

**CLASS DEVIATION DETERMINATION AND FINDINGS
FOR REVISED DEPARTMENT OF ENERGY ACQUISITION REGULATION
(DEAR) SOLICITATION PROVISIONS AND CONTRACT CLAUSES
FOR TECHNOLOGY TRANSFER**

FINDINGS

1. This class deviation revises and/or adds the following Department of Energy (DOE)’s DEAR Solicitation Provisions and Contract Clauses for Technology Transfer as follows:

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)

The above changes are discussed below.

2. DEAR 970.5227-2, Rights in Data-Technology Transfer (Dec 2000) (Deviation) and DEAR 970.5227-3, Technology Transfer Mission (Aug 2019) (Deviation).

Rights in data, including copyright, and technology transfer under Management and Operating (M&O) contracts are covered by the above clauses. Both clauses have been revised to provide M&O contractors with more flexibility to accomplish technology transfer as part of their mission.

970.5227-2, Rights in Data-Technology Transfer, is revised from the traditional copyright of software for commercial licensing or placing most data in the public domain. DOE has several statutes that require the Department to disseminate the scientific and technical information, including software, first produced under its contracts to the public. This clause is revised to include open source software (OSS) distribution to allow the public free access to software and to make commercial use of derivative works. 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 the Department's duty to

disseminate the results of its research. In addition, the revisions to the clause remove the five-year renewal process for commercially licensed software, which was burdensome to track and rarely rejected by DOE to extend. This clause is also revised from asserting copyright in scientific articles without DOE Contracting Officer approval to allow M&O contractors to assert copyright in drawings, chapters in books, workshop documents, datasets, etc. that are released to the public. This allows control of the content when the public uses or references this copyright work, but still satisfies DOE's duty to disseminate the results of its research.

970.5227-3, Technology Transfer Mission, is revised to address the M&O contractors use of Trademark and Service marks with regards to the laboratory names and facilities. The Technology partnership ombudsman is moved into the contract from an Alternate I. Finally, the consideration by M&O contractors 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 (USTR) to assist in such consideration. After many years of experience, DOE has determined that a streamlined procedure, which involves relying on information available from USTR web sites, can be utilized for obtaining the relevant information. This streamlined procedure is reflected in a new subparagraph (t)(1)(ii)(C).

3. DEAR 970.5227-4, Authorization and Consent (Aug 2002) (Deviation) and DEAR 970.5227-5, Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2000) (Deviation).

The above clauses have been revised to change the tier of including in subcontracts from the \$100,000 level to the Simplified Acquisition Threshold. This allows the M&O contractors to include this with other clauses in the Simplified Acquisition Threshold and eliminates treating these clauses differently from other FAR and DEAR provisions.

4. DEAR 970.5227-10, Patent Rights—Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor (Dec 2000) (Deviation) and DEAR 970.5227-12, Patent Rights—Management and Operating Contracts, For-profit Contractor, Patent Waiver. (Dec 2000) (Deviation).

The above clauses 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) approved in the last decade. Also, electronic reporting using the Government's iEdison or similar system is addressed.

5. DEAR 952.227-17, Rights in Data-Special Works, (Alternate I) (Deviation) and 952.227-14, Rights in Data-General, (DOE coverage—Alternate VIII) (Deviation).

The above clauses have been revised by adding Alternate I and Alternate VIII, respectively, to permit DOE Patent Counsel to approve copyright requests from subcontractors 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 the DOE Patent

Counsel. Accordingly, the corresponding Solicitation Provisions and Contract Clauses at DEAR 927.409 (Deviation) and these clauses have been revised to provide this coverage.

6. Cost to M&O contractors implementing the above changes.

The Government would incur no additional cost as a result of the M&O contractors implementing and complying with the above changes. These contract clauses have not been substantially revised for two decades. Not only have the statutes changed over the years, but there is a need for the laboratories to have expanded authority in copyright, patent and technology transfer to adequately meet DOE's mission of broad dissemination of technology developed at the laboratories. DOE benefits from the laboratories expanded role with the changes in these contract clauses.

RECOMMENDATION

Based upon these findings, it is hereby determined that a class deviation to revise and/or add the above DEAR Solicitation Provisions and Contract Clauses, generally used for M&O contracts with technology transfer as part of the mission is appropriate pending formal amendment of the DEAR. This class deviation is effective upon the date of signature and will remain in effect until cancelled or until the DEAR is amended.

APPROVED: _____ DATE: _____
S. Keith Hamilton, P.E.
Deputy Associate Administrator
for Acquisition and Project Management
and Senior Procurement Executive
National Nuclear Security Administration

APPROVED: _____ DATE: _____
John R. Bashista
Director
Office of Acquisition Management
and Senior Procurement Executive
Department of Energy

Attachment

- Class Deviation Text for Revised DEAR Provisions and Clauses for Technology Transfer