



Entrepreneurial Training & Consulting

New data rights provisions are appearing in Small Business Innovation Research (SBIR) contracts.

On March 17, 2020, the DoD issued [class deviation 2020-O0007](#) containing major implications for small businesses applying for DoD contracts under the SBIR program. The SBIR program has been providing funding for small businesses since 1982 to perform federally funded research and development (R&D) as well as to commercialize innovations coming from those R&D efforts.

The federal government allocates \$3.7 billion annually to fund the SBIR and its sister program, the Small Business Technology Transfer (STTR) program. Both programs are designed to strengthen small businesses, and the way they allocate data rights is more advantageous to small businesses than typical government contracts. The DoD's new class deviation substantially revises how data rights are allocated for SBIR contracts.

The Department of Defense (DoD) class deviation addressing SBIR contracts will cause contracts with the new language to *provide SBIR Data Rights protection for 20 years from the first award instead of the traditional five years after final award*. At the end of the protection period, the DoD will receive Government Purpose Rights, instead of Unlimited Rights.

Key changes from the deviation

The Deviation requires DoD contracting officers to substitute the deviation's language for the regulatorily prescribed SBIR Data Rights Clause, DFARS 252.227-7018.

Among other things, this deviation

- Imposes a **finite protection period of 20 years** for SBIR data (during which the Government has only SBIR data rights)
- **Eliminates the possibility of extensions** of SBIR Data Rights through follow-on awards

- Provides the Government with **only Government Purpose Rights** instead of Unlimited Rights after expiration of the protection period

Contractors will no doubt welcome the certainty that comes with the new 20-year term, but contractors are losing the ability to establish successive five-year protection periods through subsequent SBIR awards — which in some cases has enabled contractors to extend the period of protection even beyond 20 years.

Impetus for the deviation and anticipated future contract clause revisions

The Deviation seeks to implement the Small Business Administration's revised [SBIR/STTR Policy Directive](#), which became effective on May 2, 2019.

Despite the effective date, the Policy Directive's effect on SBIR contracts has been limited because agencies must publish new contract language to implement many of the directive's policies. The Deviation does this, on an interim basis, for the DoD.

The SBA has the authority to direct agencies' actions regarding SBIR contracts, and agencies cannot promote policies or regulations that are inconsistent with the SBA's SBIR/STTR Policy Directive. So, both the DoD and civilian agencies are working to issue new DFARS and FAR clauses to implement the SBA's updated directive. The DoD is reviewing a draft DFARS rule. (See Defense Acquisition Regulations Council 2019-D043.) Changes to the FAR for civilian agencies' SBIR contracts are to come.