

SUBPART 204.73—EXPORT-CONTROLLED ITEMS

(Added July 21, 2008)

204.7300 Scope of subpart.

This subpart implements Section 890(a) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181).

204.7301 Definitions.

As used in this subpart—

“Applied research” means the effort that—

- (1) Normally follows basic research, but may not be severable from the related basic research;
- (2) Attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and
- (3) Attempts to advance the state of the art.

“Export-controlled items” is defined in the clauses at 252.204-7008 and 252.204-7009.

“Fundamental research,” as defined by National Security Decision Directive (NSDD) 189, means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community. This is distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

204.7302 General.

Export control laws and regulations restrict the transfer, by any means, of certain types of items to unauthorized persons. The International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) establish these restrictions. See PGI 204.7302 for additional information.

204.7303 Policy.

- (a) It is in the interest of both the Government and the contractor to have a common understanding of export-controlled items expected to be involved in contract performance.
- (b) The requiring activity shall review each acquisition to determine if, during performance of the contemplated contract, the contractor is expected to generate or require access to export-controlled items.

204.7304 Procedures.

- (a) Prior to issuance of a solicitation for research and development, the requiring activity shall notify the contracting officer in writing when—

Defense Federal Acquisition Regulation Supplement

Part 204--Administrative Matters

(1) Export-controlled items are expected to be involved; or

(2) The work is fundamental research only, and export-controlled items are not expected to be involved.

(b) Prior to issuance of a solicitation for supplies or services, the requiring activity shall notify the contracting officer in writing when—

(1) Export-controlled items are expected to be involved; or

(2) The requiring activity is unable to determine that export-controlled items will not be involved. See PGI 204.7304 for guidance regarding this notification requirement.

204.7305 Contract clauses.

(a) Use the clause at 252.204-7008, Requirements for Contracts Involving Export-Controlled Items, in solicitations and contracts when the requiring activity provides the notification at 204.7304(a)(1) or (b)(1), indicating that export-controlled items are expected to be involved in the performance of the contract.

(b) Use the clause at 252.204-7009, Requirements Regarding Potential Access to Export-Controlled Items, in solicitations and contracts—

(1) For research and development, except when the clause at 252.204-7008 will be included; or

(2) For supplies and services, when the requiring activity provides the notification at 204.7304(b)(2).