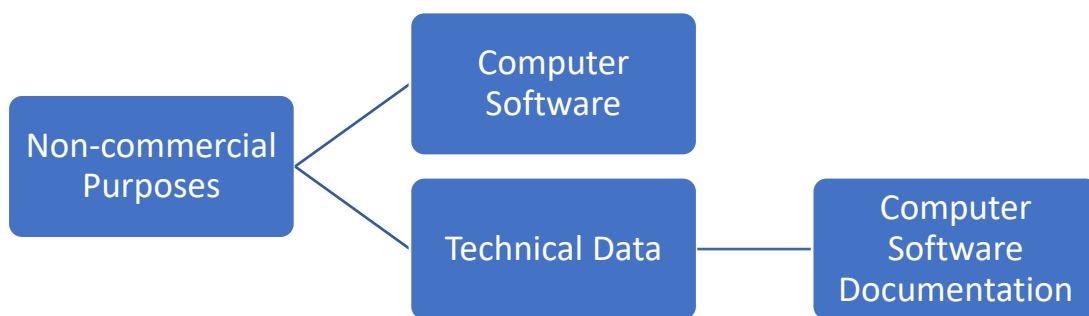# TIGER TIPS

Contractor Data Rights Assertions

Defense Federal Acquisitions Regulation (DFAR) provision 252.227-7017 **requires contractors to "assert" in their proposals** their belief that certain Technical Data or Computer Software ordered in the Request for Proposal (RFP) should be provided to the Government with less than Unlimited Rights (i.e., with restrictions on the Government's use of that data). The provision also requires a rationale for each assertion be provided.

The Federal Acquisitions Regulation (FAR) and DFAR treatment of data is **only** in terms of the Government's right to use that data on its behalf.

For AU's purposes, this will be for non-commercial purposes and includes two tracks:

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Non-commercial        Computer
Purposes              Software

                      Technical Data ── Computer
                                          Software
                                          Documentation
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Definitions: *[Pursuant to FAR 52.227-14]*

Computer database: 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: (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. [**Does not include computer databases or computer software documentation**.]

Computer software documentation: 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: 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.

Technical data: 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.

Unlimited Rights: The broadest rights that may be granted to the government in technical data or computer software. They allow the government to, among other things, use or disclose the contractor's technical data and/or computer software **for any purpose whatsoever**. These rights also allow the government to permit others, including other companies, to do the same. In other words, with unlimited rights, the government can provide a company's technical data or computer software to one of the contractor's competitors and that competitor can use it for any purpose, including for any nongovernmental (i.e., commercial) purpose.

Government Purpose Rights: These rights give the Government the ability to reproduce, modify, perform, display, use, disclose, or release the data for Government purposes without restriction. **However, the Government cannot release the data for any commercial purpose**. These rights are essentially a middle path unique to defense contracts that offers a way for contractors to exploit data in the commercial market for a limited time while the Government also gets immediate benefits. Government Purpose Rights expire after a time limit (the standard is five years after contract execution unless another time is negotiated in the contract) at which point the Government Purpose Rights become Unlimited Rights.

Limited Rights: The most restrictive rights that may be granted to the government in technical data. With limited rights, the government may use or reproduce the technical data, but generally is prohibited from disclosing it outside the government or using it for manufacturing purposes.

Restricted Rights: Refers to the most restrictive rights that may be granted to the government in computer software and include, among other things, the right to use or copy for use the software for the specific computer for which it was acquired.

Small Business Innovation Research (SBIR) rights: Applies to both Technical Data associated with noncommercial products and noncommercial Computer Software. These rights apply when the Government enters into a research and development effort awarded as a Small Business Innovation Research contract. If a product was developed as part of an SBIR effort, the Government is entitled to SBIR Data Rights, which are generally equivalent to Limited or Restricted Rights, but for a fixed period known as the SBIR data rights period. This time frame is defined in DFARS 252.227-7018 as "...the period commencing with contract award and ending upon the date five years after completion of the project from which such data were generated." The completion date should be understood and agreed to by all parties at the start of an SBIR effort.

Specifically Negotiated License Rights: Applies whenever the standard license arrangements are modified to the mutual agreement of the contractor and the government. In this case, the exact terms are spelled out in a specific license agreement unique to each application.

Relevant FAR/DFAR Clauses:

FAR 227.71 (Rights in Technical Data) FAR subpart 27.401 (data definition)
FAR 227.72 (Rights in Computer Software and Computer Software Documentation)

The most common data rights clause is FAR 52.227-14, "Rights in Data—General." Covering both technical data and computer software, FAR 52.227- 14 defines the various types of rights the government may obtain and explains when the government obtains them.

DFAR 252.227-7013
DFAR 252.227-7014

In DOD procurements, under the standard data rights clauses (i.e., DFARS 252.227-7013 and DFARS 252.227-7014), the government may also acquire government purpose rights in technical data and/or computer software. Government purpose rights permit the government to use technical data and computer software within the government without restriction, and also authorize the government to release such technical data and computer software to third parties to use for government purposes, including, most significantly, reprocurement purposes. Government purpose rights revert to unlimited rights after a specified period - typically five years.

Development at Private Expense:

If developed exclusively at private expense, the government normally obtains only limited rights (in technical data) or restricted rights (in computer software). If developed exclusively at government expense, the government will obtain unlimited rights. And **for DOD procurements, if both government and private funds were used for development, the government will obtain government purpose rights.**

The DFARS defines the phrase developed exclusively at private expense as development that "*was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.*" In other words, private expense includes direct contract charges on nongovernment contracts as well as indirect charges, such as independent research and development and bid and proposal funds, even though such charges may be recoverable, in part, under cost-type government contracts. By contrast, government expense is limited to direct contract charges for any aspect of the development effort.

Data Assertion Reporting:

Technical data to be furnished with restrictions (1)	Basis for assertion (2)	Asserted Rights Category (3)	Name of person asserting restrictions
(List)	(List)	(List)	Auburn University

(1) If the assertion is applicable to items, components or processes developed at private expense, identify both the data and each such item, component, or process.

*(2) Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data pertaining to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. **If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.***

(3) Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited or government purpose rights under this or a prior contract, or specifically negotiated licenses).