

CLIENT ALERT

Government Contracts Intellectual Property: Contractors Beware, Stick to Prescribed Technical Data Marking Legends

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On November 28, 2018, the Armed Services Board of Contract Appeals held that certain unique technical data marking legends placed by The Boeing Company and one of its subcontractors on unlimited rights technical data delivered to the Air Force were nonconforming with the Defense Federal Acquisition Regulation Supplement (DFARS).

Under the terms of its contract with the Air Force, Boeing was required to deliver certain technical data to the government with unlimited rights. Boeing marked this technical data with unique marking legends, ostensibly to place third parties on notice that, even though the government had unlimited rights, no rights had been granted to third parties. The Air Force rejected the markings as non-conforming, maintaining that the only authorized legends are those found in DFARS 252.227-7013(f), which was incorporated in Boeing's contract. Boeing argued that DFARS markings did not adequately protect the rights granted to it under the DFARS. In its decision, the board agreed with the Air Force and concluded that under the contract, the specific legends identified in the DFARS and a copyright notice "are the only permissible legends for limiting data rights and no other data rights legends are allowed." In dicta, the Board also questioned whether the grant of unlimited rights waived Boeing's trade secret protection of that data vis-à-vis third parties.

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