

SOUTHWEST RESEARCH INSTITUTE®

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August 30, 2005

Via Electronic Mail
dfars@osd.mil

Defense Acquisition Regulations Council
OUSD (AT&L) DPAP (DAR)
IMD 3C132,
3062 Defense Pentagon
Washington, DC 20301-3062

Attn: Ms. Amy Williams

Re: DFARS Case 2004-D010 Comments

Dear Ms. Williams:

Southwest Research Institute (SwRI®) is pleased to submit the following comments in response to the Federal Register Notice published in 70 FR 39976-39978 (July 12, 2005) related to the proposed rule in Defense Federal Acquisition Regulation Supplement (DFARS) Case 2004-D010 regarding the Defense Federal Acquisition Regulation Supplement: Export Controlled Information and Technology.

The subject case proposes changes to certain sections in 48 CFR Parts 204, 235 and 252 with respect to export controlled information and technology at Contractor, University and Federally Funded Research and Development Center Facilities. SwRI's comments are as follows:

1. The proposed language in §252.204-70XX(d) requires that a Contractor "maintain an effective export compliance program." This section appears to be vague in that it does not define what an effective program is under the DFARS. SwRI recommends a definition or criteria that outlines what is required for an "effective" export compliance program be stated clearly in the regulation and that such definition incorporate the criteria contained in the Directorate of Defense Trade of the Department of State's and the Bureau of Industry and Secretary, Department of Commerce's published guidelines for such programs.
2. It is not clear who will determine whether a contractor's export compliance program is effective. Would this determination be made by the Contracting Officer for a particular contract in which the regulations apply or would it be made by the appropriate enforcement agency? Selecting a



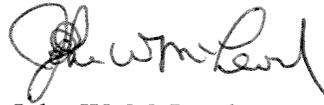
Amy Williams
DFARS Case 2004-D010
August 30, 2005
Page 2

Contracting Officer to make such a determination could create confusion on the part of the Contractor since each determination may be different and, thus, a compliance program that is found effective under one contract may be found ineffective under another contract. SwRI recommends clarification on this point.

SwRI thanks the Council for this opportunity to provide its comments and recommendations on this important matter.

Please do not hesitate to contact me directly by telephone at (210) 522-3368, by facsimile at (210) 522-5839 or by electronic mail at john.mcleod@swri.org with any questions you may have.

Very truly yours,

A handwritten signature in black ink, appearing to read "John W. McLeod". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John W. McLeod
Vice President and General Counsel

JWM/mt