1827.404-4 Contractor's release, publication, and use of data.

(b)

(1) NASA's intent is to ensure the most expeditious dissemination of computer software developed by it or its contractor. Accordingly, when the clause at FAR 52.227-14, Rights in Data—General, is modified by 1852.227-14 (see 1827.409(b)(1)), the contractor shall not assert claim to copyright, publish, or release to others computer software first produced in the performance of a contract without the contracting officer's prior written permission. The prohibition on “release to others” does not prohibit release to another Federal Agency for its use or its contractors' use, as long as any such release is consistent with any restrictive markings on the software. Any restrictive markings on the software shall take precedence over the aforementioned release. Any such release to a Federal Agency in accordance with this paragraph shall limit use to the Federal Agency or its contractors for Government purposes only.

(2) The contracting officer may, in consultation with the center patent or intellectual property counsel, grant the contractor permission to assert claim to copyright, publish, or release to others computer software first produced in the performance of a contract if:

(i) The contractor has identified an existing commercial computer software product line or proposes a new one and states a positive intention of incorporating identified computer software first produced under the contract into that line, either directly itself or through a licensee;

(ii) The contractor has identified an existing open source software project or proposes a new one and states a positive intention of incorporating identified computer software first produced under the contract into that project, or has been instructed by the Agency to incorporate software first produced under the contract into an open source software project or otherwise release the software as open source software;

(iii) The contractor has made, or will be required to make, substantial contributions to the development of the computer software by co-funding or by cost-sharing, or by contributing resources (including but not limited to agreement to provide continuing maintenance and update of the software at no cost for Governmental use); or

(iv) The concurrence of the Agency Counsel for Intellectual Property, or designee, is obtained.

(c)

(1) The contractor's request for permission in accordance with 1827.404-4(b) may be made either before contract award or during contract performance.

(2)

(i) If the basis for permitting the assertion under 1827.404-4(b)(2) is subsection (i), then the permission shall be granted by a contract modification prepared by the contracting officer in consultation with the Center patent or intellectual property counsel that contains appropriate assurances that the computer software will be incorporated into an existing or proposed new commercial computer software product line within a specified reasonable time, with contingencies enabling the Government to obtain the right to distribute the software for commercial use, including

the right to obtain assignment of copyright where applicable, in order to prevent the computer software from being suppressed or abandoned by the contractor.

(ii) If the basis for permitting the assertion under 1827.404-4(b)(2) is paragraph (b)(2)(ii), then the permission shall be granted by a contract modification prepared by the contracting officer in consultation with the Center patent or intellectual property counsel that contains appropriate assurances that the computer software will be incorporated into an existing or proposed new open source project within a specified reasonable time, with contingencies enabling the Government to obtain the right to distribute the software for open source development, including the right to obtain assignment of copyright where applicable, in order to prevent the computer software from being suppressed or abandoned by the contractor.

(iii) If the basis for permitting the assertion under 1827.404-4(b)(2) is paragraph (b)(2)(iii), then the permission shall be granted by a contract modification that contains appropriate assurances that the agreed contributions to the Government are fulfilled, with contingencies enabling the Government to obtain assignment of copyright if such contributions do not occur in order to prevent the computer software from being suppressed or abandoned by the contractor.

(iv) If the basis for permitting the assertion under 1827.404-4(b)(2) is paragraph (b)(2)(iv), then the permission shall be granted by a contract modification prepared by the contracting officer in consultation with the Center patent or intellectual property counsel that contains appropriate assurances as required by the Agency Counsel for Intellectual Property, or designee, including at the very least the right to obtain assignment of copyright in order to prevent the computer software from being suppressed or abandoned by the contractor.

(3) When any permission to copyright is granted, any copyright license retained by the Government shall be of the same scope as set forth in subparagraph (c)(1) of the clause at FAR 52.227-14 and without any obligation of confidentiality on the part of the Government unless, in accordance with 1827.404-4(b)(2)(iii), the contributions of the Contractor are considered “substantial” for the purposes of FAR 27.408 (*i.e.*, approximately 50 percent), in which case rights consistent with FAR 27.408 may be negotiated for the computer software in question.

(d) If the contractor has not been granted permission to assert claim to copyright, paragraph (d)(4)(ii) of the clause at FAR 52.227-14, Rights in Data—General (as modified by 1852.227-14) enables NASA to direct the contractor to assert claim to copyright in computer software first produced under the contract and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee. The contracting officer may, in consultation with the center patent or intellectual property counsel, so direct the contractor in situations where copyright protection is considered necessary in furtherance of Agency mission objectives, needed to support specific Agency programs, or necessary to meet statutory requirements.

Parent topic: Subpart 1827.4—Rights in Data and Copyrights