

Data Access Guidelines Acquisition Language - Contracts

Use case 2: Contracts with a need for data

Updated as of: 7/9/20

DISCLAIMER: This document reflects the policy objectives of the ITS JPO, specifically the [Data Access Guidelines](#), and applies ONLY to research projects funded, either fully or partially, by the ITS JPO. This document may not be suitable for other U.S. DOT or non-U.S. DOT missions. For any questions or concerns regarding the applicability of this document or the [ITS JPO Data Access Guidelines](#), please contact the ITS JPO at data.itsjpo@dot.gov.

I. Introduction:

The [ITS JPO Data Access Guidelines](#) outline key requirements that increase the ITS JPO's return on investment for collecting or creating data, including making this data publicly accessible and open source. To operationalize these requirements, solicitations for ITS JPO projects producing data must have procurement language requiring adherence to relevant portions of the [ITS JPO Data Access Guidelines](#). The below language lays out requirements for Program Managers and acquisition personnel to input into ITS JPO-funded contracts that will create or collect data. This language is meant to be tailored as appropriate for specific procurements and requirements.

ITS JPO Program Managers and acquisition personnel must consider including elements of this language in a procurement if contract *might* collect or create data, even if it is not an explicit deliverable or deemed necessary at the solicitation stage. In particular, not including the Data Rights portion of this language opens up the U.S. DOT to risk that it will not receive or have appropriate rights to source code developed over the course of a project. If a project is expected to produce source code, ITS JPO Program Managers and acquisition personnel must also consider adding [procurement language](#) requiring adherence to the [ITS JPO Source Code Guidelines](#). This language may overlap in parts with the below language, so ITS JPO Program Managers and acquisition personnel must review all language (source code and data) to make sure it is clear, concise, not duplicative, and obtains appropriate artifacts and requirements for the ITS JPO.

II. How to Use This Language

This language is meant to be inserted into ITS JPO procurements for contracts by ITS JPO Program Managers and/or acquisition personnel. For more information on Data Management Plan deliverables requested as part of this language, see the [ITS JPO's Data Management Resources](#) page, including Templates & Instructions.

RFP Section	Data Access Guidelines Requirement	Suggested Data Access Language
C - Statement of Work	Preference for Existing Publicly Available Data	Projects shall make every attempt to use publicly available data and source code, or data and source code that can be made public, before using proprietary data and source code. Additionally, the U.S. DOT is looking for a Contractor that will use the latest data and source code methodologies and standards accepted by industry and is able to evolve with the latest industry-accepted methodologies and standards throughout the course of the project.
C - Statement of Work	Open Source	The U.S. DOT strongly prefers that the Contractor use, acquire and develop open source technologies throughout the course of the project and that any data collected or created for the project is open source. Open source is defined as publicly accessible works (including data) that can be used, modified, and shared by anyone, and distributed under licenses that comply with the definition of “Open Source” provided by the Open Source Initiative and/or meet the definition of “Free Software” provided by the Free Software Foundation. The priority of open source should be reflected in the Contractor's response.
C - Statement of Work	General Compliance	All work conducted under this contract must comply with all federal, U.S. DOT, ITS JPO, and other applicable policies and guidelines (e.g. the OPEN Government Data Act , U.S. DOT Public Access Plan with additional details for adherence to these requirement at https://ntl.bts.gov/public-access/how-comply , Federal Open Data Policy: M-13-13 memorandum for the Heads of Executive Departments and Agencies , and DOT Order 1351.28 Records Management directive) throughout the period of performance of this work, including those at https://www.its.dot.gov/data/#/resources/guidelines . The Contractor must also comply with new and updated policies throughout the period of performance, including updates to federal, U.S. DOT and ITS JPO policies and guidelines.

C - Statement of Work	Access, Security and Licensing	<p>The Contractor must make available to the U.S. DOT copies of all work developed in performance of this contract, including but not limited to software and data.</p> <p>Consistent with federal policy (OPEN Government Data Act), awardees must provide public access to data collected or created through the project unless a specific intellectual property, privacy, confidentiality, security, or other valid restriction on public access is identified by the U.S. DOT. This presumption in favor of openness must be reflected in the research project's preliminary and post-award DMP. Where valid restrictions exist, the Contractor must make data and associated documentation adhere to as many open source principles as possible. This may include making a redacted version of the data publicly accessible, using an incremental release schedule, or restricting access only to sensitive portions of the data.</p> <p>The Contractor must assign the Creative Commons Zero (CC0 1.0 Universal) license to all new data and associated documentation collected or created in performance of this contract. The assignment of this license must occur when the data is made publicly available and made explicit to the public. Project teams may retain existing licenses for any preexisting data or software integrated into project solutions. In the event preexisting data or software is used, the U.S. DOT only requires that project teams assign CC0 to new federally-funded data. The Contractor must make all licensing relationships with preexisting data or software clear in applications and documentation, including DMPs. The Contractor is required to include these obligations in any sub-awards or other related funding agreements.</p> <p>The U.S. DOT expects Contractors to remove Confidential Business Information (CBI) and Personally Identifiable Information (PII) before providing public access to project data. Data must adhere to all relevant federal and U.S. DOT security policies, including but not limited to FIPS 199, NIST SP 800-37, the DOT Cybersecurity Policy, the DOT Departmental Cybersecurity Compendium, the DOT Privacy Risk Management Policy, DOT Order 1351.19, and PII Breach Notification Controls. Contractors must use source code analysis tools or comparable means to analyze the code and/or compiled versions of code and detect and report weaknesses to U.S. DOT. Details around access and any requirements for</p>
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		<p>controlled access should be detailed in the Contractor's preliminary DMP and post-award DMP.</p> <p>Final research results must satisfy the reporting and compliance requirements as set forth in the U.S.DOT Public Access Plan, including, but not limited to, the use of Open Researcher and Contributor ID (ORCID) numbers, the creation and maintenance of a research project record in the Transportation Research Board's (TRB) Research in Progress (RiP) database, and the timely and complete submission of all required publications and associated digital datasets as such terms are defined in the U.S. DOT Public Access Plan. Additional information about how to comply with the requirements can be found at: https://ntl.bts.gov/public-access/how-comply.</p>
C - Statement of Work	Storage	<p>The Contractor should detail where they plan to store the data and for how long in their preliminary and post-award DMP. The Contractor may store their data in a Contractor-managed system, a third-party system, or a U.S. DOT-managed system. Details on these systems can be found at https://www.its.dot.gov/data/. Data storage systems used to store project data must provide an appropriate level of user access, functionality and data lifecycle management. If the Contractor plans to store their data in a non-U.S. DOT managed system (i.e. Contractor-managed or third-party), they must demonstrate in their preliminary DMP how this system adheres to or exceeds these requirements. If a non-U.S. DOT system does not provide user access, functionality and data lifecycle management that meets the U.S. DOT's requirements, the U.S. DOT has the right to require the project to use a different data storage system that does adhere to these requirements. Details on how the U.S. DOT may determine if a data storage system is appropriate can be found at https://ntl.bts.gov/public-access/guidelines-evaluating-repositories. Contractors should budget for the costs of data storage, sharing, and management as appropriate.</p>
C - Statement of Work / Section I - Contract Clauses	Data Rights	<p>Data rights under this contract shall be in accordance with FAR 52.227-14, Rights in Data.</p>

C - Statement of Work	Retention	Data and associated metadata collected or created under this contract must be retained and made accessible to the U.S. DOT for a minimum of five years. This retention period begins when the U.S. DOT first receives access to the data and associated metadata.
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<p>Section F - Deliveries or Performance</p>	<p>Standards</p>	<p>Consistent with federal policy (M-13-13 and the OPEN Government Data Act), the Contractor must use standards to promote data interoperability and openness. As much as possible, the Contractor should use underlying open standards that are maintained by a standards organization. Where existing standards are insufficient, the Contractor must describe how they will contribute to the development of new standards. Information on data standards must be provided in the post-award DMP.</p> <p>The Contractor must provide metadata on all data described in their DMP. In the preliminary DMP, the Contractor must indicate what metadata schema they will use to describe the data in various contexts, including at the field level describing the elements in the data, at the asset level describing the contents of the data generally in accordance with the Project Open Data Metadata Schema or another appropriate standard, and any other level that may be appropriate. After award, the Contractor must provide metadata in accordance with requests from the U.S. DOT in order for the U.S. DOT to provide this metadata to the public via the ITS DataHub and other data catalogs to facilitate data discovery, unless a specific privacy, confidentiality, security, or other valid restriction is identified. The Contractor can claim such restrictions when they submit their metadata, and should note any controlled-access requirements in their preliminary and post-award DMPs.</p> <p>The Contractor must provide a detailed description and all other supporting evidence and documentation (e.g., signed memorandum of understanding, executed data agreements, detailed plans on what and how to share data between partners, etc.) related to project data collection, management, sharing, and usage.</p> <p>The Contractor must make the data and associated documentation cited herein available on the U.S. DOT's website ITS DataHub (https://www.its.dot.gov/data/) when data creation or collection begins, and any other appropriate website as requested by the U.S. DOT. Note: All materials posted on a U.S. DOT website must be Section 508 compliant.</p> <p>Deliverables for this award include:</p> <ul style="list-style-type: none"> • Data and documentation that meet acceptance criteria as approved by the Government
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		<ul style="list-style-type: none"> • Documentation to include a Data Management Plan and any other documents deemed necessary. Templates and instructions for these materials can be found on ITS DataHub. All data documentation must be stored in the same location as the data and should describe how the data will be managed during and after the project. This documentation must contain, at a minimum: <ul style="list-style-type: none"> ○ A Data Management Plan, including at a minimum: <ul style="list-style-type: none"> ▪ Project Overview (summary information about the research project and its goals, as well as how the project's data helps the U.S. DOT achieve its goals, etc.) ▪ Data Overview (description of the nature, scope, and scale of the data that will be collected and/or created, etc.) ▪ Data Stewardship (details around maintaining data quality, safeguarding the data, access level, when data will be made available and how often it will be updated etc.)
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Section L - Instructions, Conditions, and Notices to Offeror's		<p>Contractors should describe how they will adhere to all requirements listed in Section C if this [RFP/RFQ/etc.]. Proposals should budget for the costs of data storage, sharing, and management as appropriate. Proposals must include a preliminary DMP that explains how the Contractor has thought through all aspects of data management and has appropriate plans to ensure data adheres to all relevant requirements and is made accessible while protecting privacy, confidentiality, and security. Templates and examples for these materials can be found on ITS DataHub.</p> <p>[No need to duplicate the following requirement if existing language covers PII and CBI marking] If the submission includes information the Contractor considers to be trade secret or confidential commercial or financial information, the Contractor should do the following: (1) Note on the front cover that the submission “Contains Confidential Business Information (CBI)”, (2) mark each affected page “CBI”, and (3) highlight or otherwise denote the CBI portions. [funding agency] protects such information from disclosure to the extent allowed under applicable law. If [funding agency] receives a Freedom of Information Act (FOIA) request for the information, [funding agency] will follow the procedures described in the Department’s FOIA regulations at 49 CFR part 7.</p>
Section M - Evaluation Factors for Award		<ul style="list-style-type: none"> • Responses that demonstrate a strong commitment to open source, publicly available and publicly accessible data in a way that appropriately addresses CBI or PII concerns will be viewed more positively. • A preliminary DMP that must be no longer than 10 pages will be evaluated for alignment to the solicitation's goals and adherence to the solicitation's requirements, as well as confidence that the Contractor has thought through all aspects of data management with the goal of public accessibility in mind.

Applicable Clauses:

- FAR 52.227-14, Rights in Data
- 17 U.S.C. 105, Subject matter of copyright: United States Government works