

(e) If it is determined that a contractor or subcontractor does not have a clear understanding of the rights and obligations of the parties under a patent rights clause, or that its procedures for complying with the clause are deficient, a post-award orientation conference or letter should ordinarily be used to explain these rights and obligations (see subpart 42.5). When a contractor fails to establish, maintain, or follow effective procedures for identifying, disclosing, and, when appropriate, filing patent applications on inventions (if such procedures are required by the patent rights clause), or after appropriate notice fails to correct any deficiency, the contracting officer may require the contractor to make available for examination books, records, and documents relating to the contractor's inventions in the same field of technology as the contract effort to enable a determination of whether there are such inventions and may invoke the withholding of payments provision (if any) of the clause. The withholding of payments provision (if any) of the patent rights clause or of any other contract clause may also be invoked if the contractor fails to disclose a subject invention. Significant or repeated failures by a contractor to comply with the patent rights obligation in its contracts shall be documented and made a part of the general file (see 4.801(c)(3)).

27.305-4 Conveyance of invention rights acquired by the Government.

(a) Agencies are responsible for those procedures necessary to protect the Government's interest in subject inventions. When the Government acquires the entire right, title, and interest in an invention by contract, this is normally accomplished by an assignment either from each inventor to the contractor and from the contractor to the Government, or from the inventor to the Government with the consent of the contractor, so that the chain of title from the inventor to the Government is clearly established. When the Government's rights are limited to a license, there should be a confirmatory instrument to that effect.

(b) The form of conveyance of title from the inventor to the contractor

must be legally sufficient to convey the rights the contractor is required to convey to the Government. Agencies may, by supplemental instructions, develop suitable assignments, licenses, and other papers evidencing any rights of the Government in patents or patent applications, including such instruments as may be required to be recorded in the Statutory Register or documented in the Government Register maintained by the U.S. Patent and Trademark Office pursuant to Executive Order 9424, February 18, 1944.

27.305-5 Publication or release of invention disclosures.

(a) In accordance with the policy at 27.302(i), to protect their mutual interests, contractors and the Government should cooperate in deferring the publication or release of invention disclosures until the filing of the first patent application, and use their best efforts to achieve prompt filing when publication or release may be imminent. The Government will, on its part and to the extent authorized by 35 U.S.C. 205, withhold from disclosure to the public any invention disclosures reported under the patent rights clauses of 52.227-11, 52.227-12, or 52.227-13 for a reasonable time in order for patent applications to be filed. The policy in 27.302(i) regarding protection of confidentiality shall be followed.

(b) The Government will also use reasonable efforts to withhold from disclosure to the public for a reasonable time other information disclosing a reported invention included in any data delivered pursuant to contract requirements; *provided*, that the contractor notifies the agency as to the identity of the data and the invention to which it relates at the time of delivery of the data. Such notification must be to both the contracting officer and any patent representative to which the invention is reported, if other than the contracting officer.

(c) As an additional protection for small business firms and nonprofit organizations 37 CFR part 401 prescribes that agencies shall not disclose or release, in accordance with 35 U.S.C. 205, for a period of 18 months from the filing date of the application to third parties pursuant to request under the