
When to Call a Lawyer: Bid Protests and International Government Sales

David Goodwin
Of Counsel

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Types of Bid Protests

- Pre-Award (Solicitation Protest)
 - Examples:
 - Unduly restrictive specifications or criteria
 - Improper exclusion from bidding
 - Ambiguities
 - When:
 - Must be filed before deadline for proposals
 - Pre-Award Issues are waived if not protested.
- Post-Award (Selection Protest)
 - Challenging the selected awardee or exclusion
 - When:
 - Depends on where brought, generally within 10 days of the award decision
 - Debriefings only extend this period under certain circumstances



Where to Bring A Bid Protest

- Agency
 - Least formal
 - If timely filed stays award or performance
- GAO
 - Less formal than COFC
 - Timely filed protest obtains CICA stay and requires decision within 100 days
- Court of Federal Claims
 - Full formality of court proceedings
 - Must pursue an injunction to block performance
 - Assuming certain factors, can be brought after a GAO or Agency Protest
 - Can be appealed to the Federal Circuit

GAO Bid Protest Timeline

Timeline of Bid Protest Process



Why use an attorney for a bid protest?

- Signals seriousness
- Differentiate enforceable legal arguments from general unfairness/frustration
- Strategize on best approach
- Outside counsel can be admitted to a protective order
- Minimize pitfalls from filing deadlines

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When to hire an attorney for a bid protest.

Now...

In all seriousness, some considerations

- Limited Time is one of the most difficult factors in bid protests
 - Get ahead by finding a bid protest attorney even before you have the immediate need
- Use the opportunity to teach your attorney about your business
- Ensure your baseline compliance.

Categories of International Government Contracts

- U.S. Foreign Military Sales (FMS) and Foreign Military Financing (FMF)
- Direct Sales to Foreign Governments
- Direct Sales to International Organizations
- Distributors Based in the US
- Non-US Based Distributors

Categories of International Government Contracts

(Continued)

Foreign Military Sales (FMS)

and

Foreign Military Financing (FMF)

- Has the feel and regulatory burden of a regular procurement by and for the U.S. Military.
- DoD manages the procurement for a foreign government end customer
- Complex and expansive rules on commissions

Foreign Military Sales (FMS)



 [Printer Friendly Version](#)

Purpose:

The Foreign Military Sales (FMS) program is a form of security assistance authorized by the Arms Export Control Act (AECA), as amended [22 U.S.C. 2751, et. seq.] and a fundamental tool of U.S. foreign policy.

Under Section 3, of the AECA, the U.S. may sell defense articles and services to foreign countries and international organizations when the President formally finds that to do so will strengthen the security of the U.S. and promote world peace.

Under FMS, the U.S. Government and a foreign government enter into a government-to-government agreement called a Letter of Offer and Acceptance (LOA).

Who:

Secretary of State determines which countries will have programs. Secretary of Defense executes the program.

Funding:

May be funded by country national funds or U.S. Government funds.

Foreign Military Financing (FMF)



 [Printer Friendly Version](#)

Purpose:

The Arms Export Control Act (AECA), as amended [22 U.S.C. 2751, et. seq.], authorizes the President to finance procurement of defense articles and services for foreign countries and international organizations.

FMF enables eligible partner nations to purchase U.S. defense articles, services, and training through either FMS or, for a limited number of countries, through the [foreign military financing of direct commercial contracts \(FMF/DCC\) program](#) (Also DCC Guidelines).

Who:

Secretary of State determines which countries will have programs. Secretary of Defense executes the program.

Funding:

FMF is a source of financing and may be provided to a partner nation on either a grant (non-repayable) or direct loan basis.

Direct Sales to Foreign Governments

United Nations

<https://www.un.org/Depts/ptd/welcome-united-nations-procurement-division-unpd>



The screenshot shows the UNPD website homepage. At the top left is the UN logo and the text "Procurement Division". To the right is a search bar. Below this is a navigation menu with items: HOME, VENDORS, BUSINESS OPPORTUNITIES, AWARDS, STATISTICS, and ABOUT US. The main content area features a large banner with a photo of two people and the text: "Business Seminars: learn more about business opportunities with the UN. The main objective of the business seminar programme is to inform potential vendors and trade entities including the Chamber of Commerce about the work of UN/PD. The seminars also provide... Read more". To the right of the banner are three smaller news items: "2016 Conference of the Chief Procurement Officers (CPOs)", "UNPD launches new Mobile App for Apple smart phones and tablets", and "Business Seminars: learn more about business opportunities with the UN". Below the banner is a "Welcome to the United Nations Procurement Division (UNPD)" section with a paragraph of text. To the right is a "Latest Bulletins" section with two items: "16 Jun 16 - Update of the UN's Aircraft Flight Following Standards" and "16 Nov 15 - Attention: Air Cargo, Air Freight and Multimodal (Sea/Surface)..."

Direct Sales to Foreign Governments

(Continued)

NATO

- NATO Logistics Stock Exchange (NLSE):
<http://www.nspa.nato.int/en/organization/logistics/LogServ/nlse.htm>
- NLSE is the GSA of NATO and NATO Member Countries

Direct Sales to Foreign Governments (Continued)

The screenshot displays the website for the NATO Support and Procurement Agency (NSPA). The header includes the NATO logo and the NSPA logo. The main navigation menu contains: Organization, Newsroom, Employment, Business with NSPA, Links, Contact, and Français. A breadcrumb trail shows: Homepage > Organization > Logistics Operations > Logistics Services > NATO Logistics Stock Exchange (NLSE).

NATO Logistics Stock Exchange (NLSE)

The NATO Logistics Stock Exchange (NLSE) is a set of tools developed by NSPA to assist customers and suppliers in putting into practice cooperative logistics concepts for item acquisition and management. These tools allow customers to arrange for the exchange of excess spare parts and to manage commonly held stocks. In addition, the NLSE allows industry to provide sales catalogues of spare parts and to submit bids with a view to supplying specific items that customers require.

The NLSE information system platform consists of a set of databases and a web-based interface. The databases contain, amongst other things, logistics information about parts, information on customers' stockholdings and present and future requirements, as well as details of commercial suppliers and what they can offer. The web interface provides an easy way for customers and suppliers to access and exchange information in a secure, controlled manner.

Customers wishing to use the NLSE directly must subscribe to the provisions of the COMMIT (Common Item Management) Partnership Agreement – which establishes the legal framework necessary for the management of common stocks and prescribes the rules for asset redistribution. This agreement has the same legal basis as a WSP agreement.

Firms wishing to submit bids through the NLSE must [register](#) in the system.

SYSTEM FUNCTIONS

The main functions currently provided by the NLSE information system are:

- ▶ reporting and exchanging excess assets
- ▶ reporting of armed forces' inventories, to improve stock management
- ▶ asset pooling, to permit common stock management (see "Virtual Stock Management" insert)
- ▶ processing of NATO-wide Mutual Emergency Support requests
- ▶ financial settlement of all transactions

For further information please contact : lb@nspa.nato.int

VIRTUAL STOCK MANAGEMENT

The virtual stock management concept is one of the cornerstones of the NLSE, offering a means of reducing stockholdings in individual nations by managing the overall stock in common.

In a nutshell, it operates as follows:

- ▶ NSPA customer nations select a range of items which they wish to manage jointly and enter the relevant data in the NLSE databases;
- ▶ based upon reported demand history, the system computes the minimum stockage levels that need to be held by each customer while maintaining the overall required level and tracking stock locations.

This allows users to lower their individual stockholdings while offering them access to a much larger stock, distributed over various locations in different nations. Because the total stock is managed through the NLSE database, it is called a *virtual stock*.

[Connect to the NLSE](#)

Weapon Systems & Equipment Support

Logistics Services

- Supply management and automation
- Maintenance, repair, engineering and calibration
- Naval Logistics Support
- Random Brokerage
- NATO Logistics Stock Exchange (NLSE)
- General Procurement Shared Services (GPSS)
- Demilitarization, Dismantling, and Disposal
- NATO Trust Fund projects
- Environmental Protection and Energy Efficiency Services
- Logistics Data Management
- Central Software Management (CSWM)

Logistic Support to Operations

NLSE 4G
Ordering Process

Management System
ISO 9001:2015
www.tuv.com
ID: 9110009071

Distributors Based in the US

- Pro: US Law
- Con: More potential for diversion of product

Non-US Based Distributors

- Pro: Local presence and contacts.
- Con: Non-US law

Compliance Considerations

- *Anti-Corruption/Anti-Bribery*
- *Export Controls*
- *Anti-Boycott*
- *Office of Foreign Assets Control (OFAC) Sanctions*

Compliance Considerations

Anti-Corruption/Anti-Bribery Compliance

- US Foreign Corrupt Practices Act (FCPA)
 - Focuses on conduct relating to Government Officials
 - Includes government owned or controlled companies
- UK Bribery Act (UKBA)
 - Focuses on governmental and commercial bribery and improper payments
 - Applies corporate liability for actions of agents and employees, but also provides a mechanism for a defense of a robust anti-corruption program
- Third Party Intermediaries
- Politically Exposed Persons (PPEs)

Compliance Considerations

Export Controls

Responsible Agency	BIS (Bureau of Industry & Security)	DDTC (Directorate of Defense Trade Controls)
Primary Regulations	EAR (Export Administration Regulations)	ITAR (international Traffic in Arms Regulations)
Parent Department	Commerce Department	State Department
Classification List	Commerce Control List (CCL) Export Control Classification Number (ECCN)	US Munitions List (USML) USML Category
Lineage of Items	Dual Use Scientific and Other Equipment	Military and Intelligence
Require a License for Export	It Depends	Yes (Virtually Always)

Compliance Considerations

(Continued)

Anti-Boycott Compliance

- BIS and IRS each regulate different aspects
- IRS Boycotting Countries List: Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Yemen
- Additional BIS Noted Countries: Bahrain, Bangladesh, and Oman
 - BIS does not publish a formal list per se
- Some companies have also experienced prohibited boycotting behavior in transactions relating to Malaysia

BIS Anti-Boycott

The screenshot shows the Bureau of Industry and Security (BIS) website. The header includes the BIS logo, the text "Bureau of Industry and Security, U.S. Department of Commerce, Where Industry and Security Intersect", and a search bar. A navigation menu contains links for Home, About BIS, Regulations, Licensing, Enforcement, Compliance & Training, Policy Guidance, Add'l Programs, Reform, and Data. The main content area is titled "Enforcement" and features a sidebar with "Important OAC Links" and a central section for the "Office of Antiboycott Compliance (OAC)". The OAC section includes a description of the Bureau's role, a "Boycott Alert", "Antiboycott Compliance Requirements", and "Antiboycott Laws". A right sidebar titled "Other Resources" lists various links and guidelines.

Enforcement

- Enforcement
- Office of Antiboycott Compliance
- Office of Enforcement Analysis
- Office of Export Enforcement
- Enforcement Field Offices "Map"

Important OAC Links

- BIS Online Antiboycott Video Training
- Boycott Request Reporting Forms
- Examples of Recent Boycott-Related Requests
- Antiboycott Warning Letters
- Alleged Antiboycott Violations
- Antiboycott Advice Line:
Phone: (202) 482-2381
Fax: (202) 482-0913
or by Email

Office of Antiboycott Compliance (OAC)

The Bureau is charged with administering and enforcing the Antiboycott Laws under the Export Administration Act. Those laws discourage, and in some circumstances, prohibit U.S. companies from furthering or supporting the boycott of Israel sponsored by the Arab League, and certain other countries, including complying with certain requests for information designed to verify compliance with the boycott. Compliance with such requests may be prohibited by the Export Administration Regulations (EAR) and may be reportable to the Bureau.

Boycott Alert

U.S. companies continue to report receiving requests to engage in activities that further or support the boycott of Israel. U.S. companies may receive similar requests in the future. If you have questions, please call (202) 482-2381 and ask for the Duty Officer or you may contact us by email.

Antiboycott Compliance Requirements

Antiboycott Laws, Objectives, and Primary Impact
Who is covered by the Antiboycott Laws?
What actions the laws prohibit?
What must be reported to the Office of Antiboycott Compliance?
How to report?
Penalties for violations of the laws?
Where to get more information?

Antiboycott Laws:

During the mid-1970's the United States adopted two laws that seek to counteract the participation of U.S. citizens in other nation's economic boycotts or embargoes. These "antiboycott" laws are the 1977 amendments to the Export Administration Act (EAA) and the Ribicoff Amendment to the 1976 Tax Reform Act (TRA). While these laws share a common purpose, there are distinctions in their administration.

Other Resources

- Department of Treasury Links and Information on 1976 Tax Reform Act:
Boycott Provision of the Internal Revenue Code 26, USC Sec. 999
- Department of Treasury Guidelines Concerning International Boycotts
Boycott Guidelines
43 FR 3454
44 FR 66272
49 FR 18061
52 FR 2511
- Information Concerning Treasury Guidelines:
Office of the General Counsel
Room 2015
Washington, DC 20220
(202) 622-1945

IRS Anti-Boycott



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Form 5713, International Boycott Report



U.S. persons file this form to report:

- operations in or related to boycotting countries and
- the receipt of boycott requests and boycott agreements made.

Current Products

[Form 5713](#)

[Instructions for Form 5713 \(HTML\)](#)

Recent Developments

Other Items You May Find Useful

[All Revisions for Form 5713](#)

[Other Current Products](#)

Comment on Form 5713

Use the [Comment on Tax Forms and Publications](#) web form to provide feedback on the content of this product. Although we cannot respond individually to each comment, we do appreciate your feedback and will consider all comments submitted.

CAUTION: We cannot respond to tax-related questions submitted using this page. Instead, please see our [Tax Law Questions](#) page.

Page Last Reviewed or Updated: 17-Aug-2016

Related Items

- › Form 8873, Extraterritorial Income Exclusion
- › Schedule A (Form 5713), International Boycott Factor (Section 999(c)(1))
- › Schedule B (Form 5713), Specifically Attributable Taxes and Income (Section 999(c)(2))
- › Schedule C (Form 5713), Tax Effect of the International Boycott Provisions

Compliance Considerations

Office of Foreign Assets Control (OFAC) Sanctions

- Critical to screen all customers, related individuals, and related intermediaries.
- Individual and Country-Based Sanctions
- Consider all aspects of transaction and think through how it will be handled in a compliant manner
 - Banking
 - Registrations/Certifications/Licensing

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- Data and Charts Center
- FAQs

Home » Resource Center » Financial Sanctions

Office of Foreign Assets Control - Sanctions Programs and Information

The Office of Foreign Assets Control ("OFAC") of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.

Search OFAC For:

OFAC Sanctions Lists

OFAC publishes lists of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific.

- Specially Designated Nationals List
- Consolidated Sanctions List
- Additional OFAC Sanctions Lists

News and Frequently Updated Content

OFAC updates its website on a regular basis. Information on the latest changes to OFAC's site can be found below.

- OFAC Recent Actions
- Press Center

Search OFAC's Sanctions Lists

OFAC provides a free, online application to enable users to simultaneously search all of its sanctions lists.

[SEARCH OFAC'S SANCTIONS LISTS](#) >

- Information About OFAC's Sanctions List Search Tools

Apply for an OFAC License

A license is an authorization from OFAC to engage in a transaction that otherwise would be prohibited (e.g. release of blocked funds).

[START AN ONLINE APPLICATION](#) >

- Additional Information About OFAC Licenses

Sanctions Programs and Country Information

OFAC administers a number of different sanctions programs. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals. Click here for information about an OFAC "Country List."

General OFAC Information and Guidance

In addition to providing guidance on specific sanctions programs, OFAC provides information on a number of sanctions-related issues that span multiple programs or that may affect specific industries.

- Frequently Asked Questions (FAQs)

Why and when prepare for international government sales?

Heightened Risk Factors

Heightened Compliance Obligations

Best viewed as investments in long term strategy, rather than chasing one-off deals