**DFARS Case 2018-D018**

**(S) Noncommercial Computer Software**

**Final Rule**

**PART 227—PATENTS, DATA, AND COPYRIGHTS**

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**SUBPART 227.71--~~RIGHTS IN~~ TECHNICAL DATA [AND ASSOCIATED RIGHTS]**

**227.7100 Scope of subpart.**

This subpart—

(a) Prescribes policies and procedures for the acquisition of technical data and the rights to use, modify, reproduce, release, perform, display, or disclose technical data. It implements ~~requirements in~~ the following laws and Executive Order:

(1) 10 U.S.C. 3013.

(2) 10 U.S.C. 3208(d).

(3) 10 U.S.C. 3771-3775.

~~(4) 10 U.S.C. 3781-3786.~~

~~(5) 10 U.S.C. 3761.~~

~~(6)~~**[(5)]** 10 U.S.C. 8687.

~~(7)~~**[(6)]** 17 U.S.C. 1301, et seq.

~~(8)~~**[(7)]** Pub**[lic]**~~.~~ L**[aw]**~~.~~ 103-355.

~~(9)~~**[(8)]** Executive Order 12591 (~~S~~**[s]**ubsection 1(b)(~~6~~**[7]**)).

(b) Does not apply to—

(1) Computer software or technical data that is computer software documentation (see subpart 227.72); or

(2) Releases of technical data to litigation support contractors (see subpart 204.74).

\* \* \* \* \*

**227.7103-2 Acquisition of technical data.**

\* \* \* \* \*

(b)(1) Data managers or other requirements personnel are responsible for identifying the Government’s **[life-cycle]** ~~minimum~~ needs for technical data. ~~Data~~ **[Technical data]** needs must be established giving consideration to the **[offeror’s]** ~~contractor’s~~ economic interests in **[technical]** data pertaining to items, components, or processes that have been developed at private expense **[(including the economic interests of small businesses and nontraditional contractors)]**; the Government’s costs to acquire, maintain, store, retrieve, and protect the **[technical]** data; reprocurement needs; repair, maintenance**[,]** and overhaul philosophies; spare and repair part considerations; and whether procurement of the items, components, or processes can be accomplished on a form, fit, or function basis. When it is anticipated that the Government will obtain unlimited or government purpose rights in technical data that will be required for competitive spare or repair parts procurements, such data should be identified as deliverable **[technical]** data items. Reprocurement needs may not be a sufficient reason to acquire detailed manufacturing or process data when items or components can be acquired using performance specifications, form, fit**[,]** and function data, or when there are a sufficient number of alternate sources ~~which~~**[that]** can reasonably be expected to provide such items on a performance specification or form, fit, or function basis.

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**SUBPART 227.72--~~RIGHTS IN~~ COMPUTER SOFTWARE[,] ~~AND~~ COMPUTER SOFTWARE DOCUMENTATION[, AND ASSOCIATED RIGHTS]**

**227.7200 Scope of subpart.**

**[(a)]** This subpart—

(~~a~~**[1]**) Prescribes policies and procedures for the acquisition of computer software and computer software documentation, and the rights to use, modify, reproduce, release, perform, display, or disclose such software or documentation. It implements ~~requirements in~~the following laws and Executive ~~O~~**[o]**rder:

(~~1~~**[i]**) 10 U.S.C. 3013.

(~~2~~**[ii]**) 10 U.S.C. 3208(d).

(~~3~~**[iii]**) 10 U.S.C. 3771-3775.

(~~4~~**[iv]**) 10 U.S.C. 3781-3786.

**[(v)** **10 U.S.C. 4576.]**

**~~(~~**~~5~~**~~)~~** ~~10 U.S.C. 3761.~~

(~~6~~**[vi]**) Executive Order 12591 (subsection 1(b)(~~6~~**[7]**)).

~~(b)~~**[(2)]** Does not apply to—

~~(1)~~**[(i)]** Computer software or computer software documentation acquired under **[General Services Administration (]**GSA**[)]** schedule contracts; or

~~(2)~~**[(ii)]** Releases of computer software or computer software documentation to litigation support contractors (see subpart 204.74).

**[(b) See PGI 227.7200(b) for guidance and information in DoD issuances.]**

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**227.7202 Commercial computer software and commercial computer software documentation.**

**227.7202-1 Policy.**

**\* \* \* \* \***

**[(d) When establishing contract requirements and negotiation objectives to meet agency needs, the Government should consider the factors identified in 227.7203-2(b) and (c) for commercial computer software and computer software documentation, consistent with paragraph (c) of this section.]**

**\* \* \* \* \***

**227.7203 Other than commercial computer software and other than commercial computer software documentation.**

**\* \* \* \* \***

**227.7203-2 Acquisition of other than commercial computer software and computer software documentation [and associated rights].**

**\* \* \* \* \***

(b)(1) Data managers or other requirements personnel are responsible for identifying the Government’s **[life-cycle]** ~~minimum~~ needs **[for computer software and computer software documentation. See PGI 227.7203-2(b) for further guidance on assessing life-cycle needs]**. In addition to desired software performance, compatibility, or other technical considerations, **[identification of life-cycle]** needs ~~determinations~~ should consider such factors as**[—**

**(i) The offeror’s economic interests in software that has been developed at private expense (including the economic interests of small businesses and nontraditional contractors);**

**(ii) The Government’s costs to develop, acquire, maintain, store, retrieve, and protect the computer software and computer software documentation;**

**(iii) M]**~~m~~ultiple site or shared use requirements~~,~~**[;**

**(iv) W]**~~w~~hether the Government’s software maintenance philosophy will require the right to modify or have third parties modify the software~~,~~**[;]** and

**[(v) A]**~~a~~ny special computer software documentation requirements.

**[(2)(i) *Procurement planning*. To the maximum extent practicable, when assessing the life-cycle needs, data managers or other requirements personnel will address in the procurement planning and requirements documents (e.g., acquisition plans, purchase requests) the acquisition at appropriate times in the life cycle of all computer software, related recorded information, and associated license rights necessary to—**

**(A) Reproduce, build, or recompile the software from its source code and required software libraries (e.g., software libraries called, invoked, or linked by the computer software source code that are necessary for the operation of the software);**

**(B) Conduct required computer software testing and evaluation;**

**(C) Integrate and deploy computer programs on relevant hardware including developmental, operational, diagnostic, training, or simulation environments; and**

**(D) Sustain and support the software over its life cycle.**

**(ii) *Alternatives to delivery* *of source code and related software design details*. The assessment of life-cycle needs should consider alternatives to the delivery of source code and related software design details for privately developed computer software as necessary to meet the Government’s needs, such as—**

**(A) T****echnical data and computer software sufficient to implement a modular open system approach or a similar approach (see PGI 227.7203-2(b)(2)(ii)(A)** **for guidance on alternatives to source code and related software design details);**

**(B) Access to technical data or computer software, including access agreements for cloud-based or subscription-based software products or services; see PGI 227.7203-2(b)(2)(ii)(B) and (C) for guidance on use of access agreements to contractor source code and related software design details;**

**(C) Software support and maintenance provided directly from the contractor; or**

**(D) Other contracting or licensing mechanisms including priced options, specially negotiated licenses, direct licensing between contractors for qualifying second sources, data escrow agreements, deferred delivery solutions, and subscription agreements. See PGI 227.7203-2(b)(2)(ii)(D) for guidance on use of escrow agreements.]**

(**[3]**~~2~~) When reviewing offers received in response to a solicitation or other request for computer software or computer software documentation, data managers must balance the original assessment of the Government’s needs with prices offered.

(c) Contracting officers are responsible for ensuring that, wherever practicable, solicitations and contracts—

**\* \* \* \* \***

(4) Include delivery schedules and acceptance criteria for each deliverable item; ~~and~~

(5) Specifically identify the place of delivery for each deliverable item~~.~~**[; and**

**(6) Specify in the negotiated terms that any required other than commercial computer software, related recorded information, and associated license rights identified in the assessment of life-cycle needs in paragraph (b) of this section shall to the extent appropriate—**

**(i) Include computer software delivered in a digital format compatible with applicable computer programs on relevant system hardware;**

**(ii) Not rely on additional internal or external other than commercial or commercial technical data and software, unless such technical data or software is—**

**(A) Included in the items to be delivered with license rights sufficient to meet the Government’s needs; or**

**(B) Commercially available with license rights sufficient to meet the Government’s needs; and**

**(iii) Include sufficient information, with license rights sufficient to meet the Government’s needs, to support maintenance and understanding of interfaces and software version history when the negotiated terms do not allow for the inclusion of the external or additional other than commercial or commercial technical data and software.]**

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**PART 237—SERVICE CONTRACTING**

**\* \* \* \* \***

**SUBPART 237.1—SERVICE CONTRACTS—GENERAL**

**237.102 Policy.**

**\* \* \* \* \***

**[237.102-76** **Acquisition of computer software and computer software documentation under services contracts.**

**(a) See 227.7202 for policy on the acquisition of commercial computer software and commercial computer software documentation for services contracts that require the development or modification of commercial computer software.**

**(b) See 227.7203 for policy on the acquisition of other than commercial computer software and other than commercial computer software documentation for services contracts that require the development or modification of other than commercial computer software.]**

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**PART 239—ACQUISITION OF INFORMATION TECHNOLOGY**

**\* \* \* \* \***

**SUBPART 239.1—GENERAL**

**239.101 Policy.**

**\* \* \* \* \***

(3) See 227.7202 for policy on the acquisition of commercial computer software and commercial computer software documentation.

**[(4) See 227.7203 for policy on the acquisition of other than commercial computer software and other than commercial computer software documentation.]**

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**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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**SUBPART 252.2—TEXT OF PROVISIONS AND CLAUSES**

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**252.227-7013 Rights in Technical Data—Other than Commercial Products and Commercial Services.**

As prescribed in 227.7103-6(a), use the following clause:

RIGHTS IN TECHNICAL DATA—OTHER THAN COMMERCIAL PRODUCTS OR COMMERCIAL SERVICES (~~JAN 2023~~**[MAR 2023])**

(a) *Definitions*. As used in this clause—

**\* \* \* \* \***

(15) “Technical data” means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or ~~data incidental to contract administration, such as financial and/or management information~~**[****financial, administrative, cost or pricing, or management information, or information incidental to contract administration]**.

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**252.227-7014 Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation.**

As prescribed in 227.7203-6(a)(1), use the following clause:

RIGHTS IN OTHER THAN COMMERCIAL COMPUTER SOFTWARE AND OTHER THAN COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (~~JAN 2023~~**[MAR 2023])**

(a) *Definitions*. As used in this clause—

**\* \* \* \* \***

(15) “Restricted rights” apply only to other than commercial computer software and mean the Government’s rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

**\* \* \* \* \***

(iii) Make **[a reasonable]**~~the minimum~~ number of copies of the computer software required for **[the purposes of]** safekeeping (archive), backup, ~~or~~ modification**[,]** ~~purposes,~~ **[****or other activities authorized in paragraphs (a)(15)(i), (ii), and (iv) through (vii) of this clause]**;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(15)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(15)(ii), (v), (vi)**[,]** and (vii) of this clause;

(v) **[Use, and p]**~~P~~ermit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use**[,]** computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a**[ny such]** release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and ~~non-disclosure~~**[nondisclosure]** agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iii) of this clause;

(vi) **[Use, and p]**~~P~~ermit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use**[,]** the computer software when necessary to perform the **[emergency]** repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the use and ~~non-disclosure~~**[nondisclosure]** agreement at DFARS 227.7103-7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(C) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iii) of this clause; and

(vii) **[****Use, modify, reproduce, perform, display, or release or disclose computer software to a person authorized to receive restricted rights computer software for management and oversight of a program or effort, and p]**~~P~~ermit covered Government support contractors in the performance of covered Government support contracts that contain the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that—

(A) The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iv) of this clause.

**\* \* \* \* \***

**252.227-7015 Technical Data--Commercial Products and Commercial Services.**

As prescribed in 227.7102-4(a)(1), use the following clause:

TECHNICAL DATA—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (~~JAN 2023~~**[MAR 2023]**)

(a) *Definitions*. As used in this clause—

**\* \* \* \* \***

(4) “Technical data” means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or ~~data incidental to contract administration, such as financial and/or management information~~**[****financial, administrative, cost or pricing, or management information, or information incidental to contract administration]**.

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**252.227-7018 Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.**

As prescribed in 227.7104(a), use the following clause:

RIGHTS IN OTHER THAN COMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE—SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM (~~JAN 2023~~**[MAR 2023])**

(a) *Definitions*. As used in this clause—

**\* \* \* \* \***

(18) “Restricted rights” apply only to other than commercial computer software and mean the Government’s rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

**\* \* \* \* \***

(iii) Make **[a reasonable]**~~the minimum~~ number of copies of the computer software required for **[the purposes of]** safekeeping (archive), backup, ~~or~~ modification ~~purposes~~**[, or other activities authorized in paragraphs (a)(18)(i), (ii), and (iv) through (vii) of this clause]**;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(18)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(18)(ii), (v), (vi), and (vii) of this clause;

**\* \* \* \* \***

(v) **[Use, and p]**~~P~~ermit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use**[,]** computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a**[ny such]** release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and ~~non-disclosure~~**[nondisclosure]** agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement or are Government contractors receiving access to the software 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;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(18)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iii) of this clause;

(vi) **[Use, and p]**~~P~~ermit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use**[,]** the computer software when necessary to perform the **[emergency]** repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the use and ~~non-disclosure~~ **[nondisclosure]** agreement at 227.7103-7 or is a Government contractor receiving access to the software 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;

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(18)(iv) of this clause, for any other purpose; and

(C) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iii) of this clause; and

(vii) **[****Use, modify, reproduce, perform, display, or release or disclose computer software to a person authorized to receive restricted rights computer software for management and oversight of a program or effort, and p]**~~P~~ermit covered Government support contractors in the performance of **[covered]** Government **[support]** contracts that contain the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that—

(A) The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(18)(iv) of this clause, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iv) of this clause.

**\* \* \* \* \***

(20) “Technical data” means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or ~~data incidental to contract administration, such as financial and/or management information~~**[****financial, administrative, cost or pricing, or management information, or information incidental to contract administration]**.

**\* \* \* \* \***