

## 27.404-2 Limited rights data and restricted computer software.

(a) *General*. The basic clause at [52.227-14](#), Rights in *Data-General*, enables the contractor to protect qualifying *limited rights data* and *restricted computer software* by withholding the *data* from the Government and instead delivering *form, fit, and function data*.

(b) *Alternate definition of limited rights data*. For contracts that do not require the development, use, or delivery of items, *components*, or processes that are intended to be acquired by or for the Government, an agency *may* adopt the *alternate* definition of *limited rights data* set forth in *Alternate I* to the clause at [52.227-14](#). The *alternate* definition does not require that the *data* pertain to items, *components*, or processes developed at private expense; but rather that the *data* were developed at private expense and embody a trade secret or are commercial or financial and confidential or privileged.

(c) Protection of *limited rights data* specified for delivery.

(1) The clause at [52.227-14](#) with its *Alternate II* enables the Government to require delivery of *limited rights data* rather than allow the contractor to withhold the *data*. To obtain delivery, the contract *may* identify and specify *data* to be delivered, or the *contracting officer* *may* require, by written request during contract performance, the delivery of *data* that has been withheld or identified to be withheld under paragraph (g)(1) of the clause. In addition, the contract *may* specifically identify *data* that are not to be delivered under *Alternate II* or which, if delivered, will be delivered with *limited rights*. The *limited rights* obtained by the Government are set forth in the *Limited Rights Notice* contained in paragraph (g)(3) of *Alternate II*. Agencies *shall* not, without permission of the contractor, use *limited rights data* for purposes of manufacture or disclose the *data* outside the Government except as set forth in the Notice. Any disclosure by the Government *shall* be subject to prohibition against further use and disclosure by the recipient. The following are examples of specific purposes that *may* be adopted by an agency in its supplement and added to the *Limited Rights Notice* of paragraph (g)(3) of *Alternate II* of the clause:

(i) Use (except for manufacture) by support service contractors.

(ii) Evaluation by nongovernment evaluators.

(iii) Use (except for manufacture) by other contractors participating in the Government's program of which the specific contract is a part.

(iv) *Emergency* repair or overhaul work.

(v) Release to a foreign government, or its instrumentalities, if required to serve the interests of the U.S. Government, for information or evaluation, or for *emergency* repair or overhaul work by the foreign government.

(2) The provision at [52.227-15](#), Representation of *Limited Rights Data* and *Restricted Computer Software*, helps the *contracting officer* to determine whether the clause at [52.227-14](#) *should* be used with its *Alternate II*. This provision requests that an *offeror* state whether *limited rights data* are likely to be delivered. Where *limited rights data* are expected to be delivered, use *Alternate II*. Where negotiations are based on an *unsolicited proposal*, the need for *Alternate II* of the clause at

52.227-14 should be addressed during negotiations or discussions, and if *Alternate II* was not included initially it may be added by modification, if needed, during contract performance.

(3) If *data* that would otherwise qualify as *limited rights data* is delivered as a *computer database*, the *data* shall be treated as *limited rights data*, rather than *restricted computer software*, for the purposes of paragraph (g) of the clause at 52.227-14.

(d) Protection of *restricted computer software* specified for delivery.

(1) *Alternate III* of the clause at 52.227-14, enables the Government to require delivery of *restricted computer software* rather than allow the contractor to withhold such *restricted computer software*. To obtain delivery of *restricted computer software* the *contracting officer* shall-

(i) Identify and specify the deliverable *computer software* in the contract; or

(ii) Require by written request during contract performance, the delivery of *computer software* that has been withheld or identified to be withheld under paragraph (g)(1) of the clause.

(2) In considering whether to use *Alternate III*, *contracting officers* should note that, unlike other *data*, *computer software* is also an end item in itself. Thus, the *contracting officer* shall use *Alternate III* if delivery of *restricted computer software* is required to meet agency needs.

(3) Unless otherwise agreed (see paragraph (d)(4) of this subsection), the *restricted rights* obtained by the Government are set forth in the *Restricted Rights Notice* contained in paragraph (g)(4) (*Alternate III*). Such *restricted computer software* will not be used or reproduced by the Government, or disclosed outside the Government, except that the *computer software* may be-

(i) Used or copied for use with the computers for which it was acquired, including use at any Government installation to which the computers may be transferred;

(ii) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other *computer software*, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, *restricted computer software* shall be subject to the same *restricted rights*;

(v) Disclosed to and reproduced for use by support service contractors or their subcontractors, in accordance with paragraphs (3)(i) through (iv) of this section; and

(vi) Used or copied for use with a replacement computer.

(4) The *restricted rights* set forth in paragraph (d)(3) of this subsection are the minimum rights the Government normally obtains with *restricted computer software* and will automatically apply when such software is acquired under the *Restricted Rights Notice* of paragraph (g)(4) of *Alternate III* of the clause at 52.227-14. However, the *contracting officer* may specify different rights in the contract, consistent with the purposes and needs for which the software is to be acquired. For example, the *contracting officer* should consider any networking needs or any requirements for use of the *computer software* from remote terminals. Also, in addressing such needs, the scope of the *restricted rights* may be different for the documentation accompanying the *computer software* than

for the programs and databases. Any additions to, or limitations on, the *restricted rights* set forth in the *Restricted Rights* Notice of paragraph (g)(4) of *Alternate III* of the clause at 52.227-14 shall be expressly stated in the contract or in a collateral agreement incorporated in and made part of the contract, and the notice modified accordingly.

(5) The provision at 52.227-15, Representation of *Limited Rights Data* and *Restricted Computer Software*, helps the *contracting officer* determine whether to use the clause at 52.227-14 with its *Alternate III*. This provision requests that an *offeror* state whether *restricted computer software* is likely to be delivered under the contract. In addition, the need for *Alternate III* should be addressed during negotiations or discussions with an *offeror*, particularly where negotiations are based on an *unsolicited proposal*. However, if *Alternate III* is not used initially, it may be added by modification, if needed, during contract performance.

**Parent topic:** 27.404 Basic rights in data clause.