

Federal Acquisition Regulation

52.227-3

this contract or with specific written instructions given by the Contracting Officer directing the manner of performance.

[49 FR 12986, Mar. 30, 1984, as amended at 60 FR 34761, July 3, 1995; 72 FR 63065, Nov. 7, 2007]

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.

As prescribed in 27.201-2(b), insert the following clause:

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in the Contractor's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold.

(End of clause)

[49 FR 12987, Mar. 30, 1984, as amended at 61 FR 39198, July 26, 1996; 72 FR 63065, Nov. 7, 2007]

52.227-3 Patent Indemnity.

As prescribed in 27.201-2(c)(1), insert the following clause:

PATENT INDEMNITY (APR 1984)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real prop-

erty (hereinafter referred to as *construction work*) under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(End of clause)

Alternate I (APR 1984). As prescribed in 27.201-2(c)(2), add the following paragraph (c) to the basic clause:

(c) This patent indemnification shall not apply to the following items: _____
[Contracting Officer list and/or identify the items to be excluded from this indemnity]

Alternate II (APR 1984). As prescribed in 27.201-2(c)(2), add the following paragraph (c) to the basic clause:

(c) This patent indemnification shall cover the following items: _____

List or identify the items to be included under this indemnity

Alternate III (JUL 1995). As prescribed in 27.201-2(c)(3), add the following paragraph to the basic clause:

() As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over the simplified acquisition threshold issued under this contract and covering those communications services and