252.204–7008

Export-Controlled Items

As prescribed in 204.7304, use the following clause:

EXPORT-CONTROLLED ITEMS (APR 2010)

(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:

(i) 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.

(ii) End items, defined in the Export Control Act, 50 U.S.C. 4802(j), 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.
Defense Acquisition Regulations System, DOD 252.204–7010

(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 to, 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 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.

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

(End of clause)

[75 FR 18034, Apr. 8, 2010]

252.204–7009 [Reserved]

252.204–7010 Requirement for Contractor to Notify DoD if the Contractor’s Activities are Subject to Reporting Under the U.S.-International Atomic Energy Agency Additional Protocol.

As prescribed in 204.470–3, use the following clause:

REQUIREMENT FOR CONTRACTOR TO NOTIFY DOD IF THE CONTRACTOR’S ACTIVITIES ARE SUBJECT TO REPORTING UNDER THE U.S.-INTERNATIONAL ATOMIC ENERGY AGENCY ADDITIONAL PROTOCOL (JAN 2009)

(a) If the Contractor is required to report any of its activities in accordance with Department of Commerce regulations (15 CFR part 781 et seq.) or Nuclear Regulatory Commission regulations (10 CFR part 75) in order to implement the declarations required by the U.S.-International Atomic Energy Agency Additional Protocol (U.S.-IAEA AP), the Contractor shall—

(1) Immediately provide written notification to the following DoD Program Manager: [Contracting Officer to insert Program Manager’s name, mailing address, e-mail address, telephone number, and facsimile number];
(2) Include in the notification—

(i) Where DoD contract activities or information are located relative to the activities or information to be declared to the Department of Commerce or the Nuclear Regulatory Commission; and

(ii) If or when any current or former DoD contract activities and the activities to be declared to the Department of Commerce or the Nuclear Regulatory Commission have been or will be co-located or located near enough to one another to result in disclosure of the DoD activities during an IAEA inspection or visit; and

(b) After receipt of a notification submitted in accordance with paragraph (a) of this clause, the DoD Program Manager will—

(1) Conduct a security assessment to determine if and by what means access may be granted to the IAEA; or
(2) Provide written justification to the component or agency treaty office for a national security exclusion, in accordance with DoD Instruction 2060.03, Application of the National Security Exclusion to the Agreements Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America. DoD will notify the Contractor if a national security exclusion is applied at the Contractor’s location to prohibit access by the IAEA.

(c) If the DoD Program Manager determines that a security assessment is required—

(1) DoD will, at a minimum—

(i) Notify the Contractor that DoD officials intend to conduct an assessment of vulnerabilities to IAEA inspections or visits;

(ii) Notify the Contractor of the time at which the assessment will be conducted, at least 30 days prior to the assessment;

(iii) Provide the Contractor with advance notice of the credentials of the DoD officials who will conduct the assessment; and

(iv) To the maximum extent practicable, conduct the assessment in a manner that does not impede or delay operations at the Contractor’s facility; and

(2) The Contractor shall provide access to the site and shall cooperate with DoD officials in the assessment of vulnerabilities to IAEA inspections or visits.

(d) Following a security assessment of the Contractor’s facility, DoD officials will notify the Contractor as to—

(1) Whether the Contractor’s facility has any vulnerabilities where potentially declarable activities under the U.S.-IAEA AP are taking place;

(2) Whether additional security measures are needed; and

(3) Whether DoD will apply a national security exclusion.

(e) If DoD applies a national security exclusion, the Contractor shall not grant access to IAEA inspectors.

(f) If DoD does not apply a national security exclusion, the Contractor shall apply