



DEPARTMENT OF THE AIR FORCE

HQ WARNER ROBINS AIR LOGISTICS CENTER (AFMC)
ROBINS AIR FORCE BASE GEORGIA

20 OCT 1999

MEMORANDUM FOR SEE DISTRIBUTION

FROM: WR-ALC/PKP

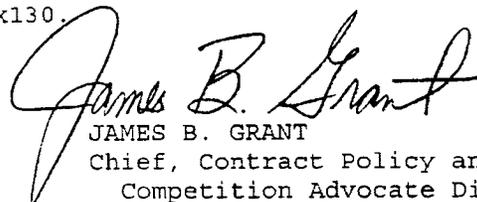
SUBJECT: International Agreement Competitive Restrictions (IACR)

1. DFARS 206.302-4 no longer requires approval for IACRs; however, the documentation of what constitutes sole source designation for restricting competition under statutory authority 10 U.S.C. 2304 (c)(4), FAR 6.302-4, remains unchanged. Questions continue to be raised on the proper documentation of IACRs. WR-ALC/JA has determined that in accordance with DOD 5105.38-M, Security Assistance Management Manual (SAMM), as interpreted by the Air Force General Counsel, International Division, a foreign country's written direction designating a sole source of supply or service must be contained in that country's Letter of Offer and Acceptance (LOA), or in an amendment to the LOA. The basis for this opinion is derived from the following two provisions of the SAMM:

- a. Paragraph 80102.B, "Sole Source Designation" (Atch 1), and
- b. Table 701-1, "Letter of Offer and Acceptance Standard Terms and Conditions," paragraph 1.2 (Atch 2).

2. The Contracting Officer should document the file with the LOA provision identifying the requirement and the sole source from whom to buy it. For your convenience, an IACR template is on the WR-ALC/PK Home Page at <http://contracting.robins.af.mil/crdocs/crdocs.htm> to assist you in documenting the contract file.

3. This is a coordinated JAN/PKP memorandum. Point of contact for IACR questions is Margie Stanley/WR-ALC/PKPF, 6-6725, and for LOA questions is Brad Adams, WR-ALC/JAN, 6-3961x130.


JAMES B. GRANT
Chief, Contract Policy and
Competition Advocate Division
Directorate of Contracting

Attachments:

1. Paragraph 80102.B
2. Table 701-1, Paragraph 1.2
3. IACR Document

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contractors shall implement FMS requirements using normal procurement and contract management procedures as set forth in the FAR, other directives and pertinent contractual provisions. Representatives of the FMS Purchaser shall not be permitted to review bidders' mailing lists or slates of proposed architect engineer firms, nor shall they be permitted to direct the deletion of names of firms from such lists or slates. They may, however, suggest that certain firms be included. The defense components should fully control the procurement and contracting process and contractual provisions. Representatives of the FMS Purchaser will not normally participate in contract negotiations. The defense components shall not accept directions from the FMS Purchaser as to source selection decisions or contract terms (other than the special contract provisions and warranties referred to in condition 6.1), nor shall the Purchaser be permitted to interfere with a prime contractor's placement of his subcontracts. However, to the extent permitted above, and as shown in condition 1.2 of the LOA, IAs may honor a Purchaser's request for the designation of particular prime or subcontract sources. Requests by the Purchaser for rejection of any bid or proposal shall not be honored unless such rejection is justified on the basis of reasons which would be sufficient in the case of a procurement made by DoD to meet its own needs.

80102 -- FMS Customer Requests for Specific Source.

A. **DoD Policy.** DoD policy provides that procurements made for FMS will comply with U.S. government acquisition regulations and procedures. When procurement is required to meet an FMS requirement for defense articles and/or services, to the maximum extent possible, the competitive procurement process will be utilized. Authority for sole source procurement can be considered when the purchasing country makes a specific written request and provides sufficient rationale for obviating the benefits of the competitive process.

B. **Sole Source Designation.** As described in Defense FAR Supplement 225.7304, the FMS purchaser may request that a defense article or defense service be obtained from a particular source. In such cases, FAR 6.302-4 provides authority for the U.S. government to contract on a sole source basis. The purchaser request should be contained in a letter of request for an LOA or an amendment to an existing LOA. The request for sole source must also provide the basis and justification for the sole source and may be for a prime and/or sub-contractor source. Sole source procurement designations under accepted FMS LOAs will be submitted by the DoD component security assistance director to the applicable contracting activity in order to exercise the FAR authority.

1. **Foreign Purchaser Request.** Foreign purchaser sole source requests may be honored (See Defense FAR Supplement 225.7304) only when the sole source designation is based upon the objective needs of the FMS purchaser as stated by the purchaser and DoD component security assistance director approval is obtained. Accordingly, a letter requesting a specific item(s) and/or service(s) from a specifically identified firm or other supplier must be addressed by an authorized official of the purchasing government through the chief of the security assistance organization (SAO) in country, or by the Defense Attache or comparable official of the purchasing government in the United States, to the DoD component security assistance director whose component has procurement cognizance for the required item/service. If from an overseas activity of the purchasing government, this written request should be submitted via the SAO in country. The letter must provide the basis and justification for a sole source request. To the maximum extent possible submission through the SAO is preferred. The request shall not be honored in any case of patently arbitrary, capricious or discriminatory exclusion of other sources. The number or frequency of sole source requests should be kept to the absolute minimum; however, there may be situations where for programmatic reasons sole source procurement is necessary and justifiable. Situations where sole source procurement may be justifiable could include, but are not limited to, the following situations:

- a. When one of the numerous suppliers can deliver faster and the situation is urgent enough to forego the benefits of the competitive process.
- b. When the procurement of a non-standard item which is out of the DoD buying pattern has been approved because of a country request and a specific source has been

identified by the country; i.e., obsolete items no longer supportable by DoD. This could occur in countries with predominantly MAP merger funded programs since MAP merger funds can be utilized only for FMS programs; therefore, such a purchasing country may not have the capability of buying on a direct basis.

c. When the country has an established history of procurement for articles or services from a particular prime source and to change would adversely affect an ongoing program. For example, this would include an ongoing maintenance program wherein a particular prime contractor is providing technical assistance or other services under established agreements.

d. When the designated source has won the foreign purchaser's own source selection competition. A copy of the country's request for proposal, invitation for bid, or request for tender; a description of the method used to advertise the requirement and any restrictions placed thereon; and a narrative summary of the country's source selection criteria and method of evaluation should be included with the single source request. If price is not the sole selection criteria, the country must identify the weight that was given to each criterion.

e. When the country has established a history of procurement for articles or services from a particular prime source and needs to continue procurement from that source to continue standardization of equipment with consequent benefits of logistics support. This could include spares for support equipment or other single vendor integrity (SVI) subcontracted items.

2. **Disapprovals.** Proposed DoD component disapprovals of sole source requests will be coordinated with DSCA Operations.

3. **SAO Responsibilities.** When possible, the SAO in country will review specific country requests, advise the country of any necessary changes, and subsequently forward the request with any necessary comments and/or recommendations to the appropriate DoD component security assistance director for approval. The original copy of the request must be forwarded. Advance copies, in message format, must be quoted in their entirety, including the date and the signature block when they are forwarded to the DoD component for approval. The original request, if approved, will be retained in the contract file.

4. **Subcontractor Sole Source Designation.** The FMS purchaser may also request that a sole source subcontract be placed with a particular U.S. firm. The DoD contracting officer will honor such a request for subcontractor placement on the same basis as indicated above for prime sources. It should be noted that the designation of subcontractors carries a risk which should be brought to the attention of the FMS purchaser. In the event that problems in the performance or integration of the component are experienced and are attributable to its characteristics, the specifications may be held to be defective in that respect and any increased costs incurred by the prime contractor in correcting or attempting to correct the problem may be recovered by the prime contractor. Since by law such additional costs must be borne by the FMS purchaser, the purchaser should be advised of this potential expense at the time the sole source designation is requested.

5. **Out of Channels Requests.** Request for sole source procurement received outside of the channels outlined in sub-paragraph 2.a. above must be forwarded to the applicable DoD component security assistance director for appropriate action. The original of the request must be forwarded. When a sole source request is forwarded in message format, the entire text of the country request, including the date and the signature block, must be quoted.

6. **Coordination with Contracting Officers.** When possible, the sole source request should be processed to the potential contracting officer for information and advice during the P&A process. The contracting officer will be provided a copy of the accepted LOA containing the sole source designation. This is especially important when the contracting activity is separate from the activity responsible for the LOA, e.g., LOAs prepared by a MILDEP which contain items which will be procured by the Defense Logistics Agency.

C. Timing of Sole Source Requests. To avoid the additional delay and workload involved in revision of an LOA, requests for sole source procurement should be made when the request for preparation of the LOA for defense articles or defense services is transmitted to the U.S. government. However, if a request can be honored without excessive delay or undue disruption of

1.1 Unless otherwise specified, items will be those which are standard to the US Department of Defense (DoD), without regard to make or model.

1.2 The USG will furnish the items from its stocks and resources, or will procure them under terms and conditions consistent with DoD regulations and procedures. When procuring for the Purchaser, DoD will, in general, employ the same contract clauses, the same contract administration, and the same quality and audit inspection procedures as would be used in procuring for itself, except as otherwise requested by the Purchaser and as agreed to by DoD and set forth in this LOA. Unless the Purchaser has requested, in writing, that a sole source contractor be designated, and this LOA reflects acceptance of such designation by DoD, the Purchaser understands that selection of the contractor source to fill requirements is the responsibility of the USG, which will select the contractor on the same basis used to select contractors for USG requirements. Further, the Purchaser agrees that the US DoD is solely responsible for negotiating the terms and conditions of contracts necessary to fulfill the requirements in this LOA.

1.3 The USG will use its best efforts to provide the items for the dollar amount and within the availability cited.

1.4 Under unusual and compelling circumstances, when the national interest of the US requires, the USG reserves the right to cancel or suspend all or part of this LOA at any time prior to the delivery of defense articles or performance of defense services. The USG shall be responsible for termination costs of its suppliers resulting from cancellation or suspension under this section. Termination by the USG of its contracts with its suppliers, other actions pertaining to such contracts, or cessation of deliveries or performance of defense services is not to be construed as cancellation or suspension of this LOA itself under this section.

1.5 US personnel performing defense services under this LOA will not perform duties of a combatant nature, including duties relating to training and advising that may engage US personnel in combat activities outside the US, in connection with the performance of these defense services.

1.6 The assignment or employment of US personnel for the performance of this LOA by the USG will not take into account race, religion, national origin, or sex.

1.7 Unless otherwise specified, this LOA may be made available for public inspection consistent with the national security of the United States.

2 -- Conditions -- General Purchaser Agreements

2.1 The Purchaser may cancel this LOA or delete items at any time prior to delivery of defense articles or performance of defense services. The Purchaser is responsible for all costs resulting from cancellation under this section.

2.2 The Purchaser agrees, except as may otherwise be mutually agreed in writing, to use the defense articles sold hereunder only:

2.2.1 For purposes specified in any Mutual Defense Assistance Agreement between the USG and the Purchaser;

2.2.2 For purposes specified in any bilateral or regional defense treaty to which the USG and the Purchaser are both parties, if section 2.2.1 is inapplicable; or,

2.2.3 For internal security, individual self-defense, or civic action, if sections 2.2.1 and 2.2.2 are inapplicable.

2.3 The Purchaser will not transfer title to, or possession of, the defense articles, components and associated support material, related training or other defense services (including plans, specifications, or information), or technology furnished under this LOA to anyone who is not an officer, employee, or

**INTERNATIONAL AGREEMENT COMPETITIVE RESTRICTIONS
(IACR)**

PR NUMBER:

I. ORGANIZATION: WR-ALC/_____
Robins AFB GA 31098-_____

PCO: (Name/Off Sym/Phone)

II. DESCRIPTION OF REQUIREMENT: (Narrative description to include estimated cost).

III. NATURE/DESCRIPTION OF THE ACTION: (Include contract type, period of performance, cost and schedule, and rationale).

IV. STATUTORY AUTHORITY: 10 USC 2304(c)(4) as implemented by FAR 6.304-4, International Agreement

V. APPLICABILITY OF AUTHORITY:

The cited authority is applicable because _____ (LOA, Treaty, Amended LOA, etc) dated _____ directed that the requirement be obtained from _____. A copy of the page(s) of the LOA, etc that has the effect of restricting competition is attached hereto.

VI. CONTRACTING OFFICER AND TECHNICAL/REQUIREMENTS PERSONNEL CERTIFICATION: The Contracting Officer's signature evidences that he/she has determined the IACR to be both accurate and complete to the best of his/her knowledge and belief. The Program Manager's/requirements personnel's signature evidences that any supporting data contained in the IACR, which is his/her responsibility, is both accurate and complete.

Technical Representative

Preparer, if other than PCO

Procuring Contracting Officer