PART 1227—PATENTS, DATA, AND COPYRIGHTS

Authority: 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

Source: 87 FR 61159, Oct. 7, 2022, unless otherwise noted.

Subpart 1227.3—Patent Rights Under Government Contracts

1227.304 Procedures.

1227.304-4 Appeals.

1227.305 Administration of patent rights clauses.

1227.305-4 Protection of invention disclosures.

Parent topic: SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Subpart 1227.3—Patent Rights Under Government Contracts

1227.304 Procedures.

1227.304-4 Appeals.

(b) Contractors may appeal agency actions listed at FAR 27.304–4(a)(1), (3), and (4) to the cognizant Head of the Contracting Activity (HCA). Contracting officers shall coordinate actions under this section with the legal counsel of the responsible office. The following procedures apply:

(1) Actions must be appealed within 30 days of receipt of the written statement issued by DOT required by FAR 27.304–4(a). The contractor must present all pertinent arguments in the appeal along with documentary evidence, if any.

(2) The HCA shall issue a determination within 45 days from the date the contractor's appeal is received.

(c) Contractor appeal of decisions rendered under FAR 27.304–4(a)(2) are subject to the following requirements:

(1) Actions must be appealed within 30 days of receipt of the written statement required by FAR 27.304–4(a). The contractor must present all pertinent arguments in the appeal along with documentary evidence, if any.

(2) The HCA may hold an informal hearing if deemed appropriate or at the request of the contractor. The informal hearing shall be held after all fact-finding is completed.

(i) If a hearing is held, DOT shall provide for a transcribed record of the hearing unless transcription is waived as provided for in paragraph (c)(2)(ii) of this section. A copy of the transcript shall be

available to the contractor at cost.

(ii) Transcription of the hearing may be waived by agreement of the parties.

(3) The HCA shall designate an impartial fact-finding official. The official conducting the fact-finding shall prepare findings of fact and transmit them to the HCA promptly after the conclusion of the fact-finding proceeding along with a recommended determination.

(i) A copy of the findings of fact shall be sent to the contractor (assignee or exclusive licensee) by mail, to the last known street address, the last known facsimile number, or the last known email address and to the contractor's identified counsel. The contractor (assignee or exclusive licensee) and agency representatives will be given 30 days to submit written arguments to the HCA; and, upon request by the contractor, oral arguments will be held before the HCA as part of an informal hearing. The HCA will make the final determination as to whether the initial agency action was appropriate under the relevant laws and procedures (*see* 1227.304–4(c)).

(ii) Any portion of the informal hearing that involves testimony or evidence shall be closed to the public. Agencies shall not disclose any such information obtained during the appeal to persons outside the Government except when such release is authorized by the contractor (assignee or licensee).

(4) The HCA's final determination shall be based on the findings of facts, together with any other information and written or oral arguments submitted by the contractor (assignee or exclusive licensee) and agency representatives, and any other information in the administrative record. The HCA may reject only those facts that have been found clearly erroneous and must explicitly state the rejection and the basis for the contrary finding. The HCA shall provide the contractor (assignee or exclusive licensee) a written determination by certified or registered mail no later than 90 days after fact-finding is completed or no later than 90 days after oral arguments, whichever is later.

1227.305 Administration of patent rights clauses.

1227.305-4 Protection of invention disclosures.

Solicitations and contracts that include a patent rights clause must provide the contractor the means to report inventions made during contract performance and at contract completion. This requirement may be fulfilled by requiring the contractor to submit a Department of Defense DD Form 882, Report of Inventions and Subcontracts.