

and/or assure correction if the technical data are not complete, accurate, and in compliance with contract requirements.

(3) When the clause at 52.227-21, Technical Data, Declaration, Revision and Withholding of Payment—Major Systems, is used, the section of the contract specifying data delivery requirements (see subparagraph (a)(2) of this section) shall expressly identify those line items of technical data to which the clause applies. Upon delivery of such technical data, the contracting officer or designee shall review the technical data and the contractor's declaration relating thereto to assure that the data are complete, accurate, and comply with contract requirements. If not, the contractor is to be requested to correct the deficiencies, and payment may be withheld until such is done. Final payment should not be made under the contract until it has been determined that the delivery requirements of those line items of data to which the clause applies have been satisfactorily met.

(4) In a contract for or in support of a major system awarded by a civilian agency other than NASA or the U.S. Coast Guard the contracting officer shall include contractual provisions requiring, as an element of performance under the contract, the delivery of any technical data, other than computer software, relating to the major system or supplies for the major system procured or to be procured by the Government, which are to be developed exclusively with Federal funds in the performance of the contract if the delivery of such technical data is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future. The clause at 52.227-22, Major System—Minimum Rights, is to be included in such contracts in addition to the clause at 52.227-14, Rights in Data—General, and other required clauses, to ensure that the Government acquires at least those rights required by Pub. L. 98-577 in technical data developed exclusively with Federal funds. In any contract to which this subparagraph (d)(4) applies, technical data, other than computer software, relating to a major system or supplies for a major

system, procured or to be procured by the Government and also relating to the design, development, or manufacture of products or processes offered or to be offered for sale to the public (except for such data as may be necessary for the Government to operate or maintain the product, or use the process if obtained by the United States as an element of performance under the contract), shall not be required to be provided to the Government from persons who have developed such products or processes as a condition for the procurement of such products or processes by the Government.

[52 FR 18140, May 13, 1987, as amended at 62 FR 236, Jan. 2, 1997]

#### **27.407 Rights to technical data in successful proposals.**

(a) Contracting officers may, in consideration of contract award, desire to acquire unlimited rights in technical data (but not commercial or financial information) contained in a successful proposal upon which a contract award is based. However, before such unlimited rights are acquired, the prospective contractor must be afforded the opportunity either (1) to advise the contracting officer that the technical data, or portions thereof (to be identified by the prospective contractor), are covered by any restrictive notice regarding the disclosure and use of proposal information authorized by subpart 15.2 or 15.6 (or any agency supplement thereto), and request that such protection be maintained by excluding the data from the Government's rights; or (2) to establish to the contracting officer's satisfaction that identified portions of the technical data do not relate directly to or will not be utilized in the work to be performed under the contract, and request that such portions be excluded from the Government's rights.

(b) If unlimited rights to technical data in successful proposals, as set forth in paragraph (a) of this section, are to be acquired, it shall be by use of the clause at 52.227-23, Rights to Proposal Data (Technical). Any excluded technical data will be identified by inserting appropriate proposal page numbers in the clause, which clause enables

the identification of data to be excluded from the Government's rights, as discussed in paragraph (a) of this section. Such exclusion is not dispositive of the protective status of the data, but any excluded technical data, as well as any commercial and financial information contained in the proposal, will remain subject to the policies in subpart 15.2 or 15.6 (or agency supplements thereto) relating to proposal information (i.e., will be used for evaluation purposes only). If the clause at 52.227-23, Rights to Proposal Data (Technical), is included in a contract, the prospective contractor must be specifically afforded the opportunity to exclude technical data as set forth in paragraph (a) of this section, and the contract file must reflect that fact. If there is a need to have access to any of the excluded technical data during contract performance, consideration should be given to their acquisition as limited rights data, if they so qualify, in accordance with 27.404(d).

[52 FR 18140, May 13, 1987, as amended at 62 FR 51271, Sept. 30, 1997]

**27.408 Cosponsored research and development activities.**

(a) In contracts involving cosponsored research and development wherein the contractor is required to make substantial contributions of funds or resources (i.e., by cost-sharing or by repayment of nonrecurring costs), and the contractor's and the Government's respective contributions to any item, component, process, or computer software, developed or produced under the contract are not readily segregable, the contracting officer may limit the acquisition of or acquire less than unlimited rights to any data developed and delivered under such contract. Agencies may regulate the use of this authority in their supplements. Basically such rights should, at a minimum, assure use of the data for agreed-to Governmental purposes (including procurement rights as appropriate), and will address any disclosure limitations or restrictions to be imposed on the data. Also, consideration may be given to directed licensing provisions if needed to carry out the objectives of the contract. Since the purpose of the cosponsored research and development,

the legitimate proprietary interests of the contractor, the needs of the Government, and the respective contributions of both parties may vary, no specific clauses are prescribed, but a clause providing less than unlimited rights in the Government for data developed and delivered under the contract (such as license rights) may be tailored to the circumstances consistent with the foregoing and the policy set forth in 27.402. As a guide, such clause may be appropriate when the contractor contributes money or resources, or agrees to make repayment of nonrecurring costs, of a value of approximately 50 percent of the total cost of the contract (i.e., Government, contractor, and/or third party paid costs), and the respective contributions are not readily segregable for any work element to be performed under the contract. Such clause may be used for all or for only specifically identified tasks or work elements under the contract. In the latter instance, its use will be in addition to whatever other data rights clause is prescribed under this subpart, with the contract specifically identifying which clause is to apply to which tasks or work elements. Further, such clause may not be appropriate where the purpose of the contract is to produce data for dissemination to the public, or to develop or demonstrate technologies which will be available, in any event, to the public for their direct use.

(b) Where the contractor's contributions are readily segregable (by performance requirements and the funding therefor) and so identified in the contract, any data resulting therefrom may be treated under such clause as limited rights data or restricted computer software in accordance with 27.404 (d) or (e), as applicable; or if such treatment is inconsistent with the purpose of the contract, rights to such data may, if so negotiated and stated in the contract, be treated in a manner consistent with paragraph (a) of this section.

**27.409 Solicitation provisions and contract clauses.**

(a)(1) The contracting officer shall insert the clause at 52.227-14, Rights in Data—General, including its use with