

policy and objectives of chapter 18 of title 35 of the United States Code.

(iii) It is determined by a Government authority which is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities that restriction or elimination of the right to retain any subject invention is necessary to protect the security of such activities.

(iv) The contract includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to that Department's naval nuclear propulsion or weapons related programs.

(2) Before using any of the exceptions under subparagraph (d)(1) of this section in a contract with a small business firm or a nonprofit organization and before using the exception of subdivision (d)(1)(ii) of this section for any contractor, the agency shall prepare a written determination, including a statement of facts supporting the determination, that the conditions identified in the exception exist. A separate statement of facts shall be prepared for each exceptional circumstances determination, except that in appropriate cases a single determination may apply to both a contract and any subcontract issued under it, or to any contract to which an exception is applicable. In cases when subdivision (d)(1)(ii) of this section is used, the determination shall also include an analysis justifying the determination. This analysis should address, with specificity, how the alternate provisions will better achieve the objectives set forth in 35 U.S.C. 200. For contracts with small business firms and nonprofit organizations, a copy of each determination, statement of facts, and, if applicable, analysis shall be promptly provided to the contractor or offeror along with a notification of its appeal rights under 35 U.S.C. 202(b)(4) in accordance with 27.304-1(a). In the case of small business and nonprofit contractors, except for determination under subdivision (d)(1)(iii) of this section, the agency shall, within 30 days after award of a contract, also provide copies of each determination, statement of fact, and analysis to the Secretary of Commerce. These shall be sent within 30 days after the award of the contract to which they pertain. In

the case of contracts with small business concerns, copies will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

(e) For those agencies excepted under paragraph (a)(1)(i) of this section, only small business firms or non-profit organizations qualify for the clause at 52.227-11. If one of these agencies has reason to question the status of the prospective contractor, the agency may file a protest in accordance with 13 CFR 121.3-5 if small business firm status is questioned, or require the prospective contractor to furnish evidence of its status as a nonprofit organization.

(f) Alternates I and II to the clauses at 52.227-11, 52.227-12, and 52-227-13, as applicable, may be modified to make clear that the rights granted to the foreign government or international organization may be for additional rights beyond a license or sublicense if so required by the applicable treaty or international agreement. For example, in some cases exclusive licenses or even assignment of title in the foreign country involved might be required. In addition, an Alternate may be modified to provide for direct licensing by the contractor of the foreign government or international organization.

[54 FR 25065, June 12, 1989 and 55 FR 25525, June 21, 1990; 62 FR 236, Jan. 2, 1997]

## 27.304 Procedures.

### 27.304-1 General.

(a) *Contractor appeals of exceptions.* (1) In accordance with 35 U.S.C. 202(b)(4), a small business firm or nonprofit organization contractor has the right to an administrative review of a determination to use one of the exceptions at 27.303(d)(1)(i)-(iv) if the contractor believes that a determination is either (i) contrary to the policies and objectives of this subsection or (ii) constitutes an abuse of discretion by the agency. Subparagraphs (a) (2) thru (7) of this subsection specify the procedures to be followed by contractors and agencies in such cases. The assertion of such a claim by the contractor shall not be used as a basis for withholding or delaying the award of a contract or for suspending performance under an