

## 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 communication services with a common carrier and the services are unregulated and not priced by a tariff schedule set by a regulatory body.

(b) Insert the clause at 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement, in all *solicitations* and contracts that include the clause at 52.227-1, Authorization and Consent.

(c)

(1) Insert the clause at 52.227-3, Patent Indemnity, in *solicitations* and contracts that *may* result in the delivery of *commercial products* or the provision of *commercial services* unless-

(i) part 12 procedures are used;

(ii) The *simplified acquisition procedures* of part 13 are used;

(iii) Both complete performance and delivery are outside the *United States*; or

(iv) The *contracting officer* determines after consultation with legal counsel that omission of the clause would be consistent with commercial practice.

(2) Use the clause with either its *Alternate I* (identification of excluded items) or II (identification of included items) if-

(i) The contract also requires delivery of items that are not *commercial products* or the provision of services that are not *commercial services*; or

(ii) The *contracting officer* determines after consultation with legal counsel that limitation of applicability of the clause would be consistent with commercial practice.

(3) Use the clause with its *Alternate III* if the *solicitation* or contract is for communication services and facilities where performance is by a common carrier, and the services are unregulated and are not priced by a tariff schedule set by a regulatory body.

(d)

(1) Insert the clause at [52.227-4](#), Patent Indemnity-Construction Contracts, in *solicitations* and contracts for *construction* or that are fixed-price for dismantling, demolition, or removal of improvements. Do not insert the clause in contracts solely for *architect-engineer services*.

(2) If the *contracting officer* determines that the *construction* will necessarily involve the use of structures, *products*, materials, equipment, processes, or methods that are nonstandard, noncommercial, or special, the *contracting officer* may expressly exclude them from the patent indemnification by using the clause with its *Alternate I*. Note that this exclusion is for items, as distinguished from identified patents (see paragraph (e) of this subsection).

(e) It may be in the Government's interest to exempt specific U.S. patents from the patent indemnity clause. Exclusion from indemnity of identified patents, as distinguished from items, is the prerogative of the *agency head*. Upon written approval of the *agency head*, the *contracting officer* may insert the clause at [52.227-5](#), Waiver of Indemnity, in *solicitations* and contracts in addition to the appropriate patent indemnity clause.

(f) If a patent indemnity clause is not prescribed, the *contracting officer* may include one in the *solicitation* and contract if it is in the Government's interest to do so.

(g) The *contracting officer* shall not include in any *solicitation* or contract any clause whereby the Government agrees to indemnify a contractor for patent infringement.

**Parent topic:** [27.201 Patent and copyright infringement liability](#).