The Reagan Administration has consistently supported the concept of contractor ownership of inventions made with Federal support and endorsed legislation to achieve it. When the Schmitt Bill (S. 1657) became stalled in the last session of Congress, the Department of Commerce initiated the February 18, 1983 Presidential Memorandum on Government Patent Policy. The Memorandum directs agencies, to the extent permitted by law, to allow nearly all R&D contractors to own inventions under policies that are the same or substantially the same as those applied to the small business and nonprofit organizations under P.L. 96-517. Implementation of the Memorandum, as intended, is being frustrated by the patent staffs at DOD, NASA, and Energy through their control of Part 27, Patent, Data and Copyrights of the new Government-wide Federal Acquisition Regulation (FAR). FAR is scheduled to replace all existing patent regulations on September 30, 1983 and would thereby be the only vehicle implementing the President's Memorandum notwithstanding the President's Memorandum . The FAR regulations have been drafted to allow contractor ownership but under policies substantially different than those extended to small businesses and nonprofit organizations under P.L. 96-517. Incredibly, the clear ownership under the current practices of some agencies would be severely clouded by conditions included in the proposed FAR. For instance under FAR, contractors must report an invention within 6 months from its conception (which is

undefined), and elect rights and file a patent application within 6 months thereafter or be subject to loss of ownership if the prescribed actions are not taken within the allotted periods. The spector of loss of ownership as a penalty for late reporting, electing or filing has no precedent in present regulations. Small business and universities were able to eliminate a similar provision in the development of regulations implementing P.L. 96-517 through vigorous opposition. A number of similar conditions in which performers other than small business and universities are treated in a more restrictive manner are discussed in the attached comments on FAR. Without an indication of private sector concern, no organized process for objective review of the regulations can emerge to force corrective action.

In addition to the problems in the patent section, Part 27 of FAR includes a first attempt to prescribe a government-wide policy on ownership of technical data made or submitted in performance of government contracts. In most part, the section on technical data implements the policies of DOD, NASA and DOE to retain government ownership of technical data generated in the performance of such contracts. Since this policy is now being extended to all other agencies for the first time, and in light of the February 18, 1983 Presidential Memorandum endorsing contractor ownership of inventions, it appears that this is the correct time to raise the appropriateness of a

general principle of government ownership of technical data. Consistency with the February 18, 1983 Presidential Memorandum suggests a reversal of such presumption of ownership in technical data.

This could be accomplished by protecting the government's interest as it is under the new patent policy, by negotiating the rights agencies need to perform their mission at the time of contracting.

Contractor ownership of technical data (subject to appropriate license rights in the agency) could serve at least the following purposes:

a. It would place control of the data in the hands of U.S. companies to the exclusion of foreign competition. Clearly this is a better choice than permitting foreign competition the free access they have under present policy.

b. It would dampen the flow of sensitive but unclassified data to the extent it had an identifiable commercial potential.

P.L. 97-219 which establishes a Small Business Innovation Research program (SBIR) in all agencies having research programs over a designated amount provides for just such ownership in small businesses functioning under this Act. It would be well to begin discussion on extending this concept to other contract performers.

Also attached is a short presentation which supports the concept of contractor ownership of government funding inventions as an important aspect of meeting foreign competition.

Attachments