

PART 927 — PATENTS, DATA, AND COPYRIGHTS

[PART 927 — PATENTS, DATA, AND COPYRIGHTS](#)

[Subpart 927.2-Patents](#)

[927.200 Scope of subpart.](#)

[927.201 Authorization and consent.](#)

[927.201-1 General.](#)

[927.206 Refund of Royalties.](#)

[927.206-1 General.](#)

[927.206-2 Clause for refund of royalties.](#)

[927.207 Classified contracts.](#)

[927.207-1 General.](#)

[Subpart 927.3 — Patent Rights Under Government Contracts](#)

[927.300 General.](#)

[927.302 Policy.](#)

[927.303 Contract clauses.](#)

[927.304 Procedures.](#)

[927.370 \[Reserved\]](#)

[Subpart 927.4 — Technical Data and Copyrights](#)

[927.400 Scope of subpart.](#)

[927.402 Acquisition and use of technical data.](#)

[927.402-1 General.](#)

[927.402-2 Policy.](#)

[927.403 Negotiations and deviations.](#)

[927.404 Rights in Technical Data in Subcontracts \[DOE coverage paragraphs \(g\), \(k\), \(l\), and \(m\)\].](#)

[927.404-70 Statutory Programs.](#)

[927.408 Cosponsored research and development activities.](#)

[927.409 Solicitation provisions and contract clauses. \[DOE coverage paragraphs \(a\), \(h\), \(s\), and \(t\)\].](#)

[Subpart 927.70 \[Reserved\]](#)

PART 927 — PATENTS, DATA, AND COPYRIGHTS

Subpart 927.2 — Patents

Sec.

927.200 Scope of subpart.

927.201 Authorization and consent.

927.201-1 General.

927.206 Refund of royalties.

927.206-1 General.

927.206-2 Clause for refund of royalties.

927.207 Classified Contracts.

927.207-1 General.

Subpart 927.3 — Patent Rights Under Government Contracts

927.300 General.

927.302 Policy.

927.303 Contract Clauses.

927.304 Procedures.

927.370 (Reserved).

Subpart 927.4 — Technical Data and Copyrights

927.400 Scope of Subpart.

927.402 Acquisition and use of technical data.

927.402-1 General.

927.402-2 Policy.

927.403 Negotiations and deviations.

927.404 Rights in Technical Data in Subcontracts.

927.404-70 Statutory Programs.

927.408 Cosponsored research and development activities.

927.409 Solicitation provisions and contract clauses.

Authority: Atomic Energy Act of 1954, as amended (42 U.S.C. 2168, 2182, 2201); Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987 (42 U.S.C. 7261a.); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); National Nuclear Security Administration Act (50 U.S.C. 4201 *et seq.*)

Source: 49 FR 12004, Mar. 28, 1984, unless otherwise noted.

Subpart 927.40 — (Reserved)

Authority: Sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); Sec. 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168); Federal Nonnuclear Energy Research and Development Act of 1974, Sec. 9, (42 U.S.C. 5908); Atomic Energy Act of 1954, as amended, Sec. 152, (42 U.S.C. 2182); Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987, as amended, Sec. 3131(a), (42 U.S.C.

7261a.)

Source: 49 FR 12004, Mar. 28, 1984, unless otherwise noted and 59 FR 66259, Dec. 23, 1995.

Subpart 927.2-Patents

927.200 Scope of subpart.

When consulting Subpart 27.2 of the FAR, consider "research, development, and demonstration" to replace the phrase "research and development" or "R&D," for the purposes of DOE actions.

927.201 Authorization and consent.

927.201-1 General.

In certain contracting situations, such as those involving research, development, or demonstration projects, consideration should be given to the impact of third party-owned patents covering technology that may be incorporated in the project which patents may ultimately affect widespread commercial use of the project results. In such situations, Patent Counsel shall be consulted to determine what modifications, if any, are to be made to the utilization of the Authorization and Consent and Patent Indemnity provisions or what other action might be deemed appropriate.

927.206 Refund of Royalties.

927.206-1 General.

The clause at 952.227-9, Refund of Royalties, obligates the contractor to inform DOE of the payment of royalties pertaining to the use of intellectual property, either patent or data related, in the performance of the contract. This information may result in identification of instances in which the Government already has a license for itself or others acting in its behalf or the right to sublicense others. Also, there may be pending anti-trust actions or challenges to the validity of a patent or the proprietary nature of the data, or the contractor may be able to gain unrestricted access to the same data through other sources. In such situations the contractor may avoid the payment of a royalty in its entirety or may be charged a reduced royalty.

927.206-2 Clause for refund of royalties.

The contracting officer shall insert the clause at 952.227-9, Refund of Royalties, in solicitations and contracts for experimental, research, developmental, or demonstration work or other solicitations and contracts in which the contracting officer believes royalties will have to be paid by the contractor or a subcontractor of any tier.

927.207 Classified contracts.

927.207-1 General.

Unauthorized disclosure of classified subject matter, whether in a patent application or resulting from the issuance of a patent, may be a violation of the Atomic Energy Act of 1954, as amended, other laws relating to espionage and national security, and provisions of the proposed contract pertaining to disclosure of information.

Subpart 927.3 — Patent Rights Under Government Contracts

927.300 General.

(a) One of the primary missions of the Department of Energy is the use of its procurement process to ensure the conduct of research, development, and demonstration leading to the ultimate commercialization of efficient sources of energy. To accomplish its mission, DOE must work in cooperation with industry in the development of new energy sources and in achieving the ultimate goal of widespread commercial use of those energy sources. To this end, Congress has provided DOE with the authority to invoke an array of incentives to secure the commercialization of new technologies developed for DOE. One such important incentive is provided by the patent system.

(b) Pursuant to 42 U.S.C. 2182 and 42 U.S.C. 5908, DOE takes title to all inventions conceived or first actually reduced to practice in the course of or under contracts with large, for-profit companies, foreign organizations, and others not beneficiaries of Pub. L. 96-517. Regulations dealing with Department's authority to waive its title to subject inventions, including the relevant statutory objectives, exist at 10 CFR part 784, or successor regulation. Pursuant to those regulations, DOE may waive the Government's patent rights in appropriate situations at the time of contracting to encourage industrial participation, foster commercial utilization and competition, and make the benefits of DOE activities widely available to the public. In addition to considering the waiver of patent rights at the time of contracting, DOE will also consider the incentive of a waiver of patent rights upon the reporting of an identified invention when requested by such entities or by the employee-inventor with the permission of the contractor. These requests can be made whether or not a waiver request was made at the time of contracting. Waivers for identified inventions will be granted where it is determined that the patent waiver will be a meaningful incentive to achieving the development and ultimate commercial utilization of inventions. Where DOE grants a waiver of the Government's patent rights, either at the time of contracting or after an invention is made, certain minimum rights and obligations will be required by DOE to protect the public interest.

(c) Another major DOE mission is to manage the nation's nuclear weapons and other classified programs, where research and development procurements are directed toward processes and equipment not available to the public. To accomplish DOE programs for bringing private industry into these and other special programs to the maximum extent permitted by national security and policy considerations, it is desirable that the technology developed in these programs be made available on a selected basis for use in the particular fields of interest and under controlled conditions by properly cleared industrial and scientific research institutions. To ensure such availability and control, the grant of waivers in these programs may necessarily be more limited, either by the imposition of field of use restrictions or national security measures, than in other DOE programs.

[63 FR 10499, Mar. 4, 1998]

927.302 Policy.

(a) Except for contracts with organizations that are beneficiaries of Pub. L. 96-517, the United States, as represented by DOE, shall normally acquire title in and to any invention or discovery conceived or first actually reduced to practice in the course of or under the contract, allowing the contractor to retain a nonexclusive, revocable, paid-up license in the invention and the right to request permission to file an application for a patent and retain title to any ensuing patent in any foreign country in which DOE does not elect to secure patent rights. DOE may approve the request if it determines that such approval would be in the national interest. The contractor's nonexclusive license may be revoked or modified by DOE only to the extent necessary to achieve expeditious practical application of the invention pursuant to any application for and the grant of an exclusive license in the invention to another party.

(b) In contracts having as a purpose the conduct of research, development, or demonstration work and in certain other contracts, DOE may need to require those contractors that are not the

beneficiaries of Pub. L. 96- 517 to license background patents to ensure reasonable public availability and accessibility necessary to practice the subject of the contract in the fields of technology specifically contemplated in the contract effort. That need may arise where the contractor is not attempting to take the technology resulting from the contract to the commercial marketplace, or is not meeting market demands. The need for background patent rights and the particular rights that should be obtained for either the Government or the public will depend upon the type, purpose, and scope of the contract effort, impact on the DOE program, and the cost to the Government of obtaining such rights.

(c) Provisions to deal specifically with DOE background patent rights are contained in paragraph (k) of the clause at 952.227-13. That paragraph may be modified with the concurrence of Patent Counsel in order to reflect the equities of the parties in particular contracting situations. Paragraph (k) should normally be deleted for contracts with an estimated cost and fee or price of \$250,000 or less and may not be appropriate for certain types of study contracts; for planning contracts; for contracts with educational institutions; for contracts for specialized equipment for in-house Government use, not involving use by the public; and for contracts the work products of which will not be the subject of future procurements by the Government or its contractors.

(d) The Assistant General Counsel for Technology Transfer and Intellectual Property shall:

(1) Make the determination that whether reported inventions are subject inventions under the patent rights clause of the contract;

(2) Determine whether and where patent protection will be obtained on inventions;

(3) Represent DOE before domestic and foreign patent offices;

(4) Accept assignments and instruments confirmatory of the Government's rights to inventions; and

(5) Represent DOE in patent, technical data, and copyright matters not specifically reserved to the Head of the Agency or designee under these regulations.

927.303 Contract clauses.

(a) In solicitations and contracts for experimental, research, developmental, or demonstration work (but see FAR 27.304-3 regarding contracts for construction work or architect-engineer services), the contracting officer shall include the clause:

(1) At 952.227-13, Patent Rights Acquisition by the Government, in all such contracts other than those described in paragraphs (a)(2) and (a)(3) of this section;

(2) At 952.227-11, Patent Rights by the Contractor (Short Form), in contracts in which the contractor is a domestic small business or nonprofit organization as defined at FAR 27.301, except where the work of the contract is subject to an Exceptional Circumstances Determination by DOE; and

(3) At 970.5227-10, 970.5227-11, or 970.5227-12, as discussed in 970.27, Patent, Data, and Copyrights, in contracts for the management and operation of DOE laboratories and production facilities.

(b) DOE shall not use the clause at FAR 52.227-12 except in situations where patent counsel grants a request for advance waiver, pursuant to 10 CFR part 784, and supplies the contracting officer with that clause with appropriate modifications. Otherwise, in instances in which DOE grants an advance waiver or waives its rights in an identified invention, pursuant to 10 CFR part 784, contracting officers

shall consult with patent counsel for the appropriate clause.

(c) Any contract that has as a purpose the design, construction, operation, or management integration of a collection of contracts for the same purpose, of a Government-owned research, development, demonstration or production facility must accord the Government certain rights with respect to further use of the facility by or on behalf of the Government upon termination of the contract. The patent rights clause in such contracts must include the following facilities license paragraph:

[Insert appropriate paragraph no.] Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, title to, any rights or patents herein licensed.

(End of paragraph)

[63 FR 10499, Mar. 4, 1998; 65 FR 68932, Nov. 15, 2000; 65 FR 80994, Dec. 22, 2000]

927.304 Procedures.

Where the contract contains the clause at 952.227-11 and the contractor does not elect to retain title to a subject invention, DOE may consider and, after consultation with the contractor, grant requests for retention of rights by the inventor subject to the provisions of 35 U.S.C. 200 et seq. This statement is in lieu of FAR 27.304-1(c).

927.370 [Reserved]

[63 FR 10499, Mar. 4, 1998]

Subpart 927.4 – Technical Data and Copyrights

927.400 Scope of subpart.

This subpart sets forth DOE's policy, procedures, and instructions for contract clauses with respect to the acquisition and use of technical data and copyrights in contracts or subcontracts entered into, with or for the benefit of the Government.

[63 FR 10499, Mar. 4, 1998]

927.402 Acquisition and use of technical data.

927.402-1 General.

(a) The provisions herein pertain to research, development, demonstration and supply contracts. Special considerations for contracts for the operation, design, or construction of Government-owned facilities are covered by Subpart 970.27. Under DOE's broad charter to perform research,

development, and demonstration work, in both nuclear and non-nuclear fields, and to meet the objectives stated in 927.402-2, DOE has extensive needs for technical data. The satisfaction of these needs and the achievement of DOE's objectives through a sound data policy are found in the balancing of the needs and equities of the Government, its contractors, and the general public.

(b) It is important to keep a clear distinction between contract requirements for the delivery of technical data and rights in technical data. The legal rights which the Government acquires in technical data in DOE contracts, other than management and operating contracts (see 48 CFR 970.2704) and other contracts involving the production of data necessary for the management or operation of DOE facilities or a DOE site, are set forth in Rights in Data — General clause at 48 CFR 52.227-14 as modified in accordance with 927.409 of this subpart. In those contracts involving the production of data necessary for the management or operation of DOE facilities or a DOE site, after consultation with Patent Counsel the clause at 48 CFR 970.5227-1 shall be used. However, those clauses do not obtain for the Government delivery of any data whatsoever. Rather, known requirements for the technical data to be delivered by the contractor shall be set forth as part of the contract. The Additional Technical Data Requirements clause at 48 CFR 52.227-16 may be used along with the Rights in Data — General clause to enable the contracting officer to require the contractor to furnish additional technical data, the requirement for which was not known at the time of contracting. There is, however, a built-in limitation on the kind of technical data which a contractor may be required to deliver under either the contract or the Additional Technical Data Requirements clause. This limitation is found in the withholding provision of paragraph (g) of the Rights in Data — General clause at 48 CFR 52.227-14, as amended at 48 CFR 927.409(a), which provides that the Contractor need not furnish limited rights data or restricted computer software. Unless Alternate II or III to the Rights in Data — General clause is used, it is specifically intended that the contractor may withhold limited rights data or restricted computer software even though a requirement for technical data specified in the contract or called for delivery pursuant to the Additional Technical Data Requirements clause would otherwise require the delivery of such data.

(c) In contracts involving access to certain categories of DOE-owned restricted data, as set forth in 10 CFR Part 725, DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including its related data and technology. Accordingly, in contracts where access to such restricted data is to be provided to contractors, the following parenthetical phrase shall be inserted after "contract data" in paragraph (b)(2)(ii) of the clause at 952.227-75, after "technical data" in paragraph (b)(2) of the clause at 952.227-77, or after "technical data" in paragraph (b)(2)(ii) of the clause at 952.227-78 as appropriate: "(except Restricted Data in category C-24, 10 CFR Part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology)." In addition, there are other types of contract situations (e.g., no cost contracts for studies or evaluation) wherein the contractor is given access to restricted data. In such contract situations, limitations on the use of such data may be appropriate.

[63 FR 10499, Mar. 4, 1998; 65 FR 80994, Dec. 22, 2000]

927.402-2 Policy.

The technical data policy is directed toward achieving the following objectives:

(a) Making the benefits of the energy research, development and demonstration programs of DOE widely available to the public in the shortest practicable time;

(b) Promoting the commercial utilization of the technology developed under DOE programs;

(c) Encouraging participation by private persons in DOE energy research, development, and demonstration programs; and

(d) Fostering competition and preventing undue market concentration or the creation or maintenance of other situations inconsistent with the antitrust laws.

927.403 Negotiations and deviations.

Contracting officers shall contact Patent Counsel assisting their contracting activity or the Assistant General Counsel for Technology Transfer and Intellectual Property for assistance in selecting, negotiating, or approving appropriate data and copyright clauses in accordance with the procedures set forth in this subpart and 48 CFR part 27.4. In particular, contracting officers shall seek the prompt and timely advice of Patent Counsel regarding any situation not in conformance with this subpart and prescribed clauses, including the inclusion or modification of alternate paragraphs of the Rights in Data clause at 48 CFR 52.227-14, as amended at 48 CFR 927.409(a), the exclusion of specific items from said clause, the exclusion of the Additional Technical Data Requirements clause at 48 CFR 52.227-16, and the inclusion of any special provisions in a particular contract.

[63 FR 10499, Mar. 4, 1998]

927.404 Rights in Technical Data in Subcontracts [DOE coverage paragraphs (g), (k), (l), and (m)].

(g)(4) Contractors are required by paragraph (d)(3) of the clause at FAR 52.227-14, as modified pursuant to 48 CFR 927.409(a)(1), to acquire permission from DOE to assert copyright in any computer software first produced in the performance of the contract. This requirement reflects DOE's established software distribution program, recognized at FAR 27.404(g)(2), and the Department's statutory dissemination obligations. When a contractor requests permission to assert copyright in accordance with paragraph (d)(3) of the Rights in Data - General clause as prescribed for use at 48 CFR 927.409(a)(1), Patent Counsel shall predicate its decision on the considerations reflected in paragraph (e) of the clause at 970.5204-82 Rights in Data - Technology Transfer.

(k) Subcontracts.

(1)(i) It is the responsibility of prime contractors and higher tier subcontractors, in meeting their obligations with respect to contract data, to obtain from their subcontractor the rights in, access to, and delivery of such data on behalf of the Government. Accordingly, subject to the policy set forth in this subpart, and subject to the approval of the contracting officer, where required, selection of appropriate technical data provisions for subcontracts is the responsibility of the prime contractors or higher-tier subcontractors. In many, but not all instances, use of the Rights in Technical Data clause of FAR 52.227-14, as modified pursuant to 48 CFR 927.409(a)(1), in a subcontract will provide for sufficient Government rights in and access to technical data. The inspection rights afforded in Alternate V of that clause normally should be obtained only in first-tier subcontracts having as a purpose the conduct of research, development, or demonstration work or the furnishing of supplies for which there are substantial technical data requirements as reflected in the prime contract.

(ii) If a subcontractor refuses to accept technical data provisions affording rights in and access to technical data on behalf of the Government, the contractor shall so inform the contracting officer in writing and not proceed with the award of the subcontract without written authorization of the contracting officer.

(iii) In prime contracts (or higher-tier subcontracts) which contain the Additional Technical Data Requirements clause at FAR 52.227-16, it is the further responsibility of the contractor (or higher-tier

subcontractor) to determine whether inclusion of such clause in a subcontract is required to satisfy technical data requirements of the prime contract (or higher-tier subcontract).

(2) As is the case for DOE in its determination of technical data requirements, the Additional Technical Data Requirements clause at FAR 52.227-16 should not be used at any subcontracting tier where the technical data requirements are fully known. Normally, the clause will be used only in subcontracts having as a purpose the conduct of research, development, or demonstration work. Prime contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to acquire rights in the subcontractor's limited rights data or restricted computer software for their private use, and they shall not acquire rights to limited rights data or restricted computer software on behalf of the Government for standard commercial items without the prior approval of Patent Counsel.

(l) Contractor licensing. In many contracting situations the achievement of DOE's objectives would be frustrated if the Government, at the time of contracting, did not obtain on behalf of responsible third parties and itself limited license rights in and to limited rights data or restricted computer software or both necessary for the practice of subject inventions or data first produced or delivered in the performance of the contract. Where the purpose of the contract is research, development, or demonstration, contracting officers should consult with program officials and Patent Counsel to consider whether such rights should be acquired. No such rights should be obtained from a small business or non-profit organization, unless similar rights in background inventions of the small business or non-profit organization have been authorized in accordance with 35 U.S.C. 202(f). In all cases when the contractor has agreed to include a provision assuring commercial availability of background patents, consideration should be given to securing for the Government and responsible third parties at reasonable royalties and under appropriate restrictions, co-extensive license rights for data which are limited rights data and restricted computer software. When such license rights are deemed necessary, the Rights in Data-General clause at FAR 52.227-14 should be supplemented by the addition of Alternate VI as provided at 48 CFR 952.227-14. Alternate VI will normally be sufficient to cover limited rights data and restricted computer software for items and processes that were used in the contract and are necessary in order to insure widespread commercial use or practical utilization of a subject of the contract. The expression "subject of the contract" is intended to limit the licensing required in Alternate VI to the fields of technology specifically contemplated in the contract effort and may be replaced by a more specific statement of the fields of technology intended to be covered in the manner described in the patent clause at 48 CFR 952.227-13 pertaining to "Background Patents." Where, however, limited rights data and restricted computer software cover the main purpose or basic technology of the research, development, or demonstration effort of the contract, rather than subcomponents, products, or processes which are ancillary to the contract effort, the limitations set forth in subparagraphs (k)(1) through (k)(4) of Alternate VI of 48 CFR 952.227-14 should be modified or deleted. Paragraph (k) of 48 CFR 952.227-14 further provides that limited rights data or restricted computer software may be specified in the contract as being excluded from or not subject to the licensing requirements thereof. This exclusion can be implemented by limiting the applicability of the provisions of paragraph (k) of 48 CFR 952.227-14 to only those classes or categories of limited rights data and restricted computer software determined as being essential for licensing. Although contractor licensing may be required under paragraph (k) of 48 CFR 952.227-14, the final resolution of questions regarding the scope of such licenses and the terms thereof, including provisions for confidentiality, and reasonable royalties, is then left to the negotiation of the parties.

(m) Access to restricted data. In contracts involving access to certain categories of DOE-owned Category C-24 restricted data, as set forth in 10 CFR part 725, DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including its related data and technology. Accordingly, in contracts where access to such restricted data is to be provided to

contractors, Alternate VII shall be incorporated into the rights in technical data clause of the contract. In addition, in any other types of contracting situations in which the contractor may be given access to restricted data, appropriate limitations on the use of such data must be specified.

[63 FR 10499, Mar. 4, 1998; 65 FR 80994, Dec. 22, 2000]

927.404-70 Statutory Programs.

Occasionally, Congress enacts legislation that authorizes or requires the Department to protect from public disclosure specific data first produced in the performance of the contract. Examples of such programs are "the Metals Initiative" and section 3001(d) of the Energy Policy Act. In such cases DOE Patent Counsel is responsible for providing the appropriate contractual provisions for protecting the data in accordance with the statute. Generally, such clauses will be based upon the Rights in Data-General clause prescribed for use at 48 CFR 927.409(a) with appropriate modifications to define and protect the "protected data" in accordance with the applicable statute. When contracts under such statutes are to be awarded, contracting officers must acquire from Patent Counsel the appropriate contractual provisions. Additionally, the contracting officer must consult with DOE program personnel and Patent Counsel to identify data first produced in the performance of the contract that will be recognized by the parties as protected data and what data will be made available to the public notwithstanding the statutory authority to withhold the data from public dissemination.

[63 FR 10499, Mar. 4, 1998]

927.408 Cosponsored research and development activities.

Because of the Department of Energy's statutory duties to disseminate data first produced under its contracts for research, development, and demonstration, the provisions of FAR 27.408 do not apply to cosponsored or cost shared contracts.

[63 FR 10499, Mar. 4, 1998]

927.409 Solicitation provisions and contract clauses. [DOE coverage paragraphs (a), (h), (s), and (t)].

(a)(1) The contracting officer shall insert the clause at FAR 52.227-14, Rights in Data-General, substituting the following paragraph (a) and including the following paragraph (d)(3) and Alternate V in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract; except contracting officers are authorized to use Alternate IV rather than paragraph (d)(3) in contracts for basic or applied research with educational institutions except where software is specified for delivery or except where other special circumstances exist:

(a) Definitions.

(1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) Computer software, as used in this clause, means

(i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and

(ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. For the purposes of this clause, the term does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) Form, fit, and function data, as used in this clause, means data relating to items, components, or 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.

(5) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (g)(2) of this section if included in this clause.

(6) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (g)(3) of this section if included in this clause.

(7) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(8) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(d)(3) The Contractor agrees not to assert copyright in computer software first produced in the performance of this contract without prior written permission of the DOE Patent Counsel assisting the contracting activity. When such permission is granted, the Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Contractor, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

(2) However, rights in data in these specific situations will be treated as described, where the contract is

(i) For the production of special works of the type set forth in FAR 27.405(a), but the clause at FAR 52.227-14, Rights in Data-General, shall be included in the contract and made applicable to data

other than special works, as appropriate (See paragraph (i) of FAR 27.409);

(ii) For the acquisition of existing data works, as described in FAR 27.405(b) (See paragraph (j) of FAR 27.409);

(iii) To be performed outside the United States, its possessions, and Puerto Rico, in which case agencies may prescribe different clauses (See paragraph (n) of FAR 27.409);

(iv) For architect-engineer services or construction work, in which case contracting officers shall utilize the clause at FAR 52.227-17, Rights in Data-Special Works;

(v) A Small Business Innovation Research contract (See paragraph (l) of FAR 27.409);

(vi) For management and operation of a DOE facility (See 48 CFR 970.2704) or other contracts involving the production of data necessary for the management or operation of DOE facilities or a DOE site, after consultation with Patent Counsel (See 927.402-1(b)); or

(vii) Awarded pursuant to a statute expressly providing authority for the protection of data first produced thereunder from disclosure or dissemination. (See 927.404-70).

(h) The contracting officer shall insert the clause at FAR 52.227-16, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be \$500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. See FAR 27.406(b). This clause may also be used in other contracts when considered appropriate.

(s) Contracting officers shall incorporate the solicitation provision at FAR 52.227-23, Rights to Proposal Data (Technical), in all requests for proposals.

(t) Contracting officers shall include the solicitation provision at 952.227-84 in all solicitations involving research, developmental, or demonstration work..

[63 FR 10499, Mar. 4, 1998; 65 FR 80994, Dec. 22, 2000]

Subpart 927.70 [Reserved]