
Global Project Authorization

The Department of Defense (DoD) often enters into international agreements with a foreign Ministry of Defense (MOD) to carry out cooperative programs for the research, development, production, test, and evaluation of defense systems, subsystems, or technologies. These programs are governed by agreements (typically MOUs) that, among other things, describe the program objectives, what work will be performed, by whom, and how, and other terms and conditions covering security, financial, intellectual property, and other matters.

Private entities frequently conduct multiple transactions in furtherance of a particular program. Exporters working in support of these agreements are subject to Arms Export Controls and ITAR regulations. As such, entities engaged in transferring defense articles or technical data, or performing defense services in support of a cooperative program with foreign entities must seek an authorization from the USG to conduct those activities. License applications are submitted to State and referred to DoD for review. DoD reviews the licenses individually to ensure that the proposed activities are consistent with the MOU and with DoD technology security guidelines, and then DoD provides a position to State. Substantive changes to the licenses are usually again referred to DoD for review.

License applicants can find themselves dealing with multiple government entities on a repeated basis over the life of the program. Repetitively reviewing the many transactions supportive to these agreements (and already deemed in the interest of the government) may impose unnecessary burdens on exporters and result in programs delays. Recognizing this the departments of State and Defense have now established streamlined procedures. The new procedures should dramatically reduce the number of times that exporters must seek government authorizations to perform activities in furtherance of these agreements. It is also expected that streamlined procedures will reduce the cycle time for authorizations that must be obtained by exporters to participate in such programs by better utilizing baseline program guidance established as part of the MOU process.

After the MOU is concluded, DoD will prepare a set of standard terms and conditions that will apply to all phases and activities identified in the MOU. The standard terms and conditions will be informed by the MOU, the various program guidance documents (e.g., technology assessment/control plan, delegation of disclosure letter, etc.) and will be organized into various categories by program phase (i.e., research, development, production, etc.) and by system/subsystem (i.e., airframe, engines, avionics, etc.). The standard terms and conditions will be

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provided to State and to all U.S. private entities identified by DoD as participating in the program. Of course, there may be limitations on the provision of certain terms and conditions to all parties depending on whether they contain proprietary information (e.g., one team adopts a technical solution with various conditions that reveal proprietary information that should be restricted from another team competing on the same project but with a different technical approach)

U.S. program participants then decide the best approach for obtaining initial authorization to transfer articles or technical data, or perform defense services in support of the program with foreign participants. This may involve multiple license forms (DSP-5, TAAs, etc.), but they would be submitted in one package. The initial authorization package would be referred to DoD for review to apply the appropriate conditions that apply from the standard terms and conditions developed for the program.

Alternatively, a Global Project License or one broad authorization approved for a government to government program where the government "draws the box" and defines the parameters of the license could be used. The terms and conditions of the license would be published/made available for any company within the parameters of the government program to use the authorization when he/she exports in support of the project. Use of this mechanism or of individual licenses as described previously will be the choice of the individual exporter.

Streamlining of the process at this stage occurs because: (1) the U.S. program participant will have tailored his authorization request to be consistent with the standard terms and conditions, and (2) DoD/State will be able to provide faster review.

Once this initial authorization is received, the program participant need only seek additional authorizations to cover: (1) modifications in the scope of the activity that exceeds the standard terms and conditions, and/or (2) the addition of end-users or participants not originally on the initial authorization.

In the former case, the request would be treated as a separate authorization that would be reviewed by DoD under normal license review processes. Presumably, this would not occur very often because the program will be modifying the standard terms and conditions to address scope changes necessary to meet program objectives.

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In the latter case, State would not necessarily need to refer the authorization to DoD to add end-users or to permit the company to participate in additional activities governed by the established standard terms and conditions. In any case, if such a referral to DoD were necessary, DoD's review would be expedited because the activity would be consistent with the established standard terms and conditions.

Companies that are eligible to participate are typically those that are selected by DoD or the MOD, and meet standard administrative requirements under the ITAR (e.g., registration, etc.).

Authorizations can cover a broad range of activities in support of the program including multiple shipments of defense articles and technical data, and performance of defense services for extended periods with approved end-users. Exports and re-exports to and among the approved end-users would require no further authorization by the licensing authorities of the governments. Authorizations would be valid for the life of the MOU.

Congressional notification requirements would be triggered as in regular licensing situations. Companies would be required to keep electronic records of all defense articles, services and technical data exported. These electronic records would be subject to review by DTC and/or DoD.