

27.405-3 Commercial computer software.

(a) 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](#), *Commercial Computer Software License*, *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](#). 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 *shall* 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 *shall* also so state. In addition, the contract *shall* adequately describe the computer programs and/or databases, the media on which it is recorded, and all the necessary documentation.

(b) 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) 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.

(c) If a prime contractor under a contract containing the clause at [52.227-14](#), *Rights in Data-General*, with paragraph (g)(4) (*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.

Parent topic: [27.405 Other data rights provisions.](#)