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the restriction that urgent or compelling circumstances do not permit the Government to continue to respect the asserted restriction. See 252.227–7019(g) for restrictions applicable following a determination of urgent and compelling circumstances.

(2) Only a contracting officer’s final decision, or actions of an agency Board of Contract Appeals or a court of competent jurisdiction, that sustain the validity of an asserted restriction constitute validation of the restriction.

(g) Multiple challenges to an asserted restriction. When more than one contracting officer challenges an asserted restriction, the contracting officer who made the earliest challenge is responsible for coordinating the Government challenges. That contracting officer shall consult with all other contracting officers making challenges, verify that all challenges apply to the same asserted restriction and, after consulting with the contractor, subcontractor, or supplier asserting the restriction, issue a schedule that provides that person a reasonable opportunity to respond to each challenge.


227.7203–14 Conformity, acceptance, and warranty of computer software and computer software documentation.

(a) Computer software documentation. Computer software documentation is technical data. See 227.7103–14 for appropriate guidance and statutory requirements.

(b) Computer software—(1) Conformity and acceptance. Solicitations and contracts requiring the delivery of computer software shall specify the requirements the software must satisfy to be acceptable. Contracting officers, or their authorized representatives, are responsible for determining whether computer software tendered for acceptance conforms to the contractual requirements. Except for nonconforming restrictive markings (follow the procedures at 227.7203–12(a) if nonconforming markings are the sole reason computer software tendered for acceptance fails to conform to contractual requirements), do not accept software that does not conform in all respects to applicable contractual requirements. Correction or replacement of nonconforming software, or an equitable reduction in contract price when correction or replacement of the nonconforming data is not practicable or is not in the Government’s interests, shall be accomplished in accordance with—

(i) The provisions of a contract clause providing for inspection and acceptance of deliverables and remedies for nonconforming deliverables; or

(ii) The procedures at FAR 46.407(c) through (g), if the contract does not contain an inspection clause providing remedies for nonconforming deliverables.

(2) Warranties—(i) Weapon systems. Computer software that is a component of a weapon system or major subsystem should be warranted as part of the weapon system warranty. Follow the procedures at 246.7.

(ii) Non-weapon systems. Approval of the chief of the contracting office must be obtained to use a computer software warranty other than a weapon system warranty. Consider the factors at FAR 46.703 in deciding whether to obtain a computer software warranty. When approval for a warranty has been obtained, the clause at 252.246–7001, Warranty of Data, and its alternates, may be appropriately modified for use with computer software or a procurement specific clause may be developed.


227.7203–15 Subcontractor rights in computer software or computer software documentation.

(a) Subcontractors and suppliers at all tiers should be provided the same protection for their rights in computer software or computer software documentation as are provided to prime contractors.

(b) The clauses at 252.227–7019, Validation of Asserted Restrictions—Computer Software, and 252.227–7037, Validation of Restrictive Markings on Technical Data, obtain a contractor’s agreement that the Government’s transaction of validation or challenge matters directly with subcontractors at any tier does not establish or imply
privity of contract. When a subcontractor or supplier exercises its right to transact validation matters directly with the Government, contracting officers shall deal directly with such persons, as provided at 227.7203-13(c) for computer software and 227.7103-13(c)(3) for computer software documentation (technical data).

(c) Require prime contractors whose contracts include the following clauses to include those clauses, without modification except for appropriate identification of the parties, in contracts with subcontractors or suppliers who will be furnishing computer software in response to a Government requirement (see 227.7103-15(c) for clauses required when subcontractors or suppliers will be furnishing computer software documentation (technical data)):

(1) 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation;

(2) 252.227–7019, Validation of Asserted Restrictions—Computer Software;

(3) 252.227–7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends; and

(4) 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government.

(d) Do not require contractors to have their subcontractors or suppliers at any tier relinquish rights in technical data to the contractor, a higher tier subcontractor, or to the Government, as a condition for award of any contract, subcontract, purchase order, or similar instrument except for the rights obtained by the Government under the provisions of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the contractor’s contract with the Government.