

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,