

**Department of
Energy**

**No. AL-2021-04
Date: 07/06/2021**



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 professionals 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 and/or Added DEAR Solicitation Provisions
and Contract Clauses for Technology Transfer**

References: DEAR 927.409, Solicitation provisions and contract clauses,
[DOE coverage paragraphs (a), (b), (d), (m), and (n)] (Deviation)
DEAR 952.227-14, Rights in Data-General, (DOE coverage—Alternate VIII)
(Deviation)
DEAR 952.227-17, Rights in Data-Special Works, (Alternate I) (Deviation)
DEAR 970.5227-2, Rights in Data-Technology Transfer (Dec 2000) (Deviation)
DEAR 970.5227-3, Technology Transfer Mission (Aug 2019) (Deviation)
DEAR 970.5227-4, Authorization and Consent (Aug 2002) (Deviation)
DEAR 970.5227-5, Notice and Assistance Regarding Patent and
Copyright Infringement (Dec 2000) (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)

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This AL remains in effect until superseded or canceled.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](mailto: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 nine DEAR contract clauses, including solicitation provisions for use in contracts, generally management and operating (M&O) contracts, that have technology transfer as part of the mission of the contract. 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.

What is the background information?

The class deviation transmitted by this Acquisition Letter revises and/or adds the following contract clauses:

Solicitation Provisions & Contract Clauses	Title (Deviation)
DEAR 927.409	Solicitation Provisions and Contract Clauses [DOE coverage paragraphs (a), (b), (d), (m), and (n)] (Deviation)
DEAR 952.227-14	Rights in Data-General, (DOE coverage—Alternate VIII) (Deviation)
DEAR 952.227-17	Rights in Data-Special Works, (Alternate I) (Deviation)
DEAR 970.5227-2	Rights in Data-Technology Transfer (Dec 2000) (Deviation)
DEAR 970.5227-3	Technology Transfer Mission (Aug 2019) (Deviation)
DEAR 970.5227-4	Authorization and Consent (Aug 2002) (Deviation)
DEAR 970.5227-5	Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2000) (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:

- DEAR 970.5227-2, Rights in Data-Technology Transfer, and DEAR 970.5227-3, Technology Transfer Mission, have been revised for use by M&O contractors with

technology transfer as part of their mission to allow Open Source Software copyright of software first produced under their contracts and to simplify the process of obtaining information about foreign countries from the U.S. Trade Representative. There has been an expansion of what data M&O contractors may assert copyright without DOE approval. Also, the Technology Transfer Mission clause is revised to address the M&O contractors use of Trademark and Service marks with regards to the Laboratory names and facilities.

- DEAR 970.5227-4, Authorization and Consent, and DEAR 970.5227-5, Notice and Assistance Regarding Patent and Copyright Infringement, have been revised to change the \$100,000 threshold to the Simplified Acquisition Threshold.
- 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 additional Exceptional Circumstance determinations (where the Bayh-Dole rights of M&O contractors are modified usually in U.S. manufacturing requirements) that have been approved. Also, electronic reporting using the Government's iEdison or similar system is addressed.
- DEAR 927.409, Solicitation Provisions and Contract Clauses have been revised and/or added to comport with the revised and/or added contract clauses. This DEAR clause currently allows Patent Counsel to approve copyright requests for software from laboratory subcontractors and modifies the definitions used in FAR 52.227-14. Since this provision was created, the FAR has updated the definitions by adding Alternate I, so the definitions are not necessary and the instructions in this revision have been changed to reference Alternate 1 of FAR 52.227-14. The instructions for DEAR 952.227-14 Alternated VI and VII have been moved from 48 CFR 927.404(l) and (m) respectively to this provision (b)(1)(ix). Also, Patent counsel has the expanded role to approve all copyright (not just software) requests from laboratory subcontractors with the addition of DEAR 952.227-14, Alternate VIII and DEAR 952.227-17, Alternate I.
- DEAR 952.227-14, Rights in Data-General, has been revised by adding Alternate VIII, to streamline the approval process and allow Patent Counsel to approve copyright requests for all technical data such as software, drawings, data sets, etc. Currently, these approvals (other than software) must go through the DOE Contracting Officer after consulting with Patent Counsel.
- DEAR 952.227-17, Rights in Data-Special Works, has been revised by adding Alternate I and allows Patent Counsel to approve copyright requests for all technical data such as software, drawings, data sets, etc., and direct the laboratory subcontractor to transfer copyright title to the Government or the laboratory. Currently, these approvals (including software) must go through the DOE Contracting Officer after consulting with Patent Counsel.

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.

Attachments:

-Class Deviation D&F for Revised DEAR Provisions/Contract Clauses for Technology Transfer

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