

Federal Acquisition Regulation

27.201-2

solicitation provisions, and contract clauses to the extent necessary to meet the specific requirements of laws, executive orders, treaties, or international agreements. Any agency adopting alternative policies, procedures, solicitation provisions, and contract clauses should include them in the agency's published regulations.

27.102 General guidance.

(a) The Government encourages the maximum practical commercial use of inventions made under Government contracts.

(b) Generally, the Government will not refuse to award a contract on the grounds that the prospective contractor may infringe a patent. The Government may authorize and consent to the use of inventions in the performance of certain contracts, even though the inventions may be covered by U.S. patents.

(c) Generally, contractors providing commercial items should indemnify the Government against liability for the infringement of U.S. patents.

(d) The Government recognizes rights in data developed at private expense, and limits its demands for delivery of that data. When such data is delivered, the Government will acquire only those rights essential to its needs.

(e) Generally, the Government requires that contractors obtain permission from copyright owners before including copyrighted works, owned by others, in data to be delivered to the Government.

Subpart 27.2—Patents and Copyrights

27.200 Scope of subpart.

This subpart prescribes policies and procedures with respect to—

(a) Patent and copyright infringement liability;

(b) Royalties;

(c) Security requirements for patent applications containing classified subject matter; and

(d) Patented technology under trade agreements.

27.201 Patent and copyright infringement liability.

27.201-1 General.

(a) Pursuant to 28 U.S.C. 1498, the exclusive remedy for patent or copyright infringement by or on behalf of the Government is a suit for monetary damages against the Government in the Court of Federal Claims. There is no injunctive relief available, and there is no direct cause of action against a contractor that is infringing a patent or copyright with the authorization or consent of the Government (*e.g.*, while performing a contract).

(b) The Government may expressly authorize and consent to a contractor's use or manufacture of inventions covered by U.S. patents by inserting the clause at 52.227-1, Authorization and Consent.

(c) Because of the exclusive remedies granted in 28 U.S.C. 1498, the Government requires notice and assistance from its contractors regarding any claims for patent or copyright infringement by inserting the clause at 52.227-2, Notice and Assistance, Regarding Patent and Copyright Infringement.

(d) The Government may require a contractor to reimburse it for liability for patent infringement arising out of a contract for commercial items by inserting the clause at FAR 52.227-3, Patent Indemnity.

27.201-2 Contract clauses.

(a)(1) Insert the clause at 52.227-1, Authorization and Consent, in solicitations and contracts except that use of the clause is—

(i) Optional when using simplified acquisition procedures; and

(ii) Prohibited when both complete performance and delivery are outside the United States.

(2) Use the clause with its Alternate I in all R&D solicitations and contracts for which the primary purpose is R&D work, except that this alternate shall not be used in construction and architect-engineer contracts unless the contract calls exclusively for R&D work.

(3) Use the clause with its Alternate II in solicitations and contracts for