

Federal Acquisition Regulation

27.202-2

against it may, however, ultimately be borne by the contractor or subcontractor in accordance with the terms of any patent indemnity clause also included in the contract, and an authorization and consent clause does not detract from any patent indemnification commitment by the contractor or subcontractor. Therefore, both a patent indemnity clause and an authorization and consent clause may be included in the same contract.

(b) The contracting officer shall not include in any solicitation or contract—

(1) Any clause whereby the Government expressly agrees to indemnify the contractor against liability for patent infringement; or

(2) Any authorization and consent clause when both complete performance and delivery are outside the United States, its possessions, and Puerto Rico.

27.201-2 Clauses on authorization and consent.

(a) The contracting officer shall insert the clause at 52.227-1, Authorization and Consent, in solicitations and contracts (including those for construction; architect-engineer services; dismantling, demolition, or removal of improvements; and noncommon carrier communication services), except when using simplified acquisition procedures or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. Although the clause is not required when simplified acquisition procedures are used, it may be used with them.

(b) The contracting officer shall insert the clause with its Alternate I in all R&D solicitations and contracts (including those for construction and architect-engineer services calling exclusively for R&D work or exclusively for experimental work), unless both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. When a proposed contract involves both R&D work and supplies or services, and the R&D work is the primary purpose of the contract, the contracting officer shall use this alternate. In all other proposed contracts involving both R&D work and

supplies or services, the contracting officer shall use the basic clause. Also, when a proposed contract involves either R&D or supplies and materials, in addition to construction or architect-engineer work, the contracting officer shall use the basic clause.

(c) If the solicitation or contract is for communication services with a common carrier and the services are unregulated and not priced by a tariff schedule set by a regulatory body, the contracting officer shall use the clause with its Alternate II.

[49 FR 12974, Mar. 30, 1984, as amended at 60 FR 34758, July 3, 1995]

27.202 Notice and assistance.

27.202-1 General.

The contractor is required to notify the contracting officer of all claims of infringement that come to the contractor's attention in connection with performing a Government contract. The contractor is also required, when requested, to assist the Government with any evidence and information in its possession in connection with any suit against the Government, or any claims against the Government made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of or resulting from the contract performance.

27.202-2 Clause on notice and assistance.

The contracting officer shall insert the clause at 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement, in supply, service, or research and development solicitations and contracts (including construction and architect-engineer contracts) which anticipate a contract value above the simplified acquisition threshold, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless the contracts indicate that the supplies or other deliverables are ultimately to be shipped into one of those areas.

[60 FR 34758, July 3, 1995]