Subpart 225.79 - EXPORT CONTROL

Parent topic: Part 225 - FOREIGN ACQUISITION

225.7900 Scope of subpart.

This subpart implements –

(a) Section 890(a) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181); and

(b) The requirements regarding export control of Title I of the Security Cooperation Act of 2010 (Pub. L. 111-266); the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation (the U.S.-Australia DTC Treaty); and the Treaty Between the Government of the United States of America and the Government the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (the U.S.-U.K. DTC Treaty). See PGI 225.7902 for additional information.

225.7901 Export-controlled items.

This section implements section 890(a) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

225.7901-1 Definitions.

“Export-controlled items,” as used in this section, is defined in the clause at 252.225-7048 .

225.7901-2 General.

Certain types of items are subject to export controls in accordance with the Arms Export Control Act (22 U.S.C. 2751, et seq.), the International Traffic in Arms Regulations (22 CFR Parts 120-130), the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 et seq.), and the Export Administration Regulations (15 CFR Parts 730-774). See PGI 225.7901-2 for additional information.

225.7901-3 Policy.

(a) It is in the interest of both the Government and the contractor to be aware of export controls as they apply to the performance of DoD contracts.

(b) It is the contractor’s responsibility to comply with all applicable laws and regulations regarding export-controlled items. This responsibility exists independent of, and is not established or limited by, this section.

225.7901-4 Contract clause.

Use the clause at 252.225-7048 , Export-Controlled Items, in all solicitations and contracts.

225.7902 Defense Trade Cooperation Treaties.

This section implements the Defense Trade Cooperation (DTC) Treaties with Australia and the United Kingdom and the associated Implementing Arrangements for DoD solicitations and contracts that authorize prospective contractors and contractors to use the DTC Treaties to respond to DoD solicitations and in the performance of DoD contracts.

225.7902-1 Definitions.

"Approved community," “defense articles," “Defense Trade Cooperation (DTC) Treaty”, "export," “Implementing Arrangement," “qualifying defense articles,” "transfer," and "U.S. DoD Treaty-eligible requirements" are defined in contract clause DFARS 252.225-7047 , Exports by Approved Community Members in Performance of the Contract.

225.7902-2 Purpose.

The DTC Treaties permits the export of certain U.S. defense articles, technical data, and defense services, without U.S. export licenses or other written authorization under the International Traffic in Arms Regulation (ITAR) into and within the Approved Community, as long as the exports are in support of purposes specified in the DTC Treaties. All persons must continue to comply with statutory and regulatory requirements outside of DFARS and ITAR concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 CFR Parts 447, 478, and 479, which are unaffected by the DTC Treaties. The Approved Community consists of U.S. entities that are registered with the Department of State and are eligible exporters, the U.S. Government, and certain governmental and commercial facilities in Australia and the United Kingdom that are approved and listed by the U.S. Government. See PGI 225.7902-2 for additional information.

225.7902-3 Policy.

DoD will facilitate maximum use of the DTC Treaties by prospective contractors responding to DoD solicitations and by contractors eligible to export qualifying defense articles under DoD contracts in accordance with 22 CFR 126.16(g) and 22 CFR 126.17(g).

225.7902-4 Procedures.

(a) For all solicitations and contracts that may be eligible for DTC Treaty coverage (see PGI 225.7902-4 (1)), the program manager shall identify in writing and submit to the contracting officer

prior to issuance of a solicitation and prior to award of a contract—

(1) The qualifying DTC Treaty Scope paragraph (Article 3(1)(a), 3(1)(b), or 3(1)(d) of the U.S.-Australia DTC Treaty or Article (3)(1)(a), (3(1)(b), or 3(1)(d) of the U.S.-U.K. DTC Treaty); and

(2) The qualifying defense article(s) using the categories described in 22 CFR 126.16(g) and 22 CFR 126.17(g).

(b) If applicable, the program manager shall also identify in writing and submit to the contracting officer any specific Part C, DTC Treaty-exempted technology list items, terms and conditions for applicable contract line item numbers (See PGI 225.7902-4 (2)).

225.7902-5 Solicitation provision and contract clause.

(a) Use the provision at 252.225-7046 , Exports by Approved Community Members in Response to the Solicitation, in solicitations containing the clause at 252.225-7047 .

(b)(1) Use the clause at 252.225-7047 , Exports by Approved Community Members in Performance of the Contract, in solicitations and contracts when—

(i) Export-controlled items are expected to be involved in the performance of the contract and the clause at 252.225-7048 is used; and

(ii) At least one contract line item is intended to satisfy a U.S. DoD Treaty-eligible requirement.

(2) The contracting officer shall complete paragraph (b) of the clause using information the program manager provided as required by 225.7902-4 (a).