

that the contractor must bring any action for judicial review of the determination within 60 days after the notification.

Subpart 27.4—Rights in Data and Copyrights

27.400 Scope of subpart.

This subpart sets forth policies and procedures regarding rights in data and copyrights, and acquisition of data. The policy statement in 27.402 applies to all executive agencies. The remainder of the subpart applies to all executive agencies except the Department of Defense.

27.401 Definitions.

As used in this subpart—

Computer data base 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.

Computer software means—

(1) Computer programs that comprise 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

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

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, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithm, process, formulas, 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.

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. Agencies may, however, adopt the following alternate definition: *Limited rights data* means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged (see 27.404–2(b)).

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 copyrighted computer software, including minor modifications of the computer software.

Restricted rights means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice.

Technical data means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer data bases and computer software documentation) relating to supplies procured by an agency. This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. Recorded information of a scientific or technical nature that is included in computer data bases is also technical data (41 U.S.C. 403(8)).

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.

27.402 Policy.

(a) To carry out their missions and programs, agencies acquire or obtain access to many kinds of data produced during or used in the performance of their contracts. Agencies require data to—

(1) Obtain competition among suppliers;

(2) Fulfill certain responsibilities for disseminating and publishing the results of their activities;

(3) Ensure appropriate utilization of the results of research, development, and demonstration activities, including the dissemination of technical information to foster subsequent technological developments;

(4) Meet other programmatic and statutory requirements; and

(5) Meet specialized acquisition needs and ensure logistics support.

(b) Contractors may have proprietary interests in data. In order to prevent the compromise of these interests, agencies must protect proprietary data from unauthorized use and disclosure. The protection of such data is also necessary to encourage qualified contractors to participate in and apply innovative concepts to Government programs. In light of these considerations, agencies must balance the Government's needs and the contractor's legitimate proprietary interests.

27.403 Data rights—General.

All contracts that require data to be produced, furnished, acquired, or 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, reproduction, and disclosure of that data. Data rights clauses do not specify the type, quantity or quality of data that is to be delivered, but only the respective rights of the Government and the contractor regarding the use, disclosure, or reproduction of the data. Accordingly, the contract shall specify the data to be delivered.

27.404 Basic rights in data clause.

This section describes the operation of the clause at 52.227–14, Rights in Data—General, and also the use of the provision at 52.227–15, Representation of Limited Rights Data and Restricted Computer software.

27.404–1 Unlimited rights data.

The Government acquires unlimited rights in the following data (except for copyrighted works as provided in 27.404–3):

(a) Data first produced in the performance of a contract (except to the extent the data constitute minor modifications to data that are limited rights data or restricted computer software).

(b) Form, fit, and function data delivered under contract.

(c) 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.

(d) All other data delivered under the contract other than limited rights data or restricted computer software (see 27.404–2).