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

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**Background:** To facilitate the export of defense services' that are sold pursuant to the USG Foreign Military Sales (FMS) program, State and DoD have developed clarifying language for ITAR 126.6 exempting the need for an export license from the Department of State's Office of Defense Trade Controls (ODTC).

**Q. Does not Section 126.6 already provide an exemption for exports made pursuant to FMS cases (Letters of Offer and Acceptance or LOAs)?**

A. The ITAR (Section 126.6) does provide 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, even if they were being performed pursuant to an FMS LOA where the services had been sold by the US government to the foreign government.

**Q. What are the specific requirements for a contractor to use exemption?**

A. The main requirements are that there exists a contract or subcontract between the US company responsible for providing the defense service and the USG that 1) specifically defines the scope of the defense service to be transferred, 2) identifies the FMS case identifier, 3) identifies the foreign recipients of the defense service, 4) identifies any other US or foreign parties which may be involved, and 5) provides a specific period of duration in which the defense service may be performed.

**Q. Why should the foreign customer care about such a change to US export regulations? After all, licensing requirements are the contractor's problem.**

A. The customer has already signed an agreement with the USG through the LOA to provide the defense services. The current process of requiring the export license is over and above the LOA. It has the customer signing a technical assistance agreement (TAA) with the US contractor for the same defense services purchased via the LOA. This change eliminates the need for signing the TAA and hence agreeing a second time to security and other information protection provisions already in the LOA.

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**Q. Contractors already pay the USG a registry fee which covers the processing of export licenses, regardless of the number of times the contractor applies for a license. Why should contractors care about such an exemption?**

A. For several reasons. First, the less paper the contractor has to process, the lower the contractor's overhead. Second, often the foreign customer refused to sign the TAA since the customer already had an agreement with the USG through the LOA to provide the defense services. This scenario put the contractor in the difficult situation of executing the USG contract while not being compliant with US export laws/regulations. The exemption avoids this quandary.

**Q. What is in this for the US Government?**

A. Consistency! First, USG LOAs are for the export of defense articles, data, and defense services. The current interpretation of the ITAR already exempts a US contractor from the need to obtain a license to export defense articles and data. It is only masonable that defense services be treated in the same fashion. Second, it takes heat off the US embassy in-country teams. 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 customer's refusal put the in-country teams in the difficult position of defending the need for the customer to sign the TAA. Third, the exemption will avoid the potential situation of provisos on the export license which may not be consistent with the services being provided under the LOA.

**Q. Since the a company is under contract tothe USG pursuant to the LOA, will this exemption extend to the company's subcontractors who are performing defense services whose genesis is ultimately the contract with the USG and the LOA?**

A. Yes, as long as the subcontractor is registered with the Office of Defense Trade Controls (ODTC) and as long as the defense services are being transferred during the period in which the FMS LOA and implementing contracts and subcontracts are in effect. These documents will serve as authorization for the transfers in lieu of the license.