

Rights upon Delivery – or When?

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Excerpt

For years, contractors have given government employees access to technical data that is not a deliverable under the contract -- in slides at design review, in handwritten notes and drawings shared during technical interchange meetings, and many other informal settings. In many cases, these informal exchanges of technical data have been regularized in electronic portals, which allow contractor and government employees to share up-to-date drafts and preliminary information to increase the level of collaborations and flow of information. Because all members of a contractor team, from the prime contractor to the lowest level supplier, may be contributing information directly to these electronic portals, it is very important that prime contractors understand their subcontractors' positions on rights in their data and that these positions are made clear in the price contract and flowed down into subcontracts. This article discusses the treatment of that informal exchange of information under the technical data rights scheme in place and recommends steps for contractors and buying agencies to clarify their intentions contractually.

The regulations regarding rights in technical data are complex and intimidating and create confusion about when the Government assumes any rights it may receive under the procurement regulations. The international trade community developed INCOTERMS^[i] to clearly define when liability, title, and possession of shipped goods transfer. Since the informal transfer of technical data is not expressly covered by the laws and regulations, we look to those sources to determine if they may help in their interpretation.

[i] Published by the International Chamber of Commerce and available at <http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/the-incoterms-rules/>

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