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.