

## 27.306

Freedom of Information Act or otherwise copies of any document which the agency obtained under contract which is part of an application for patent with the U.S. Patent and Trademark Office or any foreign patent office filed by the contractor (or its assignees, licensees, or employees) on a subject invention to which the contractor has elected to retain title. This prohibition does not extend to disclosure to other Government agencies or contractors of Government agencies under an obligation to maintain such information in confidence.

[49 FR 12974, Mar. 30, 1984, as amended at 54 FR 25069, June 12, 1989 and 55 FR 25525, June 21, 1990]

### **27.306 Licensing background patent rights to third parties.**

(a) A contract with a small business firm or nonprofit organization will not contain a provision allowing the Government to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless such provision has been approved by the agency head and written justification has been signed by the agency head. Any such provision will clearly state whether the licensing may be required in connection with the practice of a subject invention, a specifically identified work object, or both. The agency head may not delegate the authority to approve such provisions or to sign justifications required for such provisions.

(b) The Government will not require the licensing of third parties under any such provision unless the agency head determines that the use of the invention by others is necessary for the practice of a subject invention or for the use of a work object of the contract and that such action is necessary to achieve the practical application of the subject invention or work object. Any such determination will be on the record after an opportunity for a hearing, and the contractor shall be given notification of the determination by certified or registered mail. The notification shall include a statement that any action commenced for judicial review of such determination must be brought by the contractor within 60 days after the notification.

## 48 CFR Ch. 1 (10-1-02 Edition)

### **Subpart 27.4—Rights in Data and Copyrights**

SOURCE: 52 FR 18140, May 13, 1987, unless otherwise noted.

#### **27.400 Scope of subpart.**

(a) The policy statement in 27.402 applies to all executive agencies. The remainder of the subpart sets forth civilian agency and National Aeronautics and Space Administration (NASA) policies, procedures, and instructions with respect to (1) rights in data and copyrights and (2) acquisition of data. However, these policies, procedures, and instructions are not required to be applicable to NASA solicitations until December 31, 1987 (or until such other date as the NASA FAR Supplement is revised to accommodate the policies, procedures, and instructions contained in this subpart). Due to the special mission needs of the Department of Defense (DOD) and as required by 10 U.S.C. 2320, the remainder of the DOD policies, procedures, and instructions with respect to rights in data and copyrights and acquisition of data are contained in the DOD FAR Supplement (DFARS).

(b) Civilian agencies other than NASA shall implement section 203 of Public Law 98-577 pertaining to validation of proprietary data restrictions.

[52 FR 18140, May 13, 1987, as amended at 54 FR 34755, Aug. 21, 1989]

#### **27.401 Definitions.**

As used in this subpart—

*Data* means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

*Form, fit, and function data* means data relating to items, components, processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying

source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

*Limited rights* means the rights of the Government in limited rights data, as set forth in a Limited Rights Notice if included in a data rights clause of the contract.

*Limited rights data* means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof. (Agencies may, however, adopt the following alternate definition:

*Limited rights data* means data developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged (see 27.404(c).)

*Restricted computer software* means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

*Restricted rights* means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice, if included in a data rights clause of the contract, or as otherwise may be included or incorporated in the contract.

*Technical data* means data other than computer software, which are of a scientific or technical nature.

*Unlimited rights* means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

[52 FR 18140, May 13, 1987, as amended at 66 FR 2130, Jan. 10, 2001]

#### 27.402 Policy.

(a) It is necessary for the departments and agencies, in order to carry out their missions and programs, to acquire or obtain access to many kinds of data produced during or used in the

performance of their contracts. Agencies require such data to: obtain competition among suppliers; fulfill certain responsibilities for disseminating and publishing the results of their activities; ensure appropriate utilization of the results of research, development, and demonstration activities including the dissemination of technical information to foster subsequent technological developments; and meet other programmatic and statutory requirements. Further, for defense purposes, such data are also required by agencies to meet specialized acquisition needs and ensure logistics support.

(b) At the same time, the Government recognizes that its contractors may have a legitimate proprietary interest (e.g., a property right or other valid economic interest) in data resulting from private investment. Protection of such data from unauthorized use and disclosure is necessary in order to prevent the compromise of such property right or economic interest, avoid jeopardizing the contractor's commercial position, and preclude impairment of the Government's ability to obtain access to or use of such data. The protection of such data by the Government is also necessary to encourage qualified contractors to participate in Government programs and apply innovative concepts to such programs. In light of the above considerations, in applying these policies, agencies shall strike a balance between the Government's need and the contractor's legitimate proprietary interest.

#### 27.403 Data rights—general.

All contracts that require data to be produced, furnished, acquired or specifically used in meeting contract performance requirements, must contain terms that delineate the respective rights and obligations of the Government and the contractor regarding the use, duplication, and disclosure of such data, except certain contracts resulting from sealed bidding or similar situations which require only existing data (other than limited rights data and restricted computer software) to be delivered and reproduction rights are not needed for such data. As a general rule the data rights clause at 52.227-14,