

227.7105-3

books, magazines or periodicals, or prepare derivative works.

227.7105-3 Acquisition of modified existing works.

Use the clause at 252.227-7020, Rights in Special Works, in solicitations and contracts for modified existing works in lieu of the clause at 252.227-7021, Rights in Data—Existing Works.

227.7106 Contracts for special works.

(a) Use the clause at 252.227-7020, Rights in Special Works, in solicitations and contracts where the Government has a specific need to control the distribution of works first produced, created, or generated in the performance of a contract and required to be delivered under that contract, including controlling distribution by obtaining an assignment of copyright, or a specific need to obtain indemnity for liabilities that may arise out of the creation, delivery, use, modification, reproduction, release, performance, display, or disclosure of such works. Use the clause—

(1) In lieu of the clause at 252.227-7013, Rights in Technical Data—Non-commercial Items, when the Government must own or control copyright in all works first produced, created, or generated and required to be delivered under a contract; or

(2) In addition to the clause at 252.227-7013 when the Government must own or control copyright in a portion of a work first produced, created, or generated and required to be delivered under a contract. The specific portion in which the Government must own or control copyright must be identified in a special contract requirement.

(b) Although the Government obtains an assignment of copyright and unlimited rights in a special work under the clause at 252.227-7020, the contractor retains use and disclosure rights in that work. If the Government needs to restrict a contractor's rights to use or disclose a special work, it must also negotiate a special license which specifically restricts the contractor's use or disclosure rights.

(c) The clause at 252.227-7020 does not permit a contractor to incorporate into a special work any works copyrighted by others unless the contractor obtains

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the contracting officer's permission to do so and obtains for the Government a non-exclusive, paid up, world-wide license to make and distribute copies of that work, to prepare derivative works, to perform or display publicly any portion of the work, and to permit others to do so for government purposes. Grant permission only when the Government's requirements cannot be satisfied unless the third party work is included in the deliverable work.

(d) Examples of works which may be procured under the Rights in Special Works clause include, but are not limited, to audiovisual works, computer data bases, computer software documentation, scripts, soundtracks, musical compositions, and adaptations; histories of departments, agencies, services or units thereof; surveys of Government establishments; instructional works or guidance to Government officers and employees on the discharge of their official duties; reports, books, studies, surveys or similar documents; collections of data containing information pertaining to individuals that, if disclosed, would violate the right of privacy or publicity of the individuals to whom the information relates; or investigative reports.

227.7107 Contracts for architect-engineer services.

This section sets forth policies and procedures, pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

227.7107-1 Architectural designs and data clauses for architect-engineer or construction contracts.

(a) Except as provided in paragraph (b) of this subsection and in 227.7107-2, use the clause at 252.227-7022, Government Rights (Unlimited), in solicitations and contracts for architect-engineer services and for construction involving architect-engineer services.

(b) When the purpose of a contract for architect-engineer services, or for construction involving architect-engineer services, is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, aesthetic or other special reasons the Government

does not want duplicated, the Government may acquire exclusive control of the data pertaining to the design by including the clause at 252.227-7023, Drawings and Other Data to Become Property of Government, in solicitations and contracts.

(c) The Government shall obtain unlimited rights in shop drawings for construction. In solicitations and contracts calling for delivery of shop drawings, include the clause at 252.227-7033, Rights in Shop Drawings.

227.7107-2 Contracts for construction supplies and research and development work.

Use the provisions and clauses required by 227-7103-6 and 227.7203-6 when the acquisition is limited to—

- (a) Construction supplies or materials;
- (b) Experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or
- (c) Both.

227.7107-3 Approval of restricted designs.

The clause at 252.227-7024, Notice and Approval of Restricted Designs, may be included in architect-engineer contracts to permit the Government to make informed decisions concerning noncompetitive aspects of the design.

227.7108 Contractor data repositories.

(a) Contractor data repositories may be established when permitted by agency procedures. The contractual instrument establishing the data repository must require, as a minimum, the data repository management contractor to—

- (1) Establish and maintain adequate procedures for protecting technical data delivered to or stored at the repository from unauthorized release or disclosure;
- (2) Establish and maintain adequate procedures for controlling the release or disclosure of technical data from the repository to third parties consistent with the Government's rights in such data;

(3) When required by the contracting officer, deliver data to the Government on paper or in other specified media;

(4) Be responsible for maintaining the currency of data delivered directly by Government contractors or subcontractors to the repository;

(5) Obtain use and non-disclosure agreements (see 227.7103-7) from all persons to whom government purpose rights data is released or disclosed; and

(6) Indemnify the Government from any liability to data owners or licensors resulting from, or as a consequence of, a release or disclosure of technical data made by the data repository contractor or its officers, employees, agents, or representatives.

(b) If the contractor is or will be the data repository manager, the contractor's data management and distribution responsibilities must be identified in the contract or the contract must reference the agreement between the Government and the contractor that establishes those responsibilities.

(c) If the contractor is not and will not be the data repository manager, do not require a contractor or subcontractor to deliver technical data marked with limited rights legends to a data repository managed by another contractor unless the contractor or subcontractor who has asserted limited rights agrees to release the data to the repository or has authorized, in writing, the Government to do so.

(d) Repository procedures may provide for the acceptance, delivery, and subsequent distribution of technical data in storage media other than paper, including direct electronic exchange of data between two computers. The procedures must provide for the identification of any portions of the data provided with restrictive legends, when appropriate. The acceptance criteria must be consistent with the authorized delivery format.

Subpart 227.72—Rights in Computer Software and Computer Software Documentation

SOURCE: 60 FR 33482, June 28, 1995, unless otherwise noted.

227.7200 Scope of subpart.

This subpart—