



This document is scheduled to be published in the Federal Register on 06/17/2013 and available online at <http://federalregister.gov/a/2013-14298>, and on FDsys.gov

(Billing Code 5001-06-P)

DEPARTMENT OF DEFENSE

Defense Acquisitions Regulations System

48 CFR Parts 204, 225, 235, and 252

RIN 0750-AH70

**Defense Federal Acquisition Regulation Supplement; Defense Trade Cooperation Treaties with Australia and the United Kingdom
(DFARS 2012-D034)**

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, the interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement requirements of the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (the U.S.-U.K. DTC Treaty) and the Security Cooperation Act of 2010 regarding export control regulations between the United States and the United Kingdom. The final rule also implements the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation.

DATES: Effective date: [Insert date of publication in the FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the Federal Register at 77 FR 30361 on May 22, 2012, to implement requirements of the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (the U.S.-U.K. DTC Treaty) and the Security Cooperation Act of 2010 regarding export control regulations between the United States and the United Kingdom. The public comment period ended on July 23, 2012. Two respondents submitted comments.

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) was approved by Congress simultaneously with the U.S.-U.K. DTC Treaty in Title I of the Security Trade Cooperation Act of 2010. The Department of State implementing regulation was published in the Federal Register on April 11, 2013, at 78 FR 21523, effective when the U.S.-Australia DTC Treaty entered into force on May 16, 2013. This final rule also implements the U.S.-Australia DTC Treaty, the associated Implementing Arrangement, and the Department of State implementing regulations, which all have provisions that

generally parallel the provisions of the U.S.-U.K. DTC Treaty and its implementing arrangements and regulations.

This rule streamlines the export control regulations between the United States and Australia and the United States and the United Kingdom under specified circumstances.

The U.S. Government controls exports of defense articles, technical data, and defense services. The governing law is the Arms Export Control Act (22 U.S.C. 2778 et seq.) and implementing regulations in the International Traffic in Arms Regulations (ITAR) (22 CFR 120-130).

Under the ITAR, the Department of State manages an export licensing system in which numerous government approvals are often necessary for companies to hold discussions about potential projects, pursue joint activities, ship hardware, or transfer know-how to one another, and even sometimes to transfer engineers and other company employees from one country to another. This process can be challenging and time consuming for U.S. exporters and for foreign firms in their supply chains.

The U.S. concluded the DTC Treaties with Australia and the United Kingdom to enable their militaries, security authorities, and their approved industries to exchange defense articles, technical information, and defense services more freely. The DTC Treaties establish certain exemptions from ITAR requirements. Other exports and transfers remain governed by

the Arms Export Control Act and the ITAR.

The DTC Treaties, Implementing Arrangements, and other useful resources may be accessed at

<http://pmdt.c.state.gov/treaties/index.html>.

The implementing legislation is in Title I of Pub. L. 111-266, the Security Cooperation Act of 2010.

The U.S. Department of State regulations implementing the Treaties with Australia and the United Kingdom are at 22 CFR 120 and 126.

II. Discussion and Analysis of the Public Comments

DoD reviewed the public comments in the development of the final rule. DoD responses are applicable to both treaties. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of significant changes from the interim rule

The final rule has added implementation of the U.S.-Australia DTC Treaty, the associated Implementing Arrangement, and the Department of State implementing regulations, comparable to the implementation of the U.S.-U.K. DTC Treaty.

B. Analysis of public comments

1. Support the intent of the interim rule

Comment: Both respondents support the Defense Cooperation Treaty with the United Kingdom and the intent to facilitate trade by streamlining the export of defense articles. One

respondent commended the Defense Acquisition Regulations (DAR) Council on recognizing the importance of the implementation of the U.S.-U.K DTC Treaty. The respondent also commended the DAR Council on designating portions of the solicitations that are (or are not) subject to the Treaty. This provides offerors with a common understanding of the export control requirements of a particular acquisition. Second, the respondent views the interim rule as heightening awareness of export controls.

Response: Noted.

2. Identification of line items that are U.S. DoD Treaty-eligible requirements

Comment: The same respondent, however, was of the opinion that DoD does not have legal authority to make de facto jurisdictional determinations regarding whether a particular product is a U.S. DoD Treaty-eligible requirement. According to the respondent, contractors do have the right to self-classify, but the only Government entity that can make a definitive determination is the Department of State, Directorate of Defense Trade Controls. The respondent recommended that the final rule establish a process for program managers and contracting officers to coordinate with the Directorate of Defense Trade Controls with respect to determinations regarding solicitations and contract line items that would be suitable for U.S.-U.K. DTC

Treaty treatment, so that companies can rely on the determination.

Response: DoD and the U.K. Ministry of Defence have jointly established a Management Board to resolve such issues, adopted a detailed management plan, and conducted Pathfinder Exercises to test the process with industry participants.

DoD slightly revised the wording of the final rule at DFARS 225.7902-4 to address the concern that the program manager and contracting officer do not have the authority to determine Treaty eligibility.

3. Representation

Comment: One respondent questioned the need for the representation, because a failure to comply with the ITAR provides an independent basis for regulatory enforcement against an offending contractor by the Department of State or the Department of Justice, and neither the Treaty nor the ITAR suggest the need for additional representations or certifications.

Another respondent recommended changing the contractor's representation in the provision at 252.225-7046, which requires the offeror to check one of two boxes (that exports or transfers were made and complied with the Treaty, or no such exports or transfers were made) to a more general statement requiring the contractor to acknowledge the contractor's obligation to comply

with all treaty provisions. The respondent's rationale for this change was that large DoD contractors with separate departments responsible for Government contracting and ITAR compliance will need to establish complex procedures to gather the necessary data to support an affirmative or negative representation.

Response: DoD has retained the representation in the final rule without change. The clause at DFARS 252.225-7047, Exports by Approved Community Members in Performance of the Contract, applies only to performance after contract award. The provision at DFARS 252.225-7046, Exports by Approved Community Members in Response to the Solicitation, including the representation, is necessary in order to ensure compliance by offerors prior to contract award.

It is not apparent how an offeror could accurately respond to the representation that it has complied with all Treaty provisions, as proposed by the respondent, without gathering an equal amount of data as that required by the representation in the interim rule, to know whether any exports or transfers of qualifying defense articles were made, and that any such exports or transfers were made in accordance with the Treaty.

C. Other changes

1. The final rule uses the correct full title of the Treaty at 225.7900(b) and then refers to the Treaty as "the U.S.-U.K.

DTC Treaty," in order to more specifically identify the Treaty and to distinguish it from the U.S.-Australia DTC Treaty.

2. The final rule reflects changes in the wording of the clauses 252.225-7046 and 252.225-7047 to use the term "Treaty-eligible" and "not Treaty-eligible" consistently in the rule, in order to avoid possible confusion that introduction of the term "exemption" invited.

3. DFARS 225.79, Export Control, and the associated clause at DFARS 252.204-7008, Export-Controlled Items, are moved to DFARS 225.7901 and 252.225-7048, respectively, to co-locate related coverage on export control in one subpart. A conforming change was made to DFARS 235.071.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated

September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule does not impose burdens on small businesses. Small businesses that are exporters will benefit from being able to use the streamlined treaty process to make exports that are associated with responding to DoD solicitations and performance of DoD contracts. However, a final regulatory flexibility analysis has been performed and is summarized as follows:

This rule implements requirements of-

The Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation (U.S.-Australia DTC Treaty); and

The Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (the U.S.-U.K. DTC Treaty).

The objective of the rule is to streamline the export control regulations between the United States and Australia and between the United States and the United Kingdom under specified

circumstances. The legal basis for the rule is the Security Cooperation Act of 2010 (Pub. L. 111-266), enacted October 8, 2010.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments in response to the rule.

The great majority of industry members of the Approved Community are not small businesses due to the specialized knowledge of export control regulations and the cost involved in compliance. Small businesses that are exporters will benefit from being able to use the streamlined treaty process to make exports that are associated with responding to DoD solicitations and performance of DoD contracts.

Although the interim rule added a representation that required the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq., the net effect will be to significantly streamline and reduce paperwork requirements under the systems set forth in the DTC Treaties and regulated by the ITAR by no longer requiring individual export control licenses within the Approved Community. In short, one representation per offeror will replace multiple requirements under the present system.

This rule implements Treaties and statute and DoD is not aware of any alternative methods of achieving the objectives of the rule. Furthermore, the net impact of the rule is expected to be beneficial to small businesses.

IV. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). OMB has cleared this information collection requirement under OMB Control Number 0704-0488, titled: Defense Trade Cooperation Treaty with the United Kingdom.

The annual reporting burden is estimated as follows:

Respondents: 110

Responses per respondent: 1

Total annual responses: 110

Preparation hours per response: 0.1

Total response burden hours: 11

This rule will result in a significantly streamlined process and reduced paperwork requirements overall under the processes set forth in the DTC Treaties as implemented by the ITAR by no longer requiring individual export licenses within the Approved Community. In short, one representation per offeror will streamline the current process.

List of Subjects in 48 CFR Parts 204, 225, 235, and 252

Government procurement.

Kortnee Stewart,

Editor, Defense Acquisition Regulations System.

Therefore, DoD amends 48 CFR parts 204, 225, 235, and 252 as follows:

1. The authority citation for parts 204, 225, 235, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

SUBPART 204.73- [Removed]

2. Remove subpart 204.73.

PART 225—FOREIGN ACQUISITION

3. Subpart 225.79 is revised to read as follows:

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 permit 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 [252.204-7008](#) 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).

PART 235-RESEARCH AND DEVELOPMENT CONTRACTING

235.071 [Amended]

4. Section 235.071 is amended by removing "Subpart 204.73" and adding "225.7901" in its place.

PART 252-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204-7008 [Removed and Reserved]

5. Remove and reserve section 252.204-7008.

6. Section 252.225-7046 is revised to read as follows:

252.225-7046 Exports by Approved Community Members in Response to the Solicitation.

As prescribed in [225.7902-5](#) (a), use the following provision:

EXPORTS BY APPROVED COMMUNITY MEMBERS IN RESPONSE TO THE SOLICITATION (JUNE 2013)

(a) *Definitions.* The definitions of "Approved Community", "defense articles", "Defense Trade Cooperation (DTC) Treaty", "export", "Implementing Arrangement", "qualifying defense articles", "transfer", and "U.S. DoD Treaty-eligible requirements" in DFARS clause [252.225-7047](#) apply to this provision.

(b) All contract line items in the contemplated contract, except any identified in this paragraph, are intended to satisfy

U.S. DoD Treaty-eligible requirements. Specific defense articles that are not U.S. DoD Treaty-eligible will be identified as such in those contract line items that are otherwise U.S. DoD Treaty-eligible.

CONTRACT LINE ITEMS NOT INTENDED TO SATISFY

U.S. DoD TREATY-ELIGIBLE REQUIREMENTS:

[Enter Contract Line Item Number(s) or enter "None"]

(c) Approved Community members responding to the solicitation may only export or transfer defense articles that specifically respond to the stated requirements of the solicitation.

(d) Subject to the other terms and conditions of the solicitation and the contemplated contract that affect the acceptability of foreign sources or foreign end products, components, parts, or materials, Approved Community members are permitted, but not required, to use the DTC Treaties for exports or transfers of qualifying defense articles in preparing a response to this solicitation.

(e) Any conduct by an offeror responding to this solicitation that falls outside the scope of the DTC Treaties, the Implementing Arrangements, and the implementing regulations of the Department of State in 22 CFR 126.16 (Australia), 22 CFR 126.17 (United Kingdom), and 22 CFR 126 Supplement No. 1 (exempted technologies list) is subject to all applicable International Traffic in Arms

Regulations (ITAR) requirements, including any criminal, civil, and administrative penalties or sanctions, as well as all other United States statutory and regulatory requirements outside of ITAR.

(f) If the offeror uses the procedures established pursuant to the DTC Treaties, the offeror agrees that, with regard to the export or transfer of a qualifying defense article associated with responding to the solicitation, the offeror shall—

(1) Comply with the requirements and provisions of the applicable DTC Treaties, the Implementing Arrangements, and corresponding regulations (including the ITAR) of the U.S. Government and the government of Australia or of the United Kingdom, as applicable; and

(2) Prior to the export or transfer of a qualifying defense article—

(i) Mark, identify, transmit, store, and handle any defense articles provided for the purpose of responding to such solicitations, as well as any defense articles provided with or developed pursuant to their responses to such solicitations, in accordance with the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the marking and classification requirements described in the applicable regulations;

(ii) Comply with the re-transfer or re-export provisions of the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the re-transfer and re-export requirements described in the applicable regulations; and

(iii) Acknowledge that any conduct that falls outside or in violation of the DTC Treaties, Implementing Arrangements, and implementing regulations of the applicable government including, but not limited to, unauthorized re-transfer or re-export in violation of the procedures established in the applicable Implementing Arrangement and implementing regulations, remains subject to applicable licensing requirements of the government of Australia, the government of the United Kingdom, and the United States Government, as applicable, including any criminal, civil, and administrative penalties or sanctions contained therein.

(g) *Representation.* The offeror shall check one of the following boxes and sign the representation:

The offeror represents that export(s) or transfer(s) of qualifying defense articles were made in preparing its response to this solicitation and that such export(s) or transfer(s) complied with the requirements of this provision.

Name/Title of Duly Authorized Representative

Date

The offeror represents that no export(s) or transfer(s) of qualifying defense articles were made in preparing its response to this solicitation.

Name/Title of Duly Authorized Representative

Date

(h) *Subcontracts.* The offeror shall flow down the substance of this provision, including this paragraph (h), but excluding the representation at paragraph (g), to any subcontractor at any tier intending to use the DTC Treaties in responding to this solicitation.

(End of provision)

7. Section 252.225-7047 is revised to read as follows:

252.225-7047 Exports by Approved Community Members in Performance of the Contract.

As prescribed in [225.7902-5](#)(b), use the following clause:

EXPORTS BY APPROVED COMMUNITY MEMBERS IN PERFORMANCE OF THE CONTRACT (JUNE 2013)

(a) *Definitions.* As used in this clause—

"Approved Community" means the U.S. Government, U.S. entities that are registered and eligible exporters, and certain government and industry facilities in Australia or the United Kingdom that are approved and listed by the U.S. Government.

"Australia Community member" means an Australian government authority or nongovernmental entity or facility on the Australia

Community list accessible at

<http://pmdtdc.state.gov/treaties/index.html>.

"Defense articles" means articles, services, and related technical data, including software, in tangible or intangible form, listed on the United States Munitions List of the International Traffic in Arms Regulations (ITAR), as modified or amended.

"Defense Trade Cooperation (DTC) Treaty" means—

(1) The Treaty Between the Government of the United States of America and the government of the United Kingdom of Great Britain and Northern Ireland concerning Defense Trade Cooperation, signed at Washington and London on June 21 and 26, 2007; or

(2) The Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, signed at Sydney on September 5, 2007].

"Export" means the initial movement of defense articles from the United States Community to the United Kingdom Community.

"Implementing Arrangement" means -

(1) The Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, signed on February 14, 2008; or

(2) The Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government

of Australia Concerning Defense Trade Cooperation, signed on March 14, 2008.

"Qualifying defense articles" means defense articles that are not exempt from the scope of the DTC Treaties as defined in 22 CFR 126.16(g) and 22 CFR 126.17(g).

"Transfer" means the movement of previously exported defense articles within the Approved Community.

"United Kingdom Community member" means a United Kingdom government authority or nongovernmental entity or facility on the United Kingdom Community list accessible at <http://pmddtc.state.gov>.

"United States Community" means—

(1) Departments and agencies of the U.S. Government, including their personnel, with, as appropriate, security accreditation and a need-to-know; and

(2) Nongovernmental U.S. entities registered with the Department of State and eligible to export defense articles under U.S. law and regulation, including their employees, with, as appropriate, security accreditation and a need-to-know.

"U.S. DoD Treaty-eligible requirements" means any defense article acquired by the DoD for use in a combined military or counterterrorism operation, cooperative research, development, production or support program, or DoD end use, as described in

Article 3 of the U.S.-U.K. DTC Treaty and sections 2 and 3 of the associated Implementing Arrangement; and Article 3 of the U.S.-Australia DTC Treaty and sections 2 and 3 of the associated Implementing Arrangement.

(b) All contract line items in this contract, except any identified in this paragraph, are intended to satisfy U.S. DoD Treaty-eligible requirements. Specific defense articles that are not U.S. DoD Treaty-eligible will be identified as such in those contract line items that are otherwise U.S. DoD Treaty-eligible.

CONTRACT LINE ITEMS NOT INTENDED TO SATISFY

U.S. DoD TREATY-ELIGIBLE REQUIREMENTS:

[Enter Contract Line Item Number(s) or enter "None"]

(c) Subject to the other terms and conditions of this contract that affect the acceptability of foreign sources or foreign end products, components, parts, or materials, Approved Community members are permitted, but not required, to use the DTC Treaties for exports or transfers of qualifying defense articles in performance of the contract.

(d) Any conduct by the Contractor that falls outside the scope of the DTC Treaties, the Implementing Arrangements, and 22 CFR 126.16(g) and 22 CFR 126.17(g) is subject to all applicable ITAR requirements, including any criminal, civil, and administrative penalties or sanctions, as well as all other United States

statutory and regulatory requirements outside of ITAR, 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.

(e) If the Contractor is an Approved Community member, the Contractor agrees that—

(1) The Contractor shall comply with the requirements of the DTC Treaties, the Implementing Arrangements, the ITAR, and corresponding regulations of the U.S. Government and the government of Australia or the government of the United Kingdom, as applicable; and

(2) Prior to the export or transfer of a qualifying defense article the Contractor—

(i) Shall mark, identify, transmit, store, and handle any defense articles provided for the purpose of responding to such solicitations, as well as any defense articles provided with or developed pursuant to their responses to such solicitations, in accordance with the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the marking and classification requirements described in the applicable regulations;

(ii) Shall comply with the re-transfer or re-export provisions of the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the re-transfer and re-export requirements described in the applicable regulations; and

(iii) Shall acknowledge that any conduct that falls outside or in violation of the DTC Treaties, Implementing Arrangements, and implementing regulations of the applicable government including, but not limited to, unauthorized re-transfer or re-export in violation of the procedures established in the applicable Implementing Arrangement and implementing regulations, remains subject to applicable licensing requirements of the government of Australia, the government of the United Kingdom, and the United States Government, including any criminal, civil, and administrative penalties or sanctions contained therein.

(f) The contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that may require exports or transfers of qualifying defense articles in connection with deliveries under the contract.

8. Add section 252.225-7048 to read as follows:

252.225-7048 Export-Controlled Items.

As prescribed in [225.7901-4](#), use the following clause:

EXPORT-CONTROLLED ITEMS (JUNE 2013)

(a) *Definition.* "Export-controlled items," as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes--

(1) "Defense items," defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120; and

(2) "Items," defined in the EAR as "commodities", "software", and "technology," terms that are also defined in the EAR, 15 CFR 772.1.

(b) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

(c) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items

exists independent of, and is not established or limited by, the information provided by this clause.

(d) Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

(1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, *et seq.*);

(2) The Arms Export Control Act (22 U.S.C. 2751, *et seq.*);

(3) The International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*);

(4) The Export Administration Regulations (15 CFR Parts 730-774);

(5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and

(6) Executive Order 13222, as extended.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.

(End of clause)