

**Department of Energy
Acquisition Regulation**

**No. AL-2019-01
Date: November 29, 2018
2018**



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 professions 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: Use of Products and Services of Kaspersky Lab

References:

Section 1634, National Defense Authorization Act for FY 2018 (Pub. L. 115-91)
Department of Homeland Security Binding Operational Directive 17-01
Federal Acquisition Circular 2005-099 (83 FR 28141)
FAR 4.20
FAR 52.204-23
FAR 43.103

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This AL remains in effect until superseded or canceled.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 is the intended audience for this AL?

Heads of Contracting Activities and Contracting Officers responsible for administering and managing contracts for all management and operating (M&O) and non-M&O contracts within the Department of Energy (DOE) and National Nuclear Security Administration (NNSA).

Who are the points of contact?

For DOE questions regarding the AL, contact MA-611, 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?

A recent interim rule published in the Federal Register prohibits the acquisition of products and services of Kaspersky Lab. This AL sets forth policy for implementing the rule within DOE and NNSA.

What types of contracts are affected by this AL?

This AL, which stems from a matter of national security, applies to DOE and NNSA M&O and non-M&O acquisitions, including subcontracts, regardless of dollar value.

What is the background information?

Section 1634 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, “Prohibition on use of products and services developed or provided by Kaspersky Lab,” bars Federal entities from using any hardware, software, or services developed or provided, in whole or in part by Kaspersky Lab. While the NDAA language was being negotiated, the Department of Homeland Security issued a Binding Operational Directive (BOD 17-01), having determined that the risks associated with Kaspersky products and services warranted this directive, aimed at discontinuing any current and prevent any future use of Kaspersky products or services.

Consistent with Section 1634 and BOD 17-01, an interim rule was published in the Federal Register ([83 FR 28141](#)), entitled “Use of Products and Services of Kaspersky Lab.” The rule mandates inclusion of a new clause at FAR 52.204–23 in all solicitations and contracts by October 1, 2018.

The intent of the clause at FAR 52.204-23 is to prohibit the procurement of any “covered article” developed or provided by “covered entities.” As defined in the clause and the NDAA, a “covered entity” is: (1) Kaspersky Lab (or any successor entity); (2) any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or (3) any entity of which Kaspersky Lab has majority ownership. As defined in the clause, a “covered article” is defined as any hardware, software or service: (1) that is developed or provided by a covered entity; (2) developed or provided in whole or in part by a covered entity; or (3) containing components using hardware or software developed in whole or in part by a covered entity. These prohibitions flow down to all subcontractors.

The interim rule calls for inclusion of 52.204-23 in all solicitations and new awards; it also calls for modification of any existing indefinite-delivery contracts, as well as any contracts whose periods of performance are being extended for more than 6 months. Because DOE contracts tend to have long periods of performance (i.e., longer than 12 months, as is the case with many Federal agencies), it is important that all DOE contracts anticipated to extend beyond the end of Fiscal Year 2018 are modified to incorporate the clause at FAR 52.204-23.

What is the guidance contained in this AL?

First, DOE and NNSA Contracting Officers shall incorporate the clause at FAR 52.204-23 not only into new awards, but into all existing contractual vehicles, including blanket purchase agreements. This requirement is more stringent than is contained in the interim rule, which only addressed new contracts and certain contract modifications. This is considered appropriate in the interest of national security. Additionally, the provision shall be included not only in new, but in all existing, solicitations. For purchase card transactions, the prohibition on purchasing Kaspersky goods or services will be included in section 2.16 (Prohibitions and Restrictions) of the DOE Purchase Card Guide.

Secondly, DOE Contracting Officers shall ensure that, if a covered article (see FAR 4.2001) is discovered, the contractor notifies both the Contracting Officer and the appropriate Chief Information Officer point of contact, adhering to the timeline in FAR 52.204-23(c)(1). For DOE (non-NNSA) contracts, notify the Integrated Joint Cybersecurity Coordination Center (circ@jc3.doe.gov; 1-866-941-2472). For NNSA contracts, notify the Information Assurance Response Center (iarc@iarc.nv.gov; 702-942-2611 or 877-692-2611).

If additional information is provided by the FAR Council as part of a final rule, this AL will be revised accordingly. However, please note the requirements of the interim rule were effective on July 16, 2018, in order to meet the NDAA implementation date of October 1, 2018.