



ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Senior Procurement Executives of DOE and NNSA. It is intended for use by procurement professions of DOE and NNSA, primarily Contracting Officers, and other officials of DOE and NNSA that are involved in the acquisition process. Other parties are welcome to its information, but definitive interpretations of its effect on contracts, and related procedures, if any, may only be made by DOE and NNSA Contracting Officers.

Subject: Class Deviation for Revised DEAR Solicitation Provisions and Contract Clauses for Technology Transfer

References: DEAR 970.5227-3, Technology Transfer Mission (Aug 2019)
DEAR 970.5227-10, Patent Rights—Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor (Dec 2000) (Deviation)
DEAR 970.5227-12, Patent Rights—Management and Operating Contracts, For-profit Contractor, Patent Waiver (Dec 2000) (Deviation)

When is this Acquisition Letter (AL) effective?

This Acquisition Letter (AL) is effective immediately upon issuance.

When does this AL expire?

This AL remains in effect until superseded or canceled.

Who are the points of contact?

For DOE questions regarding the AL, contact MA-611, DOE_oapmpolicy@hq.doe.gov.

For NNSA questions regarding the AL, contact Kenneth West, Kenneth.West@nnsa.doe.gov.

For additional information on ALs and other issues, visit our website at

<http://energy.gov/management/office-management/operational-management/procurement-and-acquisition>.

What is the purpose of this AL?

This AL provides a class deviation for three DEAR contract clauses, including solicitation provisions for use in contracts, such as management and operating (M&O) contracts, that have

technology transfer as part of the mission of the contract for contracts subject to the “Department of Energy Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies” (S&E DEC) issued June 7, 2021. As used in this AL, reference to DOE includes both DOE and NNSA sites.

What types of contracts are affected by this AL?

This AL is applicable to solicitations and contracts that have technology transfer as part of their mission. Generally, these will be M&O contracts. M&O subcontracts in effect prior to the date of this AL are not subject to the S&E DEC. M&O subcontracts issued or modified after this AL are subject to the S&E DEC, unless otherwise directed by DOE Patent Counsel in writing. (See detailed process in DEAR 970.5227-10(b)(4) Contractor request for greater rights in exceptional circumstance subject inventions or DEAR 970.5227-12(b)(7) Contractor request for greater rights as applicable).

What is the background information?

The class deviation transmitted by this Acquisition Letter revises the following contract clauses:

Solicitation Provisions & Contract Clauses	Title (Deviation)
DEAR 970.5227-3	Technology Transfer Mission (Aug 2019) (Deviation)
DEAR 970.5227-10	Patent Rights—Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor (Dec 2000) (Deviation)
DEAR 970.5227-12	Patent Rights—Management and Operating Contracts, For-profit Contractor, Patent Waiver (Dec 2000) (Deviation)

Below is a summary of the changes:

- This AL adds new language authorized by the S&E DEC to the DEAR solicitation provisions and contract clauses provided for in AL 2021-04 Class issued July 6, 2021, Deviation for Revised DEAR clauses available at Policy Flash ([PF 2021-31 Class Deviation for Technology Transfer DEAR Clauses and Provisions | Department of Energy](#)). DEAR 970.5227-3, Technology Transfer Mission, DEAR 970.5227-10, Patent Rights-Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor, and DEAR 970.5227-12, Patent Rights-Management and Operating Contracts, For-profit Contractor, Patent Waiver have been revised with statutory changes and to clarify the contractor obligations with regard to the S&E DEC.

What is the guidance contained in this AL?

Contracting Officers shall incorporate the revised and/or added provisions into solicitations and the revised and/or added clauses in contracts for M&O contracts that have technology

transfer as part of their mission. Additionally, Contracting Officers shall negotiate these clauses in applicable existing M&O contracts at the next annual negotiation, to the extent possible.

How Contracting Officers apply DEAR 970.5227-10, Patent Rights-Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor, and DEAR 970.5227-12, Patent Rights-Management and Operating Contracts, For-profit Contractor, Patent Waiver?

Contracting Officers must include 970.5227-3 and 970.5227-10, if a nonprofit organization or small business firm having technology transfer authority is selected into the solicitation and award. Contracting Officers must consult with DOE Patent Counsel assisting the contracting activity or the Assistant General Counsel for Technology Transfer and Intellectual Property for assistance in selecting for use in the solicitation, negotiating, or approving appropriate patent rights clauses for a M&O contract. It may be appropriate to include more than one patent rights clause in a solicitation if the successful contractor could, for instance, be either an educational or a large business. If a large business may be selected for performance of a contract that will include a technology transfer clause, the solicitation must include the clause at 970.5227-12 to reflect the waiver that will likely be granted. If the solicitation includes more than one patent clause, it must include an explanation of the circumstances under which the appropriate clause will be used. The final award must contain only one patent rights clause.

Attachments:

- Class Deviation Determination & Findings for Revised DEAR Provisions/Contract Clauses for Technology Transfer
- Class Deviation Text for Revised DEAR Provisions/Contract Clauses for Technology Transfer