

Who Owns the Code? Navigating Data Rights in Federal Contracts

One of the greatest fears for innovative consulting firms—especially those in software and engineering—is that working for the government means losing ownership of their Intellectual Property (IP). There is a pervasive myth that "if the government pays for it, they own it." The reality is far more nuanced. **Government contract consulting** often involves a specific sub-discipline: negotiating Data Rights clauses (DFARS 252.227) to ensure that you retain title to your inventions while granting the government the license they need.

The default clauses in a federal contract can be aggressive. If you are not careful, you can inadvertently grant "Unlimited Rights" to the government, meaning they can take your proprietary software and hand it to your competitor to maintain. Protecting your IP requires a proactive strategy that begins before the contract is signed and continues through every deliverable.

Pre-Existing IP vs. New Development

The golden rule is to distinguish between what you brought to the party and what you built at the party. "Background IP" (what you developed at your own expense) should remain yours.

Consultants help firms assert "Restricted Rights" or "Limited Rights" on this pre-existing IP. This allows the government to use the software, but prevents them from reverse-engineering it or giving it to third parties. The key is to specifically list this IP in the proposal (often in a "Data Rights Assertion" table). If you don't list it before the award, you may forfeit your right to protect it later.

The Danger of "Mixed Funding"

If a module of software is developed partly with your money and partly with government money, it falls into "Government Purpose Rights." This gives the government broad license to share it within the federal sphere.

Strategic consultants advise clients to segregate development. Use internal R&D funds to build the core engine, and use government funds only for the integration or customisation. This accounting separation creates a legal firewall around your core technology. It requires disciplined time-tracking and financial management.

Marking Your Deliverables

You can have the best contract clauses in the world, but if you deliver a document or a piece of code without the proper "Proprietary" legends/markings, the government can treat it as public domain.

Every PDF, every drawing, and every header file of code must carry the specific legal legend prescribed by the FAR/DFARS. "Confidential" is not enough. It must be the specific statutory language. Training your engineering team to stamp every deliverable is the final tactical step in IP protection.

The SBIR Advantage

The Small Business Innovation Research (SBIR) program offers the strongest IP protection in the federal ecosystem. SBIR data rights prevent the government from disclosing your tech for 20 years.

Consultants often steer high-tech startups toward SBIR contracts not just for the money, but for this legal shield. It creates a safe harbour to develop cutting-edge tech with government funding without the risk of creating a generic competitor.

Conclusion

You do not have to sacrifice your intellectual property to serve the government. With the right legal strategy and consulting guidance, you can build a profitable federal practice that enhances, rather than erodes, the value of your proprietary assets.

Call to Action

Protect your intellectual property and maximise your contract value with expert guidance.