

H-12 Notice to Offerors Regarding Deliverable Technical Data and Computer Software, Obligations Associated Therewith and Rights Therein

1. Deliverables

Technical data and computer software to be delivered under this procurement are identified on the CDRL # 28. The List, as provided by the contractor, is incorporated as part of this contract. The Government's rights in technical data and computer software provided in your proposal are set out in this clause. In addition to the technical data and computer software set out in the CDRL # 28, the Government reserves the right to order additional technical data and computer software pursuant to the clause at FAR 52.227-16, Additional Data Requirements. That clause enables the Contracting Officer to order, within a period of three years after acceptance of all items to be delivered under the contract, any data first produced or specifically used in contract performance. Data ordered pursuant to the clause at FAR 52.227-16 will also be furnished with the degree of rights provided for in this clause, as it modifies the FAR clauses cited herein.

2. Rights in Technical Data and Computer Software

The resulting contract will contain the clause set out at FAR 52.227-14, Rights in Data--General, with Alternate IV. This special provision, however, will have the effect of modifying that clause. Accordingly, to the extent that this provision provides for a different rights regimen than that set out in FAR 52.227-14 the terms of this clause shall govern.

To the extent that any provision of FAR 52.227-14 permits the contractor to narrow the scope of disclosure of the technical data or computer software called out in the CDRL # 28 if the data would be considered limited rights data or the computer software would be considered restricted rights computer software pursuant to the terms of FAR 52.227-14, such provision will not be applicable to this procurement. The Offeror agrees to furnish all technical data and computer software listed within CDRL # 28 with the degree of detail and disclosure to be specified by the Government. For example, submission of form, fit and function information in lieu of detailed engineering data will not be sufficient.

The contractor may assert copyright in any deliverable technical data or computer software that qualifies for copyright under 17 U.S.C. 401 et seq. The contractor grants a non-exclusive, non-transferable, copyright license to the Government to do, or have done on its behalf, anything which the copyright holder has the right to control, provided such actions are for a Government purpose. In the interest of brevity, use (to include any right or action afforded the copyright holder) by or for the Government will be termed Government Purpose Rights. For the purposes of this clause, a Government purpose does not include providing the information to any third party for the purpose of competing with the contractor in the commercial marketplace. Work performed for the Government will not be considered to be "in the commercial marketplace". The contractor agrees to

provide the Government with Government Purpose Rights in all data delivered under this contract with the exception of commercial computer software.

For the purposes of this clause, commercial computer software is defined as that computer software sold to the general public in the commercial open market. As to commercial computer software required to be delivered under this contract, the contractor agrees to furnish same with "Special Purpose License Rights". The term "Special Purpose License Rights" as used in this clause shall be the same as Government Purpose Rights as set out above, with the further limitation that the benefits of the copyright may only be utilized by the Government and its contractors for the performance of the ERA Program Mission (including other agencies' ERA related use) and that Program's successors. Further, nothing in this clause enables the Government or any of its contractors to utilize the benefits of the copyright in commercial computer software furnished with Special Purpose License Rights for any commercial purpose. Please note that standard commercial computer software licenses do not appear appropriate for this purchase and it will be the contractor's responsibility to secure the rights described herein for the Government.

3. Escrow Arrangements

The contractor recognizes that the Government is balancing multiple competing interests in this procurement. First, the Government requires the ability to utilize, and have utilized, the computer software furnished hereunder, and its associated documentation, for potentially a long period of time. Second, the Government wants to reduce costs to the greatest extent practicable through the use of commercial computer software and/or modified versions of such software. Third, the Government wants to use the latest version of such commercial computer software to the extent that is practicable but does not want to abandon any given version of commercial computer software because that version is no longer supported if the newer version does not meet the Government's needs. In order to ensure the Government will always have access to source code and associated documentation for any commercial computer software program, or modified version thereof, which is utilized in this project, the contractor agrees to provide for and maintain escrow accounts for each such software program, which is not sold in sufficient quantities as to ensure with a high degree of confidence that the vendor of the software will provide effective support to that software for the duration of this contract. This escrow account shall contain the source code and associated documentation for such programs, at all times reflecting the most current version of that source code that is being marketed to industry and the last deployed version of the source code incorporated into the ERA system and related documentation. The programs and documentation stored in these accounts will be accessible to the Government in the event that the originating organization: has gone out of business, or is no longer maintaining or interested in maintaining, modifying or supporting the software.

(End of Clause)