



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 the procurement professionals of DOE, primarily Contracting, and other officials of DOE and NNSA that are involved in the acquisition process. Other parties are welcome to its information, but definitive interpretation of its effect on contracts, and other related procedures, if any, may only be made by DOE and NNSA Contracting Officers.

Subject: Implementation of New Department of Energy (DOE) Corporate Clause DOE-H-2087 Management of Federal Records

References:

44 United States Code (U.S.C.) 3101 Records Management by Federal Agencies
36 Code of Federal Regulations (CFR) Chapter 12 Subchapter B, Records Management
Federal Acquisition Regulation (FAR) 4.7 Contractor Records Retention
U.S. Department of Energy Order 243.1C Records Management Program

When is this Acquisition Letter (AL) effective?

This AL is effective on the date issued.

When does this AL expire?

This AL remains in effect until superseded or canceled.

Who is the intended audience for this AL?

Contracting Officers within the Department of Energy (DOE) and the National Nuclear Security Administration (NNSA). Any reference in this guidance to DOE should be understood to include the NNSA, unless otherwise indicated.

Who are the points of contact?

For DOE questions, contact the Contract and Financial Assistance Policy Division at DOE_OAPMPolicy@hq.doe.gov.

For NNSA acquisition and financial assistance questions, contact at (505) 845-4337.

For additional information on Acquisition Letters and other issues, visit our website at <https://energy.gov/management/acquisition-letters>.

What is the purpose of this AL?

The AL provides guidance to Contracting Officers regarding contracts that require the

contractor to create, manage, and handle Federal records, as defined below, regardless of the medium in which the record exists, or require the contractor to create, revise, or modify Federal computing environments that hold Federal records. The AL also transmits new DOE corporate clause DOE-H-2087 Management of Federal Records, which describes requirements such contractors must adhere to in managing Federal records or Federal computing environments that contain Federal records.

What types of contracts are affected by this AL?

This AL applies to DOE contracting actions that require the issuance of a solicitation (e.g., Request for Quote (RFQ), Invitation for Bids (IFB), Request for Proposal (RFP)), except for Management & Operating contracts and Major Site and Facility contracts, which are subject to Order 243.1C Records Management Program, rather than this AL.

What is the background information?

The Federal Records Act (44 U.S.C. chapters 21, 29, 31, 33), as implemented by the National Archives and Records Administration's (NARA) regulations at 36 Code of Federal Regulations (CFR) Chapter XII Subchapter B, provides for the management and administration of Federal records. While 36 CFR 1220 specifies policies for Federal agencies' records management programs relating to proper records creation and maintenance, adequate documentation, and records disposition, it does not provide a way to include these requirements in contracts when the contract calls for the contractor to create, manage, and handle Federal records.

The increased use of various support services contracts in recent decades has resulted in a rise of contractors having access to Federal records and records subject to the requirements of the Privacy Act of 1974 (5 U.S.C. § 552a). While the FAR has implemented several clauses to address contractor access to and management of records covered by the Privacy Act (e.g., 52.224-1 Privacy Act Notification, 52.224-2 Privacy Act, 52.224-3 Privacy Training, etc.), not all Federal records fall under the protections of the Privacy Act, and the patchwork of other Federal and agency regulations, policies, and directives (e.g., 36 C.F.R. § 1220 and DOE's Order 243.1C Records Management Program) do not provide a convenient or appropriate way to incorporate applicable records management requirements into DOE contracts.

DOE Order 243.1C provides a Contract Requirements Document (CRD) to implement the parts of the Order that apply to Management and Operating (M&O), Major Site and Facility contractors, and contracts that involve the receipt, creation, use, maintenance, management, dissemination and/or disposition of DOE records. The CRD may not be suitable for use in certain support services contracts, including commercial contracts, where the contract requires contractors to create, manage, and handle Federal records, or requires the contractor to create, revise, or modify Federal computing environments that contain Federal records. This AL provides a corporate clause (DOE-H-2087 Management of Federal Records) as an alternative to the CRD from DOE Order 243.1C for use in non-M&O, non-Major Site and Facility, and other support services contracts.

Although use of the new corporate clause is not mandatory, contracts that require contractors to create, manage, and handle Federal records, or require the contractors to create, revise, or modify Federal computing environments that contain Federal records must address records management requirements. This can be done by incorporating the CRD from DOE Order

243.1C (if deemed appropriate), inserting the new corporate clause DOE-H-2087 Management of Federal Records in applicable solicitations and awards, or by including the applicable requirements in the solicitation and resulting contract Performance Work Statement (PWS) or Statement of Work (SOW).

For the purposes of this AL, the term “Federal record” as defined in 44 U.S.C. § 3301, includes all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them. The term “Federal record”: (1) includes DOE records; (2) applies to records created, received, or maintained by contractors in performance of their DOE contracts; (3) may include deliverables and documentation associated with deliverables; (4) and does not include personal materials.

What is the guidance/instructions contained in this AL?

Contracting Officers may incorporate DOE corporate clause, DOE-H-2087 Management of Federal Records in non-M&O and non-Major Site/Facility solicitations and contracts that require the contractor to create, manage, and handle Federal records, regardless of the medium in which the record exists, or create, revise, or modify Federal computing environments that hold Federal records. For M&O and Major Site and Facility solicitation and contracts, see DOE O 243.1C, Records Management Program, current version. See below for the clause.

| Clause Details | |
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| Clause Number: DOE-H-2087 | Clause Title: Management of Federal Records (OCT 2024) |
| Alternate Clause Number: H | |
| Clause Text: (no character limitations) <p>(a) <i>Definitions.</i></p> <p><i>Federal record</i> — as defined in 44 U.S.C. § 3301, includes all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them.</p> <p>The term Federal record:</p> <ul style="list-style-type: none"> (i) includes Department of Energy (DOE) records; (ii) applies to records created, received, or maintained by contractors in performance of their DOE contracts; (iii) may include deliverables and documentation associated with deliverables; (iv) does not include personal materials. <p>(b) <i>Requirements.</i></p> <ul style="list-style-type: none"> (1) The Contractor shall comply with all applicable records management laws and regulations, as well as National Archives and Records Administration (NARA) records policies, including but not limited to the Federal Records Act (44 U.S.C. chapters 21, 29, 31, 33), NARA regulations at 36 CFR Chapter XII Subchapter B, and those policies associated with the safeguarding of records covered by the Privacy Act of 1974 (5 U.S.C. § 552a). These policies include the preservation of all records, regardless of form or characteristics, mode of transmission, or state of completion. (2) In accordance with 36 CFR § 1222.32, all data created for Government use and delivered to, or falling under the legal control of the Government are Federal records subject to the provisions of 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act (FOIA) (5 U.S.C. § 552), as amended, and the Privacy Act of 1974 (5 U.S.C. § 552a), as amended. Federal records must be created, managed, and maintained in electronic format to the greatest extent possible, must include applicable metadata, and be scheduled for disposition only as permitted by statute or regulation, and in accordance with a NARA and agency-approved Federal records schedule. (3) In accordance with 36 CFR § 1222.32, the Contractor shall maintain all records created for Government use or created while performing the contract and delivered to, or under, the legal control of the Government and must be managed in accordance with Federal law. Electronic records and associated metadata must be accompanied by sufficient technical documentation to permit understanding and use of the records and data. Systems that contain Federal records must be configured to properly protect and maintain Federal records in accordance with their NARA and agency-approved records schedule and secured from tampering or deletion. | |

- (4) In accordance with 36 CFR § 1230, DOE and its contractors are responsible for preventing the alienation or unauthorized destruction of records, including all forms of mutilation. Records may not be removed from the legal custody of DOE or destroyed, except when done so in accordance with the provisions of the NARA and agency-approved records schedules and fully documented using existing processes. Willful and unlawful destruction, damage or alienation of Federal records is subject to the fines and penalties imposed by 18 U.S.C. § 2701. In the event of any unlawful or accidental removal, defacing, alteration, or destruction of records, the Contractor must immediately report the loss to the Contracting Officer and the DOE Records Program Official.
 - (5) Disclosure of non-public information is limited to authorized personnel with a need-to-know as described in the contract. The Contractor shall ensure that the appropriate personnel, and administrative, technical, and physical safeguards are established to ensure the security and confidentiality of information, data, documentary material, records, and equipment.
 - (6) The Contractor shall not remove material from Government facilities or systems, or facilities or systems operated or maintained on the Government's behalf, without the express written permission of the Contracting Officer.
 - (7) When information, data, documentary material, records, or equipment is no longer required, and has met its retention requirements in accordance with a NARA and agency-approved records schedule, the Contractor shall, in coordination with the Contracting Officer and DOE Records Management officials, comply with applicable disposition requirements. The Contractor must identify both temporary and permanent records in their custody and utilize existing DOE systems or associated processes to properly disposition the record. The process may vary from office to office. Destruction of records is EXPRESSLY PROHIBITED unless in accordance with paragraph (4).
 - (8) Any record created or maintained by the Contractor that contains non-public DOE information must be specifically tied to or authorized by the contract. All electronic information produced for public consumption under this contract shall be compliant with Section 508 of the Rehabilitation Act (29 U.S.C. § 798).
 - (9) The Contractor shall not retain, use, sell, or disseminate copies of any deliverable that contains information covered by the Privacy Act of 1974 (5 U.S.C. § 552a) or that which is generally protected from public disclosure by an exemption to the Freedom of Information Act (5 U.S.C. § 552).
 - (10) Training. The Contractor shall ensure that all Contractor employees assigned to this contract who create, work with, or otherwise handle Federal records take National Archives and Records Administration (NARA) -approved records management and controlled unclassified information (CUI) training prior to accessing or handling Federal records. The Contractor is responsible for confirming training has been completed, including initial training and annual or refresher training, and shall provide evidence of completed training to the Contracting Officer upon request. To fulfill this requirement, an applicant may choose to use DOE-provided training.
- (c) *Flowdown of requirements to subcontractors.* The Contractor shall incorporate the substance of this clause, its terms and requirements, including this paragraph, in all subcontracts in support of this contract that require the handling or management of Federal records generated under, or relating to, this contract.

(End of Clause)

| UCF Section: H | Clause/Provision: Select Clause , Provision , or Neither |
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| <p>Local Prescription Text (Agency Specific Help):</p> <p>Prescription: The Contracting Officer may insert the following clause in non-Management and Operating (M&O) and non-Major Site and Facility solicitations and contracts that require the contractor to create, manage, and handle Federal records, regardless of the medium in which the record exists, or create, revise, or modify Federal computing environments that hold Federal records. For M&O and Major Site and Facility solicitation and contracts, see DOE O 243.1C, Records Management Program, current version.</p> | |