

Department of Energy

Pt. 910, Subpt. D, App. A

specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Recipient's facility any data withheld pursuant to paragraph (h) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

As prescribed in 2 CFR 910.362(e)(2), the following Alternate I and/or II may be inserted in the clause in the award instrument.

Alternate I

(h)(2) Notwithstanding paragraph (h)(1) of this clause, the agreement may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Recipient may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, in accordance with such Notice:

Limited Rights Notice

(a) These data are submitted with limited rights under Government agreement No. _____ (and subaward/contract No. _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Recipient, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use (except for manufacture) by Federal support services contractors within the scope of their contracts;

(2) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(3) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Recipient is a part for information or use (except for manufacture) in connection with the work performed under their awards and under the restriction that the "limited

rights data" be retained in confidence and not be further disclosed;

(4) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(5) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate II

(h)(3)(i) Notwithstanding paragraph (h)(1) of this clause, the agreement may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Recipient may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (d) and (e) of this clause, in accordance with the Notice:

Restricted Rights Notice

(a) This computer software is submitted with restricted rights under Government Agreement No. _____ (and subaward/contract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (c) of this Notice or as otherwise expressly stated in the agreement.

(b) This computer software may be—

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

(2) Used or copies for use in a backup computer if any computer for which it was acquired is inoperative

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

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by Federal support service Contractors in accordance with paragraphs (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

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(6) Used or copies for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the agreement.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice

Use, reproduction, or disclosure is subject to restrictions set forth in Agreement No. _____ (and subaward/contract _____, if appropriate) with _____ (name of Recipient and subrecipient/contractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Recipient includes the following statement with such copyright notice: “Unpublished—rights reserved under the Copyright Laws of the United States.”

(End of clause)

[79 FR 76024, Dec. 19, 2014, as amended at 87 FR 15320, Mar. 18, 2022]

Subpart E—Cost Principles

§ 910.401 Application to M&O's.

In accordance with 48 CFR 970.3002-1 and 970.3101-00-70, a Federally Funded Research Center (FFRDC) which is also a designated DOE Management and Operating (M&O) contract must follow the cost accounting standards (CAS) contained in 48 CFR part 30 and must follow the appropriate Cost Principles contained in 48 CFR part 31.

2 CFR Ch. IX (1-1-24 Edition)

Subpart F—Audit Requirements for For-Profit Entities

GENERAL

§ 910.500 Purpose.

This Part follows the same format as 2 CFR 200.500. We purposely did not renumber the paragraphs within this part so that auditors and recipients can compare this to the single audit requirements contained in 2 CFR 200.500.

AUDITS

§ 910.501 Audit requirements.

(a) *Audit required.* A for-profit entity that expends \$750,000 or more during the non-Federal entity's fiscal year in DOE awards must have a compliance audit conducted for that year in accordance with the provisions of this Part.

(b) *Compliance audit.* (1) If a for-profit entity has one or more DOE awards with expenditures of \$750,000 or more during the for-profit entity's fiscal year, they must have a compliance audit for each of the awards with \$750,000 or more in expenditures. A compliance audit should comply with the applicable provisions in § 910.514—Scope of Audit. The remaining awards do not require, individually or in the aggregate, a compliance audit.

(2) If a for-profit entity receives more than one award from DOE with a sum total of expenditures of \$750,000 or more during the for-profit entity's fiscal year, but does not have any single award with expenditures of \$750,000 or more; the entity must determine whether any or all of the awards have common compliance requirements (*i.e.*, are considered a cluster of awards) and determine the total expenditures of the awards with common compliance requirements. A compliance audit is required for the largest cluster of awards (if multiple clusters of awards exist) or the largest award not in a cluster of awards, whichever corresponding expenditure total is greater. A compliance audit should comply with the applicable provisions in § 910.514—Scope of Audit. The remaining awards do not require, individually or in the aggregate, a compliance audit;