

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,

Rights in Data—General, including *Alternates I, II, III, IV, and V*, where determined to be appropriate as discussed in 27.404, is to be used for that purpose. However, in certain contracts either the particular subject matter of the contract or the intended use of the data may require the use of other prescribed clauses, or may not require the use of any prescribed clause, as discussed in 27.405 and 27.408. Also, in selecting a data rights clause, it is important to note that any such clause does not specify the data (in terms of type, quantity or quality) that is to be delivered, but only the respective rights of the Government and the contractor to use, disclose, or reproduce such data. Accordingly, the contract should also include appropriate terms to specify the data to be delivered.

27.404 Basic rights in data clause.

(a) *Unlimited rights data.* Under the clause at 52.227-14, Rights in Data—General, the Government acquires unlimited rights in the following data (except as provided in paragraph (f) of this section for copyrighted data): (1) Data first produced in the performance of a contract (except to the extent such data constitute minor modifications to data that are limited rights data or restricted computer software); (2) form, fit, and function data delivered under contract; (3) data (except as may be included with restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under a contract; and (4) all other data delivered under the contract other than limited rights data or restricted computer software (see paragraph (b) of this section). If any of the foregoing data are published copyrighted data with the notice of 17 U.S.C. 401 or 402, the Government acquires them under a copyright license, as set forth in paragraph (f) of this section, rather than with unlimited rights.

(b) *Limited rights data and restricted computer software.* The clause at 52.227-14, Rights in Data—General, enables the contractor to protect qualifying limited rights data and restricted com-

puter software by withholding such data from delivery to the Government and delivering form, fit, and function data in lieu thereof. However, when an agency has a need to obtain delivery of limited rights data or restricted computer software, the clause may be used with its *Alternates II or III*, as set forth in paragraphs (d) and (e) of this section. These alternatives enable a contracting officer to selectively request the delivery of such data with limited rights or restricted rights, either by specifying such delivery in the contract or by specific request.

(c) *Alternate definition of limited rights data.* In the clause at 52.227-14, Rights in Data—General, in order for data to qualify as limited rights data, in addition to being data that either embody a trade secret or are data that are commercial or financial and confidential or privileged, such data must also pertain to items, components, or processes developed at private expense, including minor modifications thereof. However, for contracts that do not require the development, use or delivery of items, components or processes that are intended to be acquired by or for the Government, an agency may adopt for general use or for use in specific circumstances the alternate definition of limited rights data set forth in *Alternate I*. The alternate definition does not require that such data pertain to items, components, or processes developed at private expense; but rather that such data were developed at private expense and embody a trade secret or are commercial or financial and confidential or privileged.

(d) *Protection of limited rights data specified for delivery.* (1) Contracting officers are authorized to modify the clause at 52.227-14, Rights in Data—General, by use of *Alternate II*, which *Alternate* adds subparagraph (g)(2) to the clause to enable the Government to require delivery of limited rights data rather than allowing the contractor to withhold such data. To obtain such delivery, the contract may identify and specify data to be delivered, or the contracting officer may require, by written request during contract performance, the delivery of data that has been withheld or identified as withholdable under subparagraph (g)(1) of the clause