

DFARS Case 2019-D043
Small Business Innovation Research Data Rights
Proposed Rule

252.227-70XX Additional Preaward Requirements for Small Business Technology Transfer Program.

As prescribed in 227.7104-4(c)(1), use the following provision:

ADDITIONAL PREAWARD REQUIREMENTS FOR SMALL BUSINESS TECHNOLOGY
TRANSFER PROGRAM (DATE)

(a) *Definitions.* As used in this provision, the terms “research institution” and “United States” have the meaning given in the 252.227-70YY, Additional Postaward Requirements for Small Business Technology Transfer Program, clause of this solicitation.

(b) Offers submitted in response to this solicitation shall include the following:

(1) The written agreement between the Offeror and a partnering research institution, which shall contain—

(i) A specific allocation of ownership, rights, and responsibilities for intellectual property (including inventions, patents, technical data, and computer software) resulting from the Small Business Technology Transfer (STTR) Program award;

(ii) Identification of which party to the written agreement may obtain United States or foreign patents or otherwise protect any inventions that result from a STTR award; and

(iii) No provisions that conflict with the requirements of this solicitation, including the rights of the United States and the Offeror regarding intellectual property, and regarding any right to carry out follow-on research.

(2) The Offeror’s written representation that—

(i) The Offeror is satisfied with its written agreement with the partnering research institution; and

(ii) The written agreement does not conflict with the requirements of this solicitation.

(c) The Offeror shall submit the written representation required by paragraph (b)(2) of this provision as an attachment to its offer, dated and signed by an official authorized to contractually obligate the Offeror.

(d) The Offeror’s failure to submit the written agreement or written representation required by paragraph (b) of this provision with its offer may render the offer ineligible for award.

(e) If the Offeror is awarded a contract, the Contracting Officer will include the written agreement and written representation required by paragraph (b) of this provision in an attachment to that contract.

(End of provision)

252.227-70YY Additional Postaward Requirements for Small Business Technology Transfer Program.

As prescribed in 227.7104-4(c)(2), use the following clause:

ADDITIONAL POSTAWARD REQUIREMENTS FOR SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM (DATE)

(a) *Definitions.* As used in this clause—

Research institution means an institution or entity that—

(1) Has a place of business located in the United States;

(2) Operates primarily within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor; and

(3) Is either—

(i) A nonprofit institution that is owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual (section 4(3) of the Stevenson-Wydler Technology Innovation Act of 1980); or

(ii) A Federally-funded research or research and development center as identified by the National Science Foundation (<https://www.nsf.gov/statistics/ffrdclist/>) in accordance with the Federal Acquisition Regulation (FAR).

United States means the 50 States and the District of Columbia, the territories and possessions of the Government, the Commonwealth of Puerto Rico, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(b) *Preaward submissions.* Attached to this contract are the following documents, submitted by the Contractor pursuant to Defense Federal Acquisition Regulation Supplement 252.227-70XX, Additional Preaward Requirements for Small Business Technology Transfer Program:

(1) The written agreement between the Contractor and a partnering research institution.

(2) The Contractor's written representation that it is satisfied with that written agreement, which does not conflict with the requirements of this contract.

(c) *Postaward updates.* The Contractor shall not allow any modification to its written agreement with the partnering research institution, unless the written agreement, as modified, contains—

(1) A specific allocation of ownership, rights, and responsibilities for intellectual property (including inventions, patents, technical data, and computer software) resulting from performance of this contract;

(2) Identification of which party to the written agreement may obtain United States or foreign patents or otherwise protect any inventions that result from a Small Business Technology Transfer Program award;

(3) The Contractor's written, dated, and signed representation that—

(i) The Contractor is satisfied with its written agreement with the partnering research institution, as modified; and

(ii) The written agreement, as modified, does not conflict with the requirements of this contract; and

(4) No provisions that conflict with the requirements of this contract, including the rights of the United States and the Contractor regarding intellectual property, and regarding any right to carry out follow-on research.

(d) *Submission of updated agreement.* Within 30 days of execution of the modified written agreement described in paragraph (b)(1) of this clause, the Contractor shall submit a copy of that updated written agreement and the updated written representation described in paragraph (b)(2) of this clause to the Contracting Officer for review and attachment to this contract.

(End of clause)