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## **CHAPTER 27. Patents, Copyrights, and Other Proprietary Information**

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## **27.1 Policy**

The Authority shall comply with the requirements of Federal law and regulations in acquiring or using rights in patents, copyrights, and proprietary information.

## **27.2 General Provisions**

The Authority shall limit its demands for rights in proprietary information resulting from private developments to those reasonable for present and future use by the Authority, and to those required pursuant to the terms and conditions of a Federal grant.

The Authority shall not unreasonably restrict the commercial use of inventions made while performing Authority contracts.

The Contracting Officer shall not refuse to award a contract solely on the basis of a suspicion that the contractor may infringe a patent, unless the Contracting Officer determines that refusal is in the best interests of the Authority.

Contractors shall obtain permission from the lawful owner(s) of copyrighted materials before including all or part of any copyrighted work in any item to be delivered under contract to the Authority; however, permission is not required under the fair use or other applicable provisions of Federal copyright statutes or regulations.

## **27.3 Notice and Assistance**

The Contractor shall promptly notify the Contracting Officer in writing of each notice or claim of patent or copyright infringement based on the performance of a contract of which the Contractor has knowledge.

In the event of any claim or suit against the Authority on account of any alleged patent or copyright infringement, the Contractor shall furnish the Authority with all evidence and information in the Contractor's possession pertaining to such claim or suit.

## **27.4 Indemnification**

Contractors providing commercial items shall indemnify the Authority against liability of the infringement of U.S. and/or international patents. Contracts requiring indemnification shall include an indemnity clause providing for reimbursement of the Authority for any liability incurred as the result of an infringement of rights in patents, copyrights, or proprietary information.

## **27.5 Licensing and Royalty Information**

Prospective contractors shall provide the Contracting Officer with royalty information when it is anticipated that royalties will be paid under an Authority contract. The Contracting Officer shall take appropriate action to reduce or eliminate excessive or improper royalties.

Each Request for Proposal shall include a clause requesting information relating to any proposed charge for royalties or need to obtain a license for use of any rights in patents, copyrights, or proprietary information. This information may be requested in Invitation for Bids if the Contracting Officer determines the information is necessary for the protection of Authority's interests.

When considering the approval of a subcontract, the Contracting Officer shall require royalty information if it is required under the prime contract.



The Contracting Officer shall include a notice in the solicitation when the Authority is obligated to pay a royalty on patent, copyright, or proprietary information because of a license agreement between the Authority and the licensor, and the Contracting Officer knows or has reason to believe that the licensed patent will be applicable to a prospective contract.

The Contracting Officer shall include a notice in the solicitation requiring each offeror to furnish information indicating whether it is a licensee when the Authority is obligated to pay a royalty because of a license agreement between the Authority and a licensor.

## **27.6 Patent Rights under Authority Contracts**

An invention is made in the performance of work under an Authority contract if it is conceived or first actually reduced to practice in the performance of work under an Authority contract.

The Authority shall have the right to receive title to any invention made in the performance of a contract unless the contract provides otherwise. The Authority may permit a contractor to retain title to any invention made in the performance of work under a contract. If the contractor elects to retain title to an invention, the Authority shall have at least a nonexclusive, nontransferable, irrevocable, paid up license to use or have used, the invention for or on behalf of the Authority. If provided in the contract, the Authority may have additional rights to sublicense the invention.

The Chief Contracting Officer may determine in writing to modify, waive, or omit any of the rights set forth in this section in the best interests of the Authority.

## **27.7 Patent Rights Procedures**

Contractors shall submit to the Contracting Officer a document confirming all rights to which the Authority is entitled, and shall furnish to the Contracting Officer an irrevocable power to inspect and make copies of the patent application file six (6) months after submitting the invention disclosure if the application has been previously filed.

Contractors shall establish and maintain effective procedures to ensure that patent rights obligations are met, that subject inventions are timely identified and disclosed, and that patent applications are filed when required.

Contractors shall submit all reports required by the Contracting Officer in accordance with the contract.

The Contracting Officer shall establish follow-up procedures to ensure contractor compliance with the above and to protect Authority's interests.

## **27.8 Rights to Copyrighted Material and Proprietary Information**

Contracts that obligate Federal funds shall include a provision which provide the Authority and the Federal grant agency a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal Government purposes:

1. The copyright in any work developed under an Authority contract; and
2. Any rights of copyright to which a contractor purchases ownership with grant support.

The Authority may acquire title to, or obtain or limit access to, copyrighted materials, materials subject to copyright protection, and proprietary information developed under or used in the performance of contracts not federally funded.



## **27.9 Proprietary or Confidential Information in Bids and Proposals**

The Authority may include a request for proprietary information and data in a solicitation when necessary for the evaluation of bids or proposals.

An offeror shall designate information contained in a response to the invitation for bids or request for proposals as proprietary or confidential by specifically identifying that information in writing in the bid or proposal.

Each solicitation shall contain a provision which indicates the right of the offeror to designate confidential or proprietary information in response to the solicitation, as well as the right of the Contracting Officer to challenge the designation and either eliminate the bid or proposal or remove the designation.