Government Data Policy Statement (Revised 4/15/85) 85 APR 19 P1:00

This statment provides guidance concerning rights in and the acquistion of technical data and software under government grants and contracts for use in the development of the FAR and agency regulations. It is intended to strike a balance between agency needs, mission requirements, full and open competetition in Government procurement, the purposes of grants and contracts, the proprietary interests of contractors and grantees, encouraging the participation of highly qualified concerns in Government programs, and the enhancement of commercial use of Federally-supported research and development. It does not affect the classification of technical data or software for national security purposes.

Section 1. Definitions. As used in this Statement--

(a) The terms "contract" and "contractors" include, respectively, subcontracts and subcontractors;

(b) "technical data" means recorded information of a scientific or technical nature. It does not include software or financial, administrative, cost and pricing, or management data, and other other information incidental to contract or grant administration; and

(c) "software" means computer programs, computer data bases, and documentation thereof.

Section 2. General. Agencies need to acquire or obtain access to many kinds of technical data and software developed under or used in performing their contracts or grants. They may be required to obtain competition among suppliers; to meet acquisition needs; to ensure logistic support; to monitor performance; to fulfill responsibilities for the disseminating and publishing the results of their activities; to ensure appropriate use of the results of research, development, and demonstration activities; or to meet other programmatic and statutory requirements.

At the same time, contractors and grantees may have a proprietary interest in technical data and software resulting from private investment; and its protection from unauthorized use and disclosure is required in order to preclude the compromise of such proprietary interests and contractors'commercial positions. Such protection is also necessary to encourage qualified contractors to participate in Government programs and apply innovative concepts to such programs. In addition, technical data or software produced in whole or in part with Federal funding may have use for commercial development, and limiting or restricting the Government's acquisition, use or disclosure of it in appropriate circumstances may be an added incentive for marketing technology supported with Federal funds.

## Section 3. Rights in Technical Data Under Contracts

As to technical data resulting exclusively from private investment, especially that relating to items, components, or processes developed at private expense, a contractor's proprietary interest will be protected by limiting delivery of such data, of if delivery is needed, by restricting its use and disclosure. Normally form, fit, and function data should be sufficient to meet agency needs, and a contractor should be afforded the opportunity to withhold more detailed data from delivery. If delivery of more detailed data is needed, it should be under express contract provisions limiting or restricting its use and disclosure so as not to compromise a contractor's property right or economic interst in the data. Delivery of such data with unlimited rights or reprocurement rights should not be required unless such rights are separately negotiated on a fair and equitable basis that takes into consideration the potential degradation of the contractor's commercial market position; provided that rights are not be acquired in a manner inconsistent with Pub. L. 98-525 or Pub. L. 98-577 when these apply.

As to technical data resulting partially from private expense and partially from Federal funding, particular care must be given to the contractor's economic interests therein. For example, if the Federal funding is only for minor modifications of items, components, or processes developed at private expense, the data relating thereto should normally be treated as set forth in the paragraph above. Beyond that, rights to such data must be considered in light of the purpose of the contract, agency needs, the respective contributions of the contractor and agency, and the extent to which the contractor's commercial interests will be affected. For example, as a rule, if the contract involves co-sponsored research and development and the contractor is required to make substantial contributions of funds or resources (i.e. by cost-sharing or repayment of nonrecurring costs), and the respective contributions to any item, component, or process developed under the contract are not readily segregable, the contractor may be allowed to limit or restrict disclosure and use of all technical and other data produced under the contract, with the agency acquiring only such rights as are needed to carry out the specific purposes of the contract.

As to technical data resulting exclusively from Federal funding, an agency may acquire such data with unlimited rights (i.e. without limitation on its use and disclosure by the Government); although limitations and restrictions normally should not be placed on the contractor's right to also use and disclose the data for its own purposes. However, agencies are not precluded from acquiring less than unlimited rights if this will better promote commercialization or other objectives. In particular, contractors should normally be authorized to copyright such data subject to at least a copyright license to the Government for governmental purposes (excluding publication outside the government except for procurement purposes). (Agencies

Dr. Andrew Pettifor
Office of Science and
Technology Policy
NEOB, Room 5005
726 Jackson Place, N. W.
Washington, D. C. 20506

Mr. Paul A. Pumpian, Patent Advisor
Office of Innovation Research
and Technology
Small Business Administration
1441 L Street, N. W., Room 500
Washington, D. C. 20416

Mr. William Ferguson
General Services Administration
18th and F Street, N. W.
Room 4010
Washington, D. C. 20406

Mr. Howard Dugoff
Science and Technology Advisor
U. S. Department of Transportation
400 7th Street, N. W.
Room 8410
Washington, D. C. 20590

Mr. Blake J. Ratliff
Director, Research Staff
Office of Construction (08H)
Veterans Administration
810 Vermont Avenue, N. W. Room 551
Washington, D. C. 20420

Honorable Orville G. Bentley
Assistant Secretary for Science
and Education, Room 217W
U. S. Department of Agriculture
14th and Independence Ave., S. W.
Washington, D. C. 20250

Mr. Donald Senich
Director, Division of Industry,
Science, & Technology Innovation
National Science Foundation
1800 G Street, N. W., Room 1250
Washington, D. C. 20550

Mr. Jerry Rausa
Environmental Engineer
U. S. Environmental Protection Agency
401 M Street, S. W., Room W911, RD672
Washington, D. C. 20460

Mr. Wayne Marchant
Science Advisor to the Assistant
Secretary Water & Science
U.S. Department of the Interior
18th and C Streets, N. W., Room 6649
Washington, D. C. 20240

Mr. Michael Crisp
Special Assistant to the Director
U. S. Department of Energy
1000 Independence Avenue, S. W.
Room 7B-040
Washington, D. C. 20585

Mr. William Maraist
Office of Federal Procurement Policy
New Executive Office Building,
Room 9025
726 Jackson Place, N. W.
Washington, D. C. 20503

Dr. Lowell Harmison
Office of the A/S for Health
Department of Health & Human Services
Parklawn Building, Room 1395
5600 Fishers Land
Rockville, MD 20857

Honorable John Mittino
Assistant Under Secretary, Research
& Engineering (Production Support)
U. S. Department of Defense
Pentagon, Room 3E144
Washington, D. C. 20301

Mr. Gurden Drake
Attorney Advisor, Office of the
General Counsel (Logistics)
U. S. Department of Defense
Pentagon, Room 3D937
Washington, D. C. 20301

Mr. Edward Springer
Officer of Information, Regulation
Management, NEOB, Room 3236
Office of Management and Budget
17th and Pennsylvania Ave., N. W.
Washington, D. C. 20503

Mr. Robert Kempf, Assistant General
Counsel, Patent Matters
National Aeronautics & Space Admin.
FOB 6, Room 7065
400 Maryland Avenue, S. W.
Washington, D. C. 20546

Mr. Ben Bochenek
U. S. Environmental Protection
Agency
Room 513, East Tower
401 M Street, S. W.
Washington, D. C. 20460

Mr. Howard Silverstein
Office ofthe General Counsel
U. S. Department of Agriculture
Room 2332, South Building
Washington, D. C. 20250

Mr. James Dalgety
DMSSO
5203 Leesburg Pike
Suite 1403
Falls Church, VA 22041-3466