



Department of Energy
Acquisition Regulation

No. AL-2006-10
Date 08/11/06

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the DOE and NNSA Procurement Executives.

Subject: CLASS DEVIATION FOR CERTAIN DEAR INTELLECTUAL
PROPERTY CLAUSES

References: DEAR 970.2704 Rights in Data

DEAR 970.2770 Technology Transfer

DEAR 970.5227-2 Rights in Data-Technology Transfer

DEAR 970.5227-3 Technology Transfer Mission

When is this Acquisition Letter (AL) Effective?

This AL is effective upon issuance.

When does this AL Expire?

This AL remains in effect until superseded or canceled.

Who is the Point of Contact?

Contact Robert M. Webb of the Office of Procurement and Assistance Policy at (202)287-1338 or Robert.Webb@hq.doe.gov.

Visit our website at www.pr.doe.gov for information on Acquisition Letters and other policy issues.

What is the Purpose of this Acquisition Letter?

This Acquisition Letter provides class deviations to two clauses for use in contracts, generally management and operating contracts, that have technology transfer as part of the mission of the contract. As used in this AL, reference to DOE includes both NNSA and non-NNSA sites.

What is the Background?

The class deviation transmitted by this Acquisition Letter modifies the clauses at 970.5227-2, Rights in Data-Technology Transfer and 970.5227-3, Technology Transfer Mission. The revisions to the Rights in Data clause expressly allow DOE's M&O contractors to establish copyright in contract software, using an Open Source form of license, whether the software originated under the contract or was modified under the contract from other software subject to an Open Source license. The modifications to the Technology Transfer Mission clause provide for an efficient process for the contractor to coordinate prospective licensing with the U.S. Trade Representative. Revised versions of the two clauses are attached to the deviation determination.

What is the Guidance?

Contracting Officers shall incorporate the two modified clauses into solicitations and awards for management and operating contracts. Additionally, Contracting Officers shall attempt to negotiate these clauses in existing M&O contracts at the next annual negotiation.

Attachment:

Class Deviation to Reflect Changes to Certain Intellectual Property Clauses

CLASS DEVIATION TO REFLECT CHANGES TO CERTAIN INTELLECTUAL PROPERTY CLAUSES

FINDINGS

1. Rights in data, including copyright, and technology transfer under certain of Department of Energy's (DOE's) management and operating contracts (M&O) are controlled by two clauses from the Department of Energy Acquisition Regulation (DEAR). Those two clauses are Rights in Data-Technology Transfer clause at 970.5227-2 and the Technology Transfer Mission clause at 970.5227-3.

2. Traditionally, software code has been either protected by copyright or placed in the public domain. DOE has several statutes that require this Department to disseminate the scientific and technical information, including software, first produced under its contracts to the public.

3. The intellectual property clauses included in DOE M&O contracts having technology transfer as a part of their mission have dealt with software accordingly, requiring DOE permission to assert the contractor's copyright in software first produced under its contract. In instances in which DOE grants such permission, contractors are authorized to commercialize or license the software to those who would commercialize and thereby promote the dissemination of the software.

4. Open source software (OSS) licensing is a recent development affecting copyrighted software. A user of the software must accept one of various license forms under which the licensee agrees to post any improvements in or any derivative works resulting from the software for use by others in accordance with the license or to make commercial use of derivative works limited only to the licensee's contribution to the software. This method of licensing has proven to be popular with scientists in DOE's research laboratories, allowing a platform for collegial and interactive research. DOE further recognizes that OSS licensing is consistent with this Department's duty to disseminate the results of its research.

5. The Rights in Data-Technology Transfer clause at 970.5227-2, the clause dealing with copyright under the contract, does not provide conditions under which DOE's M&O contractors may elect to subject software first produced under their contracts to an OSS license.

6. Additionally, the Technology Transfer Mission clause at 970.5227-3 requires consideration by the M&O contractor and the DOE contracting Officer of a prospective foreign partner's home country's treatment of U.S. companies' Intellectual Property and whether U.S. companies have opportunities to do collaborative research in the home country. DOE has exercised its discretion to require M&O contractors to obtain the written information from the U.S. Trade Representative (U.S.T.R.) to assist in such consideration. After many years of experience, DOE has determined that a less cumbersome procedure, relying on information available from U.S.T.R. web sites, can be

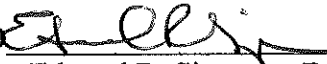
utilized for obtaining the relevant information. This less cumbersome procedure is reflected in a new subparagraph (f)(1)(ii)(C).

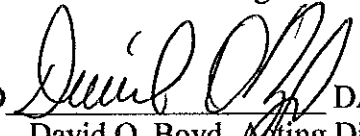
7. The clauses at Rights in Data-Technology Transfer clause at 970.5227-2 and the Technology Transfer Mission clause at 970.5227-3, respectively, have been altered to provide DOE's M&O contractors which have technology transfer as their mission (1) to allow OSS copyright of software first produced under their contracts and (2) to simplify the process of obtaining information about foreign countries from the U.S.T.R.

8. The Government would incur no additional cost as a result of the Contractor implementing and complying with and DOE would benefit from the proposed deviations.

RECOMMENDATION

Based upon these findings, I hereby determine that the proposed class deviations are beneficial to the accomplishment of DOE's mission and its mission of technology transfer. Contracting officers will be authorized to negotiate this clause into existing M&O contracts at the next appropriate opportunity. The described deviations will be effective through the promulgation of the final rule.

APPROVED  DATE 8-1-2006
Edward R. Simpson, Director
Office of Procurement and
Assistance Management

APPROVED  DATE 8/1/2006
David O. Boyd, Acting Director
Office of Acquisition and
Supply Chain Management, NNSA