

# 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*)

(a) *Definitions*. As used in this clause-

*Computer database* or "database" means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include *computer software*.

*Computer software*-

(1) Means.

(i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include *computer databases* or *computer software documentation*.

*Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the *computer software* or provide instructions for using the software.

*Data* means recorded information, regardless of form or the media on which it *may* be recorded. The term includes *technical data* and *computer software*. The term does not include information incidental to contract administration, such as financial, administrative, cost or *pricing* or management information.

*Form, fit, and function data* means *data* relating to items, *components*, or processes that are sufficient to enable physical and functional interchangeability, and *data* identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For *computer software* it means *data* identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

*Limited rights data* means *data* (other than *computer software*) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

*Restricted computer software* means *computer software* developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted *computer software*, including minor modifications of the *computer software*.

*SBIR data* means *data* first produced by a Contractor that is a small business concern in

performance of a small business innovation research contract issued under the authority of 15 U.S.C. 638, which *data* are not generally known, and which *data* without obligation as to its confidentiality have not been made available to others by the Contractor or are not already available to the Government.

*SBIR rights* means the rights in *SBIR data* set forth in the *SBIR Rights* Notice of paragraph (d) of this clause.

*Technical data* means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including *computer databases* and *computer software documentation*). This term does not include *computer software* or financial, administrative, cost or *pricing*, or management *data* or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in *computer databases*. (See 41 U.S.C. 116.)

*Unlimited rights* means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government *shall* have *unlimited rights* in-

(i) *Data* specifically identified in this contract as *data* to be delivered without restriction;

(ii) *Form, fit, and function data* delivered under this contract;

(iii) *Data* delivered under this contract (except for *restricted computer software*) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, *components*, or processes delivered or furnished for use under this contract; and

(iv) All other *data* delivered under this contract unless provided otherwise for *SBIR data* in accordance with paragraph (d) of this clause or for *limited rights data* or *restricted computer software* in accordance with paragraph (f) of this clause.

(2) The Contractor *shall* have the right to-

(i) Assert copyright in *data* first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Protect *SBIR rights* in *SBIR data* delivered under this contract in the manner and to the extent provided in paragraph (d) of this clause;

(iii) Substantiate use of, add, or correct *SBIR rights* or copyright notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and

(iv) Withhold from delivery those *data* which are *limited rights data* or *restricted computer software* to the extent provided in paragraph (f) of this clause.

(c) Copyright-

(1) *Data* first produced in the performance of this contract.

(i) Except as otherwise specifically provided in this contract, the Contractor *may* assert copyright subsisting in any *data* first produced in the performance of this contract.

(ii) When asserting copyright, the Contractor *shall* affix the applicable copyright notice of 17 U.S.C. 401 or 402 and an acknowledgment of Government sponsorship (including contract number).

(iii) For *data* other than *computer software*, the Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For *computer software*, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted *computer software* to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract*. The Contractor *shall* not, without prior written permission of the *Contracting Officer*, incorporate in *data* delivered under this contract any *data* that are not first produced in the performance of this contract unless the Contractor (i) identifies such *data* and (ii) grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(3) *Removal of copyright notices*. The Government will not remove any copyright notices placed on *data* pursuant to this paragraph (c), and will include such notices on all reproductions of the *data*.

(d) Rights to *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)

These *SBIR data* are furnished with *SBIR rights* under Contract No. \_\_\_\_ (and subcontract \_\_\_\_, if appropriate). For a period of 4 years, unless extended in accordance with FAR 27.409(h), after acceptance of all items to be delivered under this contract, 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, except that, subject to the foregoing use and disclosure prohibitions, these *data may* be disclosed for use by support Contractors. After the protection period, 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)

(2) The Government's sole obligation with respect to any *SBIR data shall* be as set forth in this paragraph (d).

(e) Omitted or incorrect markings.

(1) *Data* delivered to the Government without any notice authorized by paragraph (d) of this clause *shall* be deemed to have been furnished with *unlimited rights*. The Government assumes no liability for the disclosure, use, or reproduction of such *data*.

(2) If the unmarked *data* has not been disclosed without restriction outside the Government, the Contractor *may* request, within 6 months (or a longer time approved by the *Contracting Officer in writing* for good cause shown) after delivery of the *data*, permission to have authorized notices placed on the *data* at the Contractor's expense, and the *Contracting Officer may* agree to do so if the Contractor-

(i) Identifies the *data* to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such *data* made prior to the addition of the notice or resulting from the omission of the notice.

(3) If the *data* has been marked with an incorrect notice, the *Contracting Officer may*-

(i) Permit correction of the notice at the Contractor's expense, if the Contractor identifies the *data* and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(f) *Protection of limited rights data and restricted computer software*. The Contractor *may* withhold from delivery qualifying *limited rights data* and *restricted computer software* that are not identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor *shall* identify the *data* being withheld, and furnish *form, fit, and function data* instead.

(g) *Subcontracting*. The Contractor *shall* obtain from its subcontractors all *data* and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor *shall* promptly notify the *Contracting Officer* of the refusal and not proceed with the subcontract award without further authorization *in writing* from the *Contracting Officer*.

(h) *Relationship to patents*. Nothing contained in this clause *shall* imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

**Parent topic:** [52.227 \[Reserved\]](#)