



**PREP ASSIGNMENT  
SEASON 2023, EPISODE SIXTEEN  
FAR PART 27:  
INTELLECTUAL PROPERTY**

**Preparation Assignment (20 points each)**

**Fill In the Blank Questions:**

1. Generally, the Government will not refuse to award a contract on the grounds that the prospective contractor may infringe a patent. The Government may authorize and consent to the use of inventions in the performance of certain contracts, even though the inventions may be covered by U.S. patents.  
[Hint: Check out **FAR 27.102**]
2. Upon receipt of a patent application under paragraph (a) or (b) of the clause at 52.227-10, Filing of Patent Applications-Classified Subject Matter, the contracting officer shall ascertain the proper security classification of the patent application. If the application contains classified subject matter, the contracting officer shall inform the contractor how to transmit the application to the United States Patent Office in accordance with procedures provided by legal counsel. If the material is classified "Secret" or higher, the contracting officer shall make every effort to notify the contractor within 30 days of the Government's determination, pursuant to paragraph (a) of the clause.  
[Hint: Check out **FAR 27.203**]
3. Whenever a prime contractor or a subcontractor considers including a particular clause in a subcontract to be inappropriate or a subcontractor refuses to accept the clause, the contracting officer, in consultation with counsel, shall resolve the matter. [Hint: Check out **FAR 27.304**]
4. Generally, the contractor must obtain permission of the contracting officer prior to asserting rights in any copyrighted work containing data first produced in the performance of a contract. However, contractors are normally authorized, without prior approval of the contracting officer, to assert copyright in technical or scientific articles based on or containing such data that is published in academic, technical or professional journals, symposia proceedings and similar works.  
[Hint: Check out **FAR 27.404**]
5. When contracting other than from GSA's Multiple Award Schedule 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. [Hint: Check out **FAR 27.405-3**]

**“Look ‘Em Ups” (Enter the FAR cite and Answer)**

1. What rights does the Government obtain to data included in a contractor’s proposal responding to a solicitation that contains FAR 52.227-23? What if anything can a contractor do to limit these rights?

The clause at 52.227-23, Rights to Proposal Data (Technical), allows the Government to acquire unlimited rights to technical data in successful proposals. Pursuant to the clause, the prospective contractor is afforded the opportunity to specifically identify pages containing technical data to be excluded from the grant of unlimited rights.

2. What is a contracting officer permitted to do if she receives a notice from a contractor that “unmarked” data provided under the contract be modified to include a proper “restrictive rights” or “limited rights” legend? For purposes of this question presume the notice is provided within 6 months of delivery of the data and no disclosures of the data have been made outside of the Government?

**FAR 27.404-5(b)**

The contracting officer may permit adding appropriate notices if the contractor-

- (i) Identifies the data for which a notice is to be added;
- (ii) Demonstrates that the omission of the proposed notice was inadvertent;
- (iii) Establishes that use of the proposed notice is authorized; and
- (iv) Acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The contracting officer may also-

- (i) Permit correction, at the contractor’s expense, of incorrect notices if the contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or
- (ii) Correct any incorrect notices.

FAR Questions: What are march-in rights? For an additional 20 “fun” points. Under what circumstances, should the Government not exercise its “march in” rights?

**Part 1:**

(f) March-in rights. (1) Pursuant to 35 U.S.C. 203, agencies have certain march-in rights that require the contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to responsible applicants, upon terms that are reasonable under the circumstances. If the contractor, assignee or exclusive licensee of a subject invention refuses to grant such a license, the agency can grant the license itself. March-in rights may be exercised only if the agency determines that this action is necessary-

(i) Because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in the field(s) of use;

(ii) To alleviate health or safety needs that are not reasonably satisfied by the contractor, assignee, or their licensees;

(iii) To meet requirements for public use specified by Federal regulations and these requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(iv) Because the agreement required by paragraph (g) of this section has neither been obtained nor waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of its agreement obtained pursuant to paragraph (g) of this section.

Part 2:

(2) The agency shall not exercise its march-in rights unless the contractor has been provided a reasonable time to present facts and show cause why the proposed agency action should not be taken. The agency shall provide the contractor an opportunity to dispute or appeal the proposed action, in accordance with 27.304-1(g).

FUN Question: Speaking of “March”, what is the full name of the famous Shakespearean play that refers to the “Ides of March”? For an additional twenty (20) “fun” points, tell me the name of the character in the play who first speaks of the “ides”.

Julius Ceasar or the Tragedy of Julius Caesar  
The Soothsayer