

## 27.409 Solicitation provisions and contract clauses.

(a) Generally, a contract *should* contain only one *data* rights clause. However, where more than one is needed, the contract *should* distinguish the portion of contract performance to which each pertains.

(b)

(1) Insert the clause at 52.227-14, Rights in *Data-General*, in *solicitations* and contracts if it is contemplated that *data* will be produced, furnished, or acquired under the contract, unless the contract is-

(i) For the production of special works of the type set forth in 27.405-1, although in these cases insert the clause at 52.227-14, Rights in *Data-General*, and make it applicable to *data* other than special works, as appropriate (see paragraph (e) of this section);

(ii) For the *acquisition* of existing *data*, *commercial computer software*, or other existing *data*, as described in 27.405-2 through 27.405-4 (see paragraphs (f) and (g) of this section);

(iii) A small business innovation research contract (see paragraph (h) of this section);

(iv) To be performed outside the *United States* (see paragraph (i)(1) of this section);

(v) For *architect-engineer services* or *construction* work (see paragraph (i)(2) of this section);

(vi) For the management, operation, design, or *construction* of a Government-owned facility to perform research, development, or production work (see paragraph (i)(3) of this section); or

(vii) A contract involving cosponsored research and development in which a clause providing for less than unlimited right has been authorized (see 27.408).

(2) If an agency determines, in accordance with 27.404-2(b), to adopt the *alternate* definition of "*Limited Rights Data*" in paragraph (a) of the clause, use the clause with its *Alternate I*.

(3) If a *contracting officer* determines, in accordance with 27.404-2(c) that it is necessary to obtain *limited rights data*, use the clause with its *Alternate II*. The *contracting officer shall* complete paragraph (g)(3) to include the purposes, if any, for which *limited rights data* are to be disclosed outside the Government.

(4) In accordance with 27.404-2(d), if a *contracting officer* determines it is necessary to obtain *restricted computer software*, use the clause with its *Alternate III*. Any greater or lesser rights regarding the use, reproduction, or disclosure of *restricted computer software* than those set forth in the *Restricted Rights* Notice of paragraph (g)(4) of the clause *shall* be specified in the contract and the notice modified accordingly.

(5) Use the clause with its *Alternate IV* in contracts for basic or applied research (other than those for the management or operation of Government facilities, and contracts and subcontracts in support of programs being conducted at those facilities or where international agreements require

otherwise) to be performed solely by universities and colleges. The clause *may* be used with its *Alternate IV* in other contracts if in accordance with 27.404-3(a), an agency determines to grant permission for the contractor to assert *claim* to copyright subsisting in all *data* first produced without further request being made by the contractor. When *Alternate IV* is used, the contract *may* exclude items or categories of *data* from the permission granted, either by express provisions in the contract or by the addition of a paragraph (d)(4) to the clause (see 27.404-4).

(6) In accordance with 27.404-6, if the Government needs the right to inspect certain *data* at a contractor's facility, use the clause with its *Alternate V*.

(c) In accordance with 27.404-2(c)(2) and 27.404-2(d)(5), if the *contracting officer* desires to have an *offeror* state in response to a *solicitation* whether *limited rights data* or *restricted computer software* are likely to be used in meeting the *data* delivery requirements set forth in the *solicitation*, insert the provision at 52.227-15, Representation of *Limited Rights Data* and *Restricted Computer Software*, in any *solicitation* containing the clause at 52.227-14, Rights in *Data-General*. The contractor's response *may* provide an aid in determining whether the clause *should* be used with *Alternate II* and/or *Alternate III*.

(d) Insert the clause at 52.227-16, Additional *Data* Requirements, in *solicitations* and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be \$500,000 or less) unless all the requirements for *data* are believed to be known at the time of *contracting* and specified in the contract (see 27.406-2). This clause *may* also be used in other contracts when considered appropriate. For example, if the contract is for basic or applied research to be performed by a university or college, and the *contracting officer* believes the contract effort will in the future exceed \$500,000, even though the initial award does not, the *contracting officer* *may* include the clause in the initial award.

(e) In accordance with 27.405-1, insert the clause at 52.227-17, Rights in *Data-Special Works*, in *solicitations* and contracts primarily for the production or compilation of *data* (other than *limited rights data* or *restricted computer software*) for the Government's internal use, or when there is a specific need to limit distribution and use of the *data* or to obtain indemnity for liabilities that *may* arise out of the content, performance, or disclosure of the *data*. Examples of such contracts are set forth in 27.405-1.

(1) Insert the clause if existing works are to be modified, as by editing, translation, addition of subject matter, etc.

(2) The contract *may* specify the purposes and conditions (including time limitations) under which the *data* *may* be used, released, or reproduced by the contractor for other than contract performance.

(3) Contracts for the production of audiovisual works, sound recordings, etc. *may* include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the *data* is acquired.

(4) The clause *may* be modified in accordance with paragraphs (c) through (e) of 27.405-1.

(f) Insert the clause at 52.227-18, Rights in *Data-Existing Works*, in *solicitations* and contracts exclusively for the *acquisition*, without modification, of existing audiovisual and similar works of the type set forth in 27.405-2. The contract *may* set forth limitations consistent with the purposes for which the work is being acquired. While no specific clause of this subpart is required to be included

in contracts solely for the *acquisition*, without disclosure prohibitions, of books, publications, and similar items in the exact form in which the items exist prior to the request for purchase (*i.e.*, the off-the-shelf purchase of such items), or in other contracts where only existing *data* available without disclosure prohibitions is to be furnished, if reproduction rights are to be acquired, the contract *shall* include terms addressing such rights. (See [27.405-4](#).)

(g) In accordance with [27.405-3](#), when *contracting* (other than from GSA's Multiple Award Schedule contracts) for the *acquisition* of *commercial computer software*, the *contracting officer* may insert the clause at [52.227-19](#), *Commercial Computer Software License*, in the *solicitation* and contract. In any event, the *contracting officer* shall assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with [27.405-3](#).

(h) If the contract is a Small Business Innovation Research (SBIR) contract, insert the clause at [52.227-20](#), *Rights in Data-SBIR Program* in all Phase I, Phase II, and Phase III contracts awarded under the Small Business Innovation Research Program established pursuant to [15 U.S.C. 638](#). The SBIR protection period *may* be extended in accordance with the Small Business Administration's "Small Business Innovation Research Program Policy Directive" (September 24, 2002).

(i) Agencies *may* prescribe in their procedures, as appropriate, a clause consistent with the policy of [27.402](#) in contracts-

(1) To be performed outside the *United States*;

(2) For *architect-engineer services* and *construction work* (*e.g.*, the clause at [52.227-17](#), *Rights in Data-Special Works*); or

(3) For management, operation, design, or *construction* of Government-owned research, development, or production facilities, and in contracts and subcontracts in support of programs being conducted at such facilities.

(j) In accordance with [27.406-3\(a\)](#), insert the clause at [52.227-21](#), *Technical Data Declaration, Revision, and Withholding of Payment-Major Systems*, in contracts for *major systems acquisitions* or for support of *major systems acquisitions*. This requirement includes contracts for detailed design, development, or production of a *major system* and contracts for any individual part, *component*, subassembly, assembly, or subsystem integral to the *major system*, and other property that *may* be replaced during the service life of the system, including spare parts. When used, this clause requires that the *technical data* to which it applies be specified in the contract (see [27.406-3\(a\)](#)).

(k) In accordance with [27.406-3\(b\)](#), in the case of civilian agencies other than NASA and the U.S. Coast Guard, insert the clause at [52.227-22](#), *Major System-Minimum Rights*, in contracts for *major systems* or contracts in support of *major systems*.

(l) In accordance with [27.407](#), if a *contracting officer* desires to acquire *unlimited rights* in *technical data* contained in a successful proposal upon which a contract award is based, insert the clause at [52.227-23](#), *Rights to Proposal Data (Technical)*. Rights to *technical data* in a proposal are not acquired by mere incorporation by reference of the proposal in the contract, and if a proposal is incorporated by reference, the *contracting officer* shall follow [27.404](#) to assure that the rights are appropriately addressed.

**Parent topic:** [Subpart 27.4 - Rights in Data and Copyrights](#)