

information (e.g., will be used for evaluation purposes only). If there is a need to have access to any of the excluded technical data during contract performance, consideration should be given to acquiring the data with limited rights, if they so qualify, in accordance with 27.404–2(c).

**27.408 Cosponsored research and development activities.**

(a) In contracts involving cosponsored research and development that require the contractor to make substantial contributions of funds or resources (e.g., by cost-sharing or by repayment of nonrecurring costs), and the contractor's and the Government's respective contributions to any item, component, process, or computer software, developed or produced under the contract are not readily segregable, the contracting officer may limit the acquisition of, or acquire less than unlimited rights to, any data developed and delivered under the contract. Agencies may regulate the use of this authority in their supplements. Lesser rights shall, at a minimum, assure use of the data for agreed-to Governmental purposes (including reprourement rights as appropriate), and address any disclosure limitations or restrictions to be imposed on the data. Also, consideration may be given to requiring the contractor to directly license others if needed to carry out the objectives of the contract. Since the purpose of the cosponsored research and development, the legitimate proprietary interests of the contractor, the needs of the Government, and the respective contributions of both parties may vary, no specific clauses are prescribed, but a clause providing less than unlimited rights in the Government for data developed and delivered under the contract (such as license rights) may be tailored to the circumstances consistent with the foregoing and the policy set forth in 27.402. As a guide, a clause may be appropriate when the contractor contributes money or resources, or agrees to make repayment of nonrecurring costs, of a value of approximately 50 percent of the total cost of the contract (i.e., Government, contractor, and/or third party paid costs), and the respective contributions are not readily segregable for any work element to be performed under the contract. A clause may be used for all or for only specifically identified tasks or work elements under the contract. In the latter instance, its use will be in addition to whatever other data rights clause is prescribed under this subpart, with the contract specifically identifying which clause is to apply to

which tasks or work elements. Further, this type of clause may not be appropriate where the purpose of the contract is to produce data for dissemination to the public, or to develop or demonstrate technologies that will be available, in any event, to the public for their direct use.

(b) Where the contractor's contributions are readily segregable (by performance requirements and the funding for the contract) and so identified in the contract, any resulting data may be treated under this clause as limited rights data or restricted computer software in accordance with 27.404–2(c) or (d), as applicable; or if this treatment is inconsistent with the purpose of the contract, rights to the data may, if so negotiated and stated in the contract, be treated in a manner consistent with paragraph (a) of this section.

**27.409 Solicitation provisions and contract clauses.**

(a) Generally, a contract should contain only one data rights clause. However, where more than one is needed, the contract should distinguish the portion of contract performance to which each pertains.

(b)(1) Insert the clause at 52.227–14, Rights in Data—General, in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, unless the contract is—

(i) For the production of special works of the type set forth in 27.405–1, although in these cases insert the clause at 52.227–14, Rights in Data—General, and make it applicable to data other than special works, as appropriate (see paragraph (e) of this section);

(ii) For the acquisition of existing data works, as described in 27.405–2 (see paragraphs (f) and (g) of this section);

(iii) A small business innovation research contract (see paragraph (h) of this section);

(iv) To be performed outside the United States (see paragraph (i)(1) of this section);

(v) For architect-engineer services or construction work (see paragraph (i)(2) of this section);

(vi) For the management, operation, design, or construction of a Government-owned facility to perform research, development, or production work (see paragraph (i)(3) of this section); or

(vii) A contract involving cosponsored research and development in which a clause providing for less than unlimited right has been authorized (see 27.408).

(2) If an agency determines, in accordance with 27.404–2(b), to adopt

the alternate definition of “Limited Rights Data” in paragraph (a) of the clause, use the clause with its Alternate I.

(3) If a contracting officer determines, in accordance with 27.404–2(c), that it is necessary to obtain limited rights data, use the clause with its Alternate II. The contracting officer shall complete paragraph (g)(3) to include the purposes, if any, for which limited rights data are to be disclosed outside the Government.

(4) In accordance with 27.404–2(d), if a contracting officer determines it is necessary to obtain restricted computer software, use the clause with its Alternate III. Any greater or lesser rights regarding the use, reproduction, or disclosure of restricted computer software than those set forth in the Restricted Rights Notice of paragraph (g)(4) of Alternate III of the clause shall be specified in the contract and the notice modified accordingly.

(5) Use the clause with its Alternate IV in contracts for basic or applied research (other than those for the management or operation of Government facilities or where international agreements require otherwise) to be performed solely by universities and colleges. The clause may be used with its Alternate IV in other contracts if, in accordance with 27.404–3(a), an agency determines to grant permission for the contractor to establish claim to copyright subsisting in all data first produced without further request being made by the contractor. When Alternate IV is used, the contract may exclude items or categories of data from the permission granted, either by express provisions in the contract or by the addition of a paragraph (d)(3) to the clause (see 27.404–4).

(6) In accordance with 27.404–6, if the Government needs the right to inspect certain data at a contractor's facility, use the clause with its Alternate V.

(c) In accordance with 27.404–2(c)(2) and 27.404–2(d)(5), if the contracting officer desires to have an offeror state in response to a solicitation whether limited rights data or restricted computer software are likely to be used in meeting the data delivery requirements set forth in the solicitation, insert the provision at 52.227–15, Representation of Limited Rights Data and Restricted Computer Software, in any solicitation containing the clause at 52.227–14, Rights in Data—General. The contractor's response may provide an aid in determining whether the clause should be used with Alternate II and/or Alternate III.