

# Data Rights Considerations for a DoD SBIR Software Repository

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## Panel Members

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- Nick Guertin, Deputy Director, PEO IWS
- Frank Allen, for Deputy PM Aviation/Ship Integration, PMA-268 Navy UCAS
- Tom Sanders, Managing Director, CTSi
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## SBIR Data Rights

- SBIR firm retains: “rights to data generated by the concern in the performance of an SBIR award”
- The Government may not release or disclose SBIR data to any person, other than its support services contractors, except
  - (a) As expressly permitted by the Contractor;
  - (b) For evaluational purposes; or
  - (c) A release, disclosure, or use that is necessary for emergency repair or overhaul of items operated by the Government.
- Agencies receive a nonexclusive, royalty free license for Government use in technical data generated under an SBIR award.

## SBIR Phase III and Data Rights

- Agencies cannot use SBIR rights in technical data to produce future technical procurement specifications
- Preference must be given to the SBIR developer for agency requirements that constitute a Phase III
  - Congress intended that Phase IIIs be awarded sole source to the SBIR developer
  - Award of a Phase III to other than the SBIR developer must be reported to SBA prior to award for approval to be granted
- SBIR technical data rights are non-negotiable during any SBIR, including Phase III, awards
- An agency may not in any way make issuance of an SBIR award, including a Phase III, conditional on data rights

# Draft Open Architecture Software Information Repository (“Marketplace”)

- IR Community Source Code
  - Source code posted to IR
  - Can be freely shared with approved IR participants
  - Can be re-used and modified for Gov Purposes
- Royalty Bearing Source Code
  - Source code posted to IR in Escrow
  - Description of APIs is provided with open interface for integration
  - Royalty is required to download Company Proprietary apps
- SBIR Source Code
  - Source code posted to IR in Escrow
  - Description of APIs is provided with open interface for integration
  - SBIR apps can be downloaded royalty-free for Gov Purposes
  - SBIR apps can be maintained by Support Contractors but enhancement or modifications must be made by SBIR company
  - Becomes IR community code on expiration of SBIR data rights – SBIR data rights extend though when upgraded