

may request waiver of title to an individual identified subject invention pursuant to the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

(c) *Retention of rights by inventor.* The NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, apply for any invention made in the performance of work under any contract with other than a small business firm or a nonprofit organization.

(f) *Revocation or modification of contractor's minimum rights.* Revocation or modification of the contractor's license rights (see 1827.302–(i)(2)) shall be in accordance with 37 CFR 404.10, for subject inventions made and reported under any contract with other than a small business firm or a nonprofit organization.

(g) *Exercise of march-in rights.* For contracts with other than a small business firm or a nonprofit organization, the procedures for the exercise of march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

(h) *Licenses and assignments under contracts with nonprofit organizations.* The Headquarters Associate General Counsel (Intellectual Property) (Code GP) is the approval authority for assignments. Contractor requests should be made to the Patent Representative designated in the clause at 1852.227–72 and forwarded, with recommendation, to Code GP for approval.

1827.304–2 Contracts placed by or for other Government agencies. (NASA supplements paragraph (a))

(a)(3) When a contract is placed for another agency and the agency does not request the use of a specific patent rights clause, the contracting officer, upon consultation with the installation intellectual property counsel, may use the clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form) as modified by 1852.227–11 (see 1827.303–70(a)) or 1852.227–70, New Technology (see 1827.303–70(b)).

1827.304–3 Contracts for construction work or architect-engineer services. (NASA supplements paragraph (a))

(a) For construction or architect-engineer services contracts with other

than a small business or nonprofit organization, see 1827.303–70(b).

1827.304–4 Subcontracts. (NASA supplements paragraph (a))

(a)(i) Unless the contracting officer otherwise authorizes or directs, contractors awarding subcontracts and subcontractors awarding lower-tier subcontracts shall select and include one of the following clauses, suitably modified to identify the parties, in the indicated subcontracts:

(A) The clause at 1852.227–70, New Technology, in any subcontract with other than a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, research, design, or engineering work of any of the types described in 1827.303–70(b) (1)–(6).

(B) The clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form), modified by 1852.227–11 (see 1827.303–70(a)), in any subcontract with a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, or research work.

(ii) Whenever a prime contractor or a subcontractor considers it inappropriate to include one of the clauses discussed in paragraph (a) of this section in a particular subcontract, or a subcontractor refuses to accept the clause, the matter shall be resolved by the contracting officer in consultation with the intellectual property counsel.

1827.304–5 Appeals.

FAR 27.304–5 shall apply unless otherwise provided in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

1827.305 Administration of the patent rights clauses.

1827.305–3 Follow-up by Government.

1827.305–370 NASA patent rights and new technology follow-up procedures.

(a) For each contract containing a patent rights clause or the clause at 1852.227–70, New Technology, the contracting officer shall take the following actions:

(1) Furnish, or require the contractor or furnish directly, the New Technology Representative and the Patent Representative a copy of each contract (and modifications thereto), and copies of the final technical report, interim technical progress reports, and other pertinent material provided under the contract, unless the representatives indicate otherwise; and

(2) Notify the New Technology Representative as to which installation or organizational element has technical cognizance of the contract.

(b) The New Technology Representative shall take the following actions:

(1) Review the technical progress of work performed under the contract to ascertain whether the contractor and its subcontractors are complying with the clause's reporting and record-keeping requirements;

(2) Forward to the Patent Representative copies of all contractor and subcontractor written reports of reportable items and disclosures of subject inventions, and a copy of the written statement, if any, submitted with the reports.

(3) Consult with the Patent Representative whenever a question arises as to whether a given reportable item is to be considered a subject invention and whether it was made in the performance of work under the contract.

(4) Forward to the Patent Representative all correspondence relating to inventions and waivers under the New Technology clause or election of title under the Patent Rights—Retention by the Contractor (Short Form) clause.

(5) Upon receipt of any final report required by the clause, and upon determination that the contract work is complete, determine whether the contractor has complied with the clause's reporting requirements. If so, the New Technology Representative shall certify compliance, obtain the Patent Representative's concurrence, and forward the certification to the contracting officer.

(c) The Patent Representative shall review each reportable item to ascertain whether it is to be considered a subject invention, obtain any determinations required by paragraph (b) of the clause at 1852.227-70, New Technology, and notify the contractor. As

to any subject invention, the Patent Representative shall:

(1) Ensure that the contractor has provided sufficient information to protect the Government's rights and interests in it and to permit the preparation, filing, and prosecution of patent applications;

(2) Determine inventorship;

(3) Ensure the preparation of instruments establishing the Government's rights' and

(4) Conduct selected reviews to ensure that subject inventions are identified, adequately documented, and timely reported or disclosed.

(d) Either the New Technology Representative or the Patent Representative, in consultation with the other, may prepare opinions, make determinations, and otherwise advise the contracting officer with respect to any withholding of payment under paragraph (g) of the clause at 1852.227-70, New Technology. Either the New Technology Representative or the Patent Representative may represent the contracting officer for the purpose of examining the contractor's books, records, and other documents in accordance with paragraph (f) of the clause and take corrective action as appropriate. However, no action may be taken by either the New Technology Representative or the Patent Representative that would constitute a final decision under the Disputes clause, involve any change or increase in the work required to be performed under the contract that is inconsistent with any right of appeal provided in FAR 27.304-5 or 14 CFR 1245, Subpart 1, or otherwise be outside the scope of the contract.

(e) The contracting officer shall not approve release of final payment under the contract and, if applicable, any reserve set aside under the withholding provisions of the clause for deficiencies and delinquent reporting not corrected as of the time of the submission of the final report by the contractor until receipt of the New Technology Representative's certification of compliance, and the Patent Representative's concurrence.