

**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 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 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)

The above changes are discussed below.

970.5227-3, Technology Transfer Mission is revised to include the new U.S. Competitiveness provisions and clauses authorized by 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. Specifically, “(4) The Contractor agrees to be bound by paragraph (t) U.S. Competitiveness in its Patent Rights provision (e.g. *48 CFR 970.5227-10 or 48 CFR 970.5227-12 as may be modified*) as applicable.” has been added in (D)(4).

2. 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 provisions and clauses have been revised by the S&E DEC. The Quantum Information Science Technology and S&E DEC’s have been added to the list in (b)(3)(ii). Additionally, (B)(3)(iii) has been added to clarify that the S&E DEC applies to maximum extent authorized by the S&E DEC unless otherwise directed by DOE Patent Counsel. Consistent with the S&E DEC, (d)(5) has been added clarifying DOE’s right to seek forfeiture of title up on a breach of the U.S. Competitiveness clause. (g)(2) and (g)(3) have been modified to clarify the changes in laboratory subcontracts for work subject to the S&E DEC. Finally, (t) U.S. Competitiveness has been inserted as authorized by the S&E DEC with any other renumbering made as necessary.

3. DEAR 970.5227- 12, Patent Rights—Management and Operating Contracts, For-profit Contractor, Patent Waiver. (Dec 2000) (Deviation).

The above provisions and clauses have been revised by the S&E DEC. Paragraph (b)(2) has been revised to reference the new U.S. Competitiveness provision authorized by the S&E DEC. The Quantum Information Science Technology and S&E DEC's have been added to the list in (b)(6)(i). Additionally, (B)(6)(ii) has been added to clarify that the S&E DEC applies to maximum extent authorized by the S&E DEC unless otherwise directed by DOE Patent Counsel. Consistent with the S&E DEC, (d)(6) has been added clarifying DOE's right to seek forfeiture of title upon a breach of the U.S. Competitiveness clause. (g)(2) and (g)(3) have been modified to clarify the changes in laboratory subcontracts for work subject to the S&E DEC. Finally, (t) U.S. Competitiveness has been inserted as authorized by the S&E DEC.

4. 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 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: _____

John R. Bashista
Director
Office of Acquisition Management and
Senior Procurement Executive
Department of Energy

Attachment

Class Deviation Text for Revised DEAR Provisions/Contracts Clauses for Technology Transfer