

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 fol-

lowing 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.

[49 FR 12004, Mar. 28, 1984, as amended at 63 FR 10505, Mar. 4, 1998; 65 FR 81007, 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 anti-trust 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