

(2) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in computer software or computer software documentation from their subcontractors or suppliers.

(3) The Contractor shall ensure that subcontractor or supplier rights are recognized and protected in the identification, assertion, and delivery processes required by paragraph (e) of this clause.

(4) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in computer software or computer software documentation as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

ALTERNATE I (JUN 1995)

As prescribed in 227.7203-6(a)(2), add the following paragraph (l) to the basic clause:

(l) *Publication for sale.*

(1) This paragraph only applies to computer software or computer software documentation in which the Government has obtained unlimited rights or a license to make an unrestricted release of the software or documentation.

(2) The Government shall not publish a deliverable item or items of computer software or computer software documentation identified in this contract as being subject to paragraph (l) of this clause or authorize others to publish such software or documentation on its behalf if, prior to publication for sale by the Government and within twenty-four (24) months following the date specified in this contract for delivery of such software or documentation, or the removal of any national security or export control restrictions, whichever is later, the Contractor publishes that item or items for sale and promptly notifies the Contracting Officer of such publication(s). Any such publication shall include a notice identifying the number of this contract and the Government's rights in the published software or documentation.

(3) This limitation on the Government's rights to publish for sale shall continue as long as the software or documentation are reasonably available to the public for purchase.

14. Section 252.227-7015 is added to read as follows:

252.227-7015 Technical Data—Commercial Items.

As prescribed in 227.7102-3, use the following clause:

TECHNICAL DATA—COMMERCIAL ITEMS (JUN 1995)

(a) *Definitions.* As used in this clause:

(1) *Commercial item* means—

(i) Any item, other than real property or computer software, that customarily is used by the public for nongovernmental purposes and that—

(A) Has been sold, leased, or licensed to the public; or

(B) Has been offered for sale, lease, or license to the public;

(ii) Any item that evolved from an item described in paragraph (a)(1)(i) of this clause through advances in technology or performance and will be available in the commercial marketplace in time to satisfy the delivery requirements specified in this contract;

(iii) Any item that would satisfy a criterion expressed in paragraph (a)(1)(i) or (ii) of this clause, but for—

(A) Modifications of a type customarily available in the commercial marketplace; or
(B) Minor modifications made to meet Federal Government requirements;

(iv) Any combination of items meeting the requirements of paragraph (a)(1)(i), (ii), (iii), or (v) of this clause that are of a type customarily combined and sold in combination to the public;

(v) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraph (a)(1)(i), (ii), (iii), or (iv) of this clause, and the source of such services—

(A) Offers such services to the public and the Federal Government contemporaneously and under similar terms and conditions; and
(B) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(vi) Services, offered and sold competitively, in substantial quantities, in the commercial marketplace based on established catalog prices for specific tasks performed under standard commercial terms and conditions;

(vii) Any item, combination of items, or service referred to in paragraphs (a)(1) (i) through (vi) of this clause notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(viii) Other nondevelopmental items, if the Contracting Officer determines that the item was developed exclusively at private expense and has been sold in substantial quantities, on a competitive basis, to multiple state and local governments.

(2) *Component* means any item supplied to the government as part of an end item or of another component.

(3) *Contractor* includes the Contractor's subcontractors and suppliers at any tier.

(4) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(5) The term *item* includes components or processes.

(6) *Minor modification* means a modification that does not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process.

(7) *Technical data* means recorded information, regardless of the form or method of recording, of a scientific or technical

nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(b) *License.* (1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, and to permit others to do so, that—

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the Contractor by the Government;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

(2) Except as provided in paragraph (b)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not—

(i) Use the technical data to manufacture additional quantities of the commercial items; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Contractor's written permission unless a release, disclosure or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract.

(c) *Additional license rights.* The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall enumerate the additional rights granted the Government in such data.

(d) *Release from liability.* The Contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are