



Checklist Purpose

The DoD ESI has excelled at negotiating software licenses for commercial software applications for the DoD since 1998. DoD IT buyers reduce buying cycle time and risk by using ESI’s enterprise agreements (ESAs) with enhanced terms and conditions that support many DoD objectives and industry best practices. This checklist was compiled to provide a standardized set of steps to follow when using the ESI ESAs. It is not an exhaustive list and it should not be the only tool used to determine compliance with DoD acquisition regulations. It is only a checklist to use as a starting point and not to replace your Procurement Office’s guidance.

Requirements Determination

<input checked="" type="checkbox"/> Checklist Item	Guidance / Rationale
<input type="checkbox"/> Do Market Research	Gather market information for the commercial software products or solutions that can satisfy your requirements.
<input type="checkbox"/> Competitive or Sole Source <input type="checkbox"/> Technical Evaluation <input type="checkbox"/> Brand Name Justification	Has your market research identified just one product or many that can meet your requirements? If multiple products will satisfy the requirements, identify the minimum functionality needed and the basis for selection of the product. If only one brand name product will satisfy the requirements, a Limited Source Justification or Justification and Approval document must be prepared to comprehensively explain the rationale.
<input type="checkbox"/> Consider the Order of Precedence <input type="checkbox"/> Government Supply Sources <input type="checkbox"/> Inventory <input type="checkbox"/> ESI/SmartBUY Agreements <input type="checkbox"/> GSA Schedule <input type="checkbox"/> Other Existing Contracts <input type="checkbox"/> Open Market	Once the COTS product solution has been determined, become familiar with the vehicles pertinent to COTS software acquisition and potential sources of existing inventory that can be leveraged. FAR 8.002 and DFARS 208.002 regulations specify an order of precedence for use of Government supply sources The sources most pertinent to software acquisitions are listed below. Check to see if “DoD Inventory Exists” at www.esi.mil . Check if there is an ESI agreement for the required product. See DFARS 208.74 and DoDI 5000.2 Check if there is a DoD SmartBUY agreement for the required product. See DoD policy memo of December 22, 2005 See www.gsa.gov and www.gsaadvantage.gov If the required product is on an existing contract, review the applicable ordering procedures specified in the contract.



ENTERPRISE SOFTWARE INITIATIVE

Software Buyers Checklist

Pricing

<input checked="" type="checkbox"/> Checklist Item	Guidance / Rationale
<input type="checkbox"/> Do Market Research	Gather market information for the commercial software products or solutions that can satisfy your requirements.
<input type="checkbox"/> Are discounts appropriate for the size of the order?	What are other customers paying for similar quantities and what terms apply?
<input type="checkbox"/> Have ESI/SmartBUY discounts been quoted?	Check the ESI/SmartBUY agreement prices found at www.esi.mil .
<input type="checkbox"/> Have additional discounts been applied to large orders?	Spot discounting from the ESI/SmartBUY/GSA price is allowable and expected when buying large quantities. Most agreements require a competition at the order level so spot discounting can be obtained through the solicitation process.
<input type="checkbox"/> Has the SPM been contacted if ESI/SmartBUY is not the best value?	See DFARS 208.74 and follow the procedures at PGI 208.7403.
<input type="checkbox"/> Have options been included to fix price future requirements?	Consider the duration of the requirement. If out year coverage is needed, include options in the procurement to streamline future acquisitions and competitively secure fixed prices for known future needs.
<input type="checkbox"/> Is the first year of maintenance included in the license price?	Note that different software publishers may structure prices differently. Understand what is included in the base price. Or request a structure that is suited to your requirement.

Software Maintenance

<input checked="" type="checkbox"/> Checklist Item	Guidance / Rationale
<input type="checkbox"/> What does software maintenance include? <ul style="list-style-type: none"> <input type="checkbox"/> Right to all minor and major releases/upgrades and patches <input type="checkbox"/> Right to future versions <input type="checkbox"/> Technical support <input type="checkbox"/> Other benefits such as Training 	<p>Understand the terms of the commercial software maintenance. Know your rights. Clearly define the scope of maintenance that is included in the price. Updates and patches may be provided as a license right and may not require purchase of maintenance.</p> <p>Major releases and upgrades may be considered the right to a future version of the software and therefore would be considered software maintenance. Usually considered software maintenance.</p> <p>Dependent on publisher. May or may not be included in maintenance.</p> <p>Dependent on publisher. May or may not be included in maintenance.</p>
<input type="checkbox"/> Is software maintenance a product or a service?	Software maintenance is often considered "product". GSA Schedule definitions have changed; see GSA SINs 132-33 and 132-34. The determination of product/service could impact the allowable contract coverage period and funding.
<input type="checkbox"/> Is coverage period clearly defined? <ul style="list-style-type: none"> <input type="checkbox"/> Fixed term (1 year, 3 years) <input type="checkbox"/> Term based on date of order or end date. <input type="checkbox"/> Crossing fiscal years 	<p>Different software publishers have different maintenance coverage periods. Ensure full value for full payment. Prorate prices if the maintenance term is based on a specific end date that does not accommodate a full term.</p> <p>Protect against the potential funding gap when maintenance starts during a Continuing Resolution Authority.</p>
<input type="checkbox"/> Is there an "all or none" provision?	Some publishers may require all of the licensed software to be maintained, precluding the ability to reduce the quantity if use requirements change.



ENTERPRISE SOFTWARE INITIATIVE

Software Buyers Checklist

<input type="checkbox"/> Are maintenance prices reasonable and predictable? <input type="checkbox"/> Maintenance escalation should be capped for a number of years <input type="checkbox"/> Maintenance priced as a percentage needs clarity <input type="checkbox"/> Maintenance priced as a dollar amount	<p>Contract options may be appropriate to secure an escalation cap and/or lock in out year maintenance prices.</p> <p>Check current market conditions and CPI for escalation rates.</p> <p>Maintenance percentage should be applied to the PURCHASE price. Some commercial terms will specify list or catalog price so contracts need to be explicit. Research the market for reasonable rates. What have other organizations negotiated? What are the current metrics shown in the Research and Advisory publications?</p> <p>Do a sanity check. Check the maintenance ratio to license purchase price and measure against current market conditions.</p>
<input type="checkbox"/> Does the right to use the software terminate when payment of maintenance or support fees stops?	<p>This situation is usually associated with term type licenses; however all license and maintenance provisions must be reviewed regardless of license type.</p> <p>Purchase software licenses that provide for perpetual use rights when possible.</p>

License Terms and Conditions

<input checked="" type="checkbox"/> Checklist Item	Guidance / Rationale
<input type="checkbox"/> Check the End User License Agreement (EULA) <input type="checkbox"/> Check ESI/SmartBUY agreement to see what terms and conditions have been addressed. <input type="checkbox"/> Check GSA schedule for license rights. <input type="checkbox"/> Check for provisions that conflict with federal procurement laws. <input type="checkbox"/> Check to ensure all rights are clearly defined, quantifiable, and predictable.	<p>Some ESI/SmartBUY agreements have license addendums that revise the EULA.</p> <p>Software licensing is addressed in SIN 132-33.</p> <p>A software EULA is a commercial document and must be scrubbed for conflicting provisions to those found in the FAR/DFARS commercial contract clauses.</p> <p>Add definitions and examples for clarity.</p>
<input type="checkbox"/> Understand Use Rights <input type="checkbox"/> License Scope <input type="checkbox"/> Identify the entities that are permitted to use the software <input type="checkbox"/> Fully define terms such as Enterprise, Program, Affiliate and Subsidiary <input type="checkbox"/> License Use <input type="checkbox"/> Identify how the product is licensed (Named User, Concurrent User, Device, CPU, etc.) <input type="checkbox"/> Check for additional rights such as laptop and home use <input type="checkbox"/> Check for unusual license metrics such as use charges tied to virtual machines or remote access <input type="checkbox"/> Check for specific license restrictions such as to hardware make/model or geographic location	<p>Address License Scope, License Use, License Type</p>



ENTERPRISE SOFTWARE INITIATIVE

Software Buyers Checklist

<ul style="list-style-type: none"> <input type="checkbox"/> License Type – Perpetual versus Term License <ul style="list-style-type: none"> <input type="checkbox"/> Consider duration of requirement <input type="checkbox"/> Consider funding issues <input type="checkbox"/> Protect software investment if the software publisher changes their licensing model in the future. 	<p>Is the requirement short term or recurring? Term licenses (limited to a duration of time) may necessitate a different color of money than purchase of perpetual licenses. For example, if a software company changes their licensing model from a subscription to perpetual model, the contract price should consider a certain percentage of all amounts already paid towards the new purchase price.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Contractor Use Rights <ul style="list-style-type: none"> <input type="checkbox"/> Consider Outsourcing – Outsourcing permits the outsourced contractor to purchase and use software in support of the government customer. <input type="checkbox"/> Consider 3rd party use – Contractors working on behalf of the government are usually considered 3rd parties. 	<p>Specify who owns the licenses; government or contractor. Be sure that 3rd parties have use rights when working on behalf of government or when providing services to host government owned licenses.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Audit Provisions <ul style="list-style-type: none"> <input type="checkbox"/> Retain right to self audit <input type="checkbox"/> At a minimum, protect government rights <ul style="list-style-type: none"> <input type="checkbox"/> Require appropriate security clearances <input type="checkbox"/> Require advance notice of audit <input type="checkbox"/> Remove any payment obligations <input type="checkbox"/> Require a confidentiality clause to preclude “sharing” of audit results <input type="checkbox"/> Know how to count 	
<ul style="list-style-type: none"> <input type="checkbox"/> Termination rights 	<p>Understand impact to software use and maintenance rights if order is terminated without completion of expected payments.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Rights of Survival clauses <ul style="list-style-type: none"> <input type="checkbox"/> Address retention of rights when vendors are bought by other companies. <input type="checkbox"/> Address repackaging of software. 	<p>Include language to ensure continued use of licensed software if a company is sold. Include language to ensure that there is a right to use already licensed software with no change to maintenance and support fees if the software company creates (or acquires) a substantially similar product (to the one already licensed) and markets it as a new product.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Transfer rights <ul style="list-style-type: none"> <input type="checkbox"/> Check for limitations on movement or transfer within or between components, organizations, programs, etc. <input type="checkbox"/> Consider notice requirements <input type="checkbox"/> Address software rights in the event of merger or divestiture 	



ENTERPRISE SOFTWARE INITIATIVE

Software Buyers Checklist

<input type="checkbox"/> Software distribution <ul style="list-style-type: none"> <input type="checkbox"/> Hard Copy Media <input type="checkbox"/> Media Copies <input type="checkbox"/> Electronic Distribution (to permit central distribution, user access, etc.) 	<p>Address software distribution in the requirement if applicable.</p> <p>Is hard copy media identified and included in the purchase price?</p> <p>Is there a right (free of charge) to make unlimited copies of the software for internal use in non-production instances?</p> <p>Is electronic download available or are there special distribution scenarios that need to be addressed in the requirement and used in the evaluation for award?</p>
<input type="checkbox"/> Additional terms for consideration as appropriate <ul style="list-style-type: none"> <input type="checkbox"/> Disaster Recovery <input type="checkbox"/> Test & Development <input type="checkbox"/> Terms for Times of Conflict <input type="checkbox"/> Escrow agreement <input type="checkbox"/> Customer unique requirements such as training or development of customized reports 	<p>Escrow is usually only applicable in critical use situations. An escrow account can be negotiated that permits customer access to the software source code under certain defined situations. Escrow agreements typically carry a small charge per year. Negotiate requirements into the license purchase at no additional cost.</p>
<input type="checkbox"/> Document negotiated changes in resultant contract <ul style="list-style-type: none"> <input type="checkbox"/> Use definitions <input type="checkbox"/> Use examples to eliminate ambiguity <input type="checkbox"/> Clearly define additional license rights and specify the addendum changes are at no additional cost. <input type="checkbox"/> Check that a right granted in one area is not changed or removed by another provision. 	

Regulations and Policy Guidance

- Applicable FAR/DFARS policies: DFARS 208.74 provides policy regarding consideration of ESI agreements
- DoD SmartBUY policy memo of December 22, 2005 provides guidance on the use of SmartBUY vehicles and states that SmartBUY in DoD is implemented through the ESI
- DoDI 5000.02, Enclosure 5 states, "When the use of commercial IT is considered viable, maximum leverage of and coordination with the DoD ESI shall be made."
- Section 508 of the Rehabilitation Act:
 - Products must meet the applicable accessibility standards at 36 CFR Part 1194 as required by FAR Case 1999-607.
 - General information regarding the Section 508 Act can be found at the web site www.section508.gov.
- DoD IT Standards Repository (DISR):
 - The DISR is maintained by the DoD Executive Agent for IT Standards.
 - The DoD IT standards management tool, DISRonline is available for use by CAC-equipped authorized parties and can be accessed for account requests at <https://disronline.disa.mil>.



ENTERPRISE SOFTWARE INITIATIVE

Software Buyers Checklist

Internet Protocol version 6 (IPv6):

OMB requires that agencies enable their core networks to handle IPv6 traffic.
As a part of this process, agencies must procure IPv6 compatible products.

Net-Centricity:

DoD is transforming the way information is managed to accelerate decision-making, improve joint warfighting and create intelligence advantages.

To reach this "Net-Centric" state, DoD must exploit advancing technologies that move the enterprise from an application centric to a data-centric paradigm.

OSD NII DCIO Net-Centric Checklist, located at http://www.defenselink.mil/cio-nii/docs/NetCentric_Checklist_v2-1-3_.pdf, provides information on the Net-Centric posture of their IT products and services.

Common Security Configuration:

The Office of Management and Budget (OMB) issued policy memorandum M-07-11, "Implementation of Commonly Accepted Security Configurations for Windows Operating Systems," which stated: "agencies with these operating systems [Windows XP and VISTA] and/or plans to upgrade to these operating systems must adopt these standard security configurations by February 1, 2008."

OMB memo M-07-18, "Ensuring New Acquisitions Include Common Security Configurations," provides recommended language for agencies to use in solicitations to ensure new acquisitions include these common security configurations and IT providers certify their products operate effectively using these configurations.

For more information go to www.csrc.nist.gov/itsec.

Support

If you have any questions about ESI, please contact the Software Product Manager (SPM) or the Contracting Office assigned to the vendor or product you are seeking to acquire. Contact information is available on the ESI web site under the section titled "Ask a SPM".

www.esi.mil