

software for their private use, nor may they acquire rights in a subcontractor's limited rights data or restricted computer software except through the use of Alternate II or III to the clause at 48 CFR 970.227-14, respectively, without the prior approval of DOE Patent Counsel.

(d)(1) Paragraphs (e) and (f) of the clause at 48 CFR 970.5227-1, Rights in Data—Facilities, and paragraphs (g) and (h) of the clause at 48 CFR 970.5227-2, Rights in Data—Technology Transfer, provide for the contractor's granting a nonexclusive license in any limited rights data and restricted computer software specifically used in performance of the contract.

(2) In certain instances the objectives of DOE would be frustrated if the Government did not obtain, at the time of contracting, limited license rights on behalf of responsible third parties and the Government, and to limited rights data or restricted computer software or both necessary for the practice of subject inventions or data first produced or delivered in the performance of the contract. This situation may arise in the performance of management and operating contracts and contracts for the management or operation of a DOE facility or site. Contracting officers should consult with program officials and Patent Counsel. No such rights should be obtained from a small business or non-profit organization, unless similar rights in background inventions of the small business or non-profit organization have been authorized in accordance with 35 U.S.C. 202(f). Where such a background license is in DOE's interest, a provision that provides substantially as Alternate VI at 48 CFR 952.227-14 should be added to the appropriate clause, 48 CFR 970.5227-1, Rights in Data—Facilities, or 48 CFR 970.5227-2, Rights in Data—Technology Transfer.

(e) The Rights in Data—Technology Transfer clause at 48 CFR 970.5227-2 differs from the clause at 48 CFR 970.5227-1, Rights in Data—Facilities, in the context of its more detailed treatment of copyright. In management and operating contracts that have technology transfer as a mission, the right to assert copyright in data first produced under the contract will be a valuable

right, and commercialization of such data, including computer software, will assist the management and operating contractor in advancing the technology transfer mission of the contract. The clause at 48 CFR 970.5227-2, Rights in Data—Technology Transfer, provides for DOE approval of DOE's taking a limited copyright license for a period of five years, and, in certain rare cases, specified longer periods in order to contribute to commercialization of the data.

(f) Contracting officers should consult with Patent Counsel to assure that requirements regarding royalties and conflicts of interest associated with asserting copyright in data first produced under the contract are appropriately addressed in the Technology Transfer Mission clause (48 CFR 970.5227-3) of the management and operating contract. Where it is not otherwise clear which DOE program funded the development of a computer software package, such as where the development was funded out of a contractor's overhead account, the DOE program which was the primary source of funding for the entire contract is deemed to have administrative responsibility. This issue may arise, among others, in the decision whether to grant the contractor permission to assert copyright. See paragraph (e) of the Rights in Data—Technology Transfer clause at 970.5227-2.

(g) In management and operating contracts involving access to DOE-owned Category C-24 restricted data, as set forth in 10 CFR part 725, DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including its related restricted data and technology. Alternate I to each clause shall be used where access to Category C-24 restricted data is contemplated in the performance of a contract.

970.2704-3 Contract clauses.

(a) The contracting officer shall insert the clause at 48 CFR 970.5227-1, Rights in Data—Facilities, in management and operating contracts which do not contain the clause at 48 CFR 970.5227-2, Rights in Data—Technology Transfer. The contracting officer shall include the clause with its Alternate I

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in contracts where access to Category C-24 restricted data, as set forth in 10 CFR part 725, is to be provided to contractors.

(b) The contracting officer shall insert the clause at 970.5227-2, Rights in Data—Technology Transfer, in management and operating contracts which contain the clause at 970.5227-3, Technology Transfer Mission. The contracting officer shall include the clause with its Alternate I in contracts where access to Category C-24 restricted data, as set forth in 10 CFR part 725, is to be provided to contractors.

970.2770 Technology Transfer.

970.2770-1 General.

This subpart prescribes policies and procedures for implementing the National Competitiveness Technology Transfer Act of 1989, Public Law 101-189, (15 U.S.C. 3711 *et seq.*, as amended). The Act requires that technology transfer be established as a mission of each Government-owned laboratory operated under contract by a non-Federal entity. The National Defense Authorization Act for Fiscal Year 1994 expanded the definition of “laboratory” to include weapon production facilities that are operated for national security purposes and are engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components.

970.2770-2 Policy.

All new awards for or extensions of existing DOE laboratory or weapon production facility management and operating contracts shall have technology transfer, including authorization to award Cooperative Research and Development Agreements (CRADAs), as a laboratory or facility mission under Section 11(a)(1) of the Stevenson-Wydler Technology Innovation Act of 1980, Public Law 96-480 (15 U.S.C. 3701 *et seq.*, as amended). A management and operating contractor for a facility not deemed to be a laboratory or weapon production facility may be authorized on a case-by-case basis to support the DOE technology transfer mission including, but not limited to, participating in CRADAs awarded by

DOE laboratories and weapon production facilities.

970.2770-3 Technology transfer and patent rights.

The National Competitiveness Technology Transfer Act of 1989 (NCTTA) established technology transfer as a mission for Government-owned, contractor-operated laboratories, including weapons production facilities, and authorizes those laboratories to negotiate and award cooperative research and development agreements with public and private entities for purposes of conducting research and development and transferring technology to the private sector. In implementing the NCTTA, DOE has negotiated technology transfer clauses with the contractors managing and operating its laboratories. Those technology transfer clauses must be read in concert with the patent rights clause required by this subpart. Thus, each management and operating contractor holds title to subject inventions for the benefit of the laboratory or facility being managed and operated by that contractor.

970.2770-4 Contract clause.

(a) The contracting officer shall insert the clause at 970.5227-3, Technology Transfer Mission, in each solicitation for a new or an extension of an existing laboratory or weapon production facility management and operating contract.

(b) If the contractor is a nonprofit organization or small business eligible under 35 U.S.C. 200 *et seq.*, to receive title to any inventions under the contract and proposes to fund at private expense the maintaining, licensing, and marketing of the inventions, the contracting officer shall use the basic clause with its Alternate I.

(c) If the facility is operated for national security purposes and engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components, the contracting officer shall use the basic clause with its Alternate II.