

27.405-1 Special works.

(a) The clause at 52.227-17, Rights in *Data*-Special Works, is for use in contracts (or *may* be made applicable to portions thereof) that are primarily for the production or compilation of *data* (other than *limited rights data* or *restricted computer software*) for the Government's own 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 are contracts for-

(1) The production of audiovisual works, including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translation, adaptation, and the like;

(2) Histories of the respective agencies, departments, services, or units thereof;

(3) Surveys of Government establishments;

(4) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties;

(5) The compilation of reports, books, studies, surveys, or similar documents that do not involve research, development, or experimental work;

(6) The collection of *data* containing personally identifiable information such that the disclosure thereof would violate the right of privacy or publicity of the individual to whom the information relates;

(7) Investigatory reports;

(8) The development, accumulation, or compilation of *data* (other than that resulting from research, development, or experimental work performed by the contractor), the early release of which could prejudice follow-on *acquisition* activities or agency regulatory or enforcement activities; or

(9) The development of *computer software* programs, where the program-

(i) *May* give a commercial advantage; or

(ii) Is agency mission sensitive, and release could prejudice agency mission, programs, or follow-on *acquisitions*.

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

(c) Paragraph (c)(1)(ii) of the clause, which enables the Government to obtain assignment of copyright in any *data* first produced in the performance of the contract, *may* be deleted if the *contracting officer* determines that such assignment is not needed to further the objectives of the contract.

(d) Paragraph (e) of the clause, which requires the contractor to indemnify the Government against any liability incurred as the result of any violation of trade secrets, copyrights, right of privacy or publicity, or any libelous or other unlawful matter arising out of or contained in any production or compilation of *data* that are subject to the clause, *may* be deleted or limited in scope where the *contracting officer* determines that, because of the nature of the particular *data* involved, such liability will not arise.

(e) When the audiovisual or other special works are produced to accomplish a public purpose other than *acquisition* for the Government's own use (such as for production and distribution to the public of the works by other than a *Federal agency*) agencies are authorized to modify the clause for use in contracts, with rights in *data* provisions that meet agency mission needs yet protect free speech and freedom of expression, as well as the artistic license of the creator of the work.

Parent topic: 27.405 Other data rights provisions.