

## Subpart 27.4 - Rights in Data and Copyrights

**Parent topic:** [Part 27 - Patents, 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-

*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, algorithms, processes, 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*.

*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 *shall* 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 *shall* 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](#)).

## **27.404-2 Limited rights data and restricted computer software.**

(a) *General*. The basic clause at [52.227-14](#), Rights in *Data-General*, enables the contractor to protect qualifying *limited rights data* and *restricted computer software* by withholding the *data* from the Government and instead delivering *form, fit, and function data*.

(b) *Alternate definition of limited rights data*. For contracts that do not require the development, use, or delivery of items, *components*, or processes that are intended to be acquired by or for the Government, an agency *may* adopt the *alternate* definition of *limited rights data* set forth in *Alternate I* to the clause at [52.227-14](#). The *alternate* definition does not require that the *data* pertain to items, *components*, or processes developed at private expense; but rather that the *data* were developed at private expense and embody a trade secret or are commercial or financial and confidential or privileged.

(c) Protection of *limited rights data* specified for delivery.

(1) The clause at [52.227-14](#) with its *Alternate II* enables the Government to require delivery of *limited rights data* rather than allow the contractor to withhold the *data*. To obtain delivery, the contract *may* identify and specify *data* to be delivered, or the *contracting officer* *may* require, by written request during contract performance, the delivery of *data* that has been withheld or identified to be withheld under paragraph (g)(1) of the clause. In addition, the contract *may* specifically identify *data* that are not to be delivered under *Alternate II* or which, if delivered, will be delivered with *limited rights*. The *limited rights* obtained by the Government are set forth in the *Limited Rights Notice* contained in paragraph (g)(3) of *Alternate II*. Agencies *shall* not, without permission of the contractor, use *limited rights data* for purposes of manufacture or disclose the *data* outside the Government except as set forth in the Notice. Any disclosure by the Government *shall* be subject to prohibition against further use and disclosure by the recipient. The following are examples of specific purposes that *may* be adopted by an agency in its supplement and added to the *Limited Rights Notice* of paragraph (g)(3) of *Alternate II* of the clause:

(i) Use (except for manufacture) by support service contractors.

(ii) Evaluation by nongovernment evaluators.

(iii) Use (except for manufacture) by other contractors participating in the Government's program of which the specific contract is a part.

(iv) *Emergency* repair or overhaul work.

(v) Release to a foreign government, or its instrumentalities, if required to serve the interests of the U.S. Government, for information or evaluation, or for *emergency* repair or overhaul work by the

foreign government.

(2) The provision at 52.227-15, Representation of *Limited Rights Data* and *Restricted Computer Software*, helps the *contracting officer* to determine whether the clause at 52.227-14 *should* be used with its *Alternate II*. This provision requests that an *offeror* state whether *limited rights data* are likely to be delivered. Where *limited rights data* are expected to be delivered, use *Alternate II*. Where negotiations are based on an *unsolicited proposal*, the need for *Alternate II* of the clause at 52.227-14 *should* be addressed during negotiations or discussions, and if *Alternate II* was not included initially it *may* be added by modification, if needed, during contract performance.

(3) If *data* that would otherwise qualify as *limited rights data* is delivered as a *computer database*, the *data* *shall* be treated as *limited rights data*, rather than *restricted computer software*, for the purposes of paragraph (g) of the clause at 52.227-14.

(d) Protection of *restricted computer software* specified for delivery.

(1) *Alternate III* of the clause at 52.227-14, enables the Government to require delivery of *restricted computer software* rather than allow the contractor to withhold such *restricted computer software*. To obtain delivery of *restricted computer software* the *contracting officer* *shall*-

(i) Identify and specify the deliverable *computer software* in the contract; or

(ii) Require by written request during contract performance, the delivery of *computer software* that has been withheld or identified to be withheld under paragraph (g)(1) of the clause.

(2) In considering whether to use *Alternate III*, *contracting officers* *should* note that, unlike other *data*, *computer software* is also an end item in itself. Thus, the *contracting officer* *shall* use *Alternate III* if delivery of *restricted computer software* is required to meet agency needs.

(3) Unless otherwise agreed (see paragraph (d)(4) of this subsection), the *restricted rights* obtained by the Government are set forth in the *Restricted Rights* Notice contained in paragraph (g)(4) (*Alternate III*). Such *restricted computer software* will not be used or reproduced by the Government, or disclosed outside the Government, except that the *computer software* *may* be-

(i) Used or copied for use with the computers for which it was acquired, including use at any Government installation to which the computers *may* be transferred;

(ii) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other *computer software*, *provided* that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, *restricted computer software* *shall* be subject to the same *restricted rights*;

(v) Disclosed to and reproduced for use by support service contractors or their subcontractors, in accordance with paragraphs (3)(i) through (iv) of this section; and

(vi) Used or copied for use with a replacement computer.

(4) The *restricted rights* set forth in paragraph (d)(3) of this subsection are the minimum rights the

Government normally obtains with *restricted computer software* and will automatically apply when such software is acquired under the *Restricted Rights* Notice of paragraph (g)(4) of *Alternate III* of the clause at [52.227-14](#). However, the *contracting officer* may specify different rights in the contract, consistent with the purposes and needs for which the software is to be acquired. For example, the *contracting officer* should consider any networking needs or any requirements for use of the *computer software* from remote terminals. Also, in addressing such needs, the scope of the *restricted rights* may be different for the documentation accompanying the *computer software* than for the programs and databases. Any additions to, or limitations on, the *restricted rights* set forth in the *Restricted Rights* Notice of paragraph (g)(4) of *Alternate III* of the clause at [52.227-14](#) shall be expressly stated in the contract or in a collateral agreement incorporated in and made part of the contract, and the notice modified accordingly.

(5) The provision at [52.227-15](#), Representation of *Limited Rights Data* and *Restricted Computer Software*, helps the *contracting officer* determine whether to use the clause at [52.227-14](#) with its *Alternate III*. This provision requests that an *offeror* state whether *restricted computer software* is likely to be delivered under the contract. In addition, the need for *Alternate III* should be addressed during negotiations or discussions with an *offeror*, particularly where negotiations are based on an *unsolicited proposal*. However, if *Alternate III* is not used initially, it may be added by modification, if needed, during contract performance.

## **27.404-3 Copyrighted works.**

(a) *Data* first produced in the performance of a contract.

(1) Generally, the contractor *must* obtain permission of the *contracting officer* prior to asserting rights in any copyrighted work containing *data* first produced in the performance of a contract. However, contractors are normally authorized, without prior approval of the *contracting officer*, to assert copyright in technical or scientific articles based on or containing such *data* that is published in academic, technical or professional journals, symposia proceedings and similar works.

(2) The contractor *must* make a written request for permission to assert its copyright in works containing *data* first produced under the contract. In its request, the contractor *should* identify the *data* involved or furnish copies of the *data* for which permission is requested, as well as a statement as to the intended publication or dissemination media or other purpose for which the permission is requested. Generally, a *contracting officer* should grant the contractor's request when copyright protection will enhance the appropriate dissemination or use of the *data* unless the-

(i) *Data* consist of a report that represents the official views of the agency or that the agency is required by statute to prepare;

(ii) *Data* are intended primarily for internal use by the Government;

(iii) *Data* are of the type that the agency itself distributes to the public under an agency program;

(iv) Government determines that limitation on distribution of the *data* is in the national interest; or

(v) Government determines that the *data* should be disseminated without restriction.

(3) *Alternate IV* of the clause at [52.227-14](#) provides a substitute paragraph (c)(1) granting permission for contractors to assert copyright in any *data* first produced in the performance of the

contract without the need for any further requests. Except for contracts for management or operation of Government facilities and contracts and subcontracts in support of programs being conducted at those facilities or where international agreements require otherwise, *Alternate IV shall* be used in all contracts for basic or applied research to be performed solely by colleges and universities. *Alternate IV shall* not be used in contracts with colleges and universities if a purpose of the contract is for development of *computer software* for distribution to the public (including use in *solicitations*) by or on behalf of the Government. In addition, *Alternate IV may* be used in other contracts if an agency determines that it is not necessary for a contractor to request further permission to assert copyright in *data* first produced in performance of the contract. The *contracting officer may* exclude any *data*, or items or categories of *data*, from the provisions of *Alternate IV* by expressly so providing in the contract or by adding a paragraph (d)(4) to the clause, consistent with [27.404-4\(b\)](#).

(4) Pursuant to paragraph (c)(1) of the clause at [52.227-14](#), the contractor grants the Government a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the Government, for all *data* (other than *computer software*) first produced in the performance of a contract. For *computer software*, the scope of the Government's license includes all of the above rights except the right to distribute to the public. Agencies *may* also obtain a license of different scope if the *contracting officer* determines, after consulting with legal counsel, such a license will substantially enhance the dissemination of any *data* first produced under the contract or if such a license is required to comply with international agreements. If an agency obtains a different license, the contractor *shall* clearly state the scope of that license in a conspicuous place on the medium on which the *data* is recorded. For example, if the *data* is delivered as a report, the terms of the license *shall* be stated on the cover, or first page, of the report.

(5) The clause requires the contractor to affix the applicable copyright notices of 17 U.S.C. 401 or 402, and acknowledgment of Government sponsorship, (including the contract number) to *data* when it asserts copyright in *data*. Failure to do so could result in such *data* being treated as *unlimited rights data* (see [27.404-5\(b\)](#)).

(b) *Data* not first produced in the performance of a contract.

(1) Contractors *shall* not deliver any *data* that is not first produced under the contract without either-

(i) Acquiring for or granting to the Government a copyright license for the *data*; or

(ii) Obtaining permission from the *contracting officer* to do otherwise.

(2) The copyright license the Government acquires for such *data* will normally be of the same scope as discussed in paragraph (a)(4) of this subsection, and is set forth in paragraph (c)(2) of the clause at [52.227-14](#). However, agencies *may* obtain a license of different scope if the agency determines, after consultation with its legal counsel, that such different license will not be inconsistent with the purpose of acquiring the *data*. If a license of a different scope is acquired, it *must* be so stated in the contract and clearly set forth in a conspicuous place on the *data* when delivered to the Government. If the contractor delivers *computer software* not first produced under the contract, the contractor *shall* grant the Government the license set forth in paragraph (g)(4) of *Alternate III* if included in the clause at [52.227-14](#), or a license agreed to in a collateral agreement made part of the contract.



## **27.404-4 Contractor's release, publication, and use of data.**

(a) In contracts for basic or applied research with universities or colleges, agencies *shall* not place any restrictions on the conduct of or reporting on the results of unclassified basic or applied research, except as provided in applicable U.S. statutes. However, agencies *may* restrict the release or disclosure of *computer software* that is or is intended to be developed to the point of practical application (including for agency distribution under established programs). This is not considered a restriction on the reporting of the results of basic or applied research. Agencies *may* also preclude a contractor from asserting copyright in any *computer software* for purposes of established agency distribution programs, or where required to accomplish the purpose for which the software is acquired.

(b) Except for the results of basic or applied research under contracts with universities or colleges, agencies *may*, to the extent provided in their FAR supplements, place limitations or restrictions on the contractor's exercise of its rights in *data* first produced in the performance of the contract, including a requirement to assign copyright to the Government or another party. Any of these restrictions *shall* be expressly included in the contract.

## **27.404-5 Unauthorized, omitted, or incorrect markings.**

(a) Unauthorized marking of *data*.

(1) The Government has, in accordance with paragraph (e) of the clause at 52.227-14, the right to either return *data* containing unauthorized markings or to cancel or ignore the markings.

(2) Agencies *shall* not cancel or ignore markings without making written inquiry of the contractor and affording the contractor at least 60 days to provide a written justification substantiating the propriety of the markings.

(i) If the contractor fails to respond or fails to provide a written justification substantiating the propriety of the markings within the time afforded, the Government *may* cancel or ignore the markings.

(ii) If the contractor provides a written justification substantiating the propriety of the markings, the *contracting officer shall* consider the justification.

(A) If the *contracting officer* determines that the markings are authorized, the contractor will be so notified *in writing*.

(B) If the *contracting officer* determines, with concurrence of the *head of the contracting activity*, that the markings are not authorized, the contractor will be furnished a written determination which becomes the final agency decision regarding the appropriateness of the markings and the markings will be cancelled or ignored and the *data* will no longer be made subject to disclosure prohibitions, unless the contractor files suit within 90 days in a court of competent jurisdiction. The markings will not be cancelled or ignored until final resolution of the matter, either by the *contracting officer's* determination becoming the final agency decision or by final disposition of the matter by court decision if suit is filed.

(3) The foregoing procedures *may* be modified in accordance with agency regulations implementing

the Freedom of Information Act ([5 U.S.C. 552](#)) if necessary to respond to a request. In addition, the contractor *may* bring a *claim*, in accordance with the Disputes clause of the contract, that *may* arise as the result of the Government's action to remove or ignore any markings on *data*, unless the action occurs as the result of a final disposition of the matter by a court of competent jurisdiction.

(b) Omitted or incorrect notices.

(1) *Data* delivered under a contract containing the clause without a *limited rights* notice or *restricted rights* notice, and without a copyright notice, will be presumed to have been delivered with *unlimited rights*, and the Government assumes no liability for the disclosure, use, or reproduction of the *data*. However, to the extent the *data* has not been disclosed without restriction outside the Government, the contractor *may*, within 6 months (or a longer period approved by the *contracting officer* for good cause shown), request permission of the *contracting officer* to have the omitted *limited rights* or *restricted rights* notices, as applicable, placed on qualifying *data* at the contractor's expense. The *contracting officer* *may* permit adding appropriate notices if the contractor-

(i) Identifies the *data* for which a notice is to be added;

(ii) Demonstrates that the omission of the proposed notice was inadvertent;

(iii) Establishes that use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to any disclosure or use of any such *data* made prior to the addition of the notice or resulting from the omission of the notice.

(2) The *contracting officer* *may* also-

(i) Permit correction, at the contractor's expense, of incorrect notices if the contractor identifies the *data* on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

## **27.404-6 Inspection of data at the contractor's facility.**

*Contracting officers* *may* obtain the right to inspect *data* at the contractor's facility by use of the clause at [52.227-14](#) with its *Alternate V*, which adds paragraph (j) to provide that right. Agencies *may* also adopt *Alternate V* for general use. The *data* subject to *inspection* *may* be *data* withheld or withholdable under paragraph (g)(1) of the clause. *Inspection* *may* be made by the *contracting officer* or designee (including nongovernmental personnel under the same conditions as the *contracting officer*) for the purpose of verifying a contractor's assertion regarding the *limited rights* or *restricted rights* status of the *data*, or for evaluating work performance under the contract. This right *may* be exercised up to 3 years after acceptance of all items to be delivered under the contract. The contract *may* specify *data* items that are not subject to *inspection* under paragraph (j) of the *Alternate*. If the contractor demonstrates to the *contracting officer* that there would be a possible conflict of interest if *inspection* were made by a particular representative, the *contracting officer* *shall* designate an *alternate* representative.



## 27.405 Other data rights provisions.

### 27.405-1 Special works.

(a) The clause at 52.227-17, Rights in *Data*-Special Works, is for use in contracts (or *may* be made applicable to portions thereof) that are primarily for the production or compilation of *data* (other than *limited rights data* or *restricted computer software*) for the Government's own use, or when there is a specific need to limit distribution and use of the *data* or to obtain indemnity for liabilities that *may* arise out of the content, performance, or disclosure of the *data*. Examples are contracts for-

(1) The production of audiovisual works, including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translation, adaptation, and the like;

(2) Histories of the respective agencies, departments, services, or units thereof;

(3) Surveys of Government establishments;

(4) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties;

(5) The compilation of reports, books, studies, surveys, or similar documents that do not involve research, development, or experimental work;

(6) The collection of *data* containing personally identifiable information such that the disclosure thereof would violate the right of privacy or publicity of the individual to whom the information relates;

(7) Investigatory reports;

(8) The development, accumulation, or compilation of *data* (other than that resulting from research, development, or experimental work performed by the contractor), the early release of which could prejudice follow-on *acquisition* activities or agency regulatory or enforcement activities; or

(9) The development of *computer software* programs, where the program-

(i) *May* give a commercial advantage; or

(ii) Is agency mission sensitive, and release could prejudice agency mission, programs, or follow-on *acquisitions*.

(b) The contract *may* specify the purposes and conditions (including time limitations) under which the *data may* be used, released, or reproduced other than for contract performance. Contracts for the production of audiovisual works, sound recordings, etc., *may* include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the works are acquired.

(c) Paragraph (c)(1)(ii) of the clause, which enables the Government to obtain assignment of copyright in any *data* first produced in the performance of the contract, *may* be deleted if the *contracting officer* determines that such assignment is not needed to further the objectives of the contract.

(d) Paragraph (e) of the clause, which requires the contractor to indemnify the Government against any liability incurred as the result of any violation of trade secrets, copyrights, right of privacy or publicity, or any libelous or other unlawful matter arising out of or contained in any production or compilation of *data* that are subject to the clause, *may* be deleted or limited in scope where the *contracting officer* determines that, because of the nature of the particular *data* involved, such liability will not arise.

(e) When the audiovisual or other special works are produced to accomplish a public purpose other than *acquisition* for the Government's own use (such as for production and distribution to the public of the works by other than a *Federal agency*) agencies are authorized to modify the clause for use in contracts, with rights in *data* provisions that meet agency mission needs yet protect free speech and freedom of expression, as well as the artistic license of the creator of the work.

## **27.405-2 Existing works.**

The clause at [52.227-18](#), Rights in *Data-Existing Works*, is for use in contracts exclusively for the *acquisition* (without modification) of existing works such as, motion pictures, television recordings, and other audiovisual works; sound recordings; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. The contract *may* set forth limitations consistent with the purposes for which the works covered by the contract are being acquired. Examples of these limitations are means of exhibition or transmission, time, type of audience, and geographical location. However, if the contract requires that works of the type indicated in this paragraph are to be modified through editing, translation, or addition of subject matter, etc. (rather than purchased in existing form), then see [27.405-1](#).

## **27.405-3 Commercial computer software.**

(a) When *contracting* other than from GSA's Multiple Award Schedule contracts for the *acquisition* of commercial *computer software*, no specific *contract clause* prescribed in this subpart need be used, but the contract *shall* specifically address the Government's rights to use, disclose, modify, distribute, and reproduce the software. Section [12.212](#) sets forth the guidance for the *acquisition* of *commercial computer software* and states that *commercial computer software* or commercial computer software documentation *shall* be acquired under licenses customarily provided to the public to the extent the license is consistent with Federal law and otherwise satisfies the Government's needs. The clause at [52.227-19](#), *Commercial Computer Software License*, *may* be used when there is any confusion as to whether the Government's needs are satisfied or whether a customary commercial license is consistent with Federal law. Additional or lesser rights *may* be negotiated using the guidance concerning *restricted rights* as set forth in [27.404-2\(d\)](#), or the clause at [52.227-19](#). If greater rights than the minimum rights identified in the clause at [52.227-19](#) are needed, or lesser rights are to be acquired, they *shall* be negotiated and set forth in the contract. This includes any additions to, or limitations on, the rights set forth in paragraph (b) of the clause at [52.227-19](#) when used. Examples of greater rights *may* be those necessary for networking purposes or use of the software from remote terminals communicating with a host computer where the software is located. If the *computer software* is to be acquired with *unlimited rights*, the contract *shall* also so state. In addition, the contract *shall* adequately describe the computer programs and/or databases, the media on which it is recorded, and all the necessary documentation.

(b) If the contract incorporates, makes reference to, or uses a vendor's standard commercial lease, license, or purchase agreement, the *contracting officer shall* ensure that the agreement is consistent

with paragraph (a) of this subsection. The *contracting officer should* exercise caution in accepting a vendor's terms and conditions, since they *may* be directed to commercial sales and *may* not be appropriate for Government contracts. Any inconsistencies in a vendor's standard commercial agreement *shall* be addressed in the contract and the contract terms *shall* take precedence over the vendor's standard commercial agreement. If the clause at [52.227-19](#) is used, inconsistencies in the vendor's standard commercial agreement regarding the Government's right to use, reproduce or disclose the *computer software* are reconciled by that clause.

(c) If a prime contractor under a contract containing the clause at [52.227-14](#), Rights in *Data-General*, with paragraph (g)(4) (*Alternate III*) in the clause, acquires restricted *computer software* from a subcontractor (at any tier) as a separate *acquisition* for delivery to or for use on behalf of the Government, the *contracting officer may* approve any additions to, or limitations on the *restricted rights* in the *Restricted Rights* Notice of paragraph (g)(4) in a collateral agreement incorporated in and made part of the contract.

## **27.405-4 Other existing data.**

(a) Except for existing works pursuant to [27.405-2](#) or *commercial computer software* pursuant to [27.405-3](#), no clause contained in this subpart is required to be included in-

(1) Contracts solely for the *acquisition* of books, periodicals, and other printed items in the exact form in which these items are to be obtained unless reproduction rights are to be acquired; or

(2) Other contracts that require only existing *data* (other than *limited rights data*) to be delivered and the *data* are available without disclosure prohibitions, unless reproduction rights to the *data* are to be obtained.

(b) If the reproduction rights to the *data* are to be obtained in any contract of the type described in paragraph (b)(1) (i) or (ii) of this section, the rights *shall* be specifically set forth in the contract. No clause contained in this subpart is required to be included in contracts substantially for on-line *data* base services in the same form as they are normally available to the general public.

## **27.406 Acquisition of data.**

### **27.406-1 General.**

(a) It is the Government's practice to determine, to the extent feasible, its *data* requirements in time for inclusion in *solicitations*. The *data* requirements *may* be subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of *data* represents an expense to both the Government and the contractor, efforts *should* be made to keep the contract *data* requirements to a minimum, consistent with the purposes of the contract.

(b) The *contracting officer shall* specify in the contract all known *data* requirements, including the time and place for delivery and any limitations and restrictions to be imposed on the contractor in the handling of the *data*. Further, and to the extent feasible, in *major system acquisitions*, the *contracting officer shall* set out *data* requirements as separate *line items*. In establishing the contract *data* requirements and in specifying *data* items to be delivered by a contractor, agencies

*may*, consistent with paragraph (a) of this subsection, develop their own contract schedule provisions. Agency procedures *may*, among other things, provide for listing, specifying, identifying source, assuring delivery, and handling any *data* required to be delivered, first produced, or specifically used in the performance of the contract.

(c) *Data* delivery requirements *should* normally not require that a contractor provide the Government, as a condition of the *procurement*, *unlimited rights* in *data* that qualify as *limited rights data* or *restricted computer software*. Rather, *form, fit, and function data* *may* be furnished with *unlimited rights* instead of the qualifying *data*, or the qualifying *data* *may* be furnished with *limited rights* or *restricted rights* if needed (see [27.404-2\(c\)](#) and (d)). If greater rights are needed, they *should* be clearly set forth in the *solicitation* and the contractor fairly compensated for the greater rights.

## **27.406-2 Additional data requirements.**

(a) In some *contracting* situations, such as experimental, developmental, research, or demonstration contracts, it *may* not be feasible to ascertain all the *data* requirements at contract award. The clause at [52.227-16](#), Additional *Data* Requirements, *may* be used to enable the subsequent ordering by the *contracting officer* of additional *data* first produced or specifically used in the performance of these contracts as the actual requirements become known. The clause *shall* normally be used in *solicitations* and contracts involving experimental, developmental, research or demonstration work (other than basic or applied research to be performed under a contract solely by a university or college when 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. If the contract is for basic or applied research to be performed by a university or college, and the *contracting officer* believes the contract effort will in the future exceed \$500,000, even though the initial award does not, the *contracting officer* *may* include the clause in the initial award.

(b) *Data* *may* be ordered under the clause at [52.227-16](#) at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under the contract. The contractor is to be compensated for converting the *data* into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of *data*, the *contracting officer* *may* relieve the contractor of the retention requirements for specified *data* items at any time during the retention period required by the clause. The *contracting officer* *may* permit the contractor to identify and specify in the contract *data* not to be ordered for delivery under the clause if the *data* is not necessary to meet the Government's requirements for *data*. Also, the *contracting officer* *may* alter the clause by deleting the term "or specifically used" in paragraph (a) of the clause if delivery of the *data* is not necessary to meet the Government's requirements for *data*. Any *data* ordered under this clause will be subject to the clause at [52.227-14](#), Rights in *Data*-General, (or other equivalent clause setting forth the respective rights of the Government and the contractor) in the contract. *Data* authorized to be withheld under such clause will not be required to be delivered under the clause at [52.227-16](#), except as provided in *Alternate II* or *Alternate III*, if included (see [27.404-2\(c\)](#) and (d)).

(c) Absent an established program for dissemination of *computer software*, agencies *should* not order additional *computer software* under the clause at [52.227-16](#), for the sole purpose of disseminating or marketing the software to the public. In ordering software for internal purposes, the *contracting officer* *shall* consider, consistent with the Government's needs, not ordering particular source codes, algorithms, processes, formulas, or flow charts of the software if the contractor shows that this aids its efforts to disseminate or market the software.

## **27.406-3 Major system acquisition.**

(a) The clause at [52.227-21](#), *Technical Data Declaration, Revision, and Withholding of Payment-Major Systems*, implements [41 U.S.C. 2302\(e\)](#). When using the clause at [52.227-21](#), the section of the contract specifying *data* delivery requirements (see [27.406-1\(b\)](#)) *shall* expressly identify those *line items* of *technical data* to which the clause applies. Upon delivery of the *technical data*, the *contracting officer shall* review the *technical data* and the contractor's declaration relating to it to assure that the *data* are complete, accurate, and comply with contract requirements. If the *data* are not complete, accurate, or compliant, the *contracting officer should* request the contractor to correct the deficiencies, and *may* withhold payment. Final payment *shall* not be made under the contract until it has been determined that the delivery requirements of those *line items* of *data* to which the clause applies have been satisfactorily met.

(b) In a contract for, or in support of, a *major system* awarded by a civilian agency other than NASA or the U.S. Coast Guard, the following applies:

(1) The *contracting officer shall* require the delivery of any *technical data* relating to the *major system* or *supplies* for the *major system*, that are to be developed exclusively with Federal funds if the delivery of the *technical data* is needed to ensure the competitive *acquisition* of *supplies* or services that will be required in substantial quantities in the future. The clause at [52.227-22](#), *Major System-Minimum Rights*, is used in addition to the clause at [52.227-14](#), *Rights in Data-General*, and other required clauses, to ensure that the Government acquires at least those rights required by Pub. L. 98-577 in *technical data* developed exclusively with Federal funds.

(2) *Technical data*, relating to a *major system* or *supplies* for a *major system*, procured or to be procured by the Government and also relating to the design, development, or manufacture of *products* or processes offered or to be offered for sale to the public (except for such *data* as *may* be necessary for the Government to operate or maintain the product, or use the process if obtained by the Government as an element of performance under the contract), *shall* not be required to be provided to the Government from persons who have developed such *products* or processes as a condition for the *procurement* of such *products* or processes by the Government.

## **27.407 Rights to technical data in successful proposals.**

The clause at [52.227-23](#), *Rights to Proposal Data (Technical)*, allows the Government to acquire *unlimited rights* to *technical data* in successful proposals. Pursuant to the clause, the prospective contractor is afforded the opportunity to specifically identify pages containing *technical data* to be excluded from the grant of *unlimited rights*. This exclusion is not dispositive of the protective status of the *data*, but any excluded *technical data*, as well as any commercial and financial information contained in the proposal, will remain subject to the policies in [subpart 15.2](#) or [15.6](#) (or agency supplements) relating to proposal 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 repurchase 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 its 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*, *commercial computer software*, or other existing *data*, as described in 27.405-2 through 27.405-4 (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 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, and contracts and subcontracts in support of programs being conducted at those 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 assert *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)(4) 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*.

(d) Insert the clause at [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 [27.406-2](#)). This clause *may* also be used in other contracts when considered appropriate. For example, if the contract is for basic or applied research to be performed by a university or college, and the *contracting officer* believes the contract effort will in the future exceed \$500,000, even though the initial award does not, the *contracting officer* *may* include the clause in the initial award.

(e) In accordance with [27.405-1](#), insert the clause at [52.227-17](#), Rights in *Data*-Special Works, in *solicitations* and contracts primarily for the production or compilation of *data* (other than *limited rights data* or *restricted computer software*) for the Government's internal use, or when there is a specific need to limit distribution and use of the *data* or to obtain indemnity for liabilities that *may* arise out of the content, performance, or disclosure of the *data*. Examples of such contracts are set forth in [27.405-1](#).

(1) Insert the clause if existing works are to be modified, as by editing, translation, addition of subject matter, etc.

(2) The contract *may* specify the purposes and conditions (including time limitations) under which the *data* *may* be used, released, or reproduced by the contractor for other than contract performance.

(3) Contracts for the production of audiovisual works, sound recordings, etc. *may* include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the *data* is acquired.

(4) The clause *may* be modified in accordance with paragraphs (c) through (e) of [27.405-1](#).

(f) Insert the clause at [52.227-18](#), Rights in *Data*-Existing Works, in *solicitations* and contracts exclusively for the *acquisition*, without modification, of existing audiovisual and similar works of the type set forth in [27.405-2](#). The contract *may* set forth limitations consistent with the purposes for which the work is being acquired. While no specific clause of this subpart is required to be included in contracts solely for the *acquisition*, without disclosure prohibitions, of books, publications, and similar items in the exact form in which the items exist prior to the request for purchase (*i.e.*, the off-the-shelf purchase of such items), or in other contracts where only existing *data* available without disclosure prohibitions is to be furnished, if reproduction rights are to be acquired, the contract *shall* include terms addressing such rights. (See [27.405-4](#).)

(g) In accordance with [27.405-3](#), when *contracting* (other than from GSA's Multiple Award Schedule contracts) for the *acquisition* of *commercial computer software*, the *contracting officer* *may* insert the clause at [52.227-19](#), *Commercial Computer Software License*, in the *solicitation* and contract. In any event, the *contracting officer* *shall* assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with [27.405-3](#).

(h) If the contract is a Small Business Innovation Research (SBIR) contract, insert the clause at [52.227-20](#), Rights in *Data*-SBIR Program in all Phase I, Phase II, and Phase III contracts awarded under the Small Business Innovation Research Program established pursuant to [15 U.S.C. 638](#). The SBIR protection period *may* be extended in accordance with the Small Business Administration's "Small Business Innovation Research Program Policy Directive" (September 24, 2002).

(i) Agencies *may* prescribe in their procedures, as appropriate, a clause consistent with the policy of [27.402](#) in contracts-

(1) To be performed outside the *United States*;

(2) For *architect-engineer services* and *construction* work (*e.g.*, the clause at [52.227-17](#), Rights in Data-Special Works); or

(3) For management, operation, design, or *construction* of Government-owned research, development, or production facilities, and in contracts and subcontracts in support of programs being conducted at such facilities.

(j) In accordance with [27.406-3\(a\)](#), insert the clause at [52.227-21](#), *Technical Data* Declaration, Revision, and Withholding of Payment-Major Systems, in contracts for *major systems acquisitions* or for support of *major systems acquisitions*. This requirement includes contracts for detailed design, development, or production of a *major system* and contracts for any individual part, *component*, subassembly, assembly, or subsystem integral to the *major system*, and other property that *may* be replaced during the service life of the system, including spare parts. When used, this clause requires that the *technical data* to which it applies be specified in the contract (see [27.406-3\(a\)](#)).

(k) In accordance with [27.406-3\(b\)](#), in the case of civilian agencies other than NASA and the U.S. Coast Guard, insert the clause at [52.227-22](#), *Major System-Minimum Rights*, in contracts for *major systems* or contracts in support of *major systems*.

(l) In accordance with [27.407](#), if a *contracting officer* desires to acquire *unlimited rights* in *technical data* contained in a successful proposal upon which a contract award is based, insert the clause at [52.227-23](#), Rights to Proposal Data (Technical). Rights to *technical data* in a proposal are not acquired by mere incorporation by reference of the proposal in the contract, and if a proposal is incorporated by reference, the *contracting officer shall* follow [27.404](#) to assure that the rights are appropriately addressed.