Department of Energy
Acquisition Regulation

No. AL-2007-06
Date 06/06/07

ACQUISITION LETTER

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

Subject: Safeguarding Government Property and Sensitive Information

References:

FAR PART 45, Government Property
FAR 52.245, Property Clauses
DEAR 970.5245-1, Property
DOE Order 580.1, Department of Energy Personal Property Management Program
DOE Chief Information Officer (CIO) Guidance CS-38A, "Protection of Sensitive Unclassified Information, Including Personally Identifiable Information"
DOE Chief Information Officer (CIO) Guidance CS-11, "Media Clearing, Purging and Destruction"
Policy Flash 2006-46, "Contractor Protection of Personally Identifiable Information"
MA-1/CIO memorandum dated 04/25/07 "Control of Sensitive Property & Information"
MA-1/CIO memorandum dated 04/25/07 titled "Property Management & Cyber Security"

When is this Acquisition Letter (AL) Effective?

This AL is effective immediately.

When Does This AL Expire?

This AL remains in effect until it is canceled or superseded.

Who are the Points of Contact?

For DOE Government Property, Jerry G. Hanley, Director, Personal Property Management Division, MA-632, (202) 287-1563, or by email at Jerry.Hanley@hq.doe.gov;

For National Nuclear Security Administration, Government Property, Ronald Dugger, Supply Management Officer, NA-63, (202) 586-5144, or by email at Ronald.Dugger@nnsa.doe.gov;

For Cyber Security, William Hunteman, Associate Chief Information Officer for Cyber Security, (202) 586-1090, or by email at Bill.Hunteman@hq.doe.gov.

What is the Purpose of this Acquisition Letter?

The purpose of this AL is to ensure that Contracting Officers and other responsible DOE officials provide appropriate guidance to all DOE contractors on their responsibility to: (1) safeguard Government Property (GP), especially sensitive property such as laptops, blackberries, and other information technology equipment; and (2) safeguard personally identifiable information (PII) and other sensitive information.

What is the Background?

The Department has become increasingly concerned about the management and control of GP and PII (as defined in DOE CIO Guidance CS-38A) and other sensitive information. The majority of the Department's inventory of property is GP in the possession of contractors. A significant portion of the inventory is information technology assets capable of containing PII and other sensitive information.

In light of recent episodes of lost sensitive property and cyber security breaches at DOE, heightened management attention by both DOE and its contractors is needed to properly safeguard, and account for GP and PII. One example of an area where increased management attention is needed is where lost, stolen, or missing GP was routinely dropped from property accounting systems without reporting the loss to the government as required by 48 Code of Federal Regulations (CFR) 970.5245-1(g) or following up with a timely and thorough investigation to determine the proximate cause for the unaccounted property.

Safeguarding GP and PII is an area of special importance for the Department. Expectations must be understood by all parties associated with the administration of GP under DOE contracts. Existing contract clauses require contractors with GP to follow sound business practices for protection of the GP. Additional contractual requirements in applicable contracts require protection of information such as records covered by the Privacy Act. It is important that DOE Contracting Officers, in concert with field office property management and cyber security specialists, enforce existing contract terms and conditions, including ensuring that the contractor's property management system recognizes the need for protection of information technology assets. Accordingly, contractors should be placed on specific notice that DOE considers protection of PII to be a sound business practice as part of its property management system requirements.

The key provisions associated with contract management of GP under management and operating contracts include:

The Contractor Requirements Document (CRD) for DOE Order 580.1 states in part that ". . . contractors will be held responsible and may be held financially liable for loss, damage, destruction, and unauthorized use of personal property in their possession and control. Liability, if any, will be consistent with 48 CFR 970.5245-1, Property [clause]."

The CRD further states that ". . . all instances of loss, damage, destruction, or unauthorized use of personal property, including property in the possession or control of subcontractors, must be reported, documented, and investigated. As a minimum, this will include the following (a) notifying appropriate DOE offices and, when necessary, law enforcement organizations. . . ."

The DEAR property clause at 48 CFR 970.5245-1(f)(1)(i) states, in part, that contractors shall be liable in cases where there is "(A) Willful misconduct or lack of good faith on the part of the contractor's managerial personnel; (B) Failure of the contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the contracting officer to safeguard such property. . . or (C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system . . . ."

The DEAR property clause further states that "(ii) If, after an initial review of the facts, the Contracting Officer informs the contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the contractor to show that the contractor should not be required to compensate the government . . . ."

If GP with a value above the threshold set out in the contractor's approved property management system is missing, the DEAR property clause at 48 CFR 970.5245-1(g) states that the contractor "(1) Shall immediately inform the contracting officer . . . (2) Shall take all reasonable steps to protect the property remaining, and (3) Shall repair or replace the . . . lost property in accordance with the written guidance of the contracting officer."

For other contracts where the contractor has GP and the contract does not contain the DEAR 970.5245-1 property clause, the appropriate FAR 52.245 property clause will govern contractor risk of loss.

Regarding PII, CIO Guidance CS-38A states that ". . . all suspected or confirmed cyber security incidents involving media containing PII (including the physical loss/theft of computing devices) are reported to the DOE Cyber Incident Advisory Capability (CIAC) within 45 minutes of discovery."

What is the Guidance?

Contracting Officers, in consultation with the Organizational Property Management Officer, site Cyber Security Officer, and other consulting parties as deemed appropriate, shall take the following actions consistent with the framework discussed above:

1. verify that the CRD for DOE Order 580.1 is incorporated in applicable contracts;

2. review, and as appropriate, revise existing contract administration procedures to ensure that (a) they are adequate and aligned with DOE policies and contract terms and conditions, and (b) roles and responsibilities are well-defined and understood;

3. verify that the appropriate property clause (i.e., DEAR 970.5245-1 or the applicable FAR clause 52.245) is incorporated in applicable contracts;

4. inform contractors of the need to protect PII that is located on GP as part of sound business practices. Provide contractors with a copy of CIO Guidance CS-38A. Require contractors to confirm in writing that adequate internal controls are in place to safeguard GP and PII; and

5. report the completion of these actions via the respective Procurement Director, if any, to the DOE Procurement Executive (MA-60) or the NNSA Procurement Executive (NA-63) no later than thirty days from the release of this AL.