

What is the International Traffic in Arms Regulation (ITAR)?

When I first heard the acronym ITAR, I immediately recoiled thinking it was time again to resurface my driveway. My next reaction was that since I am a procurement analyst, I didn't need to know much, if anything, about it since I have never been involved in acquiring weapons from a foreign source, although presumably it could happen. Well, I was wrong on both counts! After several discussions with people in the know in the CECOM Legal Office, I was able to get a layman's understanding of this regulation. The purpose of this paper is to share that understanding.

As they say, it's always good to start a story in the beginning. To understand the ITAR, you must first start with the Arms Export Control Act (AECA). The AECA prohibits certain "exports". "Export" means transport outside the U.S. or disclosure to a non-resident alien and the exports that are prohibited are those of certain defense articles and technical data related thereto. When I got to this level of understanding my ears perked up. Every acquisition has technical data. Maybe I needed to learn more.

The ITAR is the regulation that implements the AECA. Included in the ITAR is the Munitions List. The Munitions List identifies specific items or classes of items that are subject to export controls under the AECA. In general, the ITAR prohibits the export of items on the Munitions List and the technical data associated with these items unless 1) an exception listed in the ITAR applies, or 2) an "export license" is obtained from the State Department. If the U.S. Army wants to export controlled technical data, then the U.S. Army would, in theory, need to obtain the export license. So, if I have a solicitation that includes technical data and a foreign source wants a copy, then I need to check the ITAR to see if the technical data is associated with an item or class of items identified on the Munitions List and, if so, if an exception applies or if I need to get an export license from the State Department before I can provide the solicitation to the foreign source. Wow, now that is a much broader impact than I ever imagined.

So then I wondered, what happens if I give the solicitation to a U.S. source that then gives it to a foreign affiliate/subsidiary? Fortunately for me, the answer was that if a U.S. firm wants to export technical data to its foreign affiliate/subsidiary, then the U.S. firm would need to obtain the export license. Just to make sure there were no other surprises, I asked the obvious question: could I give the solicitation with the technical data to a U.S. firm? The answer was yes, if the U.S. Government is providing technical data to a U.S. firm, then no export license is needed. That was welcome news.

The bottom line of this story is that I learned more than I expected and am now better prepared to help requiring organizations more effectively navigate the path leading to contract award. Knowing up front when I need to get permission from the State Department to release technical data will enable me to act in a timely manner and, thereby, minimize delays in the acquisition. Most importantly, I will be able to ensure I am compliant with the AECA and will be protecting our National Security interests by ensuring that technical data is only shared with foreign sources when appropriate.

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