

**Defense Trade Cooperation Treaty
with the United Kingdom
DFARS Case 2012-D034
Draft Interim Rule**

PART 225—FOREIGN ACQUISITION

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[SUBPART 225.7X—EXPORT CONTROL

225.7X00 Scope of subpart.

This subpart implements the requirements of the Security Cooperation Act of 2010 (Pub. L. 111-266) and the Defense Trade Cooperation Treaty with the United Kingdom (the Treaty) regarding export control. See PGI 225.7X00 for additional information.

225.7X01 Reserved.

225.7X02 Defense Trade Cooperation Treaty with the United Kingdom.

This section implements the Treaty and the Implementing Arrangement for DoD solicitations and contracts that authorize prospective contractors and contractors to use the Treaty to respond to DoD solicitations and in the performance of DoD contracts.

225.7X02-1 Definitions.

"Approved community," "defense articles," "export," "Implementing Arrangement," "qualifying defense articles," "transfer," "Treaty," and "U.S. DoD Treaty-eligible requirements" are defined in contract clause DFARS 252.225-70YY, Exports by Approved Community Members in Support of the Contract.

225.7X02-2 Purpose.

The Treaty 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

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as the exports are in support of purposes specified in the Treaty. 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 the United Kingdom that are approved and listed by the U.S. Government. See PGI 225.7X02-2 for additional information.

225.7X02-3 Policy.

DoD will facilitate maximum use of the Treaty by prospective contractors responding to DoD solicitations and by contractors eligible to export qualifying defense articles under DoD contracts in accordance with 22 CFR 110.

225.7X02-4 Procedures.

(a) For all solicitations and contracts eligible for Treaty coverage (see PGI 225.7X02-4(a)), 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 Treaty Scope paragraph (Article 3(1)(a), 3(1)(b), or 3(1)(d)); and

(2) The qualifying defense article(s) using the categories described in 22 CFR 110.

(b) If applicable, the program manager shall also identify in writing and submit to the contracting officer any specific Part C, Treaty-exempted technology list items, terms and conditions for applicable contract line item numbers (See PGI 225.7X02-4(b)).

225.7X02-5 Solicitation provision and contract clause.

(a)(1) Use the provision at 252.225-70XX, Exports by Approved Community Members in Response to the Solicitation, in solicitations 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;

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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 provision using information the program manager provided as required by 225.7X02-4(a).

(b)(1) Use the clause at 252.225-70YY, 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 225.7X02-4(a).

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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[252.225-70XX Exports by Approved Community Members in Response to the Solicitation.

As prescribed in 225.7X02-5(a), use the following provision:

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

(a) *Definitions.* The definitions of "Approved Community," "defense articles," "export," "Implementing Arrangement,"

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“qualifying defense articles,” “transfer,” “Treaty,” and “U.S. DoD Treaty-eligible requirements” in DFARS clause 252.225-70YY 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 exempt from Treaty eligibility will be identified in those contract line items that are otherwise 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 Treaty 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 Treaty, the Implementing Arrangement, and the implementing regulations of the Department of State in 22 C.F.R. §126.17 (United Kingdom), and 22 C.F.R. §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.

(f) If the offeror uses the procedures established pursuant to the Treaty, the offeror agrees that, with regard to the export or transfer

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of a qualifying defense article associated with responding to the solicitation, the offeror shall—

(1) Comply with the requirements and provisions of the Treaty, the Implementing Arrangement, and corresponding regulations (including the ITAR) of the U.S. Government and the government of the United Kingdom;

(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 Treaty, the Implementing Arrangement, and corresponding United States Government and the government of the United Kingdom regulations 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 Treaty, the Implementing Arrangement, and corresponding United States Government and the government of the United Kingdom regulations, 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 Treaty, Implementing Arrangement, 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 Agreement and implementing regulations, remains subject to applicable licensing requirements of the government of the United Kingdom and the United States Government, including any criminal, civil, and administrative penalties or sanctions contained therein; and

(3) Flow down of this provision is required to any subcontractor

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

"Implementing Arrangement" means 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.

"Qualifying defense articles" means defense articles that are not exempt from the scope of the Treaty as defined in 22 CFR 110.

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

"Treaty" means 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.

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

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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 Treaty and Sections 2 and 3 of the 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 exempt from Treaty eligibility will be identified in those contract line items that are otherwise 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 Treaty 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 Treaty, the Implementing Arrangement, and 22 CFR 110 is subject to all applicable ITAR requirements, including any criminal, civil, and administrative penalties or sanctions.

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

(1) The Contractor will comply with the requirements of the Treaty, the Implementing Arrangement, the ITAR, and corresponding regulations of the U.S. Government and the government of the United Kingdom; and

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

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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 Treaty, the Implementing Arrangement, and corresponding United States Government and the government of the United Kingdom regulations 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 Treaty, this Implementing Arrangement and corresponding United States Government and the government of the United Kingdom regulations, including, but not limited to, the re-transfer and re-export requirements described the applicable regulations; and

(iii) Shall acknowledge that any conduct that falls outside or in violation of the Treaty, Implementing Arrangement, 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 Agreement and implementing regulations, remains subject to applicable licensing requirements of 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 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.

(End of clause)

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