



**US Army Corps
of Engineers®**

ENGINEERING AND CONSTRUCTION BULLETIN

No. 2003-18 Issuing Office: CECW-ETC Issued: 17 Sep 03

Subject: Assuring Government Rights to Design and Shop Drawings in Design-Build Contracts

Applicability: Directive

1. References:

a. DFARS 227.7107-1 Architectural designs and data clauses for architect-engineer or construction contracts.

b. DFARS Clause 252.227-7022 GOVERNMENT RIGHTS (UNLIMITED).

c. DFARS Clause 252.227-7023 DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT.

d. DFARS Clause 252.227-7033 RIGHTS IN SHOP DRAWINGS.

2. When the original design-build (D-B) contract lacks a clause granting the Government any rights to the design furnished by the design-builder the agency may likely be required to provide additional compensation to the D-B contractor for this right. Reviews of various districts' D-B solicitations have revealed instances of such omissions as well as a failure to obtain rights in shop drawings furnished for the project. Districts using the D-B delivery method are reminded that the Defense FAR Supplement (DFARS) requires that one of two clauses, addressing Government rights to the design, be included in all construction solicitations and contracts involving design. The DFARS also requires that the Government include a clause providing for unlimited rights in shop drawings.

3. Reference 1.a. prescribes that the Government use the clause, "Government Rights (Unlimited)", at reference 1.b., unless the contract includes the clause, "Drawings and Other Data to become Property of Government", at reference 1.c.

4. The "Government Rights (Unlimited)" clause provides the Government, among other things, unlimited rights to use all drawings, designs, specifications, notes and other works developed in the performance of the D-B contract, including the right to use them on any other Government design or construction project, without additional compensation to the contractor. This clause is used in most D-B contracts.

5. Per reference 1.a., when the purpose of the D-B contract is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, aesthetic

ECB 2003-18

Subject: Assuring Government Rights to Design and Shop Drawings in Design-Build Contracts

or other special reasons the Government does not want duplicated, the Government may acquire exclusive control of the data pertaining to the design by including the "Drawings and Other Data to become Property of Government" clause at reference 1.c., in lieu of using the clause at reference 1.b..

6. Reference 1.a. also prescribes that the Government obtain unlimited rights in shop drawings by including the "Rights in Shop Drawings" Clause at reference 1.d. in the solicitation and contract. This clause is the standard clause, which should be included in every construction contract. The clause defines shop drawings and provides that the Government may duplicate, use and disclose, for any purpose, the contents of shop drawings furnished for the project without additional compensation to the contractor.

7. In summary, a failure to include the appropriate required clauses in solicitations and contracts for Government rights may result in additional and unnecessary costs that could have been easily avoided.

8. This bulletin was coordinated with the Office of the Principal Assistant Responsible for Contracting and the Office of the Chief Counsel.

9. The text for this bulletin was submitted by Joel Hoffman, CEHNC-CD, an instructor for the Design Build Construction PROSPECT training course. HQUSACE point of contact for this bulletin is Mark Grammer, CECW-ET, 202-761-4127.



DONALD L. BASHAM, P.E.
Chief, Engineering and Construction Division
Directorate of Civil Works