

227.7104 Contracts under the Small Business Innovation Research (SBIR) Program.

(a) Use the clause at 252.227-7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program, when technical data or computer software will be generated during performance of contracts under the SBIR program.

(b) Under the clause at 252.227-7018, the Government obtains a royalty-free license to use technical data marked with an SBIR data rights legend only for government purposes during the period commencing with contract award and ending five years after completion of the project under which the data were generated. Upon expiration of the five-year restrictive license, the Government has unlimited rights in the SBIR data. During the license period, the Government may not release or disclose SBIR data to any person other than its support services contractors except—

- (1) For evaluational purposes;
 - (2) As expressly permitted by the contractor; or
 - (3) A use, release, or disclosure that is necessary for emergency repair or overhaul of items operated by the Government.
- (c) Do not make any release or disclosure permitted by paragraph (b) of this section unless, prior to release or disclosure, the intended recipient is subject to the use and nondisclosure agreement at 227.7103-7.

(d) Use the clause at 252.227-7018 with its Alternate I in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—

- (1) In the interest of the Government; and
- (2) Facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

(e) Use the following provision and clauses in SBIR solicitations and contracts that include the clause at 252.227-7018:

- (1) 252.227-7016, Rights in Bid or Proposal Information;

(2) 252.227-7017, Identification and Assertion of Use, Release, or Disclosure Restrictions;

(3) 252.227-7019, Validation of Asserted Restrictions—Computer Software;

(4) 252.227-7030, Technical Data—Withholding of Payment; and

(5) 252.227-7037, Validation of Restrictive Markings on Technical Data (paragraph (e) of the clause contains information that must be included in a challenge).

(f) Use the following clauses and provision in SBIR solicitations and contracts in accordance with the guidance at 227.7103-6 (c) and (d):

(1) 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and

(2) 252.227-7028, Technical Data or Computer Software Previously Delivered to the Government.

[56 FR 36389, July 31, 1991, as amended at 60 FR 61598, Nov. 30, 1995; 62 FR 2614, Jan. 17, 1997; 69 FR 31912, June 8, 2004]

227.7105 Contracts for the acquisition of existing works.

227.7105-1 General.

(a) Existing works include motion pictures, television recordings, video recordings, and other audiovisual works in any medium; sound recordings in any medium; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. Usually, these or similar works were not first created, developed, generated, originated, prepared, or produced under a Government contract. Therefore, the Government must obtain a license in the work if it intends to reproduce the work, distribute copies of the work, prepare derivative works, or perform or display the work publicly. When the Government is not responsible for the content of an existing work, it should require the copyright owner to indemnify the Government for liabilities that may arise out of the content, performance, use, or disclosure of such data.

(b) Follow the procedures at 227.7106 for works which will be first created,