

## 27.303 Contract clauses.

(a)

(1) Insert a patent rights clause in all *solicitations* and contracts for experimental, developmental, or research work as prescribed in this section.

(2) This section also applies to *solicitations* or contracts for *construction* work or *architect-engineer services* that include-

(i) Experimental, developmental, or research work;

(ii) Test and evaluation studies; or

(iii) The design of a Government facility that *may* involve novel structures, machines, *products*, materials, processes, or equipment (including *construction* equipment).

(3) The *contracting officer* shall not include a patent rights clause in *solicitations* or contracts for *construction* work or *architect-engineer services* that call for or can be expected to involve only "standard types of *construction*" "Standard types of *construction*" are those involving previously developed equipment, methods, and processes and in which the distinctive features include only-

(i) Variations in size, shape, or capacity of conventional structures; or

(ii) Purely artistic or aesthetic (as distinguished from functionally significant) architectural configurations and designs of both structural and nonstructural members or groupings, whether or not they qualify for design patent protection.

(b)

(1) Unless an alternative patent rights clause is used in accordance with paragraph (c), (d), or (e) of this section, insert the clause at [52.227-11](#), Patent Rights-Ownership by the Contractor.

(2) To the extent the information is not required elsewhere in the contract, and unless otherwise specified by agency supplemental regulations, the *contracting officer* may modify [52.227-11](#)(e) or otherwise supplement the clause to require the contractor to do one or more of the following:

(i) Provide periodic (but not more frequently than annually) listings of all *subject inventions* required to be disclosed during the period covered by the report.

(ii) Provide a report prior to the closeout of the contract listing all *subject inventions* or stating that there were none.

(iii) Provide the filing date, serial number, title, patent number and issue date for any patent application filed on any *subject invention* in any country or, upon request, copies of any patent application so identified.

(iv) Furnish the Government an irrevocable power to inspect and make copies of the patent application file when a Government employee is a co-inventor.

(3) Use the clause with its *Alternate I* if the Government *must* grant a foreign government a sublicense in *subject inventions* pursuant to a specified treaty or executive agreement. The *contracting officer may* modify *Alternate I*, if the *agency head* determines, at contract award, that it would be in the national interest to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement. When necessary to effectuate a treaty or agreement, *Alternate I may* be appropriately modified.

(4) Use the clause with its *Alternate II* in contracts that *may* be affected by existing or future treaties or agreements.

(5) Use the clause with its *Alternate III* in contracts with *nonprofit organizations* for the operation of a Government-owned facility.

(6) If the contract is for the operation of a Government-owned facility, the *contracting officer may* use the clause with its *Alternate IV*.

(7) If the contract is for the performance of services at a Government owned and operated laboratory or at a Government owned and contractor operated laboratory directed by the Government to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a, the *contracting officer may* use the clause with its *Alternate V*. Since this provision is considered an exercise of an agency's "exceptional circumstances" authority, the *contracting officer must* comply with 37 CFR 401.3(e) and 401.4.

(c) Insert a patent rights clause in accordance with the procedures at 27.304-2 if the *solicitation* or contract is being placed on behalf of another Government agency.

(d) Insert a patent rights clause in accordance with agency procedures if the *solicitation* or contract is for DoD, DOE, or NASA, and the contractor is other than a small business concern or *nonprofit organization*.

(e)

(1) Except as provided in paragraph (e)(2) of this section, and after compliance with the applicable procedures in 27.304-1(b), the *contracting officer may* insert the clause at 52.227-13, Patent Rights-Ownership by the Government, or a clause prescribed by agency supplemental regulations, if-

(i) The contractor is not located in the *United States* or does not have a place of business located in the *United States* or is subject to the control of a foreign government;

(ii) There are exceptional circumstances and the *agency head* determines that restriction or elimination of the right to retain title to any *subject invention* will better promote the policy and objectives of chapter 18 of title 35 of the *United States Code*;

(iii) A Government authority that is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities, determines that restriction or elimination of the right to retain any *subject invention* is necessary to protect the security of such activities; or

(iv) The contract includes the operation of a Government-owned, contractor-operated facility of DOE primarily dedicated to that Department's naval nuclear propulsion or weapons related programs.

(2) If an agency exercises the exceptions at paragraph (e)(1)(ii) or (iii) of this section in a contract with a small business concern or a *nonprofit organization*, the *contracting officer shall* use the

clause at [52.227-11](#) with only those modifications necessary to address the exceptional circumstances and *shall* include in the modified clause greater rights determinations procedures equivalent to those at [52.227-13\(b\)\(2\)](#).

(3) When using the clause at [52.227-13](#), Patent Rights-Ownership by the Government, the *contracting officer may* supplement the clause to require the contractor to-

(i) Furnish a copy of each subcontract containing a patent rights clause (but if a copy of a subcontract is furnished under another clause, a duplicate *shall* not be requested under the patent rights clause);

(ii) Submit interim and final invention reports listing *subject inventions* and notifying the *contracting officer* of all subcontracts awarded for experimental, developmental, or research work;

(iii) Provide the filing date, serial number, title, patent number, and issue date for any patent application filed on any *subject invention* in any country or, upon specific request, copies of any patent application so identified; and

(iv) Submit periodic reports on the utilization of a *subject invention*.

(4) Use the clause at [52.227-13](#) with its *Alternate I* if-

(i) The Government *must* grant a foreign government a sublicense in *subject inventions* pursuant to a treaty or executive agreement; or

(ii) The *agency head* determines, at contract award, that it would be in the national interest to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement. If other rights are necessary to effectuate any treaty or agreement, *Alternate I* may be appropriately modified.

(5) Use the clause at [52.227-13](#) with its *Alternate II* in the contract when necessary to effectuate an existing or future treaty or agreement.

**Parent topic:** [Subpart 27.3 - Patent Rights under Government Contracts](#)