

**United States Department of State**

*Bureau of Political-Military Affairs
Office of Defense Trade Controls*

Washington, D.C. 20037

In reply refer to:
ODTC Case GC-0384-01

JUN 18 2002

Dear Mr. Mitchell:

This is in reference to your letter dated June 14, 2001, in which you requested an advisory opinion concerning the licensing requirements for the commercial operations of the BC-17X military aircraft to support the release of an RFP.

The Department of State has determined there is no objection in principle to the proposed transaction. However, the following limitations and provisos apply:

1. Commercial operation of the BC-17X aircraft will be conducted in accordance with an approved Department of State DSP-73 Temporary Export License for a series of departures and returns and in accordance with the International Traffic in Arms Regulations (ITAR)(22 CFR 120-130). The DSP-73 license will be valid for as long as the licensor remains under contract with the Department of Defense to provide BC-17X-based airlift services under the Civil Reserve Air Fleet (CRAF) program.
2. The owner of or licensor for the BC-17X aircraft must enter into a legally binding agreement with the U.S. Government for participation in the CRAF program with the BC-17X aircraft.
3. The BC-17X aircraft will be owned and operated by U.S. companies that are at least 75% owned by U.S. Persons as defined in ITAR section 120.15 and in accordance with legal requirements for participation in the CRAF program. The minority (up to 25%) ownership must not be held by a foreign person as defined in ITAR section 120.16 from a proscribed destination (i.e. ITAR section 126.1) or from a country that is otherwise prohibited. Ownership or control of BC-17X aircraft and related export controlled technical data will not be transferred to a foreign person without the approval of the Department of State, Office of Defense Trade Controls.

continued on page 2

Mr. Willard H. Mitchell
Department of the Air Force
Washington, D.C. 20330-1080

-2-

4. The owner of and licensor for BC-17X aircraft must be registered with the Office of Defense Trade Controls in accordance with ITAR section 122.1. The registrant must designate an empowered official as defined in ITAR section 120.25 to insure compliance with legal, regulatory and license requirements.
5. The configuration for commercially operated BC-17X aircraft will be in accordance with a Boeing Co. configuration summary document approved by the Office of Defense Trade Controls prior to issuance of a DSP-73 license.
6. Primary flight crews (e.g., pilots, navigators and flight mechanics, engineers and technicians) will be U.S. persons employed by or under contract to the licensor. Foreign persons may perform routine, en route maintenance, repair, service and support on BC-17X aircraft. The licensor, however, must develop a detailed plan for en route maintenance, repair, service, support, security and access control for BC-17X aircraft at destinations outside the United States as defined in ITAR section 120.13. A copy of the plan will be included with the DSP-73 export license application. The Office of Defense Trade Controls must approve the plan prior to issuance of a DSP-73 license. Intermediate or depot level maintenance of the aircraft by non-U.S. persons must be the subject of a separate approval (e.g., a Technical Assistance Agreement.)
7. Commercial operations of BC-17X aircraft will not be conducted with or for the benefit of any country identified under ITAR section 126.1 or otherwise prohibited, unless otherwise authorized by the Office of Defense Trade Controls.
8. Commercial operation of BC-17X aircraft will not transit airspace of any country identified under ITAR section 126.1, unless otherwise authorized by the Office of Defense Trade Controls. Favorable consideration may be given to requests for transport of non-military or humanitarian cargo to non-military end-users in Azerbaijan, Vietnam and Zaire (The Democratic Republic of Congo).
9. BC-17X aircraft operating under a license issued by the Office of Defense Trade Controls may transport non-military cargo and non-military passengers for private and government end-users to destinations and for purposes specifically approved in the DSP-73 license or a separate amendment thereto.
10. Military cargo (i.e., defense articles) and personnel may be transported for Governments other than those identified in ITAR section 126.1 or otherwise prohibited, in support of United Nations (UN) Peacekeeping Operations, Humanitarian Relief and Coalition Operations in which the U.S. Government participates.

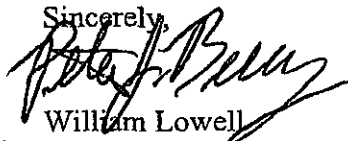
continued on page 3

-3-

11. Military cargo (i.e., defense articles) and personnel may be transported on behalf of the U.S. Government and the governments of NATO-member countries, Australia, Japan and South Korea to/from countries other than those identified in ITAR Section 126.1 or otherwise prohibited.
12. The applicant will detail in a report with the application how the ownership, control, access and use requirements outlined above will be implemented and monitored. The licensor will provide an annual report of BC-17X operations conducted outside the U.S. to the Office of Defense Trade Controls. The report will include a listing of the foreign end-users, loading and delivery locations, and cargo and passenger manifests.

This determination is not an authorization to export any defense articles, defense services or technical data as designated in 22 CFR Part 121. A DSP-73 temporary export license must be submitted for consideration by each carrier that receives a Department of Defense contract for BC-17X airlift services under CRAF. Each applicant for a license should send a copy of the contract with DOD and reference the above case number on the application. Please note that it would expedite the processing of follow-on cases if you would inform each participating carrier of the provisos above and incorporate the appropriate provisos in your contracts.

Sincerely,



William Lowell

Director, Defense Trade Controls

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