227.7103-5 Government rights.

The standard license rights that a licensor grants to the Government are unlimited rights, government purpose rights, or limited rights. Those rights are defined in the clause at 252.227-7013 , Rights in Technical Data–Other Than Commercial Products and Commercial Services. In unusual situations, the standard rights may not satisfy the Government's needs or the Government may be willing to accept lesser rights in data in return for other consideration. In those cases, a special license may be negotiated. However, the licensor is not obligated to provide the Government greater rights and the contracting officer is not required to accept lesser rights than the rights provided in the standard grant of license. The situations under which a particular grant of license applies are enumerated in paragraphs (a) through (d) of this section.

(a) *Unlimited rights*. The Government obtains unlimited rights in technical data that are—

(1) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(2) Studies, analyses, test data, or similar data produced in the performance of a contract when the study, analysis, test, or similar work was specified as an element of performance;

(3) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(4) Form, fit, and function data;

(5) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(6) Corrections or changes to technical data furnished to the contractor by the Government;

(7) Publicly available or have been released or disclosed by the contractor or subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(8) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(9) Data furnished to the Government, under a Government contract or subcontract thereunder, with—

(i) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

(ii) Government purpose rights and the contractor's exclusive right to use such data for commercial purposes has expired.

(b) *Government purpose rights*.

(1) The Government obtains government purpose rights in technical data—

(i) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights as provided in paragraphs (a)(2) and (a)(4) through (9) of this subsection; or

(ii) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(2) The period during which government purpose rights are effective is negotiable. The clause at 252.227-7013 provides a nominal five-year period. Either party may request a different period. Changes to the government purpose rights period may be made at any time prior to delivery of the technical data without consideration from either party. Longer periods should be negotiated when a five-year period does not provide sufficient time to apply the data for commercial purposes or when necessary to recognize subcontractors' interests in the data.

(3) The government purpose rights period commences upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required the development. Upon expiration of the Government rights period, the Government has unlimited rights in the data including the right to authorize others to use the data for commercial purposes.

(4) During the government purpose rights period, the Government may not use, or authorize other persons to use, technical data marked with government purpose rights legends for commercial purposes. The Government shall not release or disclose data in which it has government purpose rights to any person, or authorize others to do so, unless—

(i) Prior to release or disclosure, the intended recipient is subject to the use and nondisclosure agreement at 227.7103-7 ; or

(ii) The intended recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at 252.227-7025 , Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(5) When technical data marked with government purpose rights legends will be released or disclosed to a Government contractor performing a contract that does not include the clause at 252.227-7025 , the contract may be modified, prior to release or disclosure, to include that clause in lieu of requiring the contractor to complete a use and nondisclosure agreement.

(6) Contracting activities shall establish procedures to assure that technical data marked with government purpose rights legends are released or disclosed, including a release or disclosure through a Government solicitation, only to persons subject to the use and nondisclosure restrictions. Public announcements in the System for Award Management or other publications must provide notice of the use and nondisclosure requirements. Class use and nondisclosure agreements (e.g., agreements covering all solicitations received by the XYZ company within a reasonable period) are authorized and may be obtained at any time prior to release or disclosure of the government purpose rights data. Documents transmitting government purpose rights data to persons under class agreements shall identify the technical data subject to government purpose rights and the class agreement under which such data are provided.

(c) *Limited rights*.

(1) The Government obtains limited rights in technical data—

(i) That pertain to items, components, or processes developed exclusively at private expense except

when the Government is entitled to unlimited rights as provided in paragraphs (a)(2) and (a)(4) through (9) of this subsection; or

(ii) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(2) Data in which the Government has limited rights may not be used, released, or disclosed outside the Government without the permission of the contractor asserting the restriction except for a use, release, or disclosure that is—

(i) Necessary for emergency repair and overhaul;

(ii) To a covered Government support contractor; or

(iii) To a foreign government, other than detailed manufacturing or process data, when use, release, or disclosure is in the interest of the United States and is required for evaluational or informational purposes.

(3) The person asserting limited rights must be notified of the Government's intent to release, disclose, or authorize others to use such data prior to release or disclosure of the data except notification of an intended release, disclosure, or use for emergency repair or overhaul which shall be made as soon as practicable.

(4) When the person asserting limited rights permits the Government to release, disclose, or have others use the data subject to restrictions on further use, release, or disclosure, or for a release under paragraph (c)(2)(i), (ii), or (iii) of this subsection, the intended recipient must complete the use and nondisclosure agreement at 227.7103-7 , or receive the data for performance of a Government contract that contains the clause at 252.227-7025 , Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, prior to release or disclosure of the limited rights data.

(d) *Specifically negotiated license rights.*

(1) Negotiate specific licenses when the parties agree to modify the standard license rights granted to the Government or when the Government wants to obtain rights in data in which it does not have rights. When negotiating to obtain, relinquish, or increase the Government's rights in technical data, consider the acquisition strategy for the item, component, or process, including logistics support and other factors which may have relevance for a particular procurement. The Government may accept lesser rights when it has unlimited or government purpose rights in data but may not accept less than limited rights in such data. The negotiated license rights must stipulate what rights the Government has to release or disclose the data to other persons or to authorize others to use the data. Identify all negotiated rights in a license agreement made part of the contract.

(2) When the Government needs additional rights in data acquired with government purpose or limited rights, the contracting officer must negotiate with the contractor to determine whether there are acceptable terms for transferring such rights. Generally, such negotiations should be conducted only when there is a need to disclose the data outside the Government or if the additional rights are required for competitive reprocurement and the anticipated savings expected to be obtained through competition are estimated to exceed the acquisition cost of the additional rights. Prior to negotiating for additional rights in limited rights data, consider alternatives such as—

(i) Using performance specifications and form, fit, and function data to acquire or develop functionally equivalent items, components, or processes;

(ii) Obtaining a contractor's contractual commitment to qualify additional sources and maintain adequate competition among the sources; or

(iii) Reverse engineering, or providing items from Government inventories to contractors who request the items to facilitate the development of equivalent items through reverse engineering.

Parent topic: 227.7103 Other than commercial products, commercial services, or commercial processes.