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RE: Department of Defense (DOD) Notice of Proposed Rule by Defense Acquisition Regulations System on 12/19/2022 - Defense Federal Acquisition Regulation Supplement: Small Business Innovation Research Data Rights  
DFARS Case 2019-D043

RIN: 0750-AK84  
Document Number: 2022-27196

To: Department of Defense (DOD) DAR Council

The Small Business Technology Council (SBTC) and its member companies greatly appreciate the efforts of the Department of Defense, and its IP Cadre, in updating the DFARS clauses to be consistent with the Small Business Administration's SBIR and STTR Program Policy Directive (effective May 2, 2019). Overall, SBTC supports the proposed changes and believes that the changes are consistent with the Directive and that they will benefit small businesses.

SBTC is the nation's largest association of small, technology-based companies in diverse fields, and is proud to serve as the technology council of the National Small Business Association (NSBA), the nation's oldest nonprofit advocacy organization for small business, serving more than 150,000 small companies throughout the United States. SBTC's membership are primary participants in the nation's Small Business Innovation Research/Small Business Technology Transfer (SBIR) program, which is a mainstay of American innovation, small business growth, and contribution to America's technology-based economy and the Department of Defense's continuing strengthening of its technology-based sources of strategic and tactical advantage.

SBTC presents the following comments with the hope that they will further improve the proposed changes. Below is a listing of each DFARS section of concern followed by our comment on the requested change or revision.

**Discussion of DFARS 227.7103-6 Contract Clause**

SBTC Comment: SBTC requests that this clause be revised as shown below to include the underlined text incorporating language from the 2019 SBIR Policy Directive Section 4(c) which describes SBIR Phase III contracts. According to the Policy Directive Section 4(c)(2), "A Phase III award is, by its nature an SBIR/STTR award, has SBIR/STTR status, and must include SBIR/STTR Data Rights protection." Therefore, in clarifying the instruction to DOD contract personnel regarding the appropriate use of DFAR 252.227-7013 in this DFAR 227.7103-6 clause, it is SBTC's position that the clause should be revised as shown below including the underlined language.

- (a) Use the clause at 252.227-7013, Rights in Technical Data-Noncommercial Items, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the successful offeror(s)



will be required to deliver to the Government technical data pertaining to noncommercial items, or pertaining to commercial items for which the Government will have paid for any portion of the development costs (in which case the clause at 252.227-7013 will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense, and the clause at 252.227-7015 will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense). Do not use the clause when the only deliverable items are computer software or computer software documentation (see 227.72), commercial items developed exclusively at private expense (see 227.7102-4), existing works (see 227.7105), special works (see 227.7106), **when contracting under the Small Business Innovation Research (SBIR) Program or the Small Business Technology Transfer (STTR) Program, or when contracting for work that derives from, extends, or completes an effort made under prior SBIR/STTR Funding Agreements, but is funded by sources other than the SBIR/STTR programs.**( see 227.7104[-4(a)]). Except as provided in 227.7107-2, do not use the clause in architect-engineer and construction contracts.

#### **Discussion DFARS 227.7104-1(a)**

**SBTC Comment:** SBTC requests the following language to be added to the proposed 227.7104-1 as new subparagraph (a) to emphasize and clarify for DOD contracting personnel that SBIR/STTR contracts can be of any phase as defined by the SBIR Policy Directive. By inserting this language, it provides DOD contracting personnel with not only the clarification that SBIR/STTR contracts can include contracts funded outside of the SBIR/STTR program but also points to the SBIR Policy Directive for guidance.

**(a) A SBIR/STTR contract is a SBIR/STTR contract of any Phase as defined by the Small Business Administration's SBIR and STTR Program Policy Directive (effective May 2, 2019).**

#### **Discussion DFARS 227.7107-1(c)**

**SBTC Comment: Section 227.7104-1(c) Implies that the Government May Reject a Proposal Due to SBIR Data Rights.**

The proposed DFARS 227.7104-1(c) states:

In a manner consistent with the guidance in this section and acquisition preferences applicable to SBIR/STTR offerors, the Government may use information provided by offerors in response to a solicitation in the source selection process to evaluate the impact of proposed restrictions on the Government's ability to use or disclose technical data or computer software. However, contracting officers shall not prohibit offerors from offering products for which the offeror is entitled to provide the technical data or computer software with restrictions. Contracting officers also shall not require offerors, either as a condition of being responsive to a solicitation or as a condition for



award, to sell or otherwise relinquish any greater rights in technical data or computer software when the offeror is entitled to provide the technical data or computer software with restrictions.

At face value, the above text appears to be consistent with the SBIR Policy Directive. However, its *effect* will be inconsistent with the intent of the SBIR Policy Directive and may result in violations of the Directive.

For example, most solicitations state that the Government desires Unlimited Rights or Government Purpose Rights with any resulting contract. Hence, the Government could find that a proposal with SBIR Data Rights meets all of its technical objectives, but not the objectives that are listed with respect to data rights. As a result, the Government may evaluate the perceived limitations of SBIR Data Rights as not achieving the desired solicitation objectives, and award the contract to another entity that may not be as technically desirable, but which does meet the data rights objectives of the solicitation. In such a scenario, the Government has not asked an SBC to give up any of its rights, but the SBC has still lost the bid. As a result, SBIR awardees are under constant pressure to offer rights in excess of SBIR Data Rights without being asked to do so. While there is no explicit demand by the Government, it is implied. This is a situation that SBIR awardees have faced countless times. It is a reality, and not a hypothetical scenario.

Therefore, SBTC recommends the proposed DFARS 227.7104-1(c) text be modified as follows:

In a manner consistent with the guidance in this section and acquisition preferences applicable to SBIR/STTR offerors, the Government may use information provided by offerors in response to a solicitation in the source selection process to evaluate the impact of proposed restrictions on the Government's ability to use or disclose technical data or computer software. **Nonetheless, to the greatest extent practicable, the Government shall not penalize an offeror solely due to proposed restrictions as a result of SBIR Data Rights.** ~~However~~ Furthermore, contracting officers shall not prohibit offerors from offering products for which the offeror is entitled to provide the technical data or computer software with restrictions. Contracting officers also shall not require offerors, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish any greater rights in technical data or computer software when the offeror is entitled to provide the technical data or computer software with restrictions.

The inserted language above is consistent with section 4(c)(7) of the SBIR Directive:

*Agencies or their Government-owned, contractor-operated (GOCO) facilities, Federally-funded research and development centers (FFRDCs), or Government prime contractors that pursue R/R&D or production of technology developed under the SBIR/STTR program shall issue Phase III awards relating to the technology, including sole source awards, to the Awardee that developed the*



*technology under an SBIR/STTR award, to the greatest extent practicable, consistent with an Agency's mission and optimal small business participation.*

and 15 U.S.C. §638(j)(2)(C) which requires

*procedures to ensure, to the extent practicable, that an agency which intends to pursue research, development, or production of a technology developed by a small business concern under an SBIR program enters into follow-on, non-SBIR funding agreements with the small business concern for such research, development, or production.*

In other words, when all other factors are equal, the existence of SBIR Data Rights alone should not be used as a pretext to disqualify an offeror from an award. On the contrary, the SBIR Policy Directive requires that the Government issue such an award ***to the greatest extent practicable***.

**Discussion of DFARS 252.227-7015(b)(1), (f)(1)(i) and (f)(1)(ii):**

SBTC Comment: SBTC requests the following underlined text be added to the Government proposed language to specify the definition of "generated."

(b)(1) The clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7018, Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research Program and Small Business Technology Transfer Program, will govern technical data that are generated **(based on the definition of "generated" in 252.227-7018)** during any portion of performance that is covered under the Small Business Innovation Research (SBIR) Program or Small Business Technology Transfer (STTR) Program; and

(f)(1)(i) Use the clause at DFARS 252.227-7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, to govern technical data that are generated **(based on the definition of "generated" in 252.227-7018)** during any portion of performance that is covered under the SBIR or STTR program.

(f)(1)(ii) Use the clause at DFARS 252.227-7013, Rights in Technical Data—Noncommercial Items, to govern any technical data that are not generated **(based on the definition of "generated" in 252.227-7018)** during any portion of performance that is covered under the SBIR or STTR program.]



## **Discussion of DFARS 252.227-7017**

SBTC Comment:

### ***Assertion Requirements under Proposed DFARS 252.227-7017 Violate the SBIR Policy Directive***

Under the proposed DFARS 252.227-7017, SBIR/STTR contracts will be required to list, in advance, all of the deliverables that will be provided with less than unlimited rights, including technical data and computer software that will be developed under the SBIR contract that is being negotiated.

Specifically, it states:

*For contracts to be awarded under the Small Business Innovation Research (SBIR) Program or Small Business Technology Transfer (STTR) Program, these requirements apply to SBIR/STTR data that will be generated under the resulting contract and will be delivered with SBIR/STTR data rights and to any other data that will be delivered with other than unlimited rights.*

Under the existing DFARS 252.227-7017, SBIR contracts are excluded from the notification and identification requirement for data that will be generated under the contract under negotiation—an Offeror is required to list all “*technical data, including computer software documentation, or computer software to be delivered with other than unlimited rights*” except that those notification requirements “*do not apply to technical data or computer software that will be generated*” under the resulting SBIR contract. In other words, the assertions requirements currently pertain to data rights that were obtained under prior contracts, not the current SBIR contract being negotiated or awarded. The contract itself, through DFARS 252.227-7018, defines the class of rights that the Government will receive.

In fact, requiring a small business concern (SBC) to list all data assertions obtained under the SBIR contract in advance of a contract award will result in a violation of the SBIR Policy Directive, and will be ineffective in achieving the result that is desired—that is to “identify and protect the IP interests of contractors and subcontractors under SBIR/STTR contracts.”

Specifically, the SBIR Policy Directive states that:

- The “Awardees of an SBIR/STTR Funding Agreement retain appropriate proprietary rights for all SBIR/STTR Data generated in the performance of the award” [§8(b)(2)]; and
- The “Government receives SBIR/STTR Data Rights during the SBIR/STTR Protection Period on all appropriately marked SBIR/STTR Data” [§8(b)(3)(ii)].



In other words, the Government is required to honor SBIR Data Rights on all technical data and computer software that was generated under the contract, *so long as the SBC appropriately marks the data*. Therefore, the Government cannot demand that it obtains anything more than SBIR Data Rights to any data that was developed under a SBIR contract solely because the SBC failed to list those data assertions under DFARS 252.227-7017 before conducting the work. This implies that any requirement forcing the SBC to list assertions in advance for data to be developed under an SBIR contract will be ineffective (*and burdensome*), and in violation of the SBIR Policy Directive.

Furthermore, requiring an SBC to list, in advance, assertions for SBIR/STTR data to be generated under an SBIR contract is inconsistent with the *proposed* clause 252.227-7018, which states that:

*Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) data means all technical data or computer software developed or generated in the performance of a phase I, II, or III SBIR/STTR contract or subcontract.*

and

*This clause will govern all SBIR/STTR data.*

Hence, DFARS 252.227-7018 specifies that all technical data and computer software developed or generated under an SBIR contract is SBIR/STTR data, *regardless of whether such data is listed in advance under DFARS 252.227-7017*.

Finally, while the Notice addresses this issue in response to a prior comment that opposed the proposed change to the notification and identification requirements, the response to the comment incorrectly stated that CDRLs are generally known in advance—“*CDRLs (which should be included with the solicitation), provide the technical data and software requirements that will allow contractors to identify SBIR/STTR data with restrictions and provide information to the Government on license restrictions.*” In fact, it is very unusual to see CDRLs listed as part of Phase I or II SBIR/STTR *solicitations*. Most SBIR/STTR *solicitations* do not include a list of CDRLs. However, an Offeror will often list a set of deliverables in its Phase I, II, or III proposal, which can then be used to construct a list of CDRLs that are then issued with the resulting contract. In any case, the list of deliverables is generally not all inclusive.

Therefore, we recommend retaining the current language of DFARS 252.227-7017 that exempts the identification of notification requirements for the SBIR/STTR contract that is being negotiated.





### **Discussion DFARS 252.227-7018(c)(1)(vii)**

SBTC Comment: SBTC objects to the addition of the language below in 252.227-7018(c)(1)(vii) without inclusion of the limiting language previously imposed on computer software document. By moving the language to a new section in (c)(1)(vii) without the limiting language, DOD has effectively taken away the SBIR data rights protection from the contractor and expanded the Government rights. This contradicts the intent of the SBIR Policy Directive and also the intent of the proposed rulemaking action to clarify and insure SBIR data rights protection for contractors.

Proposed language by DOD:

(c) *Rights in technical data and computer software.* The Contractor grants or shall obtain for the Government the following royalty-free, **worldwide**, nonexclusive, irrevocable license rights in technical data or noncommercial computer software. All rights not granted to the Government are retained by the Contractor.

(1) *Unlimited rights.* The Government shall have unlimited rights in technical data, ~~including computer software documentation,~~ or computer software, **including such data** generated under this contract[, ] that are—

- (i) Form, fit, and function data;
- (ii) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
- (iii) Corrections or changes to Government-furnished technical data or computer software;
- (iv) Otherwise publicly available or have been released or disclosed by the Contractor or a subcontractor without restrictions on further use, release[, ] or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data or computer software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) **[Technical data or computer software]** ~~Data or software~~ in which the Government has acquired previously unlimited rights under another Government contract or ~~through a specific license; and~~ **[as a result of negotiations;**

(vi) **Technical data or computer software furnished to the Government, under this or any other Government contract or subcontract thereunder, with license rights for which all restrictive conditions on the Government have expired; and]**

(vi[i]) **[Computer software documentation generated or required to be delivered under this contract]** ~~SBIR data upon expiration of the SBIR data rights period.~~

**To maintain the protection afforded by the Policy Directive, SBTC requests that the Government implement one of the following versions for 252.227-7018(c)(1):**

1. **Leave subparagraph (c)(1) as it is currently reads in the DFARS:**



(c) *Rights in technical data and computer software.* The Contractor grants or shall obtain for the Government the following royalty-free, worldwide, nonexclusive, irrevocable license rights in technical data or other than commercial computer software. All rights not granted to the Government are retained by the Contractor.

(1) *Unlimited rights.* The Government shall have unlimited rights in technical data, including computer software documentation, or computer software generated under this contract that are -

OR

2. **Add the same limiting language included under (c)(1) to the new (c)(1)(vii) as shown below by underlined text:**

(c)(1)(vii) Computer software documentation generated or required to be delivered under this contract that are—

(A) Form, fit, and function data;

(B) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(C) Corrections or changes to Government-furnished technical data or computer software;

(D) Otherwise publicly available or have been released or disclosed by the Contractor or a subcontractor without restrictions on further use, release, or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data or computer software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

#### **Discussion of DFARS 252.227-7018(g)(3)**

SBTC Comment:

***Marking Requirements for Prototypes and Products Displaying Technical Data***

Section 8(l) of the SBIR Policy Directive states that:

*Participating Agencies must handle all Prototypes developed under an SBIR/STTR award with caution during the SBIR/STTR Protection Period to prevent any use or disclosure of these items that has the potential to reveal the innovative aspects of the technology in ways that may harm the Awardee's ability to commercialize the technology. In particular, reverse engineering of Prototypes may reveal, to a Government or non-Government entity, the SBIR/STTR Data that is applied or embodied in the item. While a Prototype may not itself be considered SBIR/STTR Data because it is not "recorded information," SBA cautions agencies that it is a violation of the purpose and intent of the Act to release or use a Prototype*





*during the SBIR/STTR Protection Period in a way that harms the Awardee's ability to take advantage of the economic opportunities of its SBIR/STTR Data.*

Although the Notice recognizes the need for special consideration for prototypes generated under SBIR and STTR awards, it indicates that *"the license rights and marking requirements prescribed in DFARS part 227 apply only to technical data and computer software rather than hardware, DoD has not adopted the proposed revision to part 227 and the associated clauses."*

This statement ignores the fact that some prototypes and hardware display technical data that is otherwise protected. For example, a printed circuit board (PCB) or an antenna may include information and designs that would be protected if that data was printed on paper or included in an electronic document as a deliverable. *The form of the physical storage medium of the technical data should not matter to the marking requirements.* Hence, any time technical data is on display, a small business should be permitted to place appropriate markings and the Government should be required to protect that data consistent with such markings—even if the storage medium is a prototype hardware.

For that reason, we recommend the following change to DFARS 252.227-7018(g)(3):

*The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate restrictive marking to all technical data and computer software that qualify for such markings. The authorized restrictive markings shall be placed on the transmittal document, ~~or~~ storage container, **or storage medium (regardless of its form)** and, for printed material, each page of the printed material containing technical data or computer software for which restrictions are asserted.*

**Discussion of DFARS 252.227-7013(g)(1) and (g)(2), DFARS 252.227-7014(g)(1) and (g)(2), DFARS 252.227-7018(g)(1) and (g)(2)**

SBTC Comment: SBTC **objects** to the new proposed language in 252.227-7013(g)(1) and (g)(2), DFARS 252.227-7014(g)(1) and (g)(2), and DFARS 252.227-7018(g)(1) and (g)(2) [shown below] for the reason stated below and requests that (g)(1) revised as shown below and the language proposed in (g)(2) be excluded from any revision of the clause:

**(g)(1) Marking requirements. The Contractor, and its subcontractors or suppliers, may apply asserted restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation delivered under this contract by marking such software or documentation with the applicable following restrictive markings:**

~~(g)(2) Other restrictive markings. Any other restrictive markings, including markings that describe restrictions placed on third party recipients of the~~



~~technical data, are not authorized and are nonconforming markings governed by paragraph (i)(2) of this clause.~~

Rationale for Objection:

While experienced support contractors and knowledgeable Government personnel are aware of the meaning behind the limited and restrictive rights markings, other third-parties including foreign parties who may have access to technical data through their dealings or discussions with the U.S. Government may not, and therefore, will not adequately protect technical data subject to limited or restricted rights. In the course of ordinary business dealings, companies should not be precluded from applying appropriate markings on its technical information that evidence the proprietary nature of such information. Additionally, contractors may be providing the Government copies of technical information that pre-existed the contract during the course of doing business or even provided as a “courtesy” to Government technical personnel that have non-DFARS markings that **are not** easily modified or removed since such markings are applied upon document creation – for example: documents that are available only in formats such as pictures (JPEG, PNG, etc) or as PDFs. During one of the DOD public hearings regarding this proposed rule, a Government representative made the assertion that contractors should be able to do company-wide revisions on markings using appropriate algorithms or software. Such an assertion/assumption does not take into account the **extensive** expenditure of time and personnel resources to revise markings that were applied in the normal course of doing business under standard commercial practices for marking proprietary information. Nor does such an assumption take into account the extensive dissemination and location of all the documents that would need to be revised.

The same reasoning stated above may also be applied to the Government’s proposed language (DFARS 252.227-7013(g)(5), 252.227-7018(g)(1) to add a new marking for technical data subject to unlimited rights. Further detailed discussion of this proposed language by the Government is provided in the following comment.

**Discussion of all DFARS Clauses referencing or implementing the marking of technical data subject to “Unlimited Rights” to the Government:**

**SBTC Comment: *Requiring Unlimited Rights Markings Creates an Undue Burden***

DOD is proposing to modify DFARS 252.227-7013(g)(5), DFARS 252.227-7014(g)(5), DFARS 252.227-7018(g)(5) with a requirement that all technical data or software furnished to the Government without restrictions be marked with an “Unlimited Rights” legend.

It has been a longstanding, decades-old, well-known and accepted DFARS rule that any unmarked deliverable is presumed to be delivered with Unlimited Rights. Moreover, there are procedures for correcting items that were incorrectly marked, or where markings were inadvertently omitted.



The stated objective is to eliminate confusion about whether something was delivered with Unlimited Rights, or if restrictive markings were inadvertently omitted. However, a mandatory marking requirement will not eliminate or reduce confusion but rather increase confusion for Government personnel and the entire DOD contractor community given the existing and longstanding DFARS rule regarding unmarked data. Additionally, if a business is required to mark everything, whether or not restrictions apply, it will be equally likely to mark something with restrictions as having unlimited rights, as marking something with unlimited rights with restricted rights. This is due to implicit bias and due to cut-and-paste errors and the use of templates. When people see markings, the first instinct is to assume that the marking is correct. Whereas, the lack of a marking is more likely to be questioned. If everything is required to be marked, then the default template that is being used will dictate the default marking. Hence, this new requirement is unlikely to achieve the desired goal.

Moreover, this new requirement is inconsistent with language in DFARS 252.227-7013(g)(4) and DFARS 252.227-7018(g)(4) (“Omitted markings”), which state that “[t]echnical data, computer software, or computer software documentation delivered or otherwise provided under this contract without restrictive markings shall be presumed to have been delivered with unlimited rights.”

If the Government is going to require that everything be marked, whether that data or software comes with restricted rights or not, then the Government shouldn’t be allowed to presume that unmarked items were delivered with Unlimited Rights. Instead, the Government should be required to request markings within a reasonable period. Otherwise, the intent of eliminating confusion is violated.

Additional support for SBTC’s position to delete the proposed rule to add an “unlimited rights” marking can be found in the following statutory language:

- 15 USC 638 (j)(1)(D) -- SBA policy directives must specifically provide for “*minimizing [the] regulatory burden associated with participation in the SBIR program... which will stimulate the cost-effective conduct of Federal research and development and the likelihood of commercialization of the results of research and development conducted under the SBIR program.*”
  - Similar requirements for STTR program at 15 USC 638 (p)(2)(C))
- 15 USC 638 (v)(2) -- requirements to reduce the paperwork and compliance burden on small businesses, including procedures related to proposals, selection and contracting

Finally, SBTC asserts that the requirement of this new marking would cause substantial confusion regarding all technical data provided prior to the introduction of this new language. Confusion regarding any unmarked documents in the Government’s possession which were provided prior to the new marking rule would now be subject to question for the Government and Contractors alike. Parties would now be required to ascertain when a specific document was provided to the Government to verify whether it should carry this



new marking. This would only increase the expenditure of Government manpower (aka taxpayer dollars) to track down if the technical documents in questions should have carried the marking. During the March 2, 2023 DOD Public Meeting discussing this new proposed marking language, Government personnel stated that it was included due to confusion by Government personnel regarding what type of protection applied to contractor document. The DFARS currently provide for markings and assumptions in the absence of marking. If there is confusion regarding the technical data provided by a contractor, a more efficient, cost-effective and taxpayer-considerate approach would be for the questioning Government personnel to reach out to the contractor who originally provided the data as opposed to introducing a new rule that changes a universally understood practice.

Therefore, SBTC respectfully request that the Government withdraws the proposal to have all items with unlimited and unrestricted rights to be marked with a new “Unlimited Rights” marking.

**Discussion of DFARS 252.227-7013(g)(1)(i), 252.227-7018(g)(1)(i)**

SBTC Comment: Should the Government elect to withdraw the language required a new “Unlimited Rights” marking as requested above, then the following language in the Government proposed DFARS 252.227-7013(g)(1)(i), 252.227-7014(g)(1)(i), 252.227-7018(g)(1)(i) clauses would also need to be withdrawn/deleted from the proposed rule:

**(i) The unlimited rights markings at paragraph (g)(5) of this clause.**

**Discussion of new numbering to add “Applicability” paragraph (b) to DFARS 252.227-7013, 252.227-7014 and 252.227-7018**

SBTC Comment: During the March 2, 2023 Public Meeting, this issue was discussed. Current legends for the DFARS clauses discussed in this section all reference subparagraph (b)(..). By introducing the new language of “Applicability” and designating that as (b) and thus revising the markings for all technical data to reference paragraph (c) could result in widespread confusion given the designation of paragraph (b) in the markings to date. To prevent confusion and maintain the current marking language referencing paragraph (b), SBTC recommends that the Government renumber as follows or devise a numbering scheme that keeps paragraph (b) as is. Suggested numbering: Revise paragraph (a) to (a)(I) and number Applicability paragraph as (a)(II) or number as (a-0) and (a-1).

Regarding all other proposed rule changes in the DFARS Case 2019-D043 that were not discussed above, SBTC provides its endorsement and support.

Thank you for your consideration. Please forward any questions to [alec@sbtc.org](mailto:alec@sbtc.org).