



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Class Deviation

PCD 21-02
September 14, 2021

FEDERAL ACQUISITION REGULATION (FAR) CLASS DEVIATION – PROTECTION OF DATA UNDER THE SMALL BUSINESS INNOVATIVE RESEARCH/SMALL TECHNOLOGY TRANSFER RESEARCH (SBIR/STTR) PROGRAM (NASA Case 2021-N009)

PURPOSE: Effect a class deviation from the FAR to implement the Small Business Administration's Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Program Policy Directive published in the Federal Register on April 2, 2019 (84 FR 12794) and effective on May 2, 2019, extending the period of time during which the Government must protect SBIR/STTR Data.

GUIDANCE: Currently, under FAR 52.227-20, Rights in Data-SBIR Program (MAY 2014), the Government is obligated to protect SBIR Data against unauthorized use and disclosure in accordance with SBIR Data Rights. The SBIR Protection Period under the current FAR clause is for a period of 4 years beginning after acceptance of all items to be delivered under the contract. The 4 year period is consistent with FAR 27.409(h) which implements the SBA SBIR Policy Directive dated September 24, 2002.

The SBIR/STTR Program Policy Directive effective May 2, 2019 extends the period of time during which the Government must protect SBIR/STTR Data against unauthorized use and disclosure. This protection period begins at contract award and ends 20 years after contract award.

FAR Case 2020-010, Small Business Innovation Research and Technology Transfer Programs, has been opened to implement changes related to data rights in the revised SBIR/STTR Program Policy Directive. The FAR case also implements competition requirements unique to Phase III awards under the SBIR and STTR Programs. However, NASA desires to implement the extended data rights protection period prior to publication of the FAR changes.

ACTION REQUIRED BY CONTRACTING OFFICERS: Effective with this PCD, contracting officers shall follow the period of protection provided in this class deviation when issuing solicitations and awarding contracts associated with the SBIR/STTR Program.

EFFECTIVE DATE: This PCD is effective as dated and shall remain in effect until it is incorporated into the FAR or until this class deviation is otherwise rescinded.

CLAUSE CHANGES: FAR clauses 52.227-20, Rights in Data – SBIR Program (DEVIATION)

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Enclosure

- Additions to baseline made by proposed rule are indicated by **[bold text in brackets]**
- Deletions to baseline made by proposed rule are indicated by ~~strikethroughs with yellow highlight~~
- Five asterisks (* * * * *) indicate that there are no revisions between the preceding and following sections
- Three asterisks (* * *) indicate that there are no revisions between the material shown within a subsection

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27.409 Solicitation provisions and contract clauses.

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(h) If the contract is a Small Business Innovation Research (SBIR) **[or Small Business Technology Transfer (STTR)]** contract, insert the clause at 52.227-20, Rights in Data-SBIR Program in all Phase I, Phase II, and Phase III contracts awarded under the ~~Small Business Innovation Research~~ **[SBIR or STTR]** Program established pursuant to [15 U. S.C. 638]. ~~The SBIR protection period may be extended in accordance with the Small Business Administration’s “Small Business Innovation Research Program Policy Directive” (September 24, 2002).~~ **[This clause implements 15 U.S.C. 638 and the Small Business Administration’s “Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Program Policy Directive” (84 FR 12794, April 2, 2019; see www.sbir.gov). After award of the contract, the contractor and the contracting officer may negotiate a different SBIR/STTR protection period than the one specified in the SBIR/STTR Rights Notice referenced in paragraph (d) of the clause. If a different SBIR/STTR protection period is negotiated, paragraph (d) requires the contractor to revise the SBIR/STTR Rights Notice to reflect the negotiated period.]**

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52.227-20 Rights in Data – SBIR Program.

As prescribed in 27.409(h), insert the following clause:

RIGHTS IN DATA-SBIR PROGRAM (~~MAY 2014~~**[DEVIATION 21-02]**)

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(d) Rights to **[and marking of]** SBIR data. (1) The Contractor is authorized to affix the following “SBIR Rights Notice” to SBIR data delivered under this contract and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

SBIR Rights Notice (~~Dec 2007~~**[DEVIATION 21-02]**)

These SBIR data are furnished with SBIR rights under Contract No. _____ **[, date of award _____,]** (and subcontract _____, if appropriate). For a period of ~~4~~ **[20]** years, ~~unless extended in accordance with FAR 27.409(h), after acceptance of all items to be delivered under this contract~~ **[starting from the date of award]**, the Government will use these data for Government purposes only, and they shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without permission of the Contractor, **[(unless specifically permitted elsewhere in the contract)]** except that, subject to the foregoing use and disclosure prohibitions, these data may be disclosed for use by support Contractors. After the **[SBIR]** protection period **[ends]**, the Government has a paid-up

license to use, and to authorize others to use on its behalf, these data for Government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This notice shall be affixed to any reproductions of these data, in whole or in part.

(End of notice)

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