

927.406-4 Acquisition and use of technical data.

To meet the objectives stated in 927.402, DOE has extensive technical data needs.

(a) Section 982 of the Energy Policy Act of 2005 (EPAct 2005, 42 U.S.C. 16352) mandates that the Secretary of Energy, through the Office of Scientific and Technical Information, shall maintain within the Department publicly available collections of STI resulting from research, development, demonstration, and commercial-applications activities supported by DOE.

(b) Section 105 of the DOE Energy Research and Innovation Act (Pub. L. 115-246) further mandates that DOE establish and maintain a public database populated with information on unclassified research and development projects, as well as relevant literature and patents.

(c) The legal rights in technical data acquired by the Government through DOE contracts, other than management and operating (M&O) contracts (*see* 970.2704), or contracts involving the production of data necessary for DOE sites/facilities management or operations, are set forth in the clause at FAR 52.227-14, Rights in Data—General, as supplemented in accordance with this subpart. However, those clauses do not obtain for the Government delivery of any data whatsoever. Rather, known technical data delivery requirements shall be set forth as part of the contract. For Research and Development contracting, requirements for results (conveyed as STI) are addressed in 935.010 and should be set forth in the contract.

(d) 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 FAR subpart 27.4. In particular, Contracting Officers shall seek the advice of Patent Counsel regarding any situation not in conformance with this subpart, including the inclusion or modification of alternate paragraphs of the clause at FAR 52.227-14, as supplemented pursuant to this subpart, the exclusion of specific items from that clause, the exclusion of the clause at FAR 52.227-16, Additional Data Requirements, and the inclusion of any special provisions in a particular contract. Deviations shall follow the requirements in FAR subpart 1.4 and subpart 901.4.

(e) Contractors are required by Alternate VIII of the clause at 952.227-14, as supplemented pursuant to this subpart, to acquire permission from DOE Patent Counsel to assert copyright in any data including computer software first produced in the performance of the contract. This requirement reflects DOE's established software distribution program, and DOE's statutory dissemination obligations. When a contractor requests permission to assert copyright, Patent Counsel shall predicate its decision on the considerations reflected in paragraph (e) of the clause at 970.5227-2, Rights in Data—Technology Transfer.

(f) In many situations the achievement of DOE's objectives would be frustrated if the Government, at time of award, did not obtain on behalf of responsible third parties and itself limited license rights in and to limited rights data or restricted computer software, or both. Such rights are necessary for the practice of subject inventions or data first produced or delivered under the contract. When the contract is for research, development, or demonstration, Contracting Officers should consult with program officials and Patent Counsel to determine whether such rights should be acquired. No such rights should be obtained from a small business or non-profit organization, unless similar rights in

background inventions of such organizations have been authorized in accordance with 35 U.S.C. 202(f). In all cases when the Contractor has agreed to include a provision assuring commercial availability of background patents, consideration should be given to securing for the Government and responsible third parties at reasonable royalties and under appropriate restrictions, co-extensive license rights for data, which are limited rights data and restricted computer software.

Parent topic: Subpart 927.4—Rights in Data and Copyrights