for development,
    - Get "Inchoate" (not yet transformed into actual use or possession) RIDs, and
    - Create delivery requirement to order tech data/software
  - Potential for failure
    - Pay for the development, enabling rights then
    - Fail to order delivery at critical leverage points
- **Lack of effective IP pricing framework**

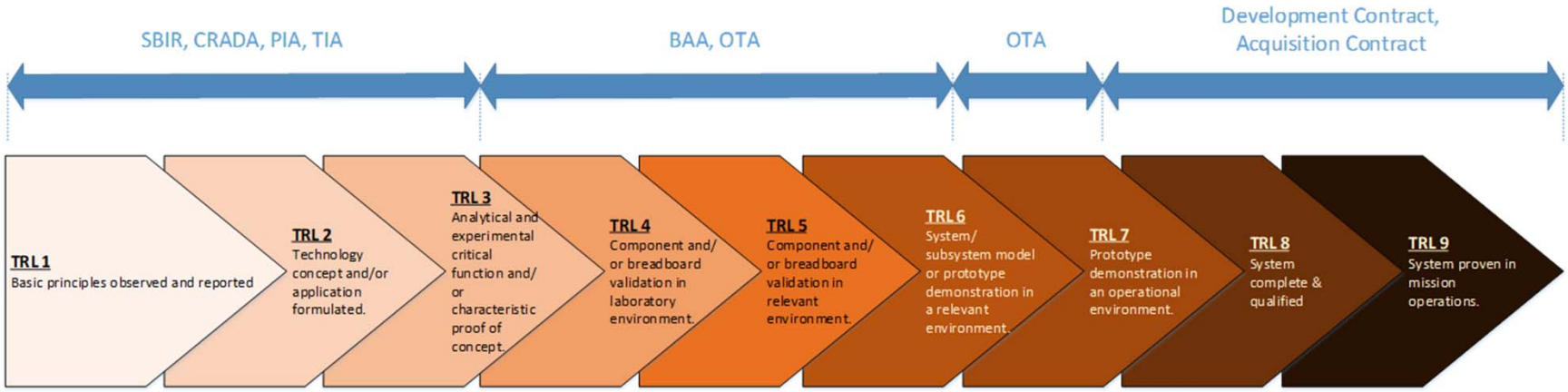
Result: Loss of Pricing Leverage

R&E IP Policy
Through the Heilmeier Catechism Lens

- **What are we trying to do?**
  - Ensure the DoD does not pay more than once for the same work.
  - Provide for cost-effective procurement, re-procurement, sustainment, modification and upgrades to DoD systems.
  - Ensure that the DoD has appropriate access to innovative products, technologies, and processes developed by the private sector for commercial use.
  - Encourage the private sector to invest in new products, technologies, and processes relevant to the missions of the DoD.
  - Ensure that DoD contractors are appropriately rewarded for their innovation.
- **How is it done today and what are the limits?**
  - Approach is ad hoc for research and development (R&D) and acquisition.
  - Draft DoD Instruction (DoDI) 5010.ab is attempting a similar mechanism for acquisition and sustainment.
- **What is new and why will it be successful?**
  - Consistent approach across the R&E that leverages experience and techniques
  - Sunset provisions already in place with SBIR regulations.
- **Who Cares?**
  - Acquisition program receiving the technology.
  - Sustainment community.
- **What are the risks?**
  - Cost of the Data Rights Review Board (DRRB) exceeds the benefit.
  - Avoidance.
- **How much will it cost?**
  - Time for DRRB members to review and provide revisions/recommendations.
- **How long will it take?**
  - TBD – depends on the scale of the agreement(s).
- **What are the mid-term and final exams to check?**
  - Mid-term – measure time invested vs. change to agreements.
  - Final Exam – change in IP issues on follow-on agreements.

Related: DoDI 5010.ab
IP Acquisition and Licensing

- **Originated by OUSD(A&S) in response to FY 2018 NDAA §802**
  - Establishes IP Policy
  - Forms IP Cadre
  - Designates ASD(A) as senior DoD official for IP policy & guidance
- **Challenge: Policy is targeted for acquisition programs**
  - Does not apply to pre-Materiel Development Decision efforts



Intellectual Property/Technical Data Rights

Problem Statement

- As technologies evolve, the failure to assert, enforce, and maintain appropriate rights in technical data and software may result in the loss of flexibility for future technology acquisition, integration, support, sustainment and system upgrades that are based upon or include these technologies.

Proposed Policy Statements

- **The negotiation objective for all S&T and R&D will specify a time (not to exceed 7 years) specified in legally binding agreements after which the Government will have at least Government Purpose Rights to all technical data under the contract. (Authority 10 USC §2320)**
- Organizations within USD(R&E) that are acquiring technology will facilitate the review of all Science & Technology and Research & Development legally binding agreements by a DRRB to ensure that the Government's IP rights and rights in technical data and software are preserved; and rights necessary for future technology uses and sustainment are obtained.

Desired Outcome

- Legally binding agreements for technologies funded by USD(R&E) include language to obtain appropriate intellectual property and data rights based upon Government investment and projected future acquisition needs.

Intellectual Property Rights – A Question of Licensing

OUSD(R&E) Course of Action

- **Recommendation:**
  - Draft direction that establishes:
    - Negotiation Objective of Government Purpose Rights after a specified time (<7 years)
    - Data rights reviews of future R&E sponsored research agreements
  - Validate the direction through a pilot application on an R&E Broad Agency Announcement (BAA)
  - Adjust per pilot and finalize

- **Benefits:**
  - Reduce IP rights gaps – stronger IP strategies
  - Government pays for only the rights it needs
  - Increase opportunities for competition and flexibility in sustainment

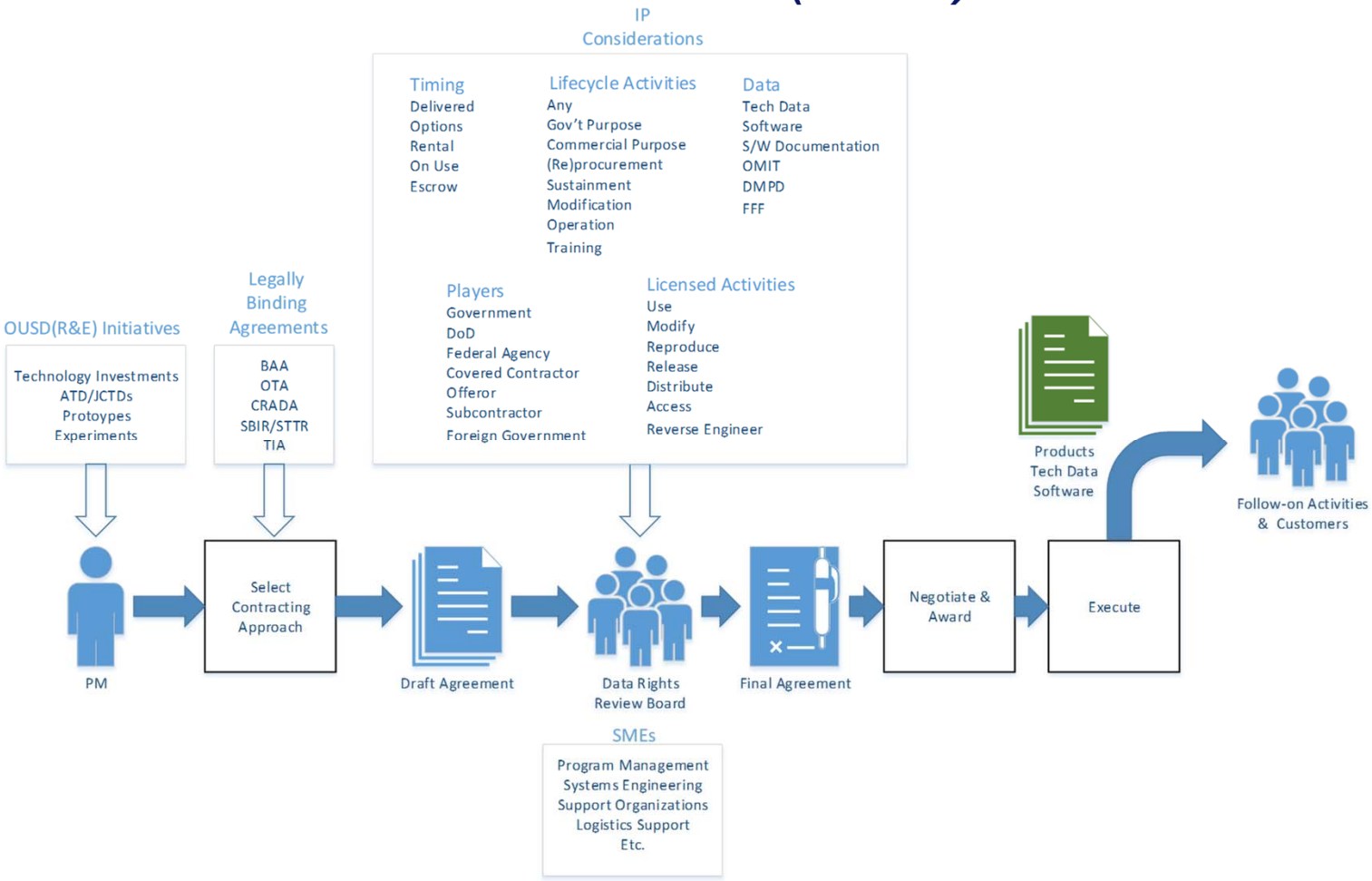
Right Size the IP Strategy

Proposed Pilot Implementation Effort

- **Review the pre-award agreements under one of the USD(R&E)(Advanced Capabilities) BAAs with a DRRB to authenticate and validate agreement data requirements**
  - Objective: Legally binding agreements include sufficient intellectual property rights language to ensure delivery of agreed rights so the Government can apply the developed technology for use outside the initial scope of the project
  - DRRB Membership: Leverage IP cadre for subject matter experts from program management, contracts, legal, finance, engineering, test, Integrated Product Support, and users
  - Process: Review and provide recommendation on all data requirements and associated tasks, data rights, and assertions to ensure they are properly specified and meet life-cycle needs. Develop legally binding IP/data rights statements for inclusion in agreements
- **Evaluate the time investment and impact of the policy after 1 year**
  - Metrics: time to review and provide recommendations, labor hours invested, quantity and scope of amendments to agreements, and percentage of impacted agreements
  - Objective: Extending policy to all R&E technology investments

Evidence-Based Return on Investment for the New Policy

General Use Case for Proposed DRRB Reviews in OUSD(R&E) R&D



IP Rights to Support Continued Technology Use and Adaptation

Desired Outcome

- Ensure DoD does not pay more than once for the same work.
- Provide for cost-effective procurement, re-procurement, sustainment, modification, and upgrades to DoD systems.
- Ensure DoD has appropriate access to innovative products, technologies, and processes developed by the private sector for commercial use.
- Encourage the private sector to invest in new products, technologies, and processes relevant to DoD missions.
- Ensure DoD contractors are appropriately rewarded for their innovation.
- Encourage the use of Modular Open Systems Approach.

For Additional Information

Ms. Philomena Zimmerman

Office of the Under Secretary of Defense

Research and Engineering

571.372.6695

philomena.m.zimmerman.civ.mail.mil

Dave McKeeby
(571) 372-6702 | david.r.mckeeby.ctr@mail.mil

Monique Ofori
(571) 372-6676 | monique.f.ofori.ctr@mail.mil

DASD(SE) MOSA Information:
https://www.acq.osd.mil/se/initiatives/init_mosa.html

https://www.cto.mil

Questions?

Follow us @DoDCTO

DoD Research and Engineering Enterprise

Solving Problems Today – Designing Solutions for Tomorrow





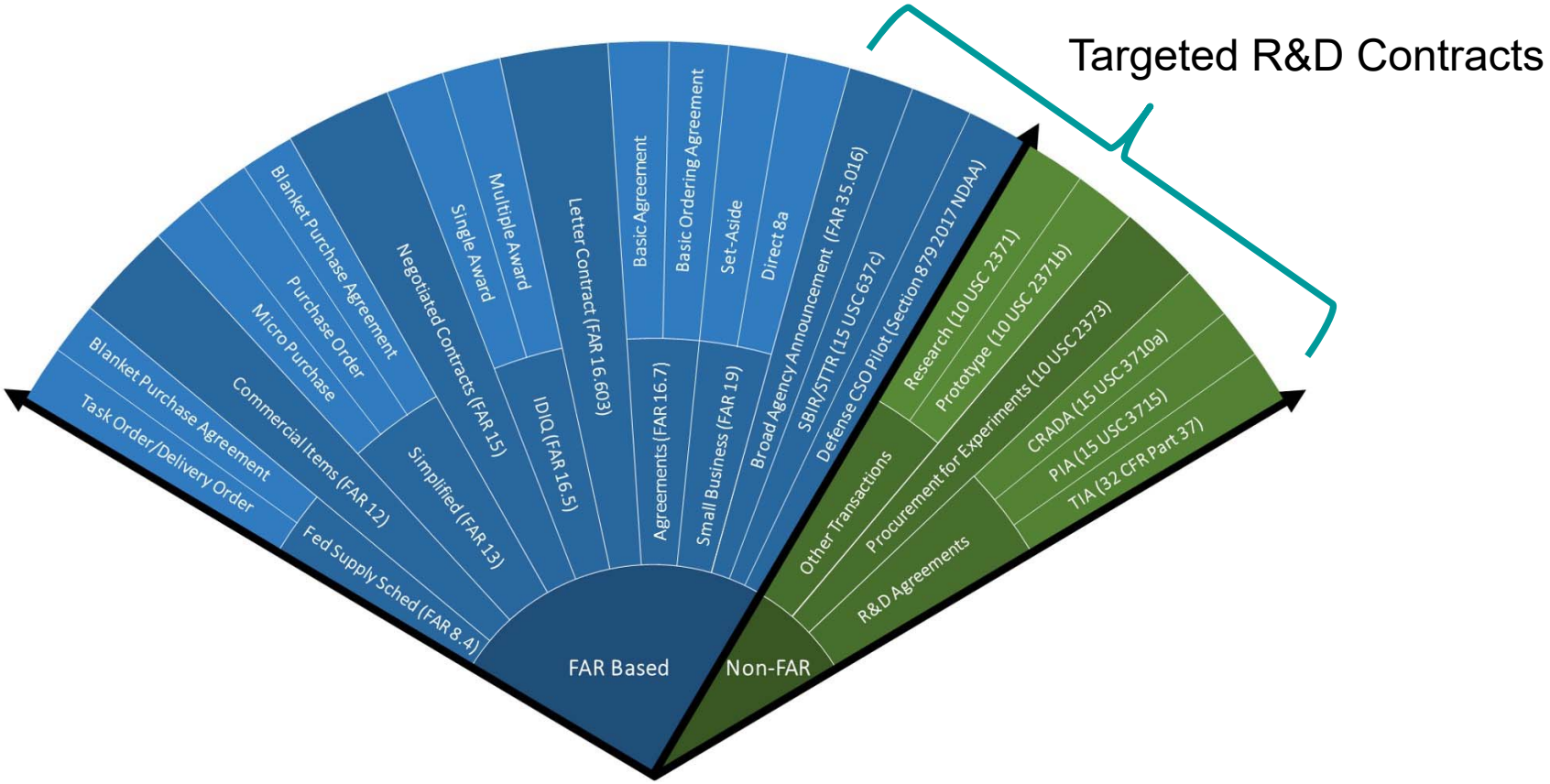




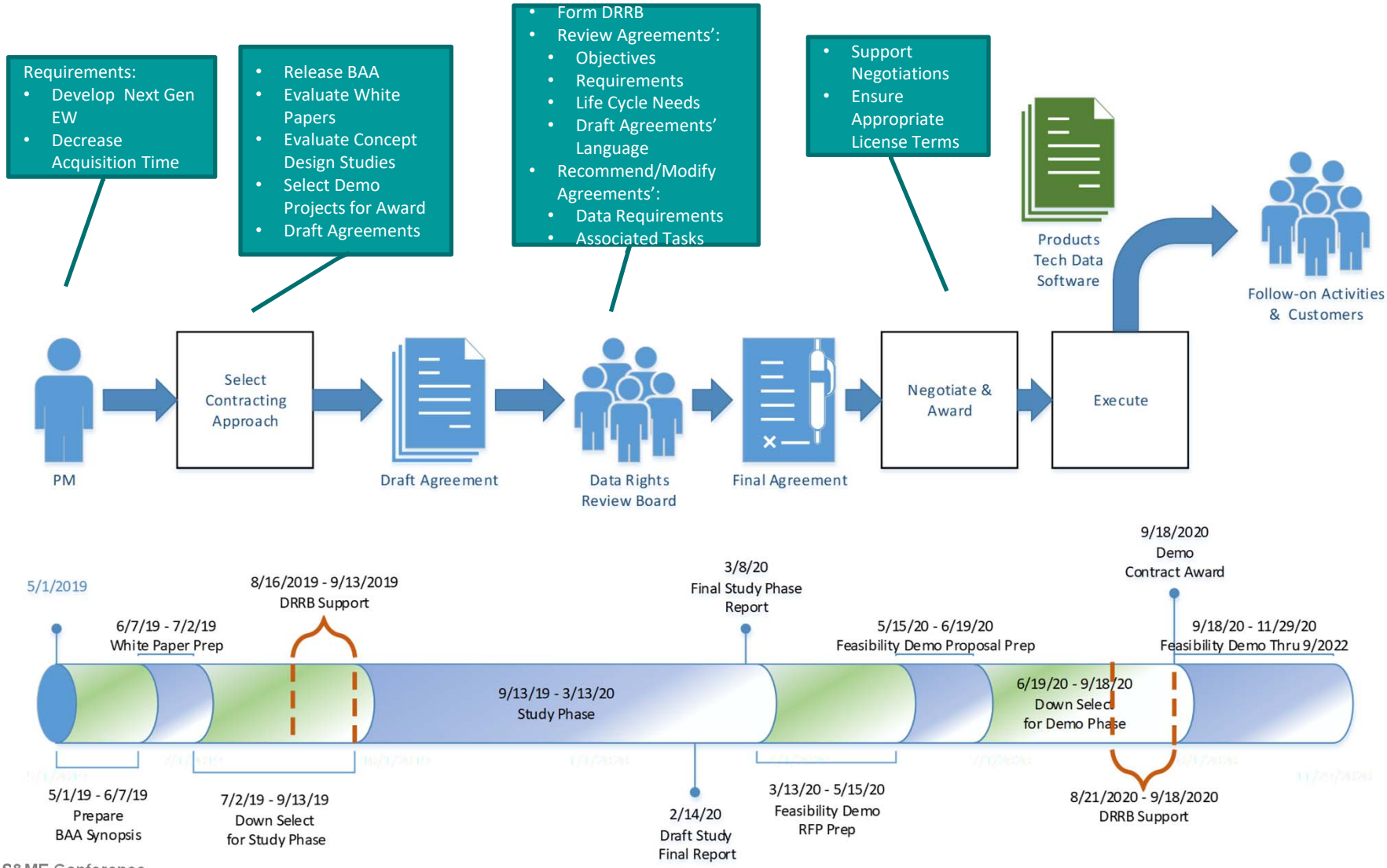

DoD Research and Engineering Enterprise	Defense Innovation Marketplace	Twitter
https://www.CTO.mil/	*https://defenseinnovationmarketplace.dtic.mil*	*@DoDCTO*

Backup

Agreement Types



Policy Validation Pilot
(Advanced EW BAA Example)



Acronyms

- **Contract Types**
  - BAA – Broad Agency Announcement
  - SBIR – Small Business Innovation Research
  - STTR – Small Business Technology Transfer
  - CSO – Commercial Solutions Opening
  - OTA – Other Transactions Agreement
  - CRADA – Cooperative Research and Development Agreement
  - TIA – Technology Investment Agreement
- **Special Data Types**
  - MOSA MSI – Modular Open Systems Approach Major Systems Interface
  - OMIT – Operation, Maintenance, Installation and Training Data
  - DMPD – Detailed Manufacturing or Process Data
  - FFF – Form, Fit, Function Data