

Federal Acquisition Regulation

52.227-21

SBIR RIGHTS NOTICE (MAR 1994)

These SBIR data are furnished with SBIR rights under Contract No. _____ (and subcontract _____ if appropriate). For a period of 4 years after acceptance of all items to be delivered under this contract, the Government agrees to use these data for Government purposes only, and they shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without permission of the Contractor, except that, subject to the foregoing use and disclosure prohibitions, such data may be disclosed for use by support Contractors. After the aforesaid 4-year period the Government has a royalty-free license to use, and to authorize others to use on its behalf, these data for Government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This Notice shall be affixed to any reproductions of these data, in whole or in part.

(End of notice)

(2) The Government's sole obligation with respect to any SBIR data shall be as set forth in this paragraph (d).

(e) *Omitted or incorrect markings.* (1) Data delivered to the Government without any notice authorized by paragraph (d) of this clause, and without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data have not been disclosed without restriction outside the Government, the Contractor may request, within six months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction, at the Contractor's expense, of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(f) *Protection of limited rights data.* When data other than that listed in subdivisions (b)(1) (i), (ii), and (iii) of this clause are spec-

ified to be delivered under this contract and such data qualify as either limited rights data or restricted computer software, the Contractor, if the Contractor desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(g) *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(h) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

[52 FR 18155, May 13, 1987, as amended at 55 FR 25532, June 21, 1990; 59 FR 11387, Mar. 10, 1994]

52.227-21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.

As prescribed in 27.409(q), insert the following clause:

TECHNICAL DATA DECLARATION, REVISION, AND WITHHOLDING OF PAYMENT—MAJOR SYSTEMS (JAN 1997)

(a) *Scope of clause.* This clause shall apply to all technical data (as defined in the Rights in Data—General clause included in this contract) that have been specified in this contract as being subject to this clause. It shall apply to all such data delivered, or required to be delivered, at any time during contract performance or within 3 years after acceptance of all items (other than technical data) delivered under this contract unless a different period is set forth herein. The Contracting Officer may release the Contractor from all or part of the requirements of this clause for specifically identified technical data items at any time during the period covered by this clause.

(b) *Technical data declaration.* (1) All technical data that are subject to this clause shall be accompanied by the following declaration upon delivery:

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TECHNICAL DATA DECLARATION (JAN 1997)

The Contractor, _____, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Government contract No. _____ (and sub-contract _____, if appropriate) are complete, accurate, and comply with the requirements of the contract concerning such technical data.

(End of declaration)

(2) The Government shall rely on the declarations set out in paragraph (b)(1) of this clause in accepting delivery of the technical data, and in consideration thereof may, at any time during the period covered by this clause, request correction of any deficiencies which are not in compliance with contract requirements. Such corrections shall be made at the expense of the Contractor. Unauthorized markings on data shall not be considered a deficiency for the purpose of this clause, but will be treated in accordance with paragraph (e) of the Rights in Data—General clause included in this contract.

(c) *Technical data revision.* The Contractor also agrees, at the request of the Contracting Officer, to revise technical data that are subject to this clause to reflect engineering design changes made during the performance of this contract and affecting the form, fit, and function of any item (other than technical data) delivered under this contract. The Contractor may submit a request for an equitable adjustment to the terms and conditions of this contract for any revisions to technical data made pursuant to this paragraph.

(d) *Withholding of payment.* (1) At any time before final payment under this contract the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$100,000 or 5 percent of the amount of this contract, whichever is less, if in the Contracting Officer's opinion respecting any technical data that are subject to this clause, the Contractor fails to—

- (i) Make timely delivery of such technical data as required by this contract;
- (ii) Provide the declaration required by paragraph (b)(1) of this clause;
- (iii) Make the corrections required by subparagraph (b)(2) of this clause; or
- (iv) Make revisions requested under paragraph (c) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has delivered the data and/or has made the required corrections or revisions. Withholding shall not be made if the failure to make timely delivery, and/or the deficiencies relating to delivered data, arose out of causes beyond the control of the Contractor and without the fault or negligence of the Contractor.

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(3) The Contracting Officer may decrease or increase the sums withheld up to the sums authorized in subparagraph (d)(1) of this clause. The withholding of any amount under this paragraph, or the subsequent payment thereof, shall not be construed as a waiver of any Government rights.

(End of clause)

[52 FR 18155, May 13, 1987, as amended at 62 FR 239, Jan. 2, 1997]

52.227-22 Major System—Minimum Rights.

As prescribed in 27.409(r), insert the following clause:

MAJOR SYSTEM—MINIMUM RIGHTS (JUN 1987)

Notwithstanding any other provision of this contract, the Government shall have unlimited rights in any technical data, other than computer software, developed in the performance of this contract and relating to a major system or supplies for a major system procured or to be procured by the Government, to the extent that delivery of such technical data is required as an element of performance under this contract. The rights of the Government under this clause are in addition to and not in lieu of its rights under the other provisions of this contract.

(End of clause)

[52 FR 18156, May 13, 1987]

52.227-23 Rights to Proposal Data (Technical).

As prescribed in 27.409(s), insert the following clause:

RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)

Except for data contained on pages _____, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the *Rights in Data—General* clause contained in this contract) in and to the technical data contained in the proposal dated _____, upon which this contract is based.

(End of clause)

[52 FR 18156, May 13, 1987]

52.228-1 Bid Guarantee.

As prescribed in 28.101-2, insert a provision or clause substantially as follows: