

EXPORT CONTROL REVIEW

Does the statement of work or pending agreement contain any language, including references to Federal Acquisition Regulations that:

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| 1. gives the sponsor the right to approve/disapprove publication ¹ or release of information ² (excluding reasonable reviews for possible patentable subject matter and/or sponsor proprietary information)? (Sponsor <u>review</u> is okay ³ , but <u>approval</u> is not as FRE is lost) | Yes | No |
| 2. References U.S. export control regulations or security restrictions ⁴ (beyond a mere statement to comply with the law ⁵)? | Yes | No |
| 3. Prohibits the involvement of non-US persons or persons from certain countries or requires prior approval from sponsor ⁶ ? | Yes | No |
| 4. Prohibits access to project material/data/information by non-US citizens? | Yes | No |
| 5. Allows the sponsor to claim resulting information as proprietary or trade secret? | Yes | No |

If yes is circled on any of the questions above, the Fundamental Research Exclusion may be lost. If possible attempts should be made to negotiate alternative language. For example, if we can show that the scope of our portion of the project is of a fundamental research nature it is

¹ E.g., clause **DFAR 252.204-7000 Disclosure of Information (AUG 2013)** states that the contractor will not release any information without prior written approval.

² E.g., Clause **ARL 52.005-4401** includes reference to “non-releasable, unclassified information” and a requirement to “confer and consult” prior to release of information.

³ E.g., Sometimes it is possible to get the standard DFAR 252.204-7000 clause deleted in favor of **252.204-7000 Release of Information (December 1991 Deviation)** which states that Contractor shall be free to publish results after review.

⁴ E.g., clause **AFMC 5352.227-9000: Export-Controlled Data Restrictions (JUL 1997)** states that the technical data is controlled by ITAR and an export license is required before assigning any foreign persons to the project.

⁵ E.g., clause **252.225-7048: Export-Controlled Items (June 2013)** part (b) merely requires adherence with the law “The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, . . .”

⁶ E.g., clause **ARL 52.004-4400** requires all foreign nationals must be approved before beginning work on the project.

sometimes possible to have added to the latest version of the 7000 provision (it has undergone multiple revisions over the years) an additional clause, part a (3)⁷, which would preserve the exclusion. However, in order to do so it is necessary to have all the parties to the contract agree and it must be documented in the contract file. If this is not possible, please check with the Export Control Officer and PI for export control issues. A Technology Control Plan may be necessary.

OUR Reviewer: _____ Date: _____

OUR Project No. _____

⁷ (3) *The information results from or arises during the performance of a project that has been scoped and negotiated by the contracting activity with the contractor and research performer and determined in writing by the contracting officer to be fundamental research in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of contract award and the USD (AT&L) memoranda on Fundamental Research, dated May 24, 2010, and on Contractual Fundamental Research, dated June 26, 2008, available at DFARS PGI 204.4).*