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***ITAR Exemption for FMS Defense Services***

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**Goal:** To facilitate the export of defense services that were sold pursuant to the USG Foreign Military Sales (FMS) program.

**Discussion:** The ITAR (Section 126.6) provides an exemption for exports made pursuant to FMS cases (Letters of Offer and Acceptance or LOAs). In 1997, however, State, upon learning that some exporters had been misusing the exemption by exporting defense services after there was no FMS LOA in effect, decided to require an export license for same.

This approach required companies having to send Technical Assistance Agreements (TAAs) describing the defense services to foreign governments for signature. The contractors would then submit the signed TAAs to State for the required export licenses in order to perform the defense services for which the companies were under US Government contract pursuant to the LOA with the foreign government.

Issue: Often the foreign customer objected to signing the TAA since the customer already had an agreement with the USG through the LOA to provide the defense services. The customers refusal:

- put the US embassy in-country teams in the difficult position of defending the need for the customer to sign the TAA
- put the contractors in the difficult situation of executing their USG contracts while not being compliant with US export laws/regulations

**Solution:** State and DoD have developed clarifying language (to be promulgated) for ITAR 126.6 that will make clear when the FMS exemption is available for exports of defense services. The exemption will apply to both prime contractors and their subcontractors.

Accordingly, a license from the Office of Defense Trade Controls (ODTC) will not be required if the defense service to be transferred was sold pursuant to the FMS Program pursuant to an LOA provided the transfers take place only during the period which the FMS LOA and implementing USG FMS contracts and subcontracts are in effect and services to be transferred are specifically identified in the LOA.