PGI 227.71 - TECHNICAL DATA AND ASSOCIATED RIGHTS

Parent topic: PGI Part 227 - TECHNICAL DATA AND ASSOCIATED RIGHTS

PGI 227.7103 Other than commercial products, commercial services, or commercial processes.

PGI 227.7103-2 Acquisition of technical data.

(b)(1) See DoDI 5010.44, Intellectual Property (IP) Acquisition and Licensing, sections 4.1 and 4.2, when formulating business advice and contract implementation strategies regarding the program manager's tailoring of technical data requirements to the needs of the Government.

PGI 227.7104 Contracts under the Small Business Innovation Research Program and Small Business Technology Transfer Program.

PGI 227.7104-1 Policy.

See section 4(c) of the Small Business Administration's Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Program Policy Directive (effective May 3, 2023) for guidance on examples of SBIR/STTR phase III, which is available at https://www.sbir.gov/sites/default/files/SBA%20SBIR_STTR_POLICY_DIRECTIVE_May2023.pdf.

PGI 227.7104-2 Rights in SBIR or STTR data.

The clause under which the SBIR/STTR data were generated or developed will govern the Government's license rights in such SBIR/STTR data. The following examples illustratethe definition of the SBIR/STTR data protection period and the applicability of the DFARS 252.227-7018 clause:

(1) Redelivery of SBIR data.

(i) SBIR data first generated under a prior SBIR clause and redelivered under the current SBIR clause. In this example, a contractor generates and delivers SBIR data under a 2016 phase II SBIR contract that includes a prior version of the clause at DFARS 252.227-7018. The contractor delivers identical data in a contiguous series of follow-on contracts, including a later phase III contract that is an extension of the research effort in the 2016 contract. That phase III contract includes the current version of the clause at DFARS 252.227-7018. The contractor asserts SBIR data rights in these data. The 2016 contract included the clause at DFARS 252.227-7018, which defined the SBIR

data protection period as the period commencing with contract award and ending upon the date 5 years after completion of the project from which such data were generated. This previous definition of the SBIR data protection period applies to the redelivered SBIR data in the contiguous series of follow-on contracts, including the later phase III contract. The SBIR data protection period is extended because the later contract derives from, extends, or completes an effort made under a prior SBIR contract that included the prior version of the clause at DFARS 252.227-7018. This is the case even under later contracts that include the current version of the clause at DFARS 252.227-7018 with a non-extendable 20-year SBIR/STTR data protection period. In addition, the SBIR data protection period from the prior version of the clause at DFARS 252.227-7018 may be extended indefinitely for subsequent redeliveries of identical SBIR data as long as the SBIR project has not been completed.

(ii) SBIR data first delivered with the 20-year SBIR data protection period and later redelivered under the current SBIR clause. In another example, a contractor generates and delivers SBIR data under a 2021 phase II SBIR contract. The contractor delivers identical data under a later phase III contract that is an extension of the research effort in the 2021 contract. The contractor asserts SBIR data rights in these data. That 2021 contract included a version of the DFARS 252.227-7018 clause that defines the SBIR data protection period as the period commencing on the date of contract award and ending 20 years after that date. The same definition of the SBIR/STTR data protection period applies to the redelivered SBIR data in the later phase III contract. Redelivery of identical SBIR data under any later contract will not extend the 20-year SBIR data protection period.

(2) Modifications to previously delivered SBIR or STTR data. A contractor generates and delivers SBIR/STTR data under a phase II STTR contract with the current version of the clause at DFARS 252.227-7018. The contractor develops and delivers modified STTR data under a later phase III contract. The contractor asserts SBIR/STTR data rights in these data. The previously delivered portions of the STTR data will be governed by the previous SBIR/STTR data protection period, while the newly developed portions of the STTR data will be governed by a new 20-year SBIR/STTR data protection period.

(3) SBIR or STTR data delivered under a contract and the contractor was not awarded a SBIR or STTR contract. A subcontractor was awarded a SBIR phase I contract. Later, the subcontractor performed SBIR phase III work under a contract awarded to a contractor who was not awarded a SBIR or STTR contract. The subcontractor furnished technical data and computer software deliverables related to SBIR phase III work performed under this contract. This technical data and computer software was furnished to the Government with SBIR data rights. The clause at DFARS 252.227-7018 should have been included either in the initial contract or via a contract modification, and the Government’s rights in this SBIR data are subject to the terms of the clause at DFARS 252.227-7018.