

227.7101

(7) Executive Order 12591 (Subsection 1(b)(6)).

(b) Does not apply to computer software or technical data that is computer software documentation (see subpart 227.72).

227.7101 Definitions.

(a) As used in this subpart, unless otherwise specifically indicated, the terms “offeror” and “contractor” include an offeror’s or contractor’s subcontractors, suppliers, or potential subcontractors or suppliers at any tier.

(b) Other terms used in this subpart are defined in the clause at 252.227-7013, Rights in Technical Data—Non-commercial Items.

[56 FR 36389, July 31, 1991, as amended at 60 FR 61598, Nov. 30, 1995]

227.7102 Commercial items, components, or processes.

227.7102-1 Policy.

(a) DoD shall acquire only the technical data customarily provided to the public with a commercial item or process, except technical data that—

(1) Are form, fit, or function data;

(2) Are required for repair or maintenance of commercial items or processes, or for the proper installation, operating, or handling of a commercial item, either as a stand alone unit or as a part of a military system, when such data are not customarily provided to commercial users or the data provided to commercial users is not sufficient for military purposes; or

(3) Describe the modifications made at Government expense to a commercial item or process in order to meet the requirements of a Government solicitation.

(b) To encourage offerors and contractors to offer or use commercial products to satisfy military requirements, offerors, and contractors shall not be required, except for the technical data described in paragraph (a) of this subsection, to—

(1) Furnish technical information related to commercial items or processes that is not customarily provided to the public; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform,

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display, or disclose technical data pertaining to commercial items or processes except for a transfer of rights mutually agreed upon.

227.7102-2 Rights in technical data.

(a) The clause at 252.227-7015, Technical Data—Commercial Items, provides the Government specific license rights in technical data pertaining to commercial items or processes. DoD may use, modify, reproduce, release, perform, display, or disclose data only within the Government. The data may not be used to manufacture additional quantities of the commercial items and, except for emergency repair or overhaul and for covered Government support contractors, may not be released or disclosed to, or used by, third parties without the contractor’s written permission. Those restrictions do not apply to the technical data described in 227.7102-1(a).

(b) If additional rights are needed, contracting activities must negotiate with the contractor to determine if there are acceptable terms for transferring such rights. The specific additional rights granted to the Government shall be enumerated in a license agreement made part of the contract.

[56 FR 36389, July 31, 1991, as amended at 76 FR 11367, Mar. 2, 2011]

227.7102-3 Government right to review, verify, challenge and validate asserted restrictions.

Follow the procedures at 227.7103-13 and the clause at 252.227-7037, Validation of Restrictive Markings on Technical Data, regarding the validation of asserted restrictions on technical data related to commercial items.

[76 FR 58147, Sept. 20, 2011]

227.7102-4 Contract clauses.

(a)(1) Except as provided in paragraph (b) of this subsection, use the clause at 252.227-7015, Technical Data—Commercial Items, in all solicitations and contracts when the Contractor will be required to deliver technical data pertaining to commercial items, components, or processes.

(2) Use the clause at 252.227-7015 with its Alternate I in contracts for the development or delivery of a vessel design or any useful article embodying a vessel design.

(b) In accordance with the clause prescription at 227.7103-6(a), use the clause at 252.227-7013, Rights in Technical Data-Noncommercial Items, in addition to the clause at 252.227-7015, if the Government will have paid for any portion of the development costs of a commercial item. The clause at 252.227-7013 will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense, and the clause at 252.227-7015 will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense.

(c) Use the clause at 252.227-7037, Validation of Restrictive Markings on Technical Data, in all solicitations and contracts for commercial items that include the clause at 252.227-7015 or the clause at 252.227-7013.

[76 FR 58147, Sept. 20, 2011]

227.7103 Noncommercial items or processes.

227.7103-1 Policy.

(a) DoD policy is to acquire only the technical data, and the rights in that data, necessary to satisfy agency needs.

(b) Solicitations and contracts shall—

(1) Specify the technical data to be delivered under a contract and delivery schedules for the data;

(2) Establish or reference procedures for determining the acceptability of technical data;

(3) Establish separate contract line items, to the extent practicable, for the technical data to be delivered under a contract and require offerors and contractors to price separately each deliverable data item; and

(4) Require offerors to identify, to the extent practicable, technical data to be furnished with restrictions on the Government's rights and require contractors to identify technical data to be delivered with such restrictions prior to delivery.

(c) Offerors shall not be required, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish to the Government any rights in technical data related to items, components or processes developed at private expense except for the data identified at 227.7103-5(a)(2) and (a)(4) through (9).

(d) Offerors and contractors shall not be prohibited or discouraged from furnishing or offering to furnish items, components, or processes developed at private expense solely because the Government's rights to use, modify, release, reproduce, perform, display, or disclose technical data pertaining to those items may be restricted.

(e) As provided in 10 U.S.C. 2305, solicitations for major systems development contracts shall not require offerors to submit proposals that would permit the Government to acquire competitively items identical to items developed at private expense unless a determination is made at a level above the contracting officer that—

(1) The offeror will not be able to satisfy program schedule or delivery requirements; or

(2) The offeror's proposal to meet mobilization requirements does not satisfy mobilization needs.

(f) For acquisitions involving major weapon systems or subsystems of major weapon systems, the acquisition plan shall address acquisition strategies that provide for technical data and the associated license rights in accordance with 207.106(S-70).

(g) The Government's rights in a vessel design, and in any useful article embodying a vessel design, must be consistent with the Government's rights in technical data pertaining to the design (10 U.S.C. 7317; 17 U.S.C. 1301(a)(3)).

[60 FR 33471, June 28, 1995, as amended at 72 FR 51189, Sept. 6, 2007; 74 FR 61044, Nov. 23, 2009]

227.7103-2 Acquisition of technical data.

(a) Contracting officers shall work closely with data managers and requirements personnel to assure that data requirements included in solicitations are consistent with the policy expressed in 227.7103-1.