

252.227-7000

(d) In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs, Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street NW, MS-2626-MIB, Washington, DC 20240-4000. The BIA will determine the eligibility and will notify the Contracting Officer. No incentive payment will be made—

(1) Within 50 working days of subcontract award;

(2) While a challenge is pending; or

(3) If a subcontractor is determined to be an ineligible participant.

(e)(1) The Contractor, on its own behalf or on behalf of a subcontractor at any tier, may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type contract.

(ii) The target cost of a cost-plus-incentive-fee contract.

(iii) The target cost and ceiling price of a fixed-price incentive contract.

(iv) The price of a firm-fixed-price contract.

(2) The amount of the adjustment that may be made to the contract is 5 percent of the estimated cost, target cost, or firm-fixed price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(3) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(4) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor.

(5) If the Contractor requests and receives an adjustment on behalf of a subcontractor, the Contractor is obligated to pay the subcontractor the adjustment.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts that—

(1) Are for other than commercial items; and

(2) Are expected to exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation.

(End of clause)

[66 FR 47111, Sept. 11, 2001; 66 FR 50504, Oct. 3, 2001]

252.227-7000 Non-estoppel.

As prescribed at 227.7009-1, insert the following clause in patent releases, license agreements, and assignments:

48 CFR Ch. 2 (10-1-02 Edition)

NON-ESTOPPEL (OCT 1966)

The Government reserves the right at any time to contest the enforceability, validity, scope of, or the title to any patent or patent application herein licensed without waiving or forfeiting any right under this contract.

(End of clause)

252.227-7001 Release of past infringement.

As prescribed at 227.7009-2(a), insert the following clause in patent releases, license agreements, and assignments:

RELEASE OF PAST INFRINGEMENT (AUG 1984)

The Contractor hereby releases each and every claim and demand which he now has or may hereafter have against the Government for the manufacture or use by or for the Government prior to the effective date of this contract, of any inventions covered by (i) any of the patents and applications for patent identified in this contract, and (ii) any other patent or application for patent owned or hereafter acquired by him, insofar as and only to the extent that such other patent or patent application covers the manufacture, use, or disposition of (description of subject matter).*

(End of clause)

252.227-7002 Readjustment of payments.

As prescribed at 227.7009-2(b), insert the following clause in patent releases, license agreements, and assignments:

READJUSTMENT OF PAYMENTS (OCT 1966)

(a) If any license, under substantially the same patents and authorizing substantially the same acts which are authorized under this contract, has been or shall hereafter be granted within the United States, on royalty terms which are more favorable to the licensee than those contained herein, the Government shall be entitled to the benefit of such more favorable terms with respect to all royalties accruing under this contract after the date such more favorable terms become effective, and the Contractor shall promptly notify the Secretary in writing of the granting of such more favorable terms.

(b) In the event any claim of any patent hereby licensed is construed or held invalid by decision of a court of competent jurisdiction, the requirement to pay royalties under this contract insofar as it arises solely by reason of such claim, and any other claim

*Bracketed portions of the clause may be omitted when not appropriate or not encompassed by the release as negotiated.

Department of Defense

252.227-7006

not materially different therefrom, shall be interpreted in conformity with the court's decision as to the scope of validity of such claims; *Provided*, however, that in the event such decision is modified or reversed on appeal, the requirement to pay royalties under this contract shall be interpreted in conformity with the final decision rendered on such appeal.

(End of clause)

252.227-7003 Termination.

As prescribed at 227.7009-2(c), insert the following clause in patent releases, license agreements, and assignments:

TERMINATION (AUG 1984)

Notwithstanding any other provision of this contract, the Government shall have the right to terminate the within license, in whole or in part, by giving the Contractor not less than thirty (30) days notice in writing of the date such termination is to be effective; provided, however, that such termination shall not affect the obligation of the Government to pay royalties which have accrued prior to the effective date of such termination.

(End of clause)

252.227-7004 License grant.

As prescribed at 227.7009-3(a), insert the following clause in patent releases, license agreements, and assignments:

LICENSE GRANT (AUG 1984)

(a) The Contractor hereby grants to the Government an irrevocable, nonexclusive, nontransferable, and paid up license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division or continuation thereof, to practice by or cause to be practiced for the Government throughout the world, any and all of the inventions thereunder, in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. _____
Date _____
Application Serial No. _____
Filing Date _____

together with corresponding foreign patents and foreign applications for patents, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227-7005 License term.

As prescribed at 227.7009-3(b), insert one of the following clauses in patent releases, license agreements, and assignments:

LICENSE TERM (OCT 2001)

Alternate I (AUG 1984). The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the "License Grant" clause of this contract and any and all patents hereafter issued on applications for patent referred to in such "License Grant" clause.

Alternate II (OCT 2001). The license hereby granted shall terminate on the _____ day of _____, _____; *Provided*, however, that said termination shall be without prejudice to the completion of any contract entered into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.

[56 FR 36479, July 31, 1991, as amended at 66 FR 49861, Oct. 1, 2001]

252.227-7006 License grant—running royalty.

As prescribed at 227.7009-4(a), insert the following clause in patent releases, license agreements, and assignments:

LICENSE GRANT—RUNNING ROYALTY (AUG 1984)

(a) The Contractor hereby grants to the Government, as represented by the Secretary of _____, an irrevocable, nonexclusive, nontransferable license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division, or continuation thereunder to practice by or cause to be practiced for the Department of _____, throughout the world, any and all of the inventions thereunder in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. _____
Date _____