927.303 Contract clauses.

(a)

(1) Insert a patent rights clause in all solicitations and contracts for experimental, research, developmental, or demonstration work as prescribed in this section.

(2) [Reserved]

(3) [Reserved]

(4) For M&O contracts, certain decontamination and decommissioning activities and the building and/or operation of other DOE facilities, see subpart 970.27.

(d) The Contracting Officer shall use the clause at 952.227-13, Patent Rights—Ownership by the Government, except for—

(1) *Contracts for construction work or architect-engineer services.* When the services can be expected to involve only "standard types of construction" such as involving previously developed equipment, methods, and processes as described in FAR 27.303(a)(3), the Contracting Officer shall not include a patent clause;

(2) *Contracts with domestic small business firms or nonprofit organizations (see FAR 27.301).* In such cases, the Contracting Officer shall use the clause at 37 CFR 401.14, Standard Patent Rights, and Alternate I of 952.227-11 that includes the agency implementing regulations specific for DOE, suitably modified to identify the parties, in all contracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, unless the work is subject to an Exceptional Circumstances Determination by DOE or another exception (see 37 CFR 401.3(a)). If the Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies executed by DOE on June 7, 2021 (S&E DEC) or any other Determination of Exceptional Circumstances under the Bayh-Dole Act (DEC) is applicable, the Contracting Officer shall include the clause at 37 CFR 401.14 and Alternate II of 952.227-11;

(3) *Waivers of rights.* In cases where DOE grants an advance waiver or waives its rights in an identified invention pursuant to 10 CFR part 784, Contracting Officers shall consult with patent counsel on appropriate clauses;

(4) *Contracts for the design, construction, operation, or management (or the integration of a collection of contracts for the same purpose) of a Government-owned research, development, demonstration or production facility.* In such cases, the Government must be accorded certain rights, applicable to further use of the facility by or on behalf of the Government after contract termination or completion. For such contracts, the Contracting Officer shall include Alternate II with the clause at 952.227-13;

(5) *Background patent rights.* For contracts involving DOE background patent rights, the Contracting Officer shall use Alternate I to the clause at 952.227-13. Alternate I may be modified with the concurrence of Patent Counsel in order to reflect the equities of the contracting parties in particular situations; or

(6) *U.S. Competitiveness.* If the funding program is subject to the S&E DEC, then the Contracting

Officer shall use Alternate II to the clause at 952.227-13 when Patent Counsel has determined that the S&E DEC applies to the Contractor's funding and should be included in the contract.

Parent topic: Subpart 927.3—Patent Rights Under Government Contracts