



June 25, 2002

Defense Acquisition Regulations Council
Attn: Ms. Amy Williams
OUSD (AT&L) DP (DAR)
IMD 3C132, 3062 Defense Pentagon
Washington, DC 20301-3062

Dear Ms. Williams:

The Aerospace Industries Association appreciates the opportunity to provide comments on the proposed rule on Foreign Military Sales Customer Involvement (DFARS Case 2002-D005). AIA was actively involved with the Defense Security Cooperation Agency in a working group that discussed the improvement of the LOA process. As one of the initiatives to improve this process, the government developed the policy contained in the Deputy Secretary of Defense Memorandum of January 9, 2002 upon which this proposed rule is based. Because of this, we are very disappointed that the proposed DFARS language, while generally consistent with that memorandum, deletes a significant provision of the policy.

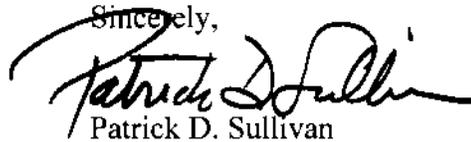
We are very concerned that the language proposed for DFARS 225.7304 omits the phrase, "after consultation with the contractor," at the end of the first sentence. This is inconsistent with paragraph 4 of the Deputy Secretary's January 9, 2002 memorandum which includes the language, "The degree of participation of the FMS customer during contract formation is left to the discretion of the contracting officer **after consultation with the contractor.**" (Emphasis added). This is a critical requirement and must not be eliminated from the DFARS coverage. It provides the contractor a voice in the process and provides the contracting officer with the tools to make a more informed decision. Eliminating the language from the DFARS represents a significant departure from the Deputy Secretary's policy.

Secondly, in paragraph (f) the statement on adding special contract provisions, warranties, or other unique requirements should be deleted since (b) 3 already gives the FMS customer the opportunity to address unique requirements at the time of the LOA. As drafted, it appears to encourage untimely modification of the stated requirements for one may conclude that unique terms and conditions should be addressed in both the development of the requirements and at the time of the negotiation of the contract. This could lead to the need for repricing and delay in meeting the customer's award date.

Finally, in 225.7304 (h) the word "sufficient" needs to be deleted. This term is indefinable in the sense that it is virtually impossible to objectively determine what is "sufficient" information. Where do you draw the line? How much is enough? Inclusion of this term will lead to unnecessary and costly exchanges, as well as delay, between the customer and the government and its contractor. There is no objection to providing information to the customer for its use in justifying the procurement but opening this to an undefined and limitless requirement can only have adverse consequences.

Thank you for this opportunity to provide our comments on this very important rule. I have attached a line-in-line-out version of the text for your use. If there are any questions I can be reached at (202) 371-8522.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick D. Sullivan". The signature is fluid and cursive, with a large initial "P" and "S".

Patrick D. Sullivan
Assistant Vice President
Procurement and Finance

PART 225--FOREIGN ACQUISITION

2. Section 225.7304 is revised to read as follows:

225.7304 FMS customer involvement.

(a) FMS customers may request that a defense article or defense service be obtained from a particular contractor. In such cases, FAR 6.302-4 provides authority to contract without full and open competition. The FMS customer may also request that a subcontract be placed with a particular firm. The contracting officer shall honor such requests from the FMS customer only if the LOA or other written direction sufficiently fulfills the requirements of FAR subpart 6.3.

(b) FMS customers may participate with U.S. Government acquisition personnel in discussions with industry to--

(1) Develop technical specifications;
(2) Establish delivery schedules;
(3) Identify any special warranty provisions or other requirements unique to the FMS customer; and

(4) Review prices of varying alternatives, quantities, and options needed to make price-performance tradeoffs.

(c) Do not disclose to the FMS customer any data, including cost or pricing data, that is contractor proprietary, except in limited circumstances where the contractor authorizes release of specific data.

(d) Except as provided in paragraph (c)(3) of this section, the degree of FMS customer participation in contract negotiations is left, after consultation with the contractor, to the discretion of the contracting officer. Factors that may limit FMS customer participation include situations where--

(1) The contract includes requirements for more than one FMS customer;

(2) The contract includes unique U.S. requirements; or
(3) Contractor proprietary data is a subject of negotiations.

(e) Do not allow representatives of the FMS customer to--
(1) Direct the exclusion of certain firms from the solicitation process (They may suggest the inclusion of certain firms);

(2) Interfere with a contractor's placement of subcontracts; or
(3) Observe or participate in negotiations between the U.S. Government and the contractor involving cost or pricing data, unless a deviation is granted in accordance with subpart 201.4.

(f) Do not accept directions from the FMS customer on source selection decisions or contract terms.

(g) Do not honor any requests by the FMS customer to reject any bid or proposal.

(h) If an FMS customer requests additional information concerning FMS contract prices, the contracting officer shall, after consultation with the contractor, provide information to demonstrate the reasonableness of the price and reasonable responses to relevant questions concerning contract price. This information--

(1) May include tailored responses, top-level pricing summaries, historical prices, or an explanation of any significant differences between the actual contract price and the estimated contract price included in the initial LOA; and

(2) May be provided orally, in writing, or by any other method acceptable to the contracting officer.

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Deleted: except that, upon timely notice, 1 the contracting officer may attempt to obtain any special contract 1 provisions, warranties, or other unique requirements requested by the 1 FMS customer).

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