



6 June 2023

Robert Schmidt
Kevin Burns
Co-Chairmen

Jere Glover
Executive Director

Larry Nannis
Treasurer

Matt Oristano
Mid-Atlantic
Regional Chair

Ash Thakker
Southeast
Regional Chair

Mary Delahunty
Southwest
Regional Chair

Russ Farmer
Mountain
Regional Chair

Michael Browne
Pacific
Regional Chair

Roy Keller
State Liaison

Paul Donovan
Michael Squillante
NIH Committee
Co-Chairs

Ash Thakker
Phase III Committee
Chair

Russ Farmer
DCAA Committee
Chair

RE: Notice of Proposed Rule to implement changes to SBIR/STTR Data Rights Protection Period in the FAR on 4/7/2023

FAR Case 2020-010

RIN: 9000-AO12

Document Number: 2023-06420

The Small Business Technology Council (SBTC) – a council of the National Small Business Association – advocates on behalf of the 6,000 Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) participant companies. These SBIR/STTR companies produce more patents than all the American universities combined and are likely the largest producers of new R&D data rights to the Federal government.

SBIR/STTR firms have created over 20 percent of America's major innovations (R&D 100 awards), despite receiving less than 5% percent of Federal R&D funding. SBIR/STTR firms produce 16 times more patents per employee than large patenting firms. It is also highly likely that SBIR/STTR companies as a group are the major licensee of university created technology.

Technology-focused small businesses contribute new technology, competitive strength and high-quality job vitality to the American economy. Such businesses depend on strong and predictable data rights and patent rights to survive. Data rights and patent regulations that increase uncertainty and add unnecessary costs stifle innovation and add anti-competitive barriers to entry against such high-tech small businesses and their new technologies, while protecting the market share and power of large companies and incumbent technologies. These small innovative companies take substantial risk to power the American economy. Without the foundation of stable, accessible, and defensible data and patent rights, small business simply cannot obtain the return-on-investment necessary to justify those risks and secure capital.

SBTC broadly supports these proposed changes to the FAR, which will be a major benefit to small businesses participating in the SBIR and STTR programs. The 20-year data rights protection period offers firms participating in the SBIR and STTR programs a major incentive to participate in government-funded research, which is often risky and doesn't necessarily have much market potential. Formalizing these rules in the FAR and DFAR will provide clarity to contracting officers and reduce the burden of small businesses having to educate those officers on the intricacies of SBIR data rights. SBTC and its member companies greatly appreciate the efforts of the GSA, DOD, and NASA, in updating the FAR and DFAR clauses to be consistent with the Small Business Administration's SBIR and STTR Program Policy Directives (effective May 2, 2019).

Regarding the more specific comments on changes, SBTC supports and endorses the American Bar Association's comprehensive and well-written comment on this subject (labeled ABA FAR-2020-0010-0002_attachment_1). We encourage those ABA comments to be incorporated into the final rules.