

**GAO**

Report to the Chairman, Subcommittee  
on National Security, Emerging  
Threats, and International Relations,  
Committee on Government Reform,  
House of Representatives

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March 2006

# JOINT STRIKE FIGHTER

## Management of the Technology Transfer Process



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# Highlights

Highlights of [GAO-06-364](#), a report to the Chairman, Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, House of Representatives

## Why GAO Did This Study

The Joint Strike Fighter (JSF) program is the Department of Defense's (DOD) largest international cooperative effort to develop and produce a major weapon system. Due to the breadth of international participation, the number of export authorizations needed to share information with partner governments, solicit bids from suppliers, and execute contracts is expected to far exceed past transfers of advanced military technology.

In July 2003, GAO reported that managing these transfers and partner expectations while avoiding delays has been a key challenge and recommended that industrial planning tools be developed and used to anticipate time frames for national disclosure and technology transfer decisions. This report examines DOD's response to this recommendation and identifies the practices DOD is using to expedite license processing and avoid program delays.

[www.gao.gov/cgi-bin/getrpt?GAO-06-364](http://www.gao.gov/cgi-bin/getrpt?GAO-06-364).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Ann Calvaresi-Barr (202) 512-4841 or [calvaresibarra@gao.gov](mailto:calvaresibarra@gao.gov).

## JOINT STRIKE FIGHTER

### Management of the Technology Transfer Process

#### What GAO Found

Agencies have taken four key actions to expedite the processing of licenses for transferring technology to partner countries and foreign suppliers. Each of these practices is intended to anticipate time frames needed for the processing of licenses or avoid delays to the JSF program schedule.

- In response to GAO's 2003 recommendation, the JSF Program Office instructed the prime contractor to develop an international industrial plan that identifies the type of license needed to transfer certain technologies to foreign industry. The contractor's plan provides mechanisms for anticipating "need" dates for submitting license applications and for identifying and addressing potential issues related to the releasability of classified information, technologies, or systems. In addition to the contractor's plan, DOD has developed guidance calling for industrial planning tools in all programs with significant international involvement.
- Agencies involved in the JSF program are expediting the processing of license applications by dedicating staff to the JSF licensing process, providing consultation to applicants on draft licenses, administering a prescreening process for the transfer of low technology and nonsensitive items, and allowing addendums to be attached to license applications.
- The JSF prime contractor and agency officials have used options available to them under the International Traffic in Arms Regulations, such as Global Project Authorization (GPA) and an exemption used in obtaining foreign contractor bids and proposals, to help facilitate the export control process and avoid program delays. While GPA is designed to approve exports within 5 days, its use has been limited.
- Due to the early involvement of international partners in the design phase of the program, decisions related to the releasability of classified information, technologies, or systems to partner countries have been addressed as they arise throughout the development of the system.

#### Joint Strike Fighter



Source: JSF Program Office.

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## Abbreviations

AECA	Arms Export Control Act
DDTC	Directorate of Defense Trade Controls
DOD	Department of Defense
DTSA	Defense Technology Security Administration
FAR	Federal Acquisition Regulation
GPA	Global Project Authorization
ITAR	International Traffic in Arms Regulations
JSF	Joint Strike Fighter
MOU	memorandum of understanding
NDPC	National Disclosure Policy Committee

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United States Government Accountability Office  
Washington, DC 20548

March 14, 2006

The Honorable Christopher Shays  
Chairman, Subcommittee on National Security,  
Emerging Threats, and International Relations  
Committee on Government Reform  
House of Representatives

Dear Mr. Chairman:

The Joint Strike Fighter (JSF) program is the Department of Defense's (DOD) largest experiment to collaboratively develop and produce a major weapon system with international partners to date with an estimated cost of over \$250 billion for the development and production phases of the program. It is a joint program among the Air Force, Navy, Marine Corps, and eight international partners for developing and producing a next-generation fighter aircraft to replace aging inventories. Due to the degree of international participation at both the government and industry levels, a large number of export authorizations are necessary to share project information with governments, solicit bids from partner suppliers, and execute contracts. The transfer of technologies necessary to achieve aircraft commonality goals in the JSF program is expected to far exceed past transfers of advanced military technology. A key challenge for the program has been managing the technology transfer process and partner expectations while avoiding delays to the program.

In July 2003, we reported that due to the early involvement of international partners in developing the system, the JSF program has had to mitigate a particular set of challenges related to technology transfers. We recommended that the JSF program ensure that industrial-planning tools are developed and used to anticipate time frames for national disclosure and technology transfer decisions.<sup>1</sup> Subsequently, you asked us to examine issues raised in our 2003 work related to technology transfer and the JSF program and describe the status of DOD planning efforts designed to address technology transfer and export control requirements among the

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<sup>1</sup>GAO, *Joint Strike Fighter Acquisition: Cooperative Program Needs Greater Oversight to Ensure Goals Are Met*, GAO-03-775 (Washington, D.C.: July 21, 2003) and GAO, *Joint Strike Fighter Acquisition: Managing Competing Pressures Is Critical to Achieving Program Goals*, GAO-03-1012T (Washington, D.C.: July 21, 2003).

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U.S. government, JSF prime contractors, foreign partners, and foreign industry. Specifically, we identified the practices DOD is using to expedite license processing and avoid program delays.

In carrying out our work, we reviewed the prime contractor's newly developed international industrial plan and compared it to a prior GAO recommendation. To determine the manner in which U.S. export control processes are being applied in the JSF program, we interviewed and gathered data from export control and JSF officials from DOD, the Department of State, and the prime contractor. The international partners did not discuss issues related to technology transfer with us due to the status of current negotiations on a memorandum of understanding for the production phase of the program. The partners generally expressed the opinion that comments by them during negotiations would not be appropriate. We conducted our review from March 2005 to January 2006, in accordance with generally accepted government auditing standards.<sup>2</sup>

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## Results in Brief

Agencies have taken a number of actions to address technology transfer issues associated with the JSF program. In response to our 2003 recommendation, the JSF Program Office tasked the prime contractor to develop an international industrial plan to anticipate time frames for national disclosure and technology transfer decisions. The Office of the Secretary of Defense also issued guidance calling for the use of similar industrial-planning tools for other development programs that include foreign partners. Further, DOD is using a variety of practices to expedite the processing of export control licenses for the JSF program. For example, agencies have staff specifically dedicated to the JSF licensing process to focus agency resources on the JSF program. In addition, agency stakeholders provide consultation to license applicants on draft licenses, and all formal license applications are prescreened to determine if they are eligible for an abbreviated review process. The JSF prime contractor and agency officials have also used options available to them under the International Traffic in Arms Regulations, such as a Global Project Authorization and an exemption used in obtaining bids and proposals from foreign contractors.<sup>3</sup> The Global Project Authorization was intended to be

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<sup>2</sup>The DOD Inspector General is also currently examining the JSF licensing process.

<sup>3</sup>The unofficial term "bid and proposal exemption" is what the JSF program office refers to in utilizing a regulatory exemption for disclosing technical data pursuant to DOD authorization.

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a mechanism for approving the transfer of low technology, nonsensitive items between pre-approved U.S. and foreign companies in about 5 days; however, this mechanism's use has been limited. Additionally, to avoid program delays, the JSF program office has certified 350 requests from U.S. contractors to use the "bid and proposal exemption," allowing the transfer of information without a license between approved U.S. and foreign contractors for purposes of obtaining bids and proposals. Further, due to the involvement of international partners in the early design phase of the program, issues related to the releasability of classified information, technologies, and systems will continue to be addressed as they arise.

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## Background

The JSF program began in 1996 and is the largest DOD acquisition program to date with an estimated cost of over \$250 billion for the development and production phase of the program. The program's goals are to develop and field a family of stealthy fighter aircraft for the Navy, Air Force, Marine Corps, and U.S. allies. To achieve its mission, JSF will incorporate low observable technologies, defensive avionics, advanced onboard and offboard sensor fusion, internal and external weapons, and advanced prognostic maintenance capability. The program intends to produce three variants. The carrier suitable variant will complement the Navy's F/A-18 E/F. The conventional take-off and landing variant will primarily be a replacement for the Air Force's F-16 and A-10 aircraft and will complement the F-22A. The short take-off and vertical landing variant will replace the Marine Corps' F/A-18 and AV-8B aircraft.

In October 2001, Lockheed Martin was awarded a contract to develop the airframe and integrate the system components. Subsequently, Lockheed Martin awarded multi-billion-dollar subcontracts to its development teammates—Northrop Grumman and BAE Systems—for work on the center and aft fuselage, respectively. In addition to the Lockheed Martin contract, DOD has contracts with both Pratt & Whitney and General Electric to develop two interchangeable aircraft engines. The program is currently in the fifth year of an estimated 12-year development phase. The current estimated cost for the development phase is about \$41.5 billion.

The JSF program is an international cooperative program consisting of the U.S. and eight foreign partners: the United Kingdom, Italy, the Netherlands, Turkey, Denmark, Norway, Canada, and Australia. The JSF program structure was established through a framework memorandum of understanding (MOU) and individual supplemental MOUs between each of the partner country's defense department or ministry and DOD, negotiating on behalf of the U.S. government. These agreements identify

the roles, responsibilities, and expected benefits for all participants. Currently DOD is negotiating one MOU for all partner countries related to the production phase of the program.

The JSF program allowed foreign countries to become partners at one of three participation levels during the system development and demonstration phase of the program, based on financial contribution. In return for their contributions, partner countries receive proportionate benefits, such as number of staff represented in the program office, access to program data and technology, and membership on management decision-making bodies. As shown in table 1, the foreign partners plan on contributing over \$4.5 billion, or about 11 percent, for the system development and demonstration phase and are expected to purchase over 700 aircraft beginning in the 2012 to 2015 time frame. Israel and Singapore are involved as security cooperation participants, a nonpartner arrangement, which offers limited access to program information. According to DOD, foreign military sales to these and other nonpartner countries could include an additional 1,500 to 3,000 aircraft.

**Table 1: Joint Strike Fighter Partner Financial Contributions and Estimated Aircraft Purchases**

Dollars in millions

Partner country	Partner level	System development and demonstration		Productions	
		Financial contributions <sup>a</sup>	Percentage of total costs	Projected quantities <sup>b</sup>	Percentage of total quantities
United Kingdom	Level I	\$2,056	5.0	150	4.7
Italy	Level II	1,028	2.5	131	4.1
Netherlands	Level II	800	1.9	85	2.7
Turkey	Level III	175	0.4	100	3.2
Australia	Level III	144	0.3	100	3.2
Norway	Level III	122	0.3	48	1.5
Denmark	Level III	110	0.3	48	1.5
Canada	Level III	100	0.2	60	1.9
<b>Total partner</b>		<b>\$4,535</b>	<b>10.9</b>	<b>722</b>	<b>22.8</b>
United States		\$36,946	89.1	2,443	77.2

Source: DOD and JSF Program Office.

<sup>a</sup>Chart values do not reflect nonfinancial contributions from partners.

<sup>b</sup>Partner quantities are preliminary and were developed for U.S. planning purposes. The estimates were developed by the United States in collaboration with partner countries, but no specific national agreements or arrangements have been established with partner countries for production; therefore, these projected production quantities are subject to change.

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DOD has stated that the core objectives of armaments cooperation are to increase military effectiveness through standardization and interoperability and to reduce weapons acquisition costs by avoiding duplication of development efforts with U.S. allies. According to DOD and the program office, through its cooperative agreements, the JSF program contributes to armaments cooperation policy in four areas

- political/military—expanded foreign relations;
- economic—decreased JSF program costs from partner contributions;
- technical—increased access to the best technologies of foreign partners; and
- operational—improved mission capabilities through interoperability with allied systems.

Under the Arms Export Control Act (AECA), DOD is provided the authority to enter into cooperative programs with certain U.S. allies.<sup>4</sup> In March 1997, the Secretary of Defense directed that DOD engage allies in discussions as early as possible to determine the potential for collaboration to meet coalition needs and ensure interoperability among allied systems. DOD guidance states that the department will give favorable consideration to transfers of defense articles, services, and technology consistent with national security interests to support these international programs. Unlike other international cooperative programs, the JSF program does not guarantee foreign or domestic suppliers a predetermined level of work based on a country's financial contribution to the program. Instead, foreign and domestic suppliers will generally bid competitively for JSF work. DOD and the JSF Program Office use the term “best value” to describe this competitive approach.<sup>5</sup>

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<sup>4</sup>Section 27 of the AECA, 22 U.S.C. § 2767 (2000).

<sup>5</sup>This is not necessarily the same as “best value” under the Federal Acquisition Regulation (FAR), which is the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement. 48 C.F.R. §§. 2.101 (2005). Such a procurement is conducted competitively under FAR procedures for contracting by negotiation using any one or a combination of source selection approaches, 48 C.F.R. §§ 15.002(b), 15.101 (2005).



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The AECA also provides statutory authority for the control of defense articles and services.<sup>6</sup> The Department of State oversees the export of military items and services.<sup>7</sup> The Directorate of Defense Trade Controls (DDTC) within the Department of State has been delegated the authority to regulate arms exports and administer the arms export-licensing system. The Defense Technology Security Administration (DTSA) represents DOD on export control issues. DTSA provides technical and national security reviews of and coordinates DOD's position on export license applications referred or reviewed by DDTC. Due to the degree of international participation at both a governmental and an industry level in the JSF program, a large number of export authorizations are necessary to share project information with governments, solicit bids from partner suppliers, and execute contracts. The transfer of technologies necessary to achieve aircraft commonality goals for the JSF program is expected to far exceed past transfers of advanced military technology for other systems.

Before transfers are approved, the U.S. government must first determine if weapons or technologies are releasable to the requesting country according to the National Disclosure Policy. The National Disclosure Policy establishes procedures and criteria for releasing classified or sensitive military information to other countries. The National Disclosure Policy Committee (NDPC) is responsible for managing the National Disclosure Policy, making determinations whether to grant exceptions to the policy, conducting security surveys of foreign governments including defense industries, and determining delegated authority among the services.<sup>8</sup> In cases where a request for transfer exceeds that authority, the service can forward the request to the NDPC for its review. For some sensitive technologies, such as stealth, the case is also forwarded for review to a special committee that focuses on that particular technology.

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<sup>6</sup>Section 38 of the AECA, 22 U.S.C. § 2778 (2000).

<sup>7</sup>The statutory authority of the President to regulate exports of defense articles and services was delegated to the Secretary of State by Executive Order 11958, as amended. The International Traffic In Arms Regulations implement that authority 22 C.F.R. parts 120-130 (2005).

<sup>8</sup>The NDPC is composed of members of the State Department, DOD (Joint Staff, Army, Navy, and Air Force) and special members such as Department of Energy and the Central Intelligence Agency, among others (industry is not represented on the NDPC).

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## Actions Taken to Expedite License Processing and Avoid Program Delays

DOD and the JSF program office have taken the following four key actions to avoid the potential negative effects on the program from delays in obtaining licenses for transferring technology to partner countries and foreign suppliers:

- In response to our 2003 recommendation, the JSF Program Office directed the prime contractor to develop an international industrial plan to anticipate time frames for national disclosure and technology transfer decisions.
- Agencies involved in the JSF export-licensing process are expediting the processing of license applications by dedicating staff to the JSF-licensing process, providing consultation to applicants on draft licenses, administering a prescreening process for the transfer of low technology and nonsensitive items, and by allowing addendums to be attached to license applications.
- The JSF prime contractor and agency officials have used options available to them under the International Traffic in Arms Regulations (ITAR), such as Global Project Authorization (GPA) and an exemption used in obtaining foreign contractor bids and proposals, to help facilitate the export control process and avoid program delays. The GPA was intended to allow for technology transfer decisions regarding certain technologies to be made in 5 days or less; however, its use has been limited. Use of the bid and proposal exemptions is intended to avoid program delays by providing foreign contractors with information needed to compete for contracts without first obtaining an export license.
- Issues related to the releasability of classified information, technology, or systems to foreign partners are addressed as they arise in the JSF program because of the involvement of international partners in the early design phase of the program. According to DOD officials, they are incorporating new practices, such as stakeholder meetings, that are intended to facilitate a timely and collaborative decision-making process.

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## Anticipating Technology Transfer Needs

In July 2003, we reported that due to the early involvement of international partners in developing the system, the JSF program has had to mitigate a particular set of challenges related to technology transfers. To address these challenges, the prime contractor needs to anticipate time frames for national disclosure and technology transfer decisions. The anticipation of these needs would allow for a timely submission of license applications as

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well as providing time to identify potential back-up suppliers, if necessary. Accordingly, we recommended that the JSF Program Office direct the prime contractor to complete an international industrial plan that

- identified current and potential contracts involving the transfer of sensitive data and technology to partner suppliers,
- evaluated the risks that unfavorable export decisions could pose for the program, and
- developed alternatives to mitigate those risks, such as using U.S. suppliers.

In response to our recommendations, in 2003 the JSF program office instructed the prime contractor to complete an international industrial plan. According to the prime contractor, the plan provides a roadmap that represents potential licensing activities as a subset of the program schedule. Specifically, the plan identifies the need for a license to transfer certain technologies to foreign industry. It provides a mechanism for the prime contractor to anticipate “need” dates for receiving export licenses and provides a mechanism for identifying issues that may arise concerning the releasability of information, technologies, or systems so that early action can be taken to determine if an exception to the National Disclosure Policy or an appropriate committee review should be pursued.

In addition to the creation of the JSF prime contractor’s international industrial plan, DOD has added guidance to the Office of the Secretary of Defense’s *Acquisition Guidebook* calling for the development of similar industrial-planning tools in all programs with significant international involvement prior to the system design and demonstration phase. The guidance further states that the plan should project when export licenses will be required in support of the acquisition process and when critical milestones regarding National Disclosure Policy implementation will need to be addressed.

These plans are intended to provide for early planning for the program’s proposed technology releases to foreign industry. They also are intended to provide early planning for higher level special technical reviews and approvals in support of proposed technology releases to foreign industry.<sup>9</sup>

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<sup>9</sup>Such reviews could be related to areas such as low observable/counter low observable, anti-tamper, or cryptology.

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Further, they are intended to establish a detailed export license approval-planning process for U.S.-foreign industry cooperation to meet critical program and contract timelines. The guidance recommends the plan include

- a timeline that maps key projected export licenses against the program acquisition schedule;
- a definition of the technologies involved in each export license; and
- a list of U.S. contractors (exporters) as well as foreign contractors (end users) for each license.

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## Expediting the JSF Licensing Process

Agencies involved in the export-licensing process have employed a variety of methods to expedite the processing of license applications. The Directorate of Defense Trade Controls (DDTC) within the Department of State has dedicated one staff member to the JSF program. Additionally, the Defense Technology Security Administration (DTSA) within DOD has dedicated staff to specifically deal with issues related to licensing, technical aspects, and policy matters for the JSF program. These staffs coordinate directly with JSF program office staff dedicated to the licensing process.

According to DTSA officials, along with dedicated staff, a new strategy is being used to accelerate processing export licenses for the JSF program. Officials across DOD provide advice and resolve issues with license applicants through stakeholder meetings prior to formal submission of license applications. DTSA officials described these stakeholder meetings as a proactive measure to ensure that the license applications are ready to be assessed when they are received. DTSA officials stated that this process evolved in response to the concern that licensing delays could affect the JSF program schedule and that while stakeholder consultation could take up to six months, it usually resulted in a shorter approval process. According to DTSA officials, these stakeholder meetings were created because of the JSF program and are currently unique to the program but would likely be incorporated into future large scale international cooperative programs.

DTSA also prescreens all license applications to expedite the processing of licenses that do not require review by other DOD entities. Once an application is received from DDTC, it is prescreened by DTSA officials to determine if it meets eligibility criteria for an abbreviated review process.

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DTSA officials stated that criteria for determining eligible items include low technology, nonsensitive items; items widely available worldwide; and items that have previously been approved through the process, among others. According to DTSA officials, prescreening has been taking place for 1 year to 2 years, and the typical time frame for a license in the abbreviated review process is 2 days to 5 days.

The use of addendums to supplement license applications is another initiative that evolved in an effort to avoid delays in the JSF program. When additional information or clarification is needed before a license can be approved, officials from DDTC and DTSA have agreed to allow the applicant to attach addendums that include more specific technical information than initially provided. The addendums provide context and clarity to the application. Previously, the license would have been returned with no action, requiring a resubmission and restart of the license process.

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### Implementing Global Project Authorization and Making Use of Bid and Proposal Exemptions

Another mechanism for expediting license processing is the use of a Global Project Authorization (GPA). The GPA is a comprehensive export authorization for international cooperative projects authorized by the ITAR.<sup>10</sup> An approved U.S. company submits an “Implementing Agreement” request to DDTC for authorization to export to an approved foreign company. DDTC can evaluate the request and based on compliance with an established set of conditions may authorize the transfer without sending the request through the formal licensing process. An implementing agreement under the GPA is expected to be approved in about 5 days.

The Department of State, DOD, and the prime contractor agreed to the GPA for the JSF program based on the following conditions:

- Technologies available for transfer through a GPA implementing agreement are based on a predetermined list of unclassified, low technology, nonsensitive items.
- In using the GPA, both domestic and foreign companies must be on an approved list. The approved list was developed by the Department of State and DOD. There are currently 46 U.S. companies and 446 foreign

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<sup>10</sup>22 C.F.R. § 126.14 (2005).

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companies that have been authorized to utilize implementing agreements under the GPA for the JSF program.

- Approved companies must follow a standard agreement format and special application process.

While the GPA is designed to approve transfers within 5 days, its usefulness has been limited. Of the 46 U.S. companies eligible to use the GPA, only 3 have exercised that option. In 2005, only two implementing agreements were approved, and they were actually submitted in 2004. Only one implementing agreement was submitted in 2005, and it was returned without action. Approved companies that wish to use the GPA must meet a special set of compliance requirements, imposed by the State Department, related to electronic record keeping and securing data. Officials from the JSF program office, DTSA, and the prime contractor said that many companies have chosen to use the traditional license process instead of the GPA to avoid the extra costs and administrative burdens associated with these compliance requirements, such as the investment associated with the development of electronic databases. These issues also make the GPA especially difficult to use for smaller companies. Further, the GPA was authorized only for the system development and demonstration phase of the program and would need to be reauthorized for the production phase.

Another practice used by the JSF program office to avoid program delays and provide for competition among U.S. and foreign suppliers is the use of an exemption under the ITAR for the purpose of obtaining bids and proposals from foreign contractors. On March 8, 2004, DTSA issued guidance to the military departments on how to certify the use of ITAR exemptions. The guidance identifies five sections under the ITAR by which the U.S. government may certify exemptions.<sup>11</sup> Section 125.4(b)(1) of the ITAR<sup>12</sup> provides that technical data, including classified information, may be disclosed pursuant to an official written request or directive from the U.S. Department of Defense without obtaining an export license. This exemption has been unofficially labeled the “bid and proposal exemption” by the JSF program office, because the primary use has been in the process of obtaining bids and proposals from foreign contractors. According to Air Force officials, the bid and proposal exemption is only

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<sup>11</sup>The executive agent for disclosure is the Air Force for the JSF program.

<sup>12</sup>22 C.F.R. § 125.4(b)(1) (2005).

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certified for use to export unclassified technical data to a foreign contractor if it is in the interest of the U.S. government.

Under this exemption, the JSF program allows approved U.S. contractors to transfer technical data on proposed work to foreign contractors. The Air Force periodically publishes an exemption certification that provides scope and limits on the transfers, such as limiting the defense services and technical data included in these exemptions to

- build to print — a defense article can be produced from engineering drawings without any technical assistance from a U.S. exporter—and
- build/design to specification — a foreign consignee can design and produce a defense article from requirement specifications without any technical assistance from the U.S. exporter.

These exemptions must not include

- design methodology — the underlying engineering methods and design philosophy utilized;
- engineering analysis — analytical methods and tools used to design or evaluate an article’s performance against operational requirements; and
- manufacturing know-how — information that provides detailed manufacturing processes and techniques needed to translate a detailed design into a finished article.

The JSF Program Office must review, authorize in advance, and maintain a record of all JSF technical data released under the authority of the certification. So far, 350 requests from U.S. contractors to use the “bid and proposal exemption” have been certified by the JSF program office.

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## Addressing Disclosure Issues Early in the Program

To prevent potential delays, decisions related to the releasability of classified information, technologies, or systems to partner countries are addressed as they arise throughout the development of the system. While the Air Force, designated as the executive agent for disclosure for the JSF program, has a certain level of delegated authority to disclose classified military information to foreign governments and international organizations, some requests exceed this authority. When a request exceeds its delegated authority, the Air Force must submit a request to the National Disclosure Policy Committee (NDPC) for an exception to the

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National Disclosure Policy. Other committees that may approve transfers include the Low Observable/Counter Low Observable Committee that adjudicates requests to sell or transfer stealth technology and the Committee on National Security Systems that adjudicates requests to sell or transfer cryptologic information and technology.

According to DOD officials, planning for foreign disclosure issues is challenging because there are numerous processes among multiple U.S. government agencies and committees with delegated authority for management of foreign disclosure and export control requirements. There are additional difficulties in a cooperative program like the JSF program because of the involvement of the international partners early in the design phase. In the JSF program, the prime contractor's international industrial plan is used to anticipate licensing needs and identify when discussions of releasability of classified information, technologies, and systems are necessary. In addition, the stakeholder meetings initiated by DTSA have provided a mechanism for disclosure issues to be discussed prior to the formal submission of a license. As a result, these discussions are held as the concerns arise so they do not become major obstacles to the program schedule. These practices are intended to resolve issues related to the releasability of classified information, technologies, and systems and to ensure decisions are made by the proper committees in a timely manner to avoid delays to the license process.

For example, in cases where a request for transfer exceeds the Air Force's delegated disclosure authority for a particular country, the Air Force can seek an exception to the National Disclosure Policy. The National Disclosure Policy establishes criteria and conditions for releasing classified information, technology, or systems to other countries. The NDPC determines if it is in the United States' interest to allow for the transfer of information, technologies or systems by granting an exception to National Disclosure Policy.<sup>13</sup> The NDPC is composed of members of the State Department, DOD (Joint Staff, Army, Navy, and Air Force) and special members such as Department of Energy and the Central Intelligence Agency, among others. In order for a disclosure exception to be granted, it must be

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<sup>13</sup>The NDPC is also responsible for managing the National Disclosure Policy, conducting security surveys of foreign governments including defense industries, and determining delegated authority among the services.



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- consistent with U.S. foreign policy,
  - consistent with U.S. military and security objectives,
  - provided the same degree of security protection by the recipient,
  - beneficial to the U.S., and
  - limited to information necessary for the purpose.

Although the NDPC seeks consensus within 10 days of a request, if any member votes against approval of a request, there is a negotiation period for no more than 20 days. If agreement still cannot be reached, the NDPC chairman can make a decision. That decision can also be appealed to the Deputy Secretary or Secretary of Defense. As of January 2006, the NDPC has granted six exceptions, as amended, to the National Disclosure Policy for the JSF program.

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## Agency Comments

A draft of this report was reviewed by the Department of Defense and the Department of State. The agencies did not provide written comments on the report. We received separate technical comments from the Department of Defense and incorporated them as appropriate.

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We are sending copies of this report to interested congressional committees; the Secretary of State; the Secretary of Defense; the Secretaries of the Navy and the Air Force; and the Commandant of the Marine Corps. We will also make copies available to others upon request. In addition, this report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

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If you or your staff have any questions regarding this report, please contact me at (202) 512-4841. Key contributors to this report are listed in appendix I.

Sincerely yours,

A handwritten signature in black ink that reads "Ann Calvaresi Barr". The signature is written in a cursive style with a large initial "A" and a stylized "B".

Ann Calvaresi-Barr, Director,  
Acquisition and Sourcing Management

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# Appendix I: GAO Contact and Staff Acknowledgments

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## GAO Contact

Ann Calvaresi-Barr (202) 512-4841

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## Staff Acknowledgments

In addition to the individual named above, Tom Denomme, Matthew Ebert, Kevin Heinz, Karen Sloan, and Adam Vodraska made key contributions to this report.

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# Related GAO Products

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*Tactical Aircraft: Status of the F/A-22 and JSF Acquisition Programs and Implications for Tactical Aircraft Modernization.* [GAO-05-390T](#). March 2005.

*Tactical Aircraft: Opportunity to Reduce Risks in the Joint Strike Fighter with Different Acquisition Strategy.* [GAO-05-271](#). March 2005.

*Defense Trade: Arms Export Control System in the Post-9/11 Environment.* [GAO-05-234](#). February 2005.

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