

Federal Acquisition Regulation

27.305-1

(b) Whenever a prime contractor or a subcontractor considers the inclusion of a particular clause in a subcontract to be inappropriate or a subcontractor refuses to accept the proffered clause, the matter shall be resolved by the agency contracting officer in consultation with counsel.

(c) It is Government policy that contractors shall not use their ability to award subcontracts as economic leverage to acquire rights for themselves in inventions resulting from subcontracts.

27.304-5 Appeals.

(a) The agency official initially authorized to take any of the following actions shall provide the contractor with a written statement of the basis for the action at the time the action is taken, including any relevant facts that were relied upon in taking the action:

(1) A refusal to grant an extension to the invention disclosure period under subparagraph (c)(4) of the clauses at 52.227-11 and 52.227-12.

(2) A request for a conveyance of title to the Government under 27.302(d)(1)(i) through (v).

(3) A refusal to grant a waiver under 27.302(g), Preference for U.S. Industry.

(4) A refusal to approve an assignment under 27.304-1(h)(1).

(5) A refusal to approve an extension of the exclusive license period under 27.304-1(h)(2).

(b) Each agency shall establish and publish procedures under which any of the agency actions listed in paragraph (a) above may be appealed to the head of the agency or designee. Review at this level shall consider both the factual and legal basis for the action and its consistency with the policy and objectives of 35 U.S.C. 200-206 and this subpart.

(c) Appeals procedures established under paragraph (b) of this subsection shall include administrative due process procedures and standards for fact-finding at least comparable to those set forth in 37 CFR part 401.6(e)-(g) whenever there is a dispute as to the factual basis for an agency request for a conveyance of title under 27.302(d)(1)(i) through (v) including any dispute as

to whether or not an invention is a subject invention.

(d) To the extent that any of the actions described in paragraph (a) above are subject to appeal under the Contract Disputes Act, the procedures under that Act will satisfy the requirements of paragraphs (b) and (c) above.

[49 FR 12974, Mar. 30, 1984, as amended at 54 FR 25068, June 12, 1989 and 55 FR 25525, June 21, 1990]

27.305 Administration of patent rights clauses.

27.305-1 Patent rights follow-up.

(a) It is important that the Government and the contractor know and exercise their rights in inventions conceived or first actually reduced to practice in the course of or under Government contracts in order to ensure their expeditious availability to the public and to enable the Government, the contractor, and the public to avoid unnecessary payment of royalties and to defend themselves against claims and suits for patent infringement. To attain these ends, contracts having a patent rights clause should be so administered that—

(1) Inventions are identified, disclosed, and reported as required by the contract, and elections are made;

(2) The rights of the Government in such inventions are established;

(3) Where patent protection is appropriate, patent applications are timely filed and prosecuted by contractors or by the Government;

(4) The rights of the Government in filed patent applications are documented by formal instruments such as licenses or assignments; and

(5) Expeditious commercial utilization of such inventions is achieved.

(b) If a subject invention is made under funding agreements of more than one agency, at the request of the contractor or on their own initiative, the agencies shall designate one agency as responsible for administration of the rights of the Government in the invention.