

Court of Federal Claims confirms ‘technical data’ grants no general right of access to contractor information

By Samarth Barot, Esq., and Luke W. Meier, Esq., Blank Rome LLP*

AUGUST 16, 2022

In an important decision for preserving contractor data rights, the Court of Federal Claims recently confirmed that “technical data” has a limited scope and, per the DFARS, includes only information “of a scientific or technical nature.”¹

Pursuant to DFARS 252.227-7013, if any data is identified as “technical data” the Government may be able to assert licensing rights in a contractor’s noncommercial technical data.² In contrast, for any data identified as proprietary non-technical data, the Government cannot assert any licensing rights in the proprietary non-technical data.

This case resolved whether a contractor can treat vendor list information as proprietary, non-technical data. In *Raytheon*, Raytheon was required to provide vendor lists to the Army on a quarterly basis.³ These vendor lists included information about suppliers Raytheon used to purchase its missile system parts from.⁴ Raytheon marked these vendor lists with a marking that explained that the information contained therein was proprietary.⁵

The Army objected to Raytheon’s proprietary markings and ordered Raytheon to remove language restricting the use of information from its vendor list because the vendor lists contained technical data that the government had the right to use pursuant to DFARS 252.227-7013(a)(15).⁶

Raytheon filed a suit challenging the government’s actions as an improper attempt to acquire rights to its proprietary information.

The Government may be able to assert licensing rights in a contractor’s noncommercial technical data.

In its decision, the Court reviewed the definition of “technical data,” as stated in the DFARS, and held that, per the plain meaning of that language, technical data includes only “recorded information ... of a scientific or technical nature.”⁷

Applying that definition to the vendor lists, the Court agreed with Raytheon, and held that because the vendor lists “do not include any information about the design, manufacture, or assembly of any of the parts” but instead essentially contain a “quarterly purchase history” of the suppliers from whom Raytheon purchased its missile system parts from, the vendor lists contain no information that is

“inherently or essentially technical in nature.”⁸ Hence, pursuant to DFARS 252.227-7013(a)(15), the vendor lists cannot be deemed “technical data.”⁹

Contractors will find this case a useful reference when they confront and push back on similar instances of overreach premised on an overly expansive definition of “technical data.” This case reemphasized the fact that contractors are allowed to protect their proprietary non-technical data and the Government cannot use the data rights clauses to acquire rights to a contractor’s proprietary information.

The result and rationale in *Raytheon* should have been no surprise; the *Raytheon* Court looked at the plain language of DFARS 252.227-7013(a)(15) and identified that “technical data” of course does not mean all data that a contractor provides the Government.

Contractors are allowed to protect their proprietary non-technical data and the Government cannot use the data rights clauses to acquire rights to a contractor’s proprietary information.

Just as Raytheon did, contractors should vigorously protect their rights to maintain confidentiality of data that is not “of a scientific or technical nature.”

Notes

¹ *Raytheon Co. v. United States*, No. 19-883C, 2022 WL 2353085 (Fed. Cl. June 15, 2022).

² See DFARS 252.227-7013(b).

³ *Id.* at *3.

⁴ *Id.*

⁵ *Id.* at *4.

⁶ *Id.* at *4-5.

⁷ *Id.* at *9.

⁸ *Id.*

⁹ *Id.*

About the authors



Samarth Barot (L), a government contracts associate at **Blank Rome LLP**, represents clients in government contracts, construction, commercial and business litigation matters. He can be reached at samarth.barot@blankrome.com. **Luke W. Meier** (R), a partner at the firm, focuses on government procurement law, contract disputes and claims, bid protests, and False Claims Act litigation. He can be reached at luke.meier@blankrome.com. The authors are based in Washington, D.C. This article was originally published Aug. 4, 2022, on the firm's website. Republished with permission.

This article was published on Westlaw Today on August 16, 2022.

* © 2022 Samarth Barot, Esq., and Luke W. Meier, Esq., Blank Rome LLP

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered, however it may not necessarily have been prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional. For subscription information, please visit legalsolutions.thomsonreuters.com.