

227.7103-2

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.

(b)(1) Data managers or other requirements personnel are responsible for identifying the Government's minimum needs for technical data. Data needs must be established giving consideration to the contractor's economic interests in data pertaining to items, components, or processes that have been developed at private expense; the Government's costs to acquire, maintain, store, retrieve, and protect the data; reprocurement needs; repair, maintenance and overhaul philosophies; spare and repair part considerations; and whether procurement of the items, components, or processes can be accomplished on a form, fit, or function basis. When it is anticipated that the Government will obtain unlimited or government purpose rights in technical data that will be required for competitive spare or repair parts procurements, such data should be identified as deliverable data items. Reprocurement needs may not be a sufficient reason to acquire detailed manufacturing or process data when items or components can be acquired using performance specifications, form, fit and function data, or when there are a sufficient number of alternate sources which can reasonably be expected to provide such items on a performance specification or form, fit, or function basis.

(2) When reviewing offers received in response to a solicitation or other request for data, data managers must balance the original assessment of the Government's data needs with data prices contained in the offer.

(c) Contracting officers are responsible for ensuring that, wherever practicable, solicitations and contracts—

(1) Identify the type and quantity of the technical data to be delivered under the contract and the format and media in which the data will be delivered;

(2) Establish each deliverable data item as a separate contract line item

48 CFR Ch. 2 (10-1-12 Edition)

(this requirement may be satisfied by listing each deliverable data item on an exhibit to the contract);

(3) Identify the prices established for each deliverable data item under a fixed-price type contract;

(4) Include delivery schedules and acceptance criteria for each deliverable data item; and

(5) Specifically identify the place of delivery for each deliverable item of technical data.

227.7103-3 Early identification of technical data to be furnished to the Government with restrictions on use, reproduction or disclosure.

(a) 10 U.S.C. 2320 requires, to the maximum extent practicable, an identification prior to delivery of any technical data to be delivered to the Government with restrictions on use.

(b) Use the provision at 252.227-7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, in all solicitations that include the clause at 252.227-7013, Rights in Technical Data—Noncommercial Items. The provision requires offerors to identify any technical data for which restrictions, other than copyright, on use, release, or disclosure are asserted and to attach the identification and assertions to the offer.

(c) Subsequent to contract award, the clause at 252.277-7013 permits a contractor, under certain conditions, to make additional assertions of use, release, or disclosure restrictions. The prescription for the use of that clause and its alternate is at 227.7103-6 (a) and (b).

227.7103-4 License rights.

(a) *Grant of license.* The Government obtains rights in technical data, including a copyright license, under and irrevocable license granted or obtained for the Government by the contractor. The contractor or licensor retains all rights in the data not granted to the Government. For technical data that pertain to items, components, or processes, the scope of the license is generally determined by the source of funds used to develop the item, component, or process. When the technical

data do not pertain to items, components, or processes, the scope of the license is determined by the source of funds used to create the data.

(1) *Technical data pertaining to items, components, or processes.* Contractors or licensors may, with some exceptions (see 227.7103-5(a)(2) and (a)(4) through (9)), restrict the Government's rights to use, modify, release, reproduce, perform, display or disclose technical data pertaining to items, components, or processes developed exclusively at private expense (limited rights). They may not restrict the Government's rights in items, components, or processes developed exclusively at Government expense (unlimited rights) without the Government's approval. When an item, component, or process is developed with mixed funding, the Government may use, modify, release, reproduce, perform, display or disclose the data pertaining to such items, components, or processes within the Government without restriction but may release or disclose the data outside the Government only for government purposes (government purpose rights).

(2) *Technical data that do not pertain to items, components, or processes.* Technical data may be created during the performance of a contract for a conceptual design or similar effort that does not require the development, manufacture, construction, or production of items, components or processes. The Government generally obtains unlimited rights in such data when the data were created exclusively with Government funds, government purpose rights when the data were created with mixed funding, and limited rights when the data were created exclusively at private expense.

(b) *Source of funds determination.* The determination of the source of development funds for technical data pertaining to items, components, or processes should be made at any practical sub-item or subcomponent level or for any segregable portion of a process. Contractors may assert limited rights in a segregable sub-item, sub-component, or portion of a process which otherwise qualifies for limited rights under the clause at 252.227-7013, Rights in Technical Data—Noncommercial Items.

227.7103-5 Government rights.

The standard license rights that a licensor grants to the Government are unlimited rights, government purpose rights, or limited rights. Those rights are defined in the clause at 252.227-7013, Rights in Technical Data—Noncommercial Items. In unusual situations, the standards rights may not satisfy the Government's needs or the Government may be willing to accept lesser rights in data in return for other consideration. In those cases, a special license may be negotiated. However, the licensor is not obligated to provide the Government greater rights and the contracting officer is not required to accept lesser rights than the rights provided in the standard grant of license. The situations under which a particular grant of license applies are enumerated in paragraphs (a) through (d) of this subsection.

(a) *Unlimited rights.* The Government obtains unlimited rights in technical data that are—

(1) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(2) Studies, analyses, test data, or similar data produced in the performance of a contract when the study, analysis, test, or similar work was specified as an element of performance;

(3) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(4) Form, fit, and function data;

(5) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(6) Corrections or changes to technical data furnished to the contractor by the Government;

(7) Publicly available or have been released or disclosed by the contractor or subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;