



National Aeronautics and
Space Administration

Washington, D.C.
20546

APR 2 1985

Reply to Attn of H

Dr. D. Bruce Merrifield
Assistant Secretary for Productivity,
Technology and Innovation
U.S. Department of Commerce
14th St. and Constitution Ave., N.W.
Washington, DC 20230

Dear Dr. Merrifield:

In regards to your letter of March 18, 1985, we are pleased that you acknowledge that there is no intent by the Intellectual Property Committee of the Federal Coordinating Council for Science, Engineering and Technology (FCCSET) to conflict with or in any way limit the Federal Acquisition Regulation (FAR) authorities of the National Aeronautics and Space Administration (NASA), the Department of Defense (DOD), and the General Services Administration (GSA) in developing technical data regulations. It has, in fact, been a matter of concern to us for some time that there has not been more uniformity and consistency among agencies in the treatment of technical data in the procurement process. Thus NASA agrees with the intent and purpose of the letter of Dr. Keyworth to which you refer; that is, that data matters are important, and that agencies should review the subject and strive for uniformity and consistency in the FAR.

However, we have some serious misgivings with the specific approach drafted for the Committee by the Office of Productivity, Technology and Innovation (OPTI) of the Department of Commerce. Such approach, in our opinion, would unnecessarily complicate the procurement process, decrease rather than increase the opportunities for competition for Government contracts, and have a detrimental effect on NASA's technology utilization and technology transfer programs. In addition, in some instances the OPTI approach appears inconsistent with the overall purposes of Pub. L. 98-525 and Pub. L. 98-577, as well as some of the express limitations in those two laws as they relate to NASA. All of the foregoing concerns have been set out in some detail in NASA's letter to you dated January 24, 1985. Some of the same concerns are also

raised by DOD Secretary Weinberger in his letter of March 19, 1985, to Secretary Baldrige, with which we strongly concur.

Also, as you are aware, on at least two occasions in the past serious efforts were undertaken, and substantial progress made, towards developing a single, uniform data regulation for use by the civilian agencies in the FPR and/or the FAR. In both instances such progress was deliberately stopped by some of the drafters of the present OPTI approach. Thus we fail to understand the OPTI position that "For years it has proven impossible to develop Federal Procurement Regulations (FPR) or FAR coverage in the technical data area for the civilian agencies" as justification for the present OPTI approach. Further, you should be aware that notwithstanding the fact that we were prevented from completing coverage in the FAR, NASA and other civilian agencies have issued substantially similar and uniform supplements under Subpart 27.4 of the FAR. Other agencies have considered doing the same. Thus the next logical step, it seems, would be to modify those supplements to comply with the specific requirements of Pub. L. 98-577 rather than develop a totally new approach as proposed by OPTI.

A further area of concern is the fact that notwithstanding assurances that there is no intent that the OPTI draft conflict with the authorities for the FAR, such draft is actually couched in terms of specific contract actions, types of contracts, contract data ordering needs of the agencies, and contract performance requirements--all matters normally addressed in operational procurement regulations rather than in overall policy objectives, which should be more generic in nature. Thus, with the foregoing in mind, we are enclosing a draft data policy statement which we feel is fair and workable, one which NASA can support, and one which we believe can provide a framework (at least for the civilian agencies) under which FAR coverage can be developed by those cognizant of, and responsible for, the FAR system. We urge you to give it serious consideration in lieu of the present OPTI draft.

Finally, we have some concerns over the next step in the process for reaching agreement on basic principles (irrespective of which draft is adopted) regarding technical data, whether by "FCCSET or another higher authority." The Committee on Intellectual Property, as we understand it, was set up under the aegis of FCCSET, and is to make recommendations to FCCSET. Neither the OPTI draft nor the enclosed NASA alternate should be recommended to FCCSET until there is substantial agreement by the Committee members, particularly those with significant contracting activities that would be affected by any approach developed. If you feel

constrained to the position that the Committee submit any recommendations to FCCSET without such agreement, then your submittal should also indicate any areas of disagreement, minority views, and alternate approaches that Committee members may wish to bring to the attention of FCCSET.

Sincerely,

original Signed By
S. J. Evans
S. J. Evans
Assistant Administrator
for Procurement

Enclosure