

19. Amend section 52.227–20 as follows:

a. Revise the introductory paragraph and the date of the clause;

b. In paragraph (a), revise the introductory text and the definitions “Computer software” and “Technical data”; remove “, as used in this clause,” from the following definitions: “Data”, “Form, fit, and function data”, “Limited rights data”, “Restricted computer software”, “SBIR data”, “SBIR rights”, and “Unlimited rights”; and remove the word “formulae” from the definition “Form, fit, and function data” and add “formulas” in its place; and

c. In paragraphs (b)(2)(iv) and (c)(2), remove the word “subparagraph” and add “paragraph” in its place.

The revised text reads as follows:

52.227–20 Rights in Data—SBIR Program.

As prescribed in 27.409(h), insert the following clause:

Rights in Data—SBIR Program (Date)

(a) *Definitions.* As used in this clause—
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.

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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.

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20. Revise section 52.227–21 to read as follows:

52.227–21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.

As prescribed in 27.409(j), insert the following clause:

Technical Data Declaration, Revision, and Withholding of Payment—Major Systems (Date)

(a) *Scope of declaration.* The Contractor shall provide, in accordance with 41 U.S.C. 418a (d)(7), the following declaration with respect to all technical data that relate to a major system and that are delivered or required to be delivered under this contract or that are delivered within 3 years after acceptance of all items (other than technical data) delivered under this contract unless a different period is set forth in the contract. The Contracting Officer may release the Contractor from all or part of the requirements of this clause for specifically identified technical data items at any time during the period covered by this clause.

(b) *Technical data declaration.* (1) All technical data that are subject to this clause shall be accompanied by the following declaration upon delivery:

TECHNICAL DATA DECLARATION (DATE)

The Contractor, _____, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Government contract No. _____ (and subcontract _____, if appropriate) are complete, accurate, and comply with the requirements of the contract concerning such technical data.

(End of declaration)

(2) The Government may, at any time during the period covered by this clause, direct correction of any deficiencies that are not in compliance with contract requirements. The corrections shall be made at the expense of the Contractor.

Unauthorized markings on data shall not be considered a deficiency for the purpose of this clause, but will be treated in accordance with paragraph (e) of the Rights in Data—General clause included in this contract.

(c) *Technical data revision.* The Contractor also shall, at the request of the Contracting

Officer, revise technical data that are subject to this clause to reflect engineering design changes made during the performance of this contract and affecting the form, fit, and function of any item (other than technical data) delivered under this contract. The Contractor may submit a request for an equitable adjustment to the terms and conditions of this contract for any revisions to technical data made pursuant to this paragraph.

(d) *Withholding of payment.* (1) At any time before final payment under this contract the Contracting Officer may withhold payment as a reserve up to an amount not exceeding \$100,000 or 5 percent of the amount of this contract, whichever is less, if the Contractor fails to—

(i) Make timely delivery of the technical data;

(ii) Provide the declaration required by paragraph (b)(1) of this clause;

(iii) Make the corrections required by paragraph (b)(2) of this clause; or

(iv) Make revisions requested under paragraph (c) of this clause.

(2) The Contracting Officer may withhold the reserve until the Contractor has complied with the direction or requests of the Contracting Officer or determines that the deficiencies relating to delivered data arose out of causes beyond the control of the Contractor and without the fault or negligence of the Contractor.

(3) The withholding of any reserve under this clause, or the subsequent payment of the reserve, shall not be construed as a waiver of any Government rights.

(End of clause)

52.227–22 [Amended]

21. In section 52.227–22, amend the introductory paragraph by removing “27.409(r)” and adding “27.409(k)” in its place.

52.227–23 [Amended]

22. In section 52.227–23, amend the introductory paragraph by removing “27.409(s)” and adding “27.409(l)” in its place.

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