

connection with talent releases, music licenses, and the like that are consistent with the purposes for which the works are acquired.

(c) Paragraph (c)(1)(ii) of the clause, which enables the Government to obtain assignment of copyright in any data first produced in the performance of the contract, may be deleted if the contracting officer determines that such assignment is not needed to further the objectives of the contract.

(d) Paragraph (e) of the clause, which requires the contractor to indemnify the Government against any liability incurred as the result of any violation of trade secrets, copyrights, right of privacy or publicity, or any libelous or other unlawful matter arising out of or contained in any production or compilation of data that are subject to the clause, may be deleted or limited in scope where the contracting officer determines that, because of the nature of the particular data involved, such liability will not arise.

(e) When the audiovisual or other special works are produced to accomplish a public purpose other than acquisition for the Government's own use (such as for production and distribution to the public of the works by other than a Federal agency), agencies are authorized to modify the clause for use in contracts, with rights in data provisions that meet agency mission needs yet protect free speech and freedom of expression, as well as the artistic license of the creator of the work.

27.405-2 Existing works.

The clause at 52.227-18, Rights in Data—Existing Works, is for use in contracts exclusively for the acquisition (without modification) of existing works such as motion pictures, television recordings, and other audiovisual works; sound recordings; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. The contract may set forth limitations consistent with the purposes for which the works covered by the contract are being acquired. Examples of these limitations are means of exhibition or transmission, time, type of audience, and geographical location. However, if the contract requires that works of the type indicated in this paragraph are to be modified through editing, translation, or addition of subject matter, etc. (rather than purchased in existing form), then see 27.405-1.

27.405-3 Commercial computer software.

(a)(1) When contracting other than from GSA's Multiple Award Schedule contracts for the acquisition of commercial computer software, no specific contract clause prescribed in this subpart need be used, but the contract shall specifically address the Government's rights to use, disclose, modify, distribute, and reproduce the software. Section 12.212 sets forth the guidance for the acquisition of commercial computer software and states that commercial computer software or commercial computer software documentation shall be acquired under licenses customarily provided to the public to the extent the license is consistent with Federal law and otherwise satisfies the Government's needs. The clause at 52.227-19 may be used when there is any confusion as to whether the Government's needs are satisfied or whether a customary commercial license is consistent with Federal law. Additional or lesser rights may be negotiated using the guidance concerning restricted rights as set forth in 27.404-2(d), or the clause at 52.227-19, Commercial Computer Software License. If greater rights than the minimum rights identified in the clause at 52.227-19 are needed, or lesser rights are to be acquired, they must be negotiated and set forth in the contract. This includes any additions to, or limitations on, the rights set forth in paragraph (b) of the clause at 52.227-19 when used. Examples of greater rights may be those necessary for networking purposes or use of the software from remote terminals communicating with a host computer where the software is located. If the computer software is to be acquired with unlimited rights, the contract must also so state. In addition, the contract must adequately describe the computer programs and/or data bases, the media on which it is recorded, and all the necessary documentation.

(2) If the contract incorporates, makes reference to, or uses a vendor's standard commercial lease, license, or purchase agreement, the contracting officer shall ensure that the agreement is consistent with paragraph (a)(1) of this subsection. The contracting officer should exercise caution in accepting a vendor's terms and conditions, since they may be directed to commercial sales and may not be appropriate for Government contracts. Any inconsistencies in a vendor's standard commercial agreement shall be addressed in the contract and the contract terms shall take precedence over the vendor's

standard commercial agreement. If the clause at 52.227-19 is used, inconsistencies in the vendor's standard commercial agreement regarding the Government's right to use, reproduce or disclose the computer software are reconciled by that clause.

(3) If a prime contractor under a contract containing the clause at 52.227-14, Rights in Data—General, with paragraph (g)(4) of Alternate III in the clause, acquires restricted computer software from a subcontractor (at any tier) as a separate acquisition for delivery to or for use on behalf of the Government, the contracting officer may approve any additions to, or limitations on, the restricted rights in the Restricted Rights Notice of paragraph (g)(4) in a collateral agreement incorporated in and made part of the contract.

(b)(1) Except for existing works pursuant to 27.405-2 or commercial computer software pursuant to 27.405-3, no clause contained in this subpart is required to be included in—

(i) Contracts solely for the acquisition of books, periodicals, and other printed items in the exact form in which these items are to be obtained unless reproduction rights are to be acquired; or

(ii) Other contracts that require only existing data (other than limited rights data) to be delivered and the data are available without disclosure prohibitions, unless reproduction rights to the data are to be obtained.

(2) If the reproduction rights to the data are to be obtained in any contract of the type described in paragraph (b)(1)(i) or (ii) of this section, the rights shall be specifically set forth in the contract. No clause contained in this subpart is required to be included in contracts substantially for on-line database services in the same form as they are normally available to the general public.

27.406 Acquisition of data.

27.406-1 General.

(a) It is the Government's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements may be subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the Government and the contractor, efforts should be made to keep the contract data requirements to a minimum, consistent with the purposes of the contract.

(b) The contracting officer shall specify in the contract all known data