



DEFENSE SECURITY ASSISTANCE AGENCY
WASHINGTON, D. C. 20301

15 June 1978

In reply refer to:
Transmittal No. 19
DOD 5105.38-M

MEMORANDUM FOR RECIPIENTS OF DOD 5105.38-M, MILITARY ASSISTANCE AND SALES
MANUAL - PARTS I, II, AND III

SUBJECT: MASM I, II, and III Transmittal

Attached is MASM Transmittal No. 19 which updates the procedures to 15 June 1978. This is the last transmittal to be issued on the 24 August 1973 MASM; the next issuance will be a completely new manual, dated 1 August 1978 (which will supersede any previous manual/messages/correspondence).

Highlights of this transmittal include chapters on Eligibility for FMS; FMS Policies, Guidelines and Restrictions; General Procedures; Preparation and Processing of FMS Transactions; and Financial Annexes to LOAs.

Update the portions of your current MASM in accordance with the List of Changes. Specific changes are indicated by a broken line in the margin of the chapter.

This transmittal supersedes the following correspondence:

DSAA Memorandum I-2514/78 dated 7 April 1978, subject: Revision to the MASM, Chapters A, B, C and D

DSAA Memorandum I-13488/77 dated 9 February 1978, subject: Financial Annexes to DD Form 1513, Letters of Offer

Ernest Graves

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Lieutenant General, USA

Director,

Defense Security Assistance Agency

Attachments

- (1) List of Changes
- (2) MASM Update Materiel



LIST OF CHANGES

Remove and insert the following portions of your current MASM:

Remove

List of Effective Pages

Table of Contents -

pages xv - xvi

PART III -

Chapter A

Chapter B

Chapter C

D-1 - D-12

D-17 - D-18

D-28 - D-32

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Appendix D

Insert

List of Effective Pages

Table of Contents -

pages xv - xvi

PART III -

Chapter A

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Appendix D

In addition to the above, post the following pen and ink changes:

PART III -

(1) Chapter D - Pages D-13 - D-16, D-19 - D-27, D-33 - D-34, and D-36 - D-42 - change page numbers to read "D-14 - D-17, D-20 - D-28, D-36 - D-27, and D-39 - D-45", respectively.

LIST OF EFFECTIVE PAGES

<u>Chapters</u>	<u>Page Numbers</u>	<u>Date of Latest Revision</u>
Table of Contents	xi through xviii	15 June 1978
PART I—GENERAL INFORMATION		
Glossary of Terms and Abbreviations	1 through 13	1 October 1977
DOD Directives and Instructions	1 through 7	1 February 1978
A	A-1 and A-2	15 December 1977
B	B-1 and B-3	1 February 1978
C	C-1 through C-3	15 December 1977
D	D-1 through D-11	15 December 1977
E	E-1 and E-2	15 December 1977
F	F-1 through F-3	15 December 1977
G	G-1 through G-5	15 January 1977
H	H-1 through H-24	1 March 1978
PART II—GRANT AID		
A	A-1 through A-4	15 December 1977
B	B-1 through B-3	Deleted
C	C-1 through C-28	1 February 1978
D	D-1 through D-15	1 March 1978
E	E-1 through E-48	1 February 1978
Appendix I-E	App I E-1 through App I E-7	1 October 1977
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G	G-1 through G-24	15 December 1977
H	H-1 through H-4	15 December 1977
J	J-1 through J-23	1 December 1975
K	K-1 through K-6	15 December 1977
L	L-1 through L-27	Deleted
Appendix A	App A-1 through App A-24	1 October 1976
PART III—FOREIGN MILITARY SALES		
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B	B-1 through B-6	15 June 1978
C	C-1 through C-21	15 June 1978
D	D-1 through D-45	15 June 1978
E	E-1 through E-10	1 July 1974
F	F-1 through F-11	1 February 1978
G	G-1 through G-17	1 February 1978
H	H-1 through H-4	1 February 1978
J	J-1 through J-6	1 February 1978
K	K-1 through K-17	1 February 1978
L	L-1 through L-23	15 January 1977
M	M-1 through M-9	1 March 1978
Appendix A	App A-1 through App A-18	1 February 1978
Appendix B	App B-1 through App B-5	15 January 1977
Appendix C	App C-1 through App C-3	1 March 1978
Appendix D	App D-1 through App D-12	15 June 1978

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CHAPTER A

ELIGIBILITY FOR FOREIGN MILITARY SALES

1. General Authority

No defense article or defense service may be sold to any country or international organization unless the President finds, in accordance with Section 3 of the Arms Export Control Act, as amended (hereafter referred to as the AECA), that

(1) the furnishing of defense articles and defense services to such country or international organization will strengthen the security of the United States and promote world peace;

(2) the country or international organization shall have agreed not to transfer title of, or possession of, any defense article or related training or other defense service so furnished to it to anyone not an officer, employee, or agent of that country or international organization and not to use or permit the use of such article or related training or other defense service for purposes other than those for which furnished unless the consent of the President has first been obtained;

(3) the country or international organization shall have agreed that it will maintain the security of such article and will provide substantially the same degree of security protection afforded to such article by the United States Government; and

(4) the country or international organization is otherwise eligible to purchase defense articles or defense services (see para 2, below).

2. Conditions of Eligibility

Countries or international organizations found eligible to purchase defense articles

and defense services under the Presidential finding are also subject to other provisions of the AECA. A summary of the major restraints on FMS and FMS Credits is included under MASM III, Chapter B, Foreign Military Sales Policies, Guidelines and Restrictions, para 3.

3. Eligible Countries and International Organizations

The current list of eligible countries and international organizations as determined by the President is appended as Table A-1.

4. Special Approval Requirements

The Department of State has primary responsibility for approving all requests for the purchase of defense articles and defense services. To aid in this approval process, all requests for defense articles and defense services have been divided into two kinds: "Significant Combat Equipment" (as listed in the International Traffic in Arms Regulation (ITAR)) and "All Other Defense Articles and Services". However, within these two categories, the Department of State has authorized certain types of requests to be forwarded directly to the Department of Defense for processing. For this purpose, Table A-2 indicates the Department of State approved channels for the submission of a request for the purchase of "Significant Combat Equipment" or "All Other Defense Articles and Services". Those approval channels designated as the Department of Defense shall be considered Category A requests and those approval channels designated as the Department of State shall be considered Category B requests. The procedures for the submission of such requests are covered in Chapter C, paragraph 6.

Table A-1

FOREIGN COUNTRIES AND INTERNATIONAL ORGANIZATIONS ELIGIBLE TO
PURCHASE DEFENSE ARTICLES AND DEFENSE SERVICES UNDER THE
AUTHORITY OF THE ARMS EXPORT CONTROL ACT¹

COUNTRIES

	<i>Africa</i>		<i>Near East and South Asia</i>
Benin	Malagasy Republic	Afghanistan	Nepal
Cameroon	Mali	Bahrain	Oman
Chad	Mauritius	Egypt	Pakistan
Ethiopia*	Morocco	Greece	Qatar
Gabon	Niger	India	Saudi Arabia
Ghana	Nigeria	Iran	Sri Lanka (Ceylon)
Guinea	Senegal	Israel	The United Arab Emirates
Ivory Coast	Sudan	Jordan	Turkey
Kenya	Tunisia	Kuwait	Yemen Arab Republic
Liberia	Upper Volta	Lebanon	
Libya*	Zaire		
	<i>Europe</i>		<i>Western Hemisphere</i>
	(Less Greece & Turkey)	Argentina	Haiti
Austria	Malta	Bahamas	Honduras
Belgium	Netherlands	Bolivia	Jamaica
Denmark	Norway	Brazil	Mexico
Finland	Portugal	Canada	Nicaragua
France	Spain	Chile*	Panama
Germany	Sweden	Colombia	Paraguay
(Fed Rep of)	Switzerland	Costa Rica	Peru
Iceland	United Kingdom	Dominican Republic	Surinam
Ireland	(Incl Crown Agents)	Ecuador	Trinidad and Tobago
Italy	Yugoslavia	El Salvador	Uruguay
Luxembourg		Guatemala	Venezuela
	<i>Far East</i>		<i>International Organizations</i>
Australia	Korea, Rep of	North Atlantic Treaty Organization (NATO)	and its agencies
Brunei	Laos*	Organization of American States (OAS)	
Burma	Malaysia	United Nations (UN) and its agencies to in-	clude International Civil Aviation Organi-
Cambodia*	New Zealand	zation (ICAO)	
China, Rep of	Philippines		
Fiji	Singapore		
Indonesia	Thailand		
Japan	Vietnam, Rep of*		

1. As of 1 March 1978

* Sales to these countries have been suspended.

TABLE A-2

**Channels of Submission and Approval¹
for Requirements for the Purchase of Defense Articles and Defense Services**

<i>Eligible Countries</i>	<i>Significant Combat² Equipment in ITAR</i>	<i>All Other Defense Articles and Services</i>	<i>Authorized Direct³ Arrangements for Dependable Undertaking</i>	<i>Authorized Receipt⁴ DLA Excess Property Listings</i>
<i>NATO Countries</i>				
Belgium -----	DOD ⁵	DOD	YES	YES
Canada -----	DOD	DOD	YES	YES
Denmark -----	DOD	DOD	YES	YES
France -----	DOD	DOD	YES	YES
Germany (Federal Republic of) ^{7,8} -----	DOD	DOD	YES	YES
Greece -----	STATE ⁶	DOD	YES	YES
Iceland -----	STATE	DOD	YES	YES
Italy -----	DOD	DOD	YES	YES
Luxembourg -----	DOD	DOD	YES	YES
Netherlands -----	DOD	DOD	YES	YES
Norway -----	DOD	DOD	YES	YES
Portugal -----	STATE	DOD	YES	YES
Turkey -----	STATE	DOD	YES	YES
United Kingdom -----	DOD	DOD	YES	YES
<i>Other European Countries</i>				
Austria -----	STATE	DOD	YES	YES
Finland -----	STATE	DOD	NO	NO
Ireland -----	STATE	DOD	YES	YES
Malta -----	STATE	DOD	YES	YES
Spain -----	STATE	DOD	YES	YES
Sweden -----	STATE	DOD	YES	YES
Switzerland -----	STATE	DOD	YES	YES
Yugoslavia -----	STATE	DOD	YES	YES
<i>Near East and South Asia Countries</i>				
Afghanistan -----	STATE	STATE	NO	NO
Bahrain -----	STATE	STATE	YES	YES
Egypt -----	STATE	STATE	NO	NO

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TABLE A-2

<i>Eligible Countries</i>	<i>Significant Combat² Equipment in ITAR</i>	<i>All Other Defense Articles and Services</i>	<i>Authorized Direct³ Arrangements for Dependable Undertaking</i>	<i>Authorized Receipt⁴ DLA Excess Property Listings</i>
<i>Near East and South Asia Countries (continued)</i>				
India -----	STATE	STATE	YES	YES
Iran -----	STATE	DOD	YES	YES
Israel -----	STATE	DOD	YES	YES
Jordan -----	STATE	DOD	YES	YES
Kuwait -----	STATE	DOD	YES	YES
Lebanon -----	STATE	STATE	YES	YES
Nepal -----	STATE	DOD	YES	YES
Oman -----	STATE	DOD	NO	NO
Pakistan -----	STATE	STATE	YES	YES
Qatar -----	STATE	DOD	YES	YES
Saudi Arabia -----	STATE	DOD	YES	YES
Sri Lanka (Ceylon) -----	STATE	DOD	NO	YES
The United Arab Emirates -----	STATE	DOD	YES	YES
Yemen Arab Republic -----	STATE	DOD	YES	YES
<i>Far East Countries</i>				
Australia -----	DOD	DOD	YES	YES
Burma -----	STATE	DOD	NO	YES
Brunei -----	STATE	STATE	YES	YES
Cambodia* -----	STATE	STATE	NO	NO
China, Republic of -----	STATE	DOD	YES	YES
Fiji -----	STATE	DOD	NO	NO
Indonesia -----	STATE	DOD	YES	YES
Japan -----	DOD	DOD	YES	YES
Korea -----	STATE	DOD	YES	YES
Laos* -----	STATE	STATE	NO	NO
Malaysia -----	STATE	DOD	YES	YES
New Zealand -----	DOD	DOD	YES	YES
Philippines -----	STATE	DOD	YES	YES
Singapore -----	STATE	DOD	YES	YES
Thailand -----	STATE	DOD	YES	YES
Vietnam* -----	STATE	STATE	NO	NO

TABLE A-2

<i>Eligible Countries</i>	<i>Significant Combat² Equipment in ITAR</i>	<i>All Other Defense Articles and Services</i>	<i>Authorized Direct³ Arrangements for Dependable Undertaking</i>	<i>Authorized Receipt⁴ DLA Excess Property Listings</i>
<i>African Countries</i>				
Cameroon -----	STATE	DOD	NO	NO
Chad -----	STATE	DOD	NO	NO
Benin -----	STATE	STATE	NO	NO
Ethiopia* -----	STATE	STATE	NO	NO
Gabon -----	STATE	DOD	NO	NO
Ghana -----	STATE	DOD	NO	NO
Guinea -----	STATE	STATE	NO	NO
Ivory Coast -----	STATE	DOD	NO	NO
Kenya -----	STATE	DOD	YES	NO
Liberia -----	STATE	DOD	YES	YES
Libya* -----	STATE	STATE	NO	NO
Malagasy Republic -----	STATE	STATE	NO	NO
Mali -----	STATE	STATE	NO	NO
Mauritius -----	STATE	DOD	NO	NO
Morocco -----	STATE	DOD	YES	YES
Niger -----	STATE	DOD	NO	NO
Nigeria -----	STATE	DOD	YES	NO
Senegal -----	STATE	DOD	NO	NO
Sudan -----	STATE	DOD	NO	NO
Tunisia -----	STATE	DOD	YES	YES
Upper Volta -----	STATE	DOD	NO	NO
Zaire -----	STATE	DOD	NO	YES
<i>Latin American Countries</i>				
Argentina -----	STATE	STATE	NO	NO
Bahamas -----	STATE	DOD	YES	YES
Bolivia -----	STATE	DOD	YES	YES
Brazil -----	STATE	STATE	NO	NO
Chile* -----	STATE	STATE	NO	NO
Colombia -----	STATE	DOD	YES	YES
Costa Rica -----	STATE	DOD	YES	YES
Dominican Republic -----	STATE	DOD	YES	YES
Ecuador -----	STATE	DOD	YES	YES

TABLE A-2

<i>Eligible Countries</i>	<i>Significant Combat Equipment in ITAR</i>	<i>All Other Defense Articles and Services</i>	<i>Authorized Direct Arrangements for Dependable Undertaking</i>	<i>Authorized Receipts DLA Excess Property Listings</i>
<i>Latin American Countries (continued)</i>				
El Salvador -----	STATE	STATE	YES	YES
Guatemala -----	STATE	STATE	YES	YES
Haiti -----	STATE	STATE	YES	YES
Honduras -----	STATE	DOD	YES	YES
Jamaica -----	STATE	DOD	NO	NO
Mexico -----	STATE	DOD	YES	YES
Nicaragua -----	STATE	STATE	NO	YES
Panama -----	STATE	DOD	YES	YES
Paraguay -----	STATE	STATE	NO	YES
Peru -----	STATE	STATE	YES	YES
Surinam -----	STATE	DOD	NO	NO
Trinidad and Tobago -----	STATE	DOD	NO	NO
Uruguay -----	STATE	STATE	NO	YES
Venezuela -----	STATE	DOD	YES	YES
<i>International Organizations</i>				
NATO (North Atlantic Treaty Organizations and its agencies) -----	DOD	DOD	YES	YES
Organization of American States (OAS) -----	STATE	DOD	NO	NO
United Nations and its agencies to include International Civil Aviation Organization (ICAO) -----	STATE	STATE	NO	NO

*Sales to these countries have been suspended.

TABLE A-2

NOTE: The purchasing country or international organization must make payment in U.S. dollars under the appropriate terms of sale as specified in Part III, Chapter G, paragraph 3.

¹ As of 1 March 1978.

² Items designated as significant combat equipment are indicated in the International Traffic in Arms Regulation (ITAR), Title 22, CFR, Section 121.03.

³ Arrangements for purchase under the dependable undertaking provisions of the Arms Control Export Act may be made directly with the cognizant DOD component, subject to the approval of that component.

⁴ Countries or international organizations receiving distribution of lists of excess U.S. military material for sale through the Defense Logistics Services Center (DLSC), Defense Logistics Agency (DLA) (DOD Instruction 2110.8).

⁵ Category A—Country purchase programs and/or requests authorized by the Department of State for submission directly to the cognizant DOD component for processing.

⁶ Category B—Country purchase programs and/or requests require submission to, and approval of, the Department of State and Department of Defense prior to action within the cognizant DOD component.

⁷ Except for purchases of items listed and defined in Annexes 2 and 3 of Paris Protocol III. (See Memorandum, I-2710/59 dated 11 June 1959.)

⁸ Request for payment of Federal Republic of Germany purchases will be submitted in accordance with DOD Instruction 2110.32.

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CHAPTER B

FOREIGN MILITARY SALES POLICIES, GUIDELINES AND RESTRICTIONS

1. Purpose

Supplement information provided in MASM—Part I, DOD Directive No. 5132.3, Department of Defense Policy and Responsibilities Relating to Security Assistance, December 20, 1972 and other related basic directives and instructions governing military export sales activities.

2. Basic Sales and Guidelines

In enacting the Arms Export Control Act (AECA), as amended, the Congress consolidated and revised foreign assistance legislation relating to reimbursable exports.

a. Basic Sales Policy. In this Act, the Congress:

(1) Declared the ultimate goal of the U.S. to be a world free of the dangers and burdens of armaments with the use of force subordinated to the rule of law;

(2) Affirmed the increasing cost and complexity of defense equipment and recognized that there continues a need for international defense cooperation to maintain peace and security;

(3) Established that the United States will facilitate the common defense by entering into international arrangements with friendly countries on projects of cooperative exchange of data, research, development, production, procurement and logistics support to achieve national defense requirements and objectives of mutual concern;

(4) To this end, authorized sales to friendly countries to equip their forces with due regard to impact on social and economic development and on arms races; and

(5) Declared the sense of the Congress that all such sales be approved only when

they are consistent with the foreign policy interests of the United States.

b. Military exports sales support specific foreign policy and security interests of the United States. Such sales have in the past improved internal order and increased the prospects for regional stability, thereby reducing the likelihood of direct U.S. military involvement. Standardization of materiel, doctrine, and training is enhanced among our allies and friends. The U.S. production base is maintained, U.S. employment is increased, research and development costs are spread wider, unit costs to the U.S. Services reduced, and forward materiel support is facilitated. The U.S. balance of payments is aided and closer relations, cooperation, and partnership with other nations are engendered.

c. Guidelines

Except where overriding considerations dictate otherwise, the following guidelines will govern Department of Defense sales activities:

(1) Department of Defense sales will support the foreign policy interests of the United States.

(2) Department of Defense will be responsive to foreign requests for sales proposals.

(3) Countries will be encouraged, consistent with economic-financial capabilities, to make the transition from grant aid to sales.

(4) To the extent practicable, the Department of Defense will assist U.S. industry in making sales directly to foreign governments. Relationships with industry will be forthright, factual, and will avoid all connotation of favoritism.

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(5) The Department of State has advised commercial firms who plan to discuss the sale of defense articles overseas to:

(a) touch base with the local MAAG or American Embassy representative upon arrival in-country, and

(b) inform the MAAG or Embassy representative whether or not they have a license to discuss technical data regarding the project planned to be discussed with host nations, and if not, how the commercial firm expects to handle the matter.

There is no mandatory requirement for a commercial firm to contact the MAAG or local Embassy representative but it is in the best interests of all concerned if commercial firms do so.

Department of Defense policy is one of even-handedness when dealing with commercial firms engaged in overseas marketing activities. When U.S. industry representatives approach the MAAG for assistance in conducting normal marketing efforts abroad, MAAG personnel should, within policy guidelines, use their own best judgement in determining whether a commercial firm should be referred to foreign country officials for the purpose of discussing a possible sale or whether any other assistance should be given.

(6) Unless dictated by overriding logistics considerations approved by the Secretary of Defense, the Department of Defense will not enter into sales arrangements which entail commitments for Department of Defense procurement in foreign countries.

(7) Credit and credit guaranties under the Arms Export Control Act will be used only to assist countries in acquiring essential items which cannot reasonably be financed by other means and normally will be used only to finance investment requirements.

(8) Wherever practicable, guaranteed credit will be used instead of direct FMS credit.

(9) Concessionary FMS credit terms (i.e., interest rates less than cost of money to the U.S. Government) will be granted only

when determined by the President to be required by the national interest.

(10) We welcome consultation with our friends and allies on research, development, production, and logistic support programs of mutual interest.

d. When procuring for a foreign government, DOD will apply the same contract clauses and contract administration as it would use in procuring for itself, except where exceptions are authorized in the Armed Forces Procurement Regulations. When a sole source procurement requested by a foreign government appears to be motivated by objectives in conflict with this requirement or with any U.S. legislation, the request must be forwarded to DSAA, which will forward the request to the Department of State for consideration. No Letter of Offer in such cases will be issued without approval of the Director DSAA.

e. The DOD Offer and Acceptance (DD Form 1513) is an agreement entered into pursuant to the authority of the Arms Export Control Act whereby the United States Government offers to sell and another government or international organization agrees to buy defense articles and/or defense services. In those instances where defense articles or defense services covered by a DD 1513 agreement are to be obtained by DOD through procurement, the implementing purchases or contracts are required to be in compliance with the Armed Services Regulation (ASPR 1-102 and 6-1302). Accordingly, in order to assure such compliance, it is essential that those provisions of the DD 1513 agreement (and any associated contemporaneous agreements such as reciprocal procurement arrangements) which bear upon the related contract or purchase action be coordinated between the Defense Security Assistance Agency and the cognizant DOD procuring activity. In those instances where a deviation from ASPR must be obtained in order to incorporate a DD 1513 special provision in an implementing DOD contract, the ASPR procedures for obtaining such deviation

should be accomplished prior to the inclusion of such provision in the DD Form 1513 agreement.

3. Major Restraints and Significant Recurring Reports to the Congress

The following is a summary of the major restraints and requirements for reporting to the Congress which govern foreign military sales activities, and reflect major requisites which impact on military export sales. Unless otherwise noted, references are to the AECA, as amended.

a. Major Restraints

(1) Sales will be approved only when consistent with U.S. foreign policy interests, foreign aid purposes as embodied in the FAA, the extent and character of the military requirement, the economic and financial capability of the purchases, with particular regard being given, where appropriate, to proper balance among such sales, grant military assistance and economic assistance as well as to the impact of the sales on social and economic development programs and on existing or incipient arms races (Sec. 1).

(2) Sales and credit guaranties (Secs. 21, 22, 23 and 24) shall not be approved to arm military dictators who are denying the growth of fundamental rights or social progress to their people. The President may waive this limitation when he determines it would be important to the security of the United States (Sec. 1).

(3) The Secretary of State shall be responsible for determining whether there shall be a sale to a country and the amount thereof, and whether these shall be delivery or other performance under such sale or export to the end that sales and exports are integrated with other U.S. activities and the foreign policy of the U.S. is best served thereby. (Sec. 2(b)).

(4) The President must determine the eligibility of the prospective purchaser on the basis that sales will strengthen U.S. security and promote world peace (Sec. 3(a)(1)).

(5) The purchaser must agree not to transfer title to, or possession of, any defense article or related training or other defense service without prior U.S. consent; and the President must report to the Congress before such consent is given (Sec. 3(a)(2)).

(6) Any foreign country which hereafter uses defense articles or defense services furnished under the Arms Export Control Act, in substantial violation of any agreement entered into under that Act, shall be ineligible for further cash sales, credits or guaranties until such time as the President determines that such violation has ceased and the country has given satisfactory assurances that such violation will not recur. (Sec. 3c)

(7) Unless the President finds that the national security requires otherwise, he shall terminate all sales, credits and guaranties to any government which aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism. Such termination shall be for one year, beginning on the date of such termination, except that if during the country's period of ineligibility another such sanctuary is granted, its period of ineligibility shall be extended for an additional year. If the President finds that the national security justifies a continuation of sales, credits or guaranties to any such government he shall report such finding to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate. (Sec. 3f)

(8) Sales may be made to countries only for purposes of internal security, legitimate self defense, civic action, or regional or collective arrangements consistent with the United Nations (U.N.) Charter, or requested by the U.N. (Sec. 4)

(9) No FMS credits or guarantees shall be extended to less developed countries—except Greece, Turkey, Iran, Israel, Republic of China, Philippines, and Korea—to buy sophisticated weapons, such as missile systems and jet aircraft for military purposes,

unless the President determines that such financing is important to the U.S. national security. (Sec. 4)

(10) Sales may be made under FMS only if the eligible purchaser agrees to pay in U.S. dollars. (Secs. 21 and 22)

(11) FMS credits must be repaid in U.S. dollars within twelve years after the delivery of the defense articles or the rendering of the defense services. (Sec. 23)

(12) Financing of sales of defense articles and defense services by any individual, corporation, partnership or other judicial entity doing business in the United States (excluding U.S. Government agencies other than the Federal Financing Bank) may be guaranteed by the USG. Fees shall be charged for such guarantees. An amount equal to 10% of the principal amount of the contractual liability under guaranty shall be set aside as a reserve from funds appropriated under the Act. (Sec. 24)

(13) Export-Import Bank financing of sales to economically less developed countries is prohibited. (Sec. 32)

(14) A ceiling on grant aid and sales credits combined (excluding training) shall not exceed \$40,000,000 in each fiscal year for African countries. The President may waive this provision when he determines it to be important to the security of the United States. (Sec. 33)

(15) FMS credit and guaranty standards and criteria, e.g., interest rates, shall be established by the President in accordance with the foreign, national security and financial policies of the U.S. (Sec. 34)

(16) Further sales, credits, and guarantees shall be terminated to any economically less developed country which diverts economic aid, or its own resources to unnecessary military expenditures, to a degree which materially interferes with its development. (Sec. 35)

(17) Cash received from FMS and from repayments of FMS credits shall not be used for financing new credits or guaranties. (Sec. 37)

(18) The President is authorized to control the import and export of defense articles and services and to designate those items which shall be considered defense articles and services to promulgate regulations for the import and export of such articles and services. The items so designated shall constitute the United States Munitions List. (Sec. 38(a))

(19) No license may be issued under Section 38 of the Act for the export of any major defense equipment sold under a contract in the amount of \$25,000,000 or more to any foreign country which is not a member of the North Atlantic Treaty Organization (unless such major defense equipment had been sold under FMS). Additionally, this prohibition shall not apply to the issuance of licenses under this section for the export of major defense equipment to Australia, Japan, or New Zealand, or major defense equipment sold commercially in implementation of an agreement between the United States Government and the government of a foreign country for the production of the major defense equipment to which such licenses relate if the President has submitted a certificate with respect to such proposed agreement, prior to its signature, to the Speaker of the House of Representatives and to the Chairman of the Committee on Foreign Relations of the Senate in the same form as the certification required under Section 36(b) of this Act and subject to the requirements of such Section. (Sec. 38(b) (3))

(20) Arms control consequences must be taken into consideration when evaluating any FMS sale. (Sec. 42(a) (3))

(21) FMS funds may be used for procurement outside the U.S. only if the President determines that such procurement will not result in adverse effects upon the U.S. economy or the industrial mobilization base. (Sec. 42(c))

(22) Provisions of Atomic Energy Act and 10 USC 7307 (requiring separate legislation for major ship loans and sales) are unaffected by the AECA. (Sec. 44)

(23) Sale of defense articles, defense

services or training to foreign organizations or units, including foreign police forces, will not be made under the Arms Export Control Act unless such organizations or units are a part of the national defense forces under the direction and control of the Ministry responsible for defense matters. Prior approval of DSAA is required for the sale of defense articles, defense services or training to foreign organizations or units that are under the direction and control of the Ministry responsible for defense matters if they are engaged in on-going civilian police functions.

(24) Consistent with its resources and the situation prevailing in-country, the MAAG is responsible for supervising and reporting on the utilization by the foreign country of defense articles and services acquired through FMS.

b. Significant Reports to the Congress

(1) Quarterly reports of:

(a) all Letters of Offer to sell any major defense equipment for \$1,000,000 or more under this Act to each foreign country and international organization, by category, if such Letters of Offer have not been accepted or cancelled. (Sec. 36(a)(1)).

(b) all such Letters of Offer that have been accepted during the fiscal year in which such report is submitted, together with the total value of all defense articles and defense services sold to each foreign country and international organization during such fiscal year. (Sec. 36(a)(2)).

(c) the cumulative dollar amounts, by foreign country and international organization, of sales credit agreements under Section 23 and guaranty agreements under Section 24 made during the fiscal year in which such report is submitted. (Sec. 36(a)(3)).

(d) projections of the dollar amounts, by foreign country and international organizations, of cash sales expected to be made under Sections 21 and 22, credits to be extended under Section 23, and guaranty agreements to be made under Section 24 in the quarter of the fiscal year immediately following the quarter for which such report is submitted. (Sec. 36(a)(5)).

(e) a projection with respect to all cash sales expected to be made and credits expected to be extended to each country and organization for the remainder of the fiscal year in which such report is transmitted. (Sec. 36(a)(6)).

(f) an estimate of the number of officers and employees of the United States Government and of United States Civilian contract personnel present in each country at the end of that quarter for assignments in implementation of sales and commercial exports under this Act. (Sec. 36(a)(7)).

(g) an analysis and description of the services being performed by officers and employees of the U.S. Government under Section 21(a) of this Act, including the number of personnel so employed. (Sec. 36(a)(8)).

(2) In the case of any Letter of Offer to sell any defense articles or services under this Act for \$25,000,000 or more, or any major defense equipment for \$7,000,000 or more, a numbered certification of (1) the foreign country or international organization to which the defense article or service is offered or was sold, (2) the dollar amount of the offer to sell or the sale and the number of defense articles offered or sold, (3) a description of the defense article or service offered or sold, and (4) the United States Armed Force or other agency of the United States which is making the offer to sell or the sale, as the case may be; and a description of any contribution, gift, commission, or fee paid or offered or agreed to be paid in order to solicit, promote, or otherwise to secure such Letter of Offer. See Appendix B, Figure App B-2 for a detailed listing of the information specified to be included in this report. (Sec. 36(b)(1)).

(3) Notification to the Congress before issuance of Letters of Offer in the amount of \$25,000,000 or more or for the sale of major defense equipment in the amount of \$7,000,000 or more. Further, the Arms Export Control Act provides that the Letter of Offer shall not be issued if Congress, within 30 calendar days of receipt of such notification, adopts a concurrent resolution stating in effect that it objects to such proposed sale,

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unless the President in his notification to Congress states that an emergency exists which requires such sale in the national security interests of the United States (Sec.

36(b)(1)). See Chapter C, paragraph 16 for processing LOAs in the amount of \$25 million or more or for LOAs in the amount of \$7 million for major defense equipment.

CHAPTER C

GENERAL PROCEDURES

1. Introduction

This Chapter describes the general context and character of Foreign Military Sales (FMS) and covers the processes and practices with which the U.S. Government decides to sell military equipment to a foreign government—or decides not to.

2. Buyer-Seller Relationships

An essential characteristic of Military Export Sales, whether they be commercial or through government channels, is that two governments must agree before a transaction is concluded. Neither government can direct the transaction; either government can shape it only by withholding its approval. Sales are negotiated. Both the buyer and the seller must be satisfied.

This essential characteristic predominates in shaping the conduct and style of Foreign Military Sales. Some of the rules governing FMS are hard and fast. For example, the U.S. Government is required by law to sell only for dollars. Most of the “rules” must be pragmatically applied. Since a sale must be negotiated, rules take the shape of preferences and sales procedures take on the shape of general practice, with the consequence that exceptions to the rule are more easily cited than the rule itself.

3. Purpose for Sale of U.S. Military Equipment Abroad

All nations generally prefer to buy at home. All nations express that preference by a willingness to pay a premium or make a sacrifice in terms of price, and/or quality for the privilege of buying at home. But because some goods are simply not available

at home, or because the premium of sacrifice is too large, all nations make some of their purchases abroad.

For civil goods, trade patterns reflect the wide diversity of procurement decisions made by private citizens. Military trade patterns reflect the policies and preferences of governments—because the acquisition and use of military equipment is uniquely a governmental function.

In a narrow sense, the U.S. Government sells military equipment abroad because such sale is authorized and encouraged by law—in modern times, since the Mutual Defense Act of 1949. In a broader sense, the U.S. Government sells military equipment abroad for all the basic reasons expressed in Chapter B as well as the following:

- a. because the United States, with only 6 percent of the world's population but one-third of its gross national product, is the world's most technological advanced nation;
- b. because the United States has maintained a foreign policy and style since World War II of aspiring to promote a world free of dangers and burdens of armament with the use of force subordinated to the rule of law;
- c. because the United States has long believed that its national security is inseparable from and dependent upon free world security;
- d. because the United States has, since World War II, joined with its free world friends and allies in concluding that such security must rest on a strong and well-equipped defense capability;

- e. because the Marshall Plan and successor assistance efforts, under which the United States has granted Military Assistance totaling over \$53 billion since World War II, combined with the self help efforts of recipient countries, have restored the economies of most free world countries; and
- f. because, finally, economically capable nations are now able to pay for the military equipment that they wish to obtain from the United States.

In brief, with many military requirements still unmet and with many modernization requirements accumulating, all the foreign policy, security and military motivations that gave rise to U.S. military grant assistance now motivate the transfers of military equipment on terms of sale.

4. General Criteria Regarding Sale of Military Equipment

In general the U.S. Government is willing to sell equipment to such countries at such times as it approves such sales on a case-by-case basis.

- a. It is easier to approve the sale of less, rather than more sophisticated equipment; easier to approve the sale of less, rather than more, expensive equipment; easier to approve the sale of equipment adopted by the U.S. forces and promising to the buyer, thereby, the benefits of logistics standardization.
- b. The willingness of the U.S. Government to sell military equipment varies country by country in accordance with the military requirement, ability to maintain and use, compatibility with existing inventory, and impact on the preconceptions and the actions of the buyer's neighbors.
- c. The willingness of the U.S. Government to sell military equipment varies with time and situation; thus changes in terms of foreign policy, diplomacy,

economy, finances and security, reflecting the changing world-wide situation, can cause reversals in such willingness from time to time.

This is not to say that there are no sources of guidance with regard to the question of the U.S. Government's willingness to sell. The National Disclosure Policy Manual (NDP-1) records the levels of classification which the U.S. Government is willing in general to release to cited countries. Requests for exceptions to policy established by this document are handled by the National Disclosure Policy Board which is chaired by the Department of Defense.

The legislative restraints on Foreign Military Sales are reviewed in Chapter B. These reflect the guidelines and constraints that must be followed prior to the approval of Military Export Sales.

5. Channels Used in the Sale of Military Equipment

"Military Export Sales" divide themselves into "Foreign Military Sales" and "Commercial Sales." Foreign Military Sales are government-to-government transactions; for these sales, the Department of Defense purchases equipment from United States firms, takes title to the equipment (or has title to equipment to be sold from U.S. stocks), and sells the equipment to the foreign buyer. For Commercial Sales, the U.S. firm sells directly to the foreign buyer.

Foreign Military Sales do not require the Defense Department to obtain an export license from the State Department if the items are physically exported by DOD; the purchaser requires a license if the items are delivered to the purchaser in the United States. For Commercial Sales, an export license from the State Department is required for the export of all military equipment (i.e., all materiel listed in the munitions list).

Section 38(b)(3) of the Arms Export Control Act states that: "No license may be issued under this Act for the export of any

major defense equipment sold under a contract in the amount of \$25,000,000 or more to any foreign country which is not a member of the North Atlantic Treaty Organization unless such major defense equipment was sold under this act." For detailed procedures on commercial sales, see Chapter H.

The Defense Department preference, therefore, is to use commercial channels as much as possible. Nevertheless, some two-thirds to three-fourths of all U.S. military exports actually pass through government-to-government channels for one or more of the following reasons:

a. This GFE likewise cannot be sold directly to U.S. prime contractors for incorporation in weapons systems for sale to foreign buyers.

b. For some special situations, the U.S. Government wishes to exercise the control that is more easily achieved with the FMS channel.

c. Classified equipment, which must in any event be delivered through government channels, is often easier to sell through the government channel.

d. Sales made under supply support arrangements and similar logistics sales arrangements are handled through the FMS channel as the only practicable way of permitting the armed forces of friends and allies to "buy into" the procedure as do using U.S. units.

Direct contact between MAAGs and Military Departments is authorized to provide information to host countries concerning technical advice, data on item configuration and availability, cost factors, and other essential technical and supply data.

6. Basic Foreign Military Sales Procedures

a. Eligible countries and international organizations authorized to purchase defense articles and defense services under the authority of the Arms Export Control Act are

listed in Chapter A, Table A-1. Special approval requirements are prescribed for "Significant Combat Equipment" and "All Other Defense Articles and Services", Chapter A, Table A-2.

b. Following are the prescribed procedures and administrative channels for implementing requests for defense articles and defense services:

(1) Category A—Requests for "significant combat equipment" (if the value of such would be \$7 million or more) or "all other defense articles and services" (if the value of such articles or services could be \$25 million or more) which originate in-country will be transmitted via the U.S. Embassy rather than by the MAAG or similar military elements to the cognizant DOD component for action, with the Department of State, DSAA, the appropriate Unified Command and ACDA as information addressees. All other FMS requests, at the discretion of the requesting country, should be transmitted either through the country's representatives in the U.S. (such as the Purchasing Missions, Embassies, or Military Attaches in Washington, D. C.) or through the U.S. country team located in the foreign country (such as the MAAG, U.S. Military Mission, Offices of Defense Cooperation (ODCs), or U.S. Defense Attache's Office) directly to the cognizant DOD component with an information copy to DSAA and (except for requests under the category "all other defense articles and services" if the value of such articles or services could be less than \$25 million) to the Department of State.

(2) Category B—All requests for "significant combat equipment" (if the value of such would be \$7 million or more) or "all other defense articles and services" (if the value of such articles or services could be

* Some countries are listed as Category A for maintenance support and Category B for major end-items.

Special Conditions: Sale of electronic warfare (EW) equipment to NATO countries will, for the most part, follow normal FMS channels. However, special coordination and review by USEUCOM will be required to assure that the equipment to be purchased by one NATO country is compatible with the overall NATO EW concept.

\$25 million or more) which originate in-country will be transmitted via the U.S. Embassy rather than by the MAAG or similar military element to the Department of State, with an information copy to DSAA and the appropriate Unified Command. The preferred channel for all other FMS requests is through the purchasing country's representative in the U.S. (e.g., purchasing mission or military attache) via the Embassy of the foreign country to the Department of State, with an information copy to DSAA. Requests received by the U.S. in-country should be sent to the Secretary of State/Secretary of Defense.

(3) When a DOD Component receives a request for defense articles or services in a manner not specifically authorized as outlined above, or specified in Chapter A, Table A-2, the request should be forwarded to the DSAA. The DSAA will, in turn, seek State Department approval. With such approval, the DSAA will return the request to the appropriate DOD Component for implementation and will advise the originator of this action as well as the proper channel for similar future requests.

(4) Military Departments will submit all Letters of Offer for significant combat equipment and for those items or services of a critical or special nature to the Defense Security Assistance Agency (Attn: Director of Operations) for approval prior to submission to the requesting country. Additional LOA's which require DSAA approval are:

(a) all Letters of Offer to African countries and Iran;

(b) all Letters of Offer for \$1 million or more, and all amendments which increase the value of a case to \$1 million or more, for Bahrain, Israel, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, the United Arab Emirates and the Yeman Arab Republic;

(c) all Letters of Offer for the sale of major defense equipment. Special instructions for Letters of Offer for the sale of end items in the amount of \$25 million or more or the sale of major defense equipment in the amount of \$7 million or more are contained in Section 16 of this chapter.

(d) all Letters of Offer for which the terms of payment are credit or guaranteed funds.

(e) all Letters of Offer for items containing a non-recurring surcharge as an element of cost of the items are prescribed in DOD Directive 2140.2;

(f) all Letters of Offer for items or services which are not standard in the DOD inventory and for which Research, Development, Test and Evaluation are included as an element to be procured;

(g) all Letters of Offer involving the sale of Technical Data Packages or similar data which would result in the establishment of a foreign production capability for an item; and,

(h) all Letters of Offer including agent's fees.

7. Furnishing Information on Price, Availability and Condition of Military Equipment to Foreign Governments

a. Importance of Accurate Estimates

The terms and conditions of the DD Form 1513 stipulate that any price and availability data shown on the DD Form 1513 are estimates rather than fixed prices or firm commitments. This point continually must be stressed to foreign governments. Nevertheless unexpected and substantial price increases, delivery delays, or the receipt of equipment in poor condition can lead to a foreign government's disappointment or even disillusionment with the FMS system. It is essential that all DOD elements concerned strive for accuracy in the development of price and availability data; the process must include the identification of contingencies which might cause the "best estimate" of price and availability to fluctuate beyond acceptable bounds. The nature of any such contingency or qualification as to the accuracy of estimates normally should be brought to the attention of the FMS purchaser during the offer and acceptance process, unless this would result in disclosure of classified information, U.S. force planning information, or

data which otherwise is sensitive to United States interests.

b. Discussions with Foreign Governments

Economic, production and budget uncertainties all contribute to Military Department and DSA difficulties in making accurate price and availability estimates. The large volume of price and availability estimates which are processed also increase the likelihood of error. It is imperative that the utmost discretion be exercised by members of the country team or other U.S. officials in discussions with foreign government officials of price, availability and equipment condition. Discussions of specifics related to FMS cash or credit sales should be based on current program data. Only specific data provided by the Military Departments, DSA or the Defense Security Assistance Agency (DSAA) should be used. In all discussions, it should be clearly noted that price quotations are estimates only and are subject to change. Final prices charged to purchasers under Foreign Military Sales contracts are governed by United States legal requirements. Purchasers must recognize that prices contained in Letters of Offer are in reality estimates, and by law the United States must finally be reimbursed for the actual costs to the U.S. Government of the equipment and services provided.

c. Importance of Accurate Statements of Condition of Equipment

The condition of used equipment suggested for consideration should be ascertained, and any commitments made must be explicit in order to preclude misunderstandings. If data on equipment condition is not available in adequate detail, the DOD components concerned should obtain and provide specifics before commitments are made.

d. Two Basic Categories of Estimates: "P&B" and "P&A"

Estimates of price and availability information can be grouped into two basic categories. (1) "P&B" estimates which are for planning and/or budgeting purposes only

(that is, not at that time meant to trigger the preparation of a DD Form 1513), and (2) "P&A" estimates which are intended for use in the processing of a DD Form 1513 (Letter of Offer and Acceptance). In order to minimize uncertainty, reduce overall average response time and lighten workload, requests for price and availability estimates shall be treated according to the type they represent.

e. Processing Requests for P&B Estimates

(1) Requests for "Planning and/or Budgetary" purpose shall be known as "P&B" requests; responses to such requests shall be known as "P&B" estimates. These estimates should be sufficiently accurate to serve the planning purposes of the particular case, but normally will not be developed as fully or coordinated as widely as "P&A" estimates (see below). Accordingly the workload and response time associated with responding to P&B requests may be less than that associated with P&A requests.

(2) Generally, P&B estimates are developed on the basis of available information, using standard Military Department configurations and program data, unless more specific country data are provided. Standard Military Department factors may be applied to basic system estimates to derive support data. Normally contractor participation in developing "P&B" data is not desired. P&B estimates are specifically not considered to be valid for purposes of DD Form 1513 preparation.

(3) Channels for the submission of requests for P&B data are the same as those used for requests for P&A data and Letters of Offer. See paragraph 6, this Chapter. DOD components will provide an information copy of P&A estimates for both Category A and B requests to DSAA and (except for 'All other defense articles and services,' if the value of such is less than \$25 million for Category A) to the Department of State.

(4) Responses to P&B requests will state that the data is for planning/budgetary

purposes only and is not valid for Letter of Offer (DD Form 1513) purposes. Any potential additional costs which have not been included in the estimates, such as accessorial and transportation changes, spare parts and support equipment and training will be clearly identified. Emphasis shall be placed on timeliness and such estimates should be transmitted to the requestor not later than 30 days after receipt by the Military Department. If this date cannot be met, an interim reply will be sent.

f. Processing Requests for P&A Estimates

Requests which are intended to lead directly to the processing of a DD Form 1513 shall be known as P&A requests; estimates prepared in response to such requests shall be known as P&A estimates. These estimates will be as accurate as possible, and will represent the best estimate of the DOD component concerned, within the limits of timeliness and practicality. If the last contract price of an item is not known to be valid, it will be revalidated before providing a "P&A" estimate. Such estimates shall be provided within 60 days after receipt of the request by the DOD component concerned. If these dates cannot be met, the DOD component will send an interim reply to the requestor. In the event the estimate is being provided separately from a LOA, it will require the DSAA coordination along the same guidelines as apply for the submission of actual Letters of Offer. An information copy of P&A estimates, for both Category A and B requests, will be provided DSAA.

Requests for P&A data should be submitted in accordance with the guidelines contained in paragraph 6, this Chapter. Should a DOD component receive a Category B request for P&A data, that request should be promptly referred to DSAA.

g. Estimates Are Not Commitments

All responses to P&A or P&B requests will include the following note: "The foregoing P&B (or P&A) estimates do not constitute an agreement between the U.S. Government and the Government of (insert the appro-

priate foreign country), nor a U.S. Government commitment to provide items or services for which these estimates are provided."

h. Need for Clarity and Completeness in Requesting Estimates

In all cases requests for P&B or P&A estimates should be as clear and complete as possible, so that they are understood and can be properly estimated by the DOD components concerned. USG officials who initially accept such requests for transmittal to the DOD components concerned should review them to ensure that (1) they are sufficiently specific to be understood and provide a firm basis for preparing estimates, and (2) requests state specifically whether they are for P&A or P&B data. When requests for estimates are received that do not specify whether they are for P&A or P&B data, the recipient initially receiving the request shall notify the requestor of this requirement and hold action on the request until the information is received. Training requirements included in the requests will be definitized and those requests which do not include training requirements will contain a statement to this effect. Other factors which should be included (as appropriate) are type or model designation, any special extra capabilities or features, concurrent and follow-on spares and components, ancillary support equipment, ancillary construction, number of locations, types of maintenance, special maintenance and technical services anticipated, any training facilities and training aids, and the approximate time-frame for proposed delivery. If a request is incomplete, it may be returned to the requestor for the additional information required. Also the requestor should be advised at the time estimates are provided of additional costs which are included in an LOA but may not be included in a P&B estimate, such as PCH&T costs, quality assurance and government provided engineering services, insurance if requested by the customer, medical and billeting costs for students, credit charges, contingencies, and the administrative surcharge.

When appropriate to ensure that complete

information is provided, as in the case of a major weapons system, the responsible DOD component will provide the requestor with a checklist of planning information. In sum, care should be taken to ensure that requests for estimates are clear and complete, and that there is a mutual understanding concerning the elements which make up or are associated with the item requests. In turn, the estimates provided should also be clear and complete, and the components thereof fully described so that there is no misunderstanding between the parties.

NOTE: All requests for information falling in Category B, no matter how informal the request, e.g., oral, letter, message, etc., (other than P&A requests intended to lead to the preparation of a Letter of Offer) are considered to be P&B requests and required the same channels of submission outlined in paragraph 7.e(3).

8. Pricing of FMS Transactions

Defense policy outlined in DOD Instruction 2140.1, 9 March 1977, calls for uniform DOD application of pricing and cost criteria for sales of Defense articles and services to eligible foreign governments and international organizations. In general terms, this means that DOD pricing and procedures will provide for the charging of all DOD direct and indirect costs, including those referred to as an "administrative charge" for the use of the DOD logistics system.

To assure that all such costs are covered in the DOD pricing, quotations on defense articles and services will be estimated and final adjustments will take place after delivery of the items or rendering of the services. DD 1513, Letter of Offer and Acceptance, provides for such estimated prices.

a. Items From Defense Stocks

Pricing of defense items from stock inventories will be handled according to DOD Instruction 2140.1. For example, standard prices will govern when nonexcess materiel is to be sold. This includes all items in the United States military supply system, except

such major items as complete ships, aircraft and missiles, space vehicles, and plant and production equipment.

Standard prices will include the current market or procurement cost of the item at the time the price is established or re-established. As a general rule, standard prices for items currently procured are revised once a year and revised when significant changes occur. Reductions in inventory standard prices may be made for sale of nonexcess materiel:

- (1) when material is in long supply, or
- (2) when there is a determination by the inventory manager that there is an actual difference in utility or desirability of an item due to age, condition or model. Sales of excess materiel will be priced as prescribed in DOD Instruction 2140.1.

b. Items From New Procurement

Prices of defense articles and services procured for eligible foreign governments or international organizations pursuant to Section 22 of the AEC Act will be cited to recover full DOD contract costs (including the cost of government materiel). In addition, the purchaser shall be required to obligate itself to pay any damages or costs that may accrue from the purchaser's cancellation of the contract. Authorized surcharges specified in Section 9 below will be added to the contract cost and included in the billing.

In general, defense articles shall be priced on the same basis as the cost principles used in pricing defense contracts for items of DOD use. However, recognition shall be given to reasonable and allocable contractor costs which are justified in connection with a particular sale (see ASPR 6-1304.3).

The cost of deviations from United States configuration and special technical data desired by a foreign government will be included as a charge to the foreign government additional to the average unit standard price or other U.S. normal charges.

9. Authorized Surcharges

Prices of defense articles and services sold to eligible foreign governments and inter-

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national organizations will include the following charges:

a. Accessorial Costs

These represent certain expenses incident to issues, sales, and transfers of materiel which are not included in the standard price or contract cost of materiel, such as:

(1) Packing, handling and crating costs (known as PCH&T costs when transportation is included). These are costs incurred for labor, materials, or services in preparing the materiel for shipment from the storage or distribution points.

(2) Transportation costs. Inland and ocean transportation costs, representing shipments by land, sea, and air, inland and coastwise waterways, vessel or air, and including parcel post via surface or air.

(3) Port loading and unloading costs. These are costs for labor, materials or services at ports of embarkation or debarkation.

(4) Prepositioning costs. Supply distribution costs incurred at locations outside the United States in anticipation of support to other authorized customers. These costs are applicable when shipments are made from overseas storage and distribution points, except that no positioning costs shall be assessed on "long supply" stocks.

b. Administrative Charges

An administrative charge for the use of the DOD logistics system shall be added to prices of contractual services and nonexcess materiel sold to eligible foreign governments and international organizations, for the purpose of recovering the DOD costs. Such a charge will be made in lieu of separate computations of charges for the costs of general management and administrative expenses pertaining to supply and procurement and services and other DOD costs (except Seat of Government costs).

The rate charge for administrative costs will be prescribed in DOD Instruction 2140.1, 9 March 1977. Supply support arrangements will include an administrative charge

of 5 percent added to the basic sales prices of contractual services and materiel to be provided. Foreign Military Sales other than supply support arrangements will include an administrative charge of 3 percent added to the cost price of contractual services, new procurements, or materiel from stock to be provided.

Rates for accessorial and administrative costs will be subject to review at least every two years. Requests for exceptions to the pricing policies prescribed herein, in the case of unresolved disputes, or deviations from any price or service charge when it can be shown that such deviations is in the best interests of the United States Government shall be submitted through the Director, DSAA, to be forwarded to the Assistant Secretary of Defense (Comptroller) for resolution or approval. Such requests will contain the basis or justification and supporting data for the exception.

c. Nonrecurring Cost Recovery

Defense policy, DOD Directive 2140.2, 5 January 1977, calls for the inclusion of DOD nonrecurring costs associated with the research, development and production of major defense equipment offered for sale to foreign governments and international organizations. The calculated equitable share of such costs to be borne by the foreign buyer shall be included in the sales price unless waived as described below.

Waivers, in whole or in part, can only be made in accordance with the conditions set forth in DOD Directive 2140.2, Section VI. Requests for such waivers will be submitted to the Director, DSAA.

d. Asset Use Charge and Rental Charge for Government-owned Tooling

Sales of defense articles which involve the use of government-owned facilities, shall be priced to include a 4 percent asset use charge in accordance with DOD Instruction 2140.1, Section X. Sales of defense articles which involve the use of government-owned tooling

shall be priced to include a rental charge for the use of the government-owned tooling and equipment in accordance with the provisions of ASPR 13-403. Waivers of these charges can be made only in accordance with the provisions of DOD Instruction 2140.1, Section X, for the asset use charge, and ASPR 13-406 for the rental of government-owned tooling and equipment.

10. Diversion of DOD Materiel

Defense policy calls for a determination to be made that sale of a defense item will not degrade U.S. defense efforts by taking needed equipment from U.S. stocks or by disrupting deliveries of critical items from production for U.S. forces, unless security or foreign policy requirements are such that sale of the item is in the overall U.S. national interest.

The Secretary of Defense on 20 September 1972 prescribed policies for allocating Defense materiel between U.S. forces and international security requirements to meet competing demands in a period of declining materiel acquisition programs. These include:

(1) To the maximum extent possible, allocations of materiel shall be made within the normal priorities structure—the Uniform Military Materiel Issue and Priority Systems (UMMIPS).

(2) Presidentially-directed, or Secretary of Defense-initiated materiel allocations shall be accorded sufficient priority through diversion of assets from other programs to assure accomplishment of the directed allocation within the time period specified.

(3) High priority international requirements (such as FMS requests) may be met by diverting or withdrawing equipment from U.S. active or reserve forces providing the operational readiness posture of these forces is not significantly lowered and payback can be accomplished in a reasonable period of time. Such determination may be made by the Military Departments.

(4) Materiel being procured or stocked specifically for FMS may be diverted to meet higher priority foreign requirements or

urgent needs of U.S. Forces with the prior concurrence of the Director, DSAA, who will, as appropriate, obtain policy guidance from the ASD (ISA).

(5) All requests or recommendations for diversions of FMS equipment will be referred to the Director, DSAA. In those instances where agreement cannot be reached with DSAA concerning the use of foreign program assets, or diversion of defense materiel, the matter will be referred to the Secretary of Defense for decision pursuant to the procedures established by Deputy Secretary of Defense Memorandum, 14 December 1976, subject: "Allocation of Defense Materiel and Services Between U.S. and International Requirements."

11. Insurance

Purchasers will self-insure FMS shipments or obtain commercial insurance without any right of subrogation of any claim against the United States. In extraordinary situations, and upon specific request by the purchaser and receipt of written authorization from the purchaser for the designated departmental procurement activity to act as the agent of the purchaser to obtain pricing quotes and, if necessary, procure the insurance required, insurance may be obtained by the military department concerned and billed as a separate line item on DD Form 1513. For FMS cases already implemented, authorized insurance coverage can be added by amendment. Whenever a Military Department does provide these services to a purchasing country or organization, it should point out that this is an exceptional arrangement, and should encourage and assist that purchaser to make its own arrangements for insurance for subsequent cases, as feasible.

12. Source Selection for Procurement for Foreign Governments

a. In keeping with the Department of Defense (DOD) policy, procurements made for FMS customers will be done under our U.S./DOD regulations and procedures. This affords the foreign customer the same benefits

and protection that apply to DOD procurement and is one of the principal reasons why nations want to procure through FMS channels.

b. With regard to the source selection process, the FMS customer may request that a defense article and defense service be obtained from a particular prime source. In such cases, Armed Services Procurement Regulation (ASPR) 3-210.2 (xviii) provides authority to negotiate on a sole source basis. Such requests may be honored when the sole source designated is based upon the objective needs of the FMS customer as stated by the customer. The request shall not be honored in any case of patently arbitrary, capricious or discriminatory exclusion of other sources. The FMS customer may also request that a sole source subcontract be placed with a particular firm. The Contracting Officer will honor such a request for subcontract placement on the same basis as indicated above for prime sources.

c. To avoid the additional delay and work load involved in revision of a Letter of Offer and Acceptance (LOA) (DD Form 1513), such requests by an FMS customer for prime or subcontract placement should be made no later than the time of the formal request for preparation of the LOA (DD Form 1513) for the defense articles or defense services is transmitted to the United States Government. However, if a request can be honored without excessive delay or undue disruption of the procurement/acquisition processes, it may be made and accepted any time prior to formal acceptance of the DD Form 1513 by the FMS customer.

d. It should be noted that the designation of subcontractors carries a risk which should be brought to the attention of the FMS customer. Clearly, the sole source designation of a component constitutes a warranty by the United States Government to the prime contractor that the designated item will be suitable for its intended purposes. In the event that problems in the performance or integration of the component are subsequently experienced and are attributable to its characteristics, the specification may be held to

the defective in that respect and any increased costs incurred by the customer in correcting or attempting to correct the problem may be recovered by the contractor. Since by law such additional costs must be borne by the FMS customer, it should be advised of this potential expense at the time the sole source designation is requested.

e. Subject to the above, Defense components' purchasing activities and prime contractors shall implement FMS requirements using normal procurement and contract management procedures as set forth in ASPR, other directives and pertinent contractual provisions. Representatives of the FMS customer 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. They shall not accept directions from the FMS customer as to source selection decisions or contract terms (other than the special contract provisions and warranties referred to in Condition A.2. of the DD Form 1513), nor shall the FMS customer be permitted to interfere with a prime contractor's placement of his subcontracts. However, to the extent permitted above, Defense components may honor an FMS customer's request for the designation of a particular prime or subcontract source for defense articles or defense services. Requests by the FMS customer 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.

13. U.S. Response to Requests for "Offset" Procurement

The Defense Department prefers that sales be negotiated without "offset" procurement arrangements wherever possible and that the

need for including an "offset" agreement be considered only on a case-by-case basis. If it is decided in any given case that such an agreement should be considered, the principles set forth below should govern.

"Offset" procurement is the term used to cover the offering, on a selective and case-by-case basis to foreign governments, of opportunities to respond to selected DOD procurement requirements. Experience to date with offset arrangements indicates that foreign countries find it difficult to compete effectively for enough U.S. business to achieve the offset procurement targets which are provided under the agreements. DOD has not had the need for a complete weapon system large enough or sophisticated enough to be procured from a foreign country to make such offset procurements sizable and attractive.

There are practical logistical problems involved in considering the procurement of major items or any quantity of sub-systems or components from a foreign source. Most important of these is the need for the U.S. to maintain a viable mobilization base within the U.S., which reduces or effectively eliminates a large quantity of items to be offered for foreign bidding. There also is the undesirability of considering foreign sources as mobilization base producers (other than Canada) for major items, assemblies, and critical components. We also have the problem of assuring proper quality of the defense items.

The administrative process for selecting items for competition has been lengthy and involved, as has been the procedure in waiving the bid differentials as the "Buy American" and the 50 percent gold flow rule. Unsuccessful U.S. producers in such competition also create many political and other pressures in opposition to any waiver of "Buy American" and "gold flow" differentials, especially in times of a declining DOD budget. This is understandable, inasmuch as such companies are not themselves realizing any direct benefits from the sale to a foreign country.

Nonetheless, if it is decided that such offset arrangements should be considered, due to the magnitude of total sales involved or for other specifically justified reasons, the follow-

ing basic guidelines will be applied:

(1) There must be, as a minimum, a plan for a realistic implementation of the offset agreement.

(2) DOD will urge the contractor to accept all or a major portion of the offset obligation.

(3) The initiative for offset procurement arrangements should be taken by the buying government.

a. DOD Participation in Offset Procurement

In the current highly competitive international market, and in view of the fact that offset procurement arrangements are being used rather widely in the free world sale of military equipment, there is justification for some flexibility in our present practice of discouraging offset procurement arrangements. DOD willingness to be flexible is affected by the levels current and projected net defense expenditures in the potential buying country. DOD participation in such offset procurement should be governed by the following principles, in order of applications:

(1) If an offset is necessary, DOD will, first, consider that it is the responsibility of the U.S. company or companies and their subcontractors involved in producing the equipment who would thereby benefit from the sale to undertake offset procurement from the buying country.

(2) If the DOD is convinced that the company or companies and their subcontractors involved in selling the equipment to the foreign country are not able to provide sufficient procurement to fulfill the offset, then DOD participation will be considered. It will first be limited to any government-furnished-equipment (GFE) provided to the U.S. contractors or subcontractors involved in the sale. The Buy American Act and gold-flow differentials will not be applied in evaluation of foreign bids.

(3) If it is not possible to restrict the DOD participation to foreign competition for GFE items involved in the item being sold, an effect will be made to restrict the release

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of invitations to bid to equipment in the same general industrial category as the item being sold. An alternative is to place some portion with firms that otherwise have received benefits of other Foreign Military Sales.

(4) The next preference is to enter into arrangements on selected items using non-appropriated funds. This, however, has limited potential because of the comparatively small amount of non-appropriated funds available.

(5) The least preferred method of filling the offset procurement arrangement is to permit foreign competition for items not directly related to the equipment being sold.

Except in special circumstances, fulfillment of reciprocal procurement obligations will be subject to two basic conditions:

(1) that the foreign source fully satisfies DOD requirements for performance, quality and delivery; and

(2) that procurement from the foreign source would cost no more than would procurement of comparable U.S. items eligible for contract award. To ensure that DOD reciprocal procurement obligations are effectively and expeditiously handled, arrangements with foreign governments should reflect a general plan for implementation.

Furthermore, DOD reserves unto itself the unilateral right to select items suitable for offset procurement which will be opened for foreign source competition. For such items that are selected, DOD will assure the foreign source competitors that a waiver of the Buy American Act and the gold-flow differentials will be granted to the foreign source competitor if the procurement conditions noted above have been properly met. Offset proposals and serious queries relating thereto should be referred to the DSAA Directorate of Operations.

b. Interdependent Research and Development

Another area to be considered in possible offset arrangements is in conjunction with Interdependent R&D projects. The Defense Department has been pursuing with its major allies a policy of interdependent R&D aimed

at improving mutual planning and acquisition of our respective national R&D programs, in order to decrease possible duplication and to increase effectiveness of the programs. A number of major factors and considerations encourage interdependent R&D programs.

(1) The position of the U.S. Government that our allies must share a large portion of the free world defense burden.

(2) The declining R&D budgets of the U.S., which puts a premium on achieving a greater R&D return per R&D dollar spent. By reducing duplication in R&D programs among our allies, greater use of the technical resources of the free world can be realized. U.S. R&D dollars thereby saved are available for other critical R&D areas.

(3) Significant advances in the technical capability of our allies. Transfer of some of this advanced technology and operational capability to the U.S. can be accomplished on a faster schedule and with less expense than through our own duplicated development.

The Defense Department intends to utilize allied developments only in those instances where it is clearly advantageous for the U.S. to do so. Production of these items, however, will be accomplished in the U.S. except where special circumstances justify overseas production. For example, when immediate hardware availability is required for operational reasons, when the production buy is too small to be economical for new production line start-up, or if reciprocal procurement obligations (offset arrangements) make it attractive to delay transition from off-the-shelf procurement to domestic production. Even in these circumstances, offshore procurement should be terminated as soon as such reasons are no longer controlling.

c. DOD Procedures in Offset Agreements

In addition to the overall rules and guidelines set forth in a and b above, the following specific rules will apply:

(1) Offset agreements include any agreement by DOD to purchase items from a foreign country in order to offset some

specific amount or percentage of the foreign country's expenditures in the U.S. for U.S. defense items. This includes any arrangement whereby the U.S. Government, to include the DOD, agrees to assist a U.S. defense contractor in some offset associated with a direct commercial sale. Such offset agreements are entered into only after approval by the Secretary or a Deputy Secretary of Defense and after approval of the Department of State in accordance with its defined procedures.

(2) Offset agreements, which may or may not contain specific coproduction arrangements, should be negotiated and the basic understanding reached prior to the final acceptance of the DOD Letter of Offer in order to include in this Letter of Offer the impact, if any, that such agreements may have on DOD Price and Availability. This procedure will also allow DOD and its contractors an opportunity to assess, in advance, our ability to fulfill such offset arrangements.

(3) Offset agreements will include guidelines concerning any restrictions of acceptability of competition under the offset from foreign government owned or subsidized companies.

(4) On the sale of a particular item or items where an offset agreement has been reached prior to the signing of the contract(s) the offset will not officially begin until after the contract(s) have been signed.

(5) In the case of offset agreements related to specific weapon system purchases, the U.S. contractors and associated subcontractors which benefit from the sale will assume the primary responsibility for fulfilling the offset.

(6) The foreign firms have the basic responsibility for marketing their products to DOD and to U.S. industry.

(7) In the event that an offset agreement provides for or involves the export from the U.S. of technology or technical data, the licensing provisions of the International Traffic in Arms Regulations (ITAR) will apply.

(8) In the negotiation of offset agreements, ISA/DSAA will be the focal point to coordinate the negotiations with the foreign

country. OUSDR&E and the Office of General Counsel must participate in these negotiations and concur with the final agreement. After negotiation and execution of the offset agreement, OUSDR&E shall take the lead and responsibility for the implementation of the agreement and fulfillment of the commitment with coordination of OASD(ISA) and DSAA as required.

(9) The basic policy for procurement activities is set forth in the DepSecDef memorandum of 15 November 1976, subject: General Policy on Purchases by DOD from Foreign Sources in Furtherance of Government-to-Government Offset Agreements.

14. Release of Technical Data

a. Approval to Release Technical Data

(1) All requests for Technical Data Packages (TDPs) must be approved by the Director, DSAA. Accordingly, all requests received by the Military Departments will be referred to DSAA for review. TDPs will normally not be released unless it has been determined to be in the U.S. interest to do so and alternative means of meeting the requirement are considered to be less desirable.

(2) Requests for TDPs normally fall in one of two categories: a request for data for use in maintaining or operating any items of U.S. equipment, or a request for data for use in producing an item of U.S. equipment either for the purchaser's own use or for sale to third countries. Referrals of requests to DSAA should include the appropriate information relevant to the intended end use of the TDP as outlined in paragraphs 13b and 13c below. A formal statement in writing from the purchaser as to the intended end-use of the TDP must be obtained in every case.

(3) TDPs furnished to foreign governments under the FMS program will be provided on a reimbursable basis only, by means of a formal LOA (DD Form 1513) which will cover, as a minimum, the full costs for preparation, reproduction and handling of the TDP in accordance with the pricing policies

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set forth in paragraph XVII of DOD Instruction 2140.1. In addition, if the TDP is intended to be used for production purposes, a charge for royalty fees in accordance with DOD Instruction 2140.1, Section XVII will be included as a separate line item on the LOA unless waived by the Director, DSAA under the provisions of paragraph 14.c below.

b. Sale of TDPs for Maintenance and Operational Purposes

(1) In the event that a TDP is requested for purposes of maintenance or operation of an item of U.S. equipment, the Military Department having cognizance over the item in question will provide to the Director, DSAA, the following:

(a) a copy of all pertinent correspondence with the purchasing government;

(b) a statement as to whether the requirement would be met by means of pertinent DOD instructions, maintenance or technical manuals, or other similar publications;

(c) in-country inventory of major end-items requiring maintenance support from the requested TDP;

(d) information as to classification of the TDP and as to proprietary rights involved, if any; and,

(e) the Military Department's recommendation concerning the request.

(2) In the event that release of the TDP is approved, care will be exercised to insure that:

(a) The TDP bears clear identifying markings stating any restriction, such as classification or proprietary rights, which apply.

(b) The LOA and any other transmittal correspondence clearly states that the TDP is released for the purpose stated by the requesting government, and may not be used for production purposes without the prior consent of the U.S. Government.

c. Sale of TDPs for Production Purposes

(1) In the event that a TDP is requested for purposes of producing an item of U.S.

defense equipment, either for use of the purchasing government's own forces, or for sale to third countries, the Military Department having cognizance over the item in question will provide to the Director, DSAA, in addition to the information outlined in paragraph 14b(1)(a), (b) and (c) above, the following data:

(a) quantity to be produced;

(b) intended end disposition of item to be produced, to include names of third country purchasers if item is for third country sale;

(c) current status of U.S. production and stock on hand of item(s) involved;

(d) U.S. and foreign production history of item for last 5 years;

(e) future U.S. production plans;

(f) current U.S. source(s) of supply for item;

(g) current cost to U.S. Government of the item, and whether it is produced in-house or under government contract;

(h) security classification of item to be produced;

(i) other countries authorized to produce the item;

(j) impact that sale may have on U.S. Foreign Military Sales, and on other programs or projects; and,

(k) whether intended recipients of production have previously obtained the item to be produced, and quantities obtained, actual or estimated.

(2) Normally, in all cases where the purchasing country intends to use the TDP for production purposes, a royalty fee will be assessed. This assessment will be done in accordance with the following rules unless the Director, DSAA, determines that special circumstances require a departure therefrom in a specific case:

(a) Where the foreign applicant intends to produce the article for "in-country" consumption only, a royalty fee of 5 percent of the latest or current U.S. unit sale price for each unit produced will be charged.

(b) Where the DOD has specifically approved "in-country" production for third country sale, a royalty fee of 8 percent of the latest or current U.S. unit sale price for each

unit produced for third country sale will be charged.

(c) The charge for "in-country" consumption only may be waived when the foreign applicant is a current recipient of grants under the MAP materiel program.

(d) Where the item to be produced is obsolete and no longer being manufactured for United States Military Departments and/or is not available in the Military Departments inventories, the 5 percent royalty fee for "in-country" consumption or the royalty fee of 8 percent where the DOD has specifically approved "in-country" production for third country sale may be reduced. The authorized sale price will be determined by DSAA in collaboration with ODDR&E based on cost of the most similar U.S. items in production.

(e) Where the pricing of the TDP is subject to an international agreement to which the DOD is a party or is otherwise bound, the sale will be determined consistent with the terms of that agreement.

(f) Where the item(s) to be produced is in long supply in a U.S. military department inventory, or if the item is being produced in the United States, requests for foreign production of the item(s) will normally be denied.

(g) In the case of TDPs related solely to processes, machinery or other items to be used in production, rather than to an end-item itself, and sold separately from a TDP for an end-item, the royalty fee will be based on the production of the end-item using the related TDP. In such cases, the authorized production under the TDP and other terms and conditions will be specified as in the case of TDPs for manufacture of end-items. However, if TDPs for processes, machinery or other items related to production are sold in conjunction with or subsequent to the sale of a TDP for manufacture of a related end-item, only one royalty will be charged based on production of the end-item.

(3) The Military Departments shall include on the Letter of Offer the applicable notes listed in (a), (b) and (c), below:

(a) The following note should be placed on all Letters of Offer involving the sale of a TDP and/or assessment of a royalty fee:

NOTE: The above stated royalty fee applies to the above quantity only. Any production in excess of the above quantity will be subject to a recalculation of royalty fee and the issuance of a new or amended Letter of Offer and Acceptance.

(b) The following note should be placed on the LOA if the TDP is to be used to manufacture items for in-country use only:

NOTE: The technical data and items to be manufactured therefrom are for recipient's indigenous purposes only, and neither the data nor the items manufactured therefrom will be sold or transferred to a third country without the written consent of the U.S. Government and the execution of a new or amended Letter of Offer and Acceptance for an additional royalty fee. It is understood that the furnishing of this data does not in any way constitute a license to make, use, or sell the subject matter of any privately-owned inventions which may be embodied or described therein except at the risk of the recipient.

(c) The following note should be added if the TDP is to be used to manufacture items for third country sale:

NOTE: The items to be manufactured for third-country sale will not be sold or transferred to third countries other than . . . (insert country name/names) . . . without the written consent of the U.S. Government.

(d) In all cases, care will be taken to insure that the TDP bears clear identifying markings stating any restrictions, such as classifications, which may apply.

(e) For reporting purposes, the royalty fee line on the LOA will be reported as code R9D in the 1100 system. Technical data packages (TDP's) will be recorded in the 1100 system under generic code M1F pseudo NSN 0208000000 TDP.

(4) Copies of all signed LOA's and all subsequent changes will be furnished by the Military Departments to the MAAG/Mission/ODC in the purchasing country and to

DSAA (JFMO).

(5) The MAAG/Mission/ODC in country will monitor implementation of the DD 1513 terms of the TDP sale to assure foregoing stipulations of the MASM on a formal and continuing basis. DSAA (JFMO) will be advised of any deviation from the terms of the TDP DD 1513 agreement so that DSAA (JFMO) may question the country to assure that all royalty fees due the U.S. are obtained.

15. Principles Regarding Coproduction Projects

Defense policy, expressed in DOD Directive 2000.9, dated 23 January 1974, states that initiation of coproduction project agreements will be encouraged and supported by all elements of DOD under the following circumstances:

a. When they advance the ability of participating countries to improve their military readiness through expansion of their technical and military support capability, while promoting U.S.-allied standardization of military materiel and equipment thus generating uniform logistics support and multi-national operational capabilities.

b. When they directly benefit the U.S. through increased capability to support the deployment of U.S. forces, strengthen international military operations in times of emergency or hostilities, encourage the unitization of common military materiel, and improve mutual support capability of friendly allied nations.

c. When they supplement and reinforce the U.S. FMS program.

d. When they are in the best interest of the U.S.

A coproduction project may be limited to the assembly of a few end-items with a small input of local country parts, or it may extend to a major manufacturing effort requiring the build-up of capital industries. Coproduction is a program under the aegis of the U.S. Government, by diplomatic or DOD agreement, either directly through the FMS pro-

gram or indirectly through specific licensing arrangements by designated commercial firms, which enables an eligible foreign government, international organization, or designated foreign commercial producer to acquire the "know-how" to manufacture or assemble, repair, maintain and operate, in whole or in part, a specific weapon, communication or support system, or an individual military item.

The "know-how" furnished through coproduction programs may include research, development production data and/or manufacturing machinery or tools, raw or finished materiel, components or major sub-assemblies, managerial skills, procurement assistance or quality-control procedures. Third country sales limitations and licensing agreements are also included, as required. Thus coproduction programs may be limited or extensive depending upon the major objectives to be attained.

Coproduction projects may be initiated by DSAA or, subject to prior approval of DSAA, by the Military Departments, the Military Assistance Advisory Groups, and by authorized representatives of foreign governments and international organizations. The cognizant DOD component will ensure appropriate coordination will DSAA and furnish technical and negotiating assistance as required. After such agreements are signed, the appropriate DOD component will perform the necessary managerial and reporting functions.

In all cases, as prerequisite, the restrictions imposed by Section 42(b) of the FMS Act will be complied with, namely: "No credit sale shall be extended and no guarantee shall be issued in any case involving coproduction or licensed, production outside the United States origin unless the Secretary of State shall, in advance of any such transaction, advise the appropriate committees of the Congress and furnish the Speaker of the House of Representatives and the President of the Senate with full information regarding the proposed transaction, including, but not limited to, a description of the particular defense article or articles which would be produced under license or coproduction, and the probable impact of the proposed trans-

action on employment and production within the United States.”

16. Processing Letters of Offer for \$25 Million or More or for Major Defense Equipment of \$7 Million or More

In compliance with Section 36 of the Arms Export Control Act, Congress must be provided with notification of all Letters of Offer to sell any defense articles or services for \$25 million or more, or any major defense equipment of \$7 million or more, before such Letter of Offer is issued. OSD General Counsel has determined that the term “Letter of Offer” used in the AEC Act pertains to any proposed sale of defense articles or services to any foreign government, whether or not the initial document (or set of documents) to be used to consummate the sale is a DD Form 1513 or a document bearing another name. If a document other than a DD Form 1513 is used for this purpose, a DD Form 1513 shall be subsequently executed to conclude the final details of the agreement unless an exception is authorized by the Director, DSAA. The statutory requirement for reporting, as well as the requirement for advance notification to Congress, extends to any undertaking by the Department of Defense to establish an FMS transaction. This includes but is not limited to FMS transactions embodied in the following:

- (1) Memorandum of Understanding for Coproduction of military items,
- (2) Cooperative Research and Development Agreements, and
- (3) Providing specific items or services under any existing general agreements, such as the Engineering Assistance Agreement entered between the Army Corps of Engineers and the Saudi Arabian Government in 1965.

In order to provide the Congress with sufficient time to review such cases, DSAA has agreed to provide the Congress with 20 days advance notification of such cases prior to the formal submission of the statutory notification. The Arms Export Control Act provides that the Letter of Offer shall not be

issued if Congress, within 30 calendar days after receiving the notification, adopts a concurrent resolution stating that it objects to the proposed sale, unless the President, in his notification to Congress, certifies that an emergency exists which requires such sale in the national security interests of the United States. DSAA is responsible for preparing and submitting the reports to the Congress. To minimize delays in processing such notifications, consistent with the legislative and other requirements, the procedures at Appendix B are placed in effect.

17. Sales Commissions and Fees

ASPR 1-505 sets forth the criteria to be used by the contracting officer or head of the procuring activity (HPA) in determining whether an agent(s) is *bona fide*. When an agent(s) has been determined to be *bona fide*, based on ASPR 1-505, the following procedures will be followed with regard to the inclusion of sales commissions and fees in FMS cases:

a. Prior Notification to Purchasing Government

Unless the purchasing government has indicated to the contrary, all sales commissions and fees anticipated to be included in FMS cases shall be made known to the purchaser prior to or in conjunction with the submission of the Letter of Offer and Acceptance (DD Form 1513) to the purchaser. Such advice will include: (a) the name and address of the agent(s); (b) the estimated amount of the proposed fee, and the percentage of the sale price; and (c) a statement indicating one of the following, whichever is applicable: (1) appropriate officials of the U.S. Department of Defense consider the fee to be fair and reasonable; (2) in the event that only a portion of the proposed fee is considered to be fair and reasonable, a statement to this effect together with the rationale therefor; or (3) the U.S. Government cannot determine the reasonableness of the proposed fee. This statement will normally be included as a “Note” to the Letter of Offer. Such a Note may also include the contractor’s ex-

planation and/or justification for the proposed fee, together with any other data requested by the purchasing governments. The Note will also include a statement that acceptance of the Letter of Offer by the purchasing government, with inclusion of the Note, will constitute that governments' approval of the sales commissions and fees involved.

b. Ex-Post Facto Notification to Purchasing Government

When it is not possible to determine prior to presentation of the Letter of Offer whether the price quoted for the articles or services includes sales commissions and fees, the purchasing government will be notified as soon as possible if, in the course of subsequent contract negotiations, it appears that a charge for sales commissions and fees will be claimed by the contractor. This notification will include the information in paragraph a above, along with a statement that, unless contrary advice is received from the purchasing government within 30 days of the data of the notification, the Department of Defense will determine whether or not to accept such a charge as a valid cost in the contract. No sales commissions and fees will be accepted by the contracting officer prior to expiration of the 30 day period.

c. Coordination with DSAA

(1) All Letters of Offer which specify that a sales commission or fee is included in the case will be coordinated with DSAA, regardless of the dollar value of the case, prior to LOA dispatch to the requesting government. (Note: Letters of Offer which carry the notation that no sales commissions and fees are included in the case do not require coordination with DSAA except as may be required by other policies and procedures which may be in effect.)

(2) All correspondence with a foreign country on the subject of agent's fees will be coordinated with DSAA prior to dispatch.

(3) All expost facto notifications of an agent's fee to a foreign country will be coordinated with DSAA prior to dispatch.

(4) The submission to DSAA of all LOAs or expost facto notifications for coordination shall be in writing, shall contain a certification that the agent is *bona fide* in accordance with the criteria set forth in ASPR 1-505, and shall provide the rationale for reasonableness or an explanation if the reasonableness of the fee cannot be determined.

d. Disallowance of Agent's Fees

No fee shall be accepted by the contracting officer if disapproved by the purchasing government.

If, in making the determination required by ASPR 1-505, the contracting officer or head of the procuring activity (HPA) determines that an agent is not *bona fide* for reasons other than reasonableness of fee, no Letter of Offer will be tendered pending withdrawal by the prospective contractor of the fee for such agent from his proposal.

e. Exceptions

The procedure contained in paragraph a, above, will not be followed in the case of Australia, Egypt, Greece, Iran, Israel, Japan, Jordan, Kuwait, Pakistan, Saudi Arabia, Turkey and the Royal Thailand Air Force (RTAF). These governments and the RTAF have requested that the following statement be included in all Letters of Offer:

'All U.S. Government contracts resulting from this Offer and Acceptance shall contain one of the following provisions, unless the sales commission and fee have been identified and payment thereof approved in writing by the Government of (____) before contract award:

'(A) For firm fixed-price contracts or fixed-price contracts with economic price adjustment:

'The contractor certifies that the contract price (including any subcontracts awarded hereunder) does not include any direct or indirect costs of sales commissions or fees for contractor sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the

supplies or services called for by this contract to the Government of (____).

(B) For all other types of contracts:

'Notwithstanding any other provision of this contract, any direct or indirect costs of sales commissions or fees for contractor (or subcontractor) sales representative for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to the Government of (____) shall be considered as an unallowable item of cost under this contract.'

Accordingly, approval of sales commissions and fees must be sought and obtained prior to contract award unless the contractor certifies that no such fee or commission is included in the cost of the contract.

f. Proprietary Information

Inclusion of a "Note" to the Letter of Offer with respect to sales commissions and fees shall not be deemed, with respect to distribution and availability of Letters of Offer, as altering the proprietary nature, if any, of such data for the purpose of 18 U.S.C. 1905.

g. A report to DSAA shall be made on a quarterly basis, submitted 30 days after the end of each quarter, which lists all FMS cases in which an agent's fee was included and all correspondence which advised a foreign country of the inclusion of an agent's fee. This report should include a copy of the Letter of Offer and Acceptance for each case, including pertinent special notes, which will show the amount of the fee, the name of the agent, and the DOD position as to reasonableness of the fee, together with any correspondence with the purchaser concerning the fee. In addition, a statement should be provided describing the current status of the fee, i.e., accepted by country, rejected by country and still under review with contractor, withdrawn by contractor, or other similar information. Cases for which the question of country acceptance of the fee is still under review shall continue to be reported until the matter is decided, and a final report closing the issue has been made.

The number which has been assigned this report in the reports control system is DSAA (Q)1127.

18. Engineering Review of U.S. Provided Foreign Communications Systems

The following guidance applies to all U.S.-provided foreign communications systems.

a. Projects provided or Financed Under Security Assistance

For all foreign communications systems provided or financed under Security Assistance requiring fixed communications facilities, such projects are fully coordinated with the Defense Communications Agency (DCA). DCA should be notified at the earliest stages of planning and kept informed during all phases of implementation. This coordination specifically includes providing DCA with the results of initial surveys as well as subsequent detailed engineering plans and significant changes thereto. Projects requiring such coordination include those which contain fixed communications elements only as a portion of the overall project. The purpose of this coordination is to determine the extent to which the communications systems involved are compatible with the Defense Communications System (DCS) and if use of the systems by the DCS would be beneficial to the U.S. The results of DCA review of these projects will be submitted to DSAA through the JCS.

b. Commercial Communications Projects

In addition to projects covered by paragraph a above, foreign communications projects being provided by U.S. industry that come to the attention of military departments or other DOD elements should be brought to the attention of DCA in order that plans can be obtained and reviewed for compatibility with DOD communications systems.

19. Patent Rights

In the event that an individual, commercial entity or foreign country should assert ownership of a foreign patent on an item intended for sale or being sold under FMS, and there are reasonable grounds for the belief that a purchasing country may be subjected to a possible claim for foreign patent infringement, the Military Departments in coordination with DSAA, are authorized to make such a sale, provided a "note" is added to the DD Form 1513 for the FMS case advising the purchaser of the existing allegation of a foreign patent right. The note should read substantially as follows:

“(Name of individual, commercial entity or foreign country, and address,)” has alleged rights in certain components of the (Name of FMS item) offered herein. In this connection, the Purchaser’s particular attention offered herein is invited to Conditions A.3 and C.1 on Annex A to the DD Form 1513.

20. DOD P&A Versus a Commercial Proposal

There are cases when a foreign government has requested and received Letters of Offer, and subsequently solicited bids from private industry for the same supplies and services. Such action by the foreign government does not automatically require DOD withdrawal of the Letter of Offer. The Letter of Offer should not be withdrawn unless the foreign government has requested such action. In no case should the Letter of Offer be withdrawn by request from commercial sources without prior concurrence from DSAA.

The Military Departments should not, except under unusual circumstances where such action is specifically approved by DSAA, engage in comparison studies requested by a foreign government of an FMS offer versus a commercial proposal.

21. Translation Services

a. The responsibility for the translation of any documents rests with the user or recipient country. U.S. security assistance organizations should make this point clear to their host country counterparts.

b. In day-to-day operations, security assistance organizations may provide for government-to-government purposes only, “informal translations” using the same practices and procedures as the local U.S. diplomatic mission, provided the host country so requests, or the chief of the U.S. security assistance organization determines an informal translation of an English text is in the U.S. interest. In each case, translators must clearly mark the translated document “Informal and unofficial translation—English text governs.” Security assistance organizations should ensure that a forwarding letter accompanies each contractual document (e.g., DD Form 1513) emphasizing that the English text is the officially binding document.

c. Security assistance organizations will not provide translation assistance to contractors or others who are not a part of the U.S. or host country official family. In the event you receive a request from such sources, you should advise requestors to seek assistance from competent local translators.

22. Appointment of an Agent

Should a foreign government desire to appoint an agent for the purpose of making purchases under the Arms Export Control Act, the following form letter should be used and the request signed at the Minister or Deputy Minister of Defense level:

Director
Defense Security Assistance Agency
Room 4E837, The Pentagon
Washington, D. C. 20301

Dear Sir:

The Government of _____ hereby appoints _____, whose address is _____ as its Agent for the purpose of purchasing for the Government of _____, under Foreign Military Sales procedures, the following defense items:

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Said Agent is hereby authorized to sign in the name of the Government of _____, as its agent, such DD Form 1513s as may be deemed necessary by the Defense Security Assistance Agency to effect the Foreign Military Sale of the foregoing defense items, and to furnish the shipping instructions called for by Paragraph B.4 of the General Conditions of the DD Form 1513.

Said Agent is hereby designated as the responsible Paying Office of the Government of _____ to which, in accordance with Paragraph B.3.h of the General Conditions of the DD Form 1513, the United States Government shall submit requests for funds and bills for the above-specified purchases, but duplicate copies of such requests for funds and bills shall be forwarded by the United States Government to

_____. However, the Government of _____ hereby acknowledges that it shall be primarily liable for any and all payments due to the United States Government for purchases made on its behalf by the herein designated Agent.

The Government of _____ further acknowledges that acceptance, by the said Agent in the name of the Government of _____, of DD Form 1513s for the above-specified purchases constitutes acceptance by the Government of _____ of all the General Conditions of the DD Form 1513 and of all special terms and conditions which may be a part of, and appended to, such DD Form 1513s.

Very truly yours,

CHAPTER D

PREPARATION AND PROCESSING OF FOREIGN MILITARY SALES TRANSACTIONS

1. Introduction

a. The guidance contained in this chapter provides specific instructions for the utilization and processing of the DD Form 1513—Offer and Acceptance, the DD Form 1513-1—Amendment to the Offer and Acceptance, the DD Form 1513-2—Notice of Modification of Offer and Acceptance, and the Letters of Intent—DD Form 2012 and DD Form 2012-1. Further provided in this chapter is a description of data which must be included in Letters of Offer submitted in response to requests from FMS purchasers. It also prescribes normal time for processing requests for Letters of Offer, and allowable times between release and expiration of such offers.

b. The Operations Directorate (DSAA-TS) is the point of entry in OSD for the DOD components to use in coordinating FMS Cases (LOAs, Amendments, and Notices). The Operations Directorate is also responsible for obtaining coordination of appropriate OSD staff elements, as well as obtaining coordination from the DSAA Comptroller. (This is not the Countersignature required for all LOAs, Amendments and Notices.) FMS Cases must contain, as a minimum, the following supportive and explanatory documentation:

(1) Financial Analysis in accordance with paragraph 8.a, below.

(2) Financial Annex, except for FMSO I cases.

(3) All amendments must be accompanied by the basic DD Form 1513 and any changes or notices that preceded the amendment.

(4) All Letters of Offer should indicate a coordination by the cognizant comptroller and legal counsel, as required.

FMS transactions submitted for coordination which do not include the proper documentation will be returned to the appropriate DOD Component without coordination. If the urgency of the situation requires processing without waiting for the required documents, the matter should be referred to the Director or Deputy Director, Operations Directorate. DSAA Operations coordination occurs prior to DOD component submission to DSAA Comptroller for countersignature.

2. DD Form 1513—Offer and Acceptance

a. The DD Form 1513—Offer and Acceptance (LOA) will be used for all foreign military sales of defense articles and services (including training) by the Military Departments and Defense Agencies. LOAs for open cases, e.g., cases providing for the requisition of spare parts and components, or cases covering the provision of a continuing service such as contractor administrative services or engine or component improvement programs, will normally be of one-year's duration. Exceptions require the approval of DSAA Operations.

b. The offer will itemize the defense articles and services offered and when executed becomes an official tender by the Government of the United States.

c. The acceptance constitutes the agreement of the foreign government to the offer and with applicable funding completes the contract.

d. Annex A of the Offer and Acceptance contains the General Conditions which are an official part of every offer issued.

e. In all FMS cases involving major systems/end items, the LOA will include all complementing/supporting material and services as opposed to negotiating separate cases for each of these items/services. Ex-

ceptions to this requirement must have prior DSAA Operations approval.

f. Such additional terms and conditions as may be appropriate for a particular sales case shall be set forth in one or more attachments or continuation sheets to the DD Form 1513. All attachments (including notes) are an integral part of the LOA. Each page should indicate the case identifier at the top of the page and be numbered consecutively from the first page of the LOA to the end of all information provided with this LOA. Thus the number on the DD Form 1513 would reflect the total number of pages in the LOA.

g. If all line items cannot be listed on the first page of an offer and acceptance, show only the program total and list the remaining line items on DD Form 1513c continuation sheets. (See Figure D-4).

h. The percentage rate used for determining packing, crating and handling costs, general administrative costs, and supply support arrangement costs should not be indicated in the applicable blocks. (This guidance also pertains to Other Estimated Costs (Block 25) should a percentage rate be applicable.)

i. See Figure D-1 for detailed instructions on the filling in of the blocks on the DD Form 1513—Offer and Acceptance.

3. Processing Requests for Letters of Offer and Acceptance

a. Approval channels for requests for Letters of Offer are included in Paragraph 6, Chapter C, MASM III. Military Departments and Defense Agencies must formally acknowledge receipt of such requests, within five days of receipt. Maximum processing time between the receipt of a request for a Letter of Offer, and the submission of the Offer to the prospective purchaser (or to DSAA for a Letter of Offer requiring Congressional approval), is sixty (60) days. Earlier response will be made whenever possible and especially in those instances where urgency is indicated by the purchaser.

b. After completion of preparation of the LOA or after notification from DSAA that the Congressional review period is completed, DOD components should forward to DSAA-TC, Ceiling Management Division, the original plus two copies (three copies if a credit case) of the signed LOA (this also applies to 1513-1 Amendments and 1513-2 Notices) for the required countersignature preparatory to release to the purchasing country organization. DSAA-TC will forward a copy of the DD Form 1513 (1513-1 or 1513-2) to SAAC for entry into the DSAA 1100 FMS Reporting System. (NOTE: Countersignature should not be construed as being the coordination required by paragraph 1, above. The necessary coordination should have been undertaken by the DOD component prior to the submission of the LOA to DSAA Ceiling Management Division.)

4. Duration of Letters of Offer

a. Each DD Form 1513—Offer and Acceptance includes, in Block (8), the date upon which the offer expires. Determination of the period to allow between the date of dispatch of the Offer and the expiration date must be conditioned by the following factors:

(1) Duration of validity of contractor quotes included in the price and availability information included in the Offer.

(2) Processing time normally required by a given nation.

(3) Time sensitivity of any information included in the Offer.

b. The standard DOD policy is to allow no more than sixty (60) days between the date of the Offer and its expiration date. However, no Offer may include an expiration date later than that required to insure that contractual action may be completed at the price quoted in the Offer.

c. In excess of sixty (60) days, but in no instance in excess of 120 days, may be allowed between Offer date and expiration date when:

(1) Experience with a given nation indicates that, because of communications prob-

lems or lengthy approval processes, a period in excess of sixty (60) days is required to obtain country acceptance, and

(2) The data included in the Letter of Offer is not time-sensitive.

d. Requests by purchasers for extensions to expiration dates will be honored only after a full review to insure that all data included in the Offer remains valid. For Letters of Offer on which DSAA Operations has previously coordinated, requests for extensions over the 120-day maximum period should be coordinated with DSAA Operations.

5. Information Conveyed by Letters of Offer

The Letter of Offer and Acceptance, when signed, is an official agreement between the United States and the purchasing nation regarding terms and conditions pertaining to furnishing certain goods or services. As such, the DD Form 1513 and its enclosures must provide sufficient detailed information so as to make clear the obligations of the United States and the Purchaser. The type and amount of information which must be conveyed will vary depending on the nature of the sale. However, at least some information which is supplemental to the preprinted "General Conditions" of Annex A of the DD Form 1513 must be provided for each sale. The normal method of accomplishing this is in the form of explanatory "Notes" which are cross-referenced to information included on the face of the DD Form 1513. Inclusion of this information as a complete package within the Offer, rather than orally or by separate correspondence, reduces misunderstandings over FMS Cases.

6. Supplemental Information for Letters of Offer

Figure D-5 indicates that information must be provided to purchasers in the form of Notes or Supplemental Terms and Conditions, depending upon the nature of the material and/or services being sold. Items indicated by X must be addressed in Notes or

Supplemental Terms and Conditions to the DD Form 1513; those indicated as being on an as required basis (A/R) should be addressed if the nature of the transaction so warrants. The following subparagraphs include instructions and discussion regarding the nature of this supplemental information. The subparagraphs are aligned to the column "Supplementary Information for Letters of Offer" of Figure D-5. The Checklist shown in Figure D-6 must accompany each case submitted to the Defense Security Assistance Agency (DSAA).

a. Transportation instructions

(1) There must be clear understanding between the USG and the purchaser as to where and how purchased material will be shipped. Blocks (19), (20), (33) and (34) of the DD Form 1513 are designed to fulfill this purpose under the normal Foreign Military Sales (FMS) method of shipment (i.e., by collect commercial bill of lading to freight forwarders), by the use of codes prescribed in DOD Directive 4140.17-M. However, supplementary instructions are required to enable purchasers to fill out Blocks (33) and (34) properly. Figure D-7 shows the instructions furnished by the Defense Logistics Agency (DLA) to meet this need; it should be used by all DOD components concerned as a guide.

(2) The normal method of movement of FMS materiel is by commercial carrier to a freight forwarder designated by the purchaser. The use of the DOD Transportation System (DTS) is authorized as an exception to this policy for the shipment of classified materiel, firearms, all classes of explosives, lethal chemicals, other hazardous cargo and materiel outsized to the capability or availability of commercial air carriers, and waivers previously approved by the Defense Security Assistance Agency (DSAA). Any other exceptions must be specifically approved by DSAA on a case-by-case basis. Use of the DTS, to include all related terms and conditions for movement, must be stated in the DD Form 1513. Each request for an exception to use the DTS must be supported with

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a statement that addresses projected tonnage, special transportation requirements, and other relevant information that will justify the commitment of DOD transportation assets. Upon approval, the extent of authorization must be clearly delineated in the supplementary conditions in the DD Form 1513. This would include identification, by specific item, when certain items in the DD Form 1513 are to be shipped via DTS and others are to be shipped via country freight forwarders.

b. Delivery Schedules of Items

Block (18) of the DD Form 1513 provides the appropriate leadtime from the date of order of material to the date of delivery. This provides sufficient information for most cases, unless delivery of major end items (i.e., airplanes, ships, missiles, or major combat vehicles) is involved. A schedule of estimated in-country or CONUS equipment deliveries by month, will be provided for major end items. When appropriate, the schedule of deliveries will include required delivery dates for items not to be delivered earlier than a specified date.

c. Personnel Movement to and from Country

Cases which provide for the provision of technical assistance services, either by contractor or military personnel, should specify to the extent known:

- (1) The number of personnel who will perform the task.
- (2) Planned date of arrival in-country.
- (3) In-country destination and "home station".
- (4) Extent of in-country travel required to perform the mission.
- (5) Planned duration of stay in-country, and planned departure date.

d. Qualifications Regarding Price and Availability Data Furnished on the DD Form 1513

(1) There must be as clear an understanding as possible of the limitations of the validity of data included in the Letter of Offer; much of the "boilerplate" of the DD Form 1513 is designed for this purpose.

However, any of the following data which is pertinent to the case must be provided as "Notes" to the Letter of Offer.

(a) Any deviations or substitutions to quantities or equipment which was included in the country request for Letter of Offer, with explanation for the deviation or substitution.

(b) The last date of validity of either price or availability data included in the Letter of Offer, with an explanation of the reason why, if the Offer is time-sensitive. Even though each Offer carries an expiration date, it is important that the purchaser be aware of any criticality in that date.

(c) Any particular reservations regarding the price quoted in the Offer should be noted and explained.

(d) The extent to which either the price or availability quoted is dependent upon an action yet to be taken by the USG (e.g., the selection of the equipment for U.S. forces).

e. Agreements to Safeguard Status or Provide Facilities for USG or Contractor Personnel While in Host Country

(1) The Letter of Offer should include those conditions required to insure that U.S. personnel can operate to the extent possible in safety, immunity, and under U.S.-type conditions. Agreements required will vary due to both the nature of the project and the nature of the country involved. The appropriate legal office of the Service concerned should be consulted to provide the salient agreements which protect that status of U.S. personnel in a given country.

(2) Figure D-8 sets forth sample terms and conditions which can be used as a guide for negotiating agreements with countries on programs involving the introduction of substantial numbers of contractor personnel. It is based on an actual agreement negotiated with the Government of Iran. These conditions may be used as a guide in developing similar agreements for countries for which no Status of Forces Agreement (SOFA) exists. Where a SOFA exists, references should be made to the SOFA.

f. Statement of Facilities, Services, or Personnel to be Provided by the Purchasing Nations

Figure D-8 also provides examples of certain actions which had to be taken by the purchaser to insure success of the program, in terms of facilities, services, or personnel. These actions will vary from program to program. It is essential that the responsibilities of the USG and the purchasing nation be clearly and completely delineated as a part of the Letter of Offer or its attachments.

g. Memorandum of Understanding or Statement of Work

Major FMS undertakings may call for Memorandums of Understanding, or detailed Statements of Work, before they can be undertaken by the USG. Such documents should be made an integral part of the Letter of Offer by reference on the DD Form 1513 and, where appropriate, be attached to the Letter of Offer.

h. Schedules of Personnel Training

(1) Letters of Offer which call for training of foreign personnel, include firm scheduling of personnel into specific training courses. When this is not feasible, Letters of Offer should set forth training plans and schedules in general terms, and should include information required to arrange for definitization of specific training requirements at a later date.

(2) Letters of Offer must specify purchasing nations' responsibilities such as providing pay and allowances, housing, qualified students, and any required supervision of students.

(3) Blanket Order Letters of Offer for training will include Notes to explain scope of coverage, methods for definitizing and requesting specific courses, and duration of applicability of the case. As indicated in paragraph 2a, above such cases will normally be limited to one-year's duration, unless an exception is approved by DSAA Operations.

i. Logistical Information

(1) The sale of weapons systems normally requires the establishment of under-

standings between the USG and the purchaser regarding logistical arrangements and support. This subject must be addressed in the "Notes" to the Letter of Offer to delineate USG responsibilities, specify the type of equipment being provided, identify subsequent actions which must be taken by both the USG and the purchaser, and occasionally to advise the purchaser of the nature of procurement action which will be taken.

(2) Letters of Offer will specify the configuration of equipment being sold, but will furnish detailed equipment specifications only if required. Variations from standard USG configurations will be noted, together with any risks which might be assumed as a result of the variance. The notes will highlight any purchase of equipment being made of a configuration contrary to that recommended by the USG.

(3) Letters of Offer will include the requirement for, and scheduling of logistical conferences or site surveys for the purpose of definitizing procurements of spare parts and support equipment, when applicable.

(4) The purchaser will be advised of the estimated period USG spare parts support will be available, providing that a termination of such support can be identified.

(5) It will be noted if the procurement is to be conducted from a sole source, based upon the request of the purchaser.

(6) Any USG intent to develop logistical or maintenance support plans will be specified.

(7) The basis upon which logistical support cost estimates are made will be specified. These should include the period of support of initial spares package, operational deployment of equipment, level of maintenance to be accomplished by the purchaser, and number of maintenance sites.

(8) Insofar as possible, the Letter of Offer must identify by line item of equipment any critical long-lead time items of spares or support equipment which must be procured in advance of the definitization conference, to insure in-country logistical support of the weapons system by its scheduled delivery date.

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j. Explanation of Condition of Equipment

(1) The Letter of Offer must include information which makes clear the condition of any equipment furnished from USG inventories; the purchaser must not be surprised or disappointed if receiving equipment in less than "like new" condition. Any known limitations in condition must be specified in the Letter of Offer, using codes set forth in Annex A of the DD Form 1513.

(2) It is desirable for a purchaser to inspect, in advance receipt of a Letter of Offer, major items and quantities of excess equipment being sold in "as-is, where-is" condition. It also is desirable for the USG to obtain written acceptance of the condition of the equipment as a result of this inspection. Any such agreement of this type should be noted in the Letter of Offer.

(3) The condition of equipment sold "as-is, where-is" should be identified by Condition Code (e.g., R-4), and the Letter of Offer should include a short description of what this Condition Code means.

(4) The Letter of Offer must specify that the cost of any repair/rehabilitation of excess items is not included in the "as-is, where-is" price.

k. Identification of Equipment Supportable under Requisition Cases

(1) Letters of Offer for all requisition cases (whether Supply Support Arrangement (SSA) or blanket order) must identify the major items of equipment supportable under the case.

(2) Letters of Offer for Supply Support Arrangements (SSA) stock level cases fall into two broad categories, weapon systems for which actual support experience is available and new weapon systems for which supply support experience is *not* available. When supply support experience is available, the normal annual dollar amount of requisitions for repair parts will be computed as a percent of the value of the total major items supported. This percentage will then be applied to the sale price of the major items sold to an FMS customer to arrive at an annual dollar amount of support. On ma-

ior items for which supply support experience is not available, it will be necessary to develop a priced listing of projected repair parts. The total of the listing will be the dollar amount of supply support required. This annual total dollar amount is the factor (normally 12/17) shown as the on-order portion of the FMSO I. An additional factor (normally 5/17) is added for the on-hand portion of the agreement to arrive at the total FMSO I price.

l. Description of Services to be Provided

(1) There must be a clear and comprehensive understanding of the extent and limitations of the obligation undertaken by the USG when providing services under an FMS case. This may require a detailed Statement of Work for major undertakings, but can be done by providing the following information for routine cases:

(a) Description of the nature of the service to be performed, together with its purpose.

(b) Statement of where and how the services will be performed.

(c) Statement of the anticipated result when the service is completed, together with any information of which the purchaser should be aware regarding USG reservations or qualifications as to success of the project.

m. Description of Components of Pricing

(1) It is not normal FMS practice to provide a detailed description of the components of cost included in estimated prices for line items on Letters of Offer. There may be instances where the provisions of such information is desirable to clarify the service to be provided. When project management offices are established in the CON-US, to insure proper management of major FMS projects, it sometimes is necessary to provide detailed cost data to provide the purchaser with information which demonstrates that such costs are necessary.

(2) FMS cases established for the sole purpose of collecting either royalties or pro rata nonrecurring cost recovery charges must

include the charge to be made per unit of production. However, pro rata nonrecurring cost recovery charges assessed for items sold under FMS will be included in the unit price of the end item being sold and will not be shown separately.

n. Responsibility for Initiation of Requisitions

(1) There must be clear understanding between the USG and the purchaser as to which party will initiate requisition actions required for spare parts and similar type support.

(2) The Letter of Offer will contain sufficient information, either by Note or by reference to DOD instructions available to the purchaser to enable the purchaser to initiate and route requisitions correctly.

(3) The Letter of Offer will also contain sufficient disposition instructions for items (owned by the purchaser) being returned by the purchaser to the CONUS for maintenance and repair services.

o. Indemnification and Assumption of Risk

(1) Annex A of the DD Form 1513 contains provisions regarding indemnity which are deemed satisfactory and complete for most FMS programs. Advice should be obtained from the appropriate legal office of the Service concerned when it appears that special circumstances of individual purchases require an expansion of indemnity clauses.

(2) If additional indemnity clauses are required, Figures D-9 through D-11 provide guidelines which can be used.

7. Absence of Specific Information

a. Letters of Offer are sometimes prepared either at purchaser request or in USG interest, before the specific details to provide all information covered in the foregoing paragraphs are known. In such cases, Notes to Letters of Offer will include general coverage of this information and estimate of when specific information on these topics can be provided to the purchaser.

b. The Letter of Offer should include information sufficient to establish follow-on

channels of communication between the purchaser and the USG component responsible for implementing the FMS case.

8. Pricing Data to be Included with Selected Letters to Offer

a. All Letters of Offer for sales of end items or services of value of \$7 million or greater and proposed amendments must be accompanied by a financial analysis. The purpose of the analysis is to permit all approval echelons a review for completeness and accuracy of financial data. The analysis will accompany the Letter of Offer throughout the coordination cycle but will not be submitted to the prospective purchaser.

b. The following information will be included:

(1) Source of estimates. Examples are:

(a) Prime Contractor quote.

(b) Prime and GFE Contractor quotes.

(c) Standard Price.

(d) Military Department estimate without contractor participation¹, based on recent sale or similar experience, or in accordance with DOD Instruction 2140.1.

(2) The basis for making or adjusting estimates from any of the above sources. Examples are:

(a) Agent's fees or commissions included in the FMS case and the amount thereof. The Service certification of reasonableness in accordance with ASPR 1-505 and DPC 76-1 must be attached. If the fee cannot be or has not been certified as reasonable, the Service notification or proposed notification to the foreign government should also be attached for information or coordination. See Chapter C, paragraph 17, for further guidelines.

(b) Inclusion of nonrecurring RDT&E and production cost recoupment in accordance with DOD Directive 2140.2.

¹ In this connection, notice should be taken of Section 6-1303.1 of the Armed Services Procurement Regulation concerning the participation of the procuring contracting officer in the preparation of Price and Availability Data and that the provisions of this section are complied with.

(c) Inclusion of adjustments for estimated inflation or other risk factors.

(d) Replacement cost in accordance with the provisions of paragraph VI.C.2.b. of DOD Instruction 2140.1.

(e) Asset use charge as described in DOD Instruction 2140.1.

(f) First destination transportation costs.

(g) Recurring support costs.

(h) Unfunded costs.

(i) Application of factors for estimating "dollar line items" such as concurrent spare parts.

(j) Adjustments based on anticipation of the receipt of other orders or Defense Department procurement of the item involved which would likely result in shared overhead costs and a reduced price for the item.

(3) Sources of data used to make any of the above adjustments and their application to the case (i.e., inflation factor of 7% compounded over four (4) years. Source: ASD(Comptroller) Price Escalation Indices, July 31, 1975).

(4) A comparison of Letter of Offer prices with budgeted or on-going service procurement price, e.g., the Selection Acquisition Report (SAR).

(5) Source for Schedule of Payments.

(6) A comparison of Letter of Offer prices with all other Letters of Offer prices for the same item within the previous twelve (12) months. This comparison should not be limited to sales within the same region.

c. Figure D-12 is a suggested format for use in presenting required financial analysis data. The format may be modified to meet the needs of the individual Military Departments. The financial analysis must, however, identify methods used in developing costs and provide the information outlined above for each line item in sufficient detail to enable the reviewer to judge the accuracy, completeness, and firmness of the estimated prices.

9. DD Form 1513-1—Amendment to Offer and Acceptance

D-8

a. Changing circumstances frequently require that changes be made to a completed Letter of Offer and Acceptance (DD Form 1513). To assure that FMS records reflect adjustments to program content in the fiscal year in which such changes occur, it is essential that we make all practical efforts to process new DD Form 1513's to provide for significant increases in scope to previously approved programs. (This policy also applies to blanket order type cases. As indicated in paragraph 2b above, such cases will normally be limited to one-year's duration unless an exception is approved by DSAA Operations.)

b. It is recognized that there are times when U.S. interests are best served by processing Amendments to cover small changes in scope, since administrative reasons sometimes preclude, or make difficult and costly, the preparation of new Letters of Offer. The Amendment to Offer and Acceptance (DD Form 1513-1) should be used to meet only minimum essential administrative needs. The amendment to Offer and Acceptance (DD Form 1513-1) may be used for minor changes in scope when such use of the form is essential for administrative reasons. Minor changes in scope occur most frequently for:

(1) Changes or requirements within FMS training cases.

(2) Minor changes in configuration of equipment previously ordered in an original Letter of Offer.

(3) Minor changes in scope due to omission in the original LOA of supporting equipment or services for major weapon systems previously sold.

(4) Increases in time of performance.

(5) Increases in the estimated costs of a blanket order type case due to an increase in the amount of items purchased under this case. (Note provisions of paragraph 2a limiting such cases to one year under normal circumstances.)

(6) Extensions of the order period for blanket order type cases which cause an increase in estimated cost. (Note provisions of paragraph 2a, limiting such cases to one year under normal circumstances.)

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(7) Minor increases in quantity of a definitive quantity case.

(8) Changes in description which increases the item/service.

(9) Changes in conditions, terms (payment) or a surcharge not already provided for.

(10) All revisions to FMSO I cases.

c. All changes in the scope of an existing Letter of Offer should be treated as a new FMS case unless minor changes in scope of the nature referred to in b(1) through (10) above occur which would, for administrative reasons, be more effectively handled as an amendment. When a new case is prepared on the basic DD Form 1513, a cross-reference to the previous FMS case may be made on LOAs issued due to an increase in scope.

d. The DD Form 1513-1 would be used only if the revision requires purchaser acceptance before implementation. If this revision is a unilateral change on the part of the USG to the terms and conditions of the LOA, which does not require purchaser acceptance (e.g., additional quantities of items requested by the purchaser have already been delivered), the DD Form 1513-2 Notice of Modification of Offer and Acceptance should be provided the purchaser. (See Figure D-3).

e. Major changes in the scope of an existing LOA require the preparation of a new FMS case on the basic DD Form 1513 unless approval has been obtained from DSAA to utilize the DD Form 1513-1 Amendment. However, should major (or minor) changes in scope occur in the same fiscal year as that in which the original LOA was accepted by the purchaser and such amendment would also be accepted in the same fiscal year, use of the DD Form 1513-1 Amendment is permitted.

f. The percentage rate used for determining packing, crating and handling costs, general administrative costs, and supply arrangement costs should not be indicated in the applicable blocks. (This guidance also pertains to Other Estimated Costs (Block

26) should a percentage rate be applicable.)

g. All DD Forms 1513-1 which reflect an increase in excess of \$50,000 should be coordinated with the Director, DSAA Operations. Such increases will be recorded in the fiscal year the DD Form 1513-1 is accepted. DD Forms 1513-1 which reflect an increase of \$50,000, or less, shall be recorded in the year of the basic FMS case.

h. See Figure D-2 for detailed instructions on the filling in of the blocks on the DD Form 1513-1.

10. DD Form 1513-2—Notice of Modification of Offer and Acceptance

a. This form is utilized to record modifications to an existing offer and acceptance, other than modifications which constitute a change in scope. (Modifications which do affect the scope of the offer and acceptance require either a new DD Form 1513 or a formal amendment (DD Form 1513-1), as indicated in paragraph 9, above).

b. When the DD Form 1513-2 is used, acceptance by the foreign customer is not required, but merely acknowledgement of receipt, to ensure that the Notice of Modification has been received by an authorized official.

c. The DD Form 1513-2 should be used for decreases in scope and for changes in data which may be made unilaterally under an Offer and Acceptance (non-scope change). Examples of such changes for which a DD Form 1513-2 must be used are:

(1) Price increases and related changes in payment schedules to a previous DD Form 1513 or amendment thereto. DOD components issuing Letters of Offer will promptly and officially notify purchasers whenever the estimated total costs (Block 26 of the DD Form 1513) increase more than 10 percent.

(2) Deletions of items or decreases in the quantities of items to be sold. Notices to the purchasing country of such changes should be issued if the result is a decrease in

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the "total estimated costs" of over 10 percent or \$50,000 or more.

(3) Changes or extensions exceeding 90 days of the delivery commitment date.

(4) Extensions of the ordering period for a blanket order type case provided there is no increase in the total estimated cost. (Note the provisions of paragraph 2a, above limiting such cases to one year under normal circumstances.)

(5) Changes initiated by the foreign country of terms (Block 27, DD Form 1513 and Block 28, DD Form 1513-1) from a type of assistance code (other than Z) to an FMS Credit Case (Code Z).

(6) Changes to transportation codes due to the requirement to use the DTS (e.g., shipment of hazardous and sensitive cargo, Chapter D, Para. 6.a).

d. Price increases or decreases discovered during case closure will be assessed the country during final billing. Issuance of a DD Form 1513-2 is not required in addition to the final billing.

e. For price increase notifications, to ensure that the country is fully aware of its options with respect to the cancellation or reduction of the case, the following information, if applicable, should be included:

(1) The detailed reason for the increase.

(2) Status of contracting for this purchase—e.g., contract completed, contract still being negotiated, etc.

(3) The options that the country has, if any, with respect to avoiding the price increase (e.g., contract termination or reduction of quantities).

(4) The estimated financial consequences of selecting such options.

(5) Any time limits for notifying the USG of purchaser desire to cancel or reduce quantities.

f. All terms and conditions of an existing DD Form 1513 and any related amendments thereto not specifically noted as being modified by the DD Form 1513-2 remain un-

changed and in effect.

g. The percentage rate used for determining packing, crating and handling costs, general administrative costs, and supply support arrangement costs should not be indicated in the applicable blocks. (This guidance also pertains to Other Estimated Costs (Block 21) should a percentage rate be applicable.)

h. For LOAs or amendments thereto on which DSAA Operations has previously coordinated, price increase notifications to these LOAs or amendments must also be coordinated with DSAA Operations.

i. If there is any doubt as to whether to use the DD Form 1513, DD Form 1513-1 or the DD Form 1513-2 in a particular case, that case should be promptly referred to DSAA Operations for determination. (Note: When a DD Form 1513-2 is signed for dispatch, appropriate change card(s) should be submitted to SAAC by DSAA for inclusion in the 1100 System.)

j. A DSAA RCS (Q) 1123 report should be submitted to DSAA on a quarterly basis 45 days after the end of each quarter, and should include a listing of all cases for which the value of the DD Form 1513 has increased in value in excess of 10 percent, together with an explanation of the reason for the change. (A copy of the DD Form 1513-2 which informed the country of this increase should be provided with this report.) This report will be submitted with the report on delivery schedule changes required by paragraph 4c(4) of Chapter F. The format at Figure F-1, Chapter F, should be followed for this report.

k. See Figure D-3 for detailed instructions on the filling in of the blocks on the DD Form 1513-2.

11. Letters of Intent (LOI)

a. There are two form Letters of Intent: The DD Form 2012, used to finance procurement of long lead time items prior to the issuance of a DD Form 1513, Letter of Offer and Acceptance; and the DD Form 2012-1,

used to finance procurement of long lead time items during the period between issuance of a DD Form 1513 and acceptance by the purchasing country.

b. As both forms contemplate a specified dollar limitation upon the liability of the purchasing country for the procurement of long lead time items, in order to comply with the requirements of the Arms Export Control Act, it is necessary that all cost-reimbursement contracts awarded to implement a Letter of Intent (procurement as well as research and development) include a Limitation of Cost or Funds contract clause (see ASPR 7-203.3(a), 7-402.2 and 7-702.11). That clause may be deleted by contract amendment after Purchaser's signature of the DD Form 1513.

c. Use of the DD Form 2012 does not constitute authorization to take implementing action under such LOI in advance of compliance with the statutory reporting requirement of Section 36(b) of the AECA. The procedures prescribed in Appendix B of the MASM apply to any such LOI regardless of dollar amount, when it is contemplated that the DD Form 1513 will total \$25 million or more or for the sale of a major defense equipment for \$7 million or more. In the event that a Military Department is of the opinion that production scheduling requirements necessitate initiation of procurement

of long lead time items in advance of full compliance with Section 36(b) of the Arms Export Control Act, the Military Department concerned shall, prior to transmitting a proposed LOI to a purchasing country, promptly forward its recommendations to the Director, DSAA, for a decision. If an exception is made by the Director, DSAA, a modified version of the DD Form 2012 will be provided to the Military Department by DSAA on a case-by-case basis.

d. DD Form 2012-2, Amendment to Letter of Intent, should be used for amending LOIs as provided for in paragraph 2(c) of DD Form 2012 and DD Form 2012-1.

e. Samples of these forms are at Figures D-13 through D-15.

12. Financial Annexes

Financial Annexes as supplemental financial terms and conditions to the DD Form 1513 will be prepared as outlined in Appendix C, Figures Appendix C-1 through Appendix C-8.

13. Obligational Authority

Obligational Authority will be approved, as necessary, by SAAC only after the receipt of the accepted FMS case and initial deposit, if required.

INSTRUCTIONS FOR PREPARING THE UNITED STATES DEPARTMENT OF DEFENSE OFFER AND ACCEPTANCE (DD FORM 1513)

1. Block (1) PURCHASER

a. For a country, enter "Government of (name of country)" and show the office and address of the purchaser's activity designated to receive the LOA (e.g., Defense Attache, 1111 24th Street, N.W., Washington, D.C. 20301).

b. For an international organization, enter the title of the organization along with the appropriate office and address.

2. Block (2) PURCHASER'S REFERENCE

A reference will always be shown. The reference may be a letter, telegram, conference, meeting, oral request, etc. The reference will always include any pertinent data (e.g., letter serial, number, message date time group (DTG)). In the event that the reference is from other than the purchaser, indicate the source of the request made on behalf of the purchaser.

3. Block (3) CASE IDENTIFIER

Enter the appropriate country code, implementing agency code and case designator (e.g., UK-P-DLG).

4. Block (4) SIGNATURE

This block should be filled in by an authorized U.S. Military Department or Defense Agency representative prior to forwarding the LOA to DSAA Comptroller for the required countersignature.

5. Block (5) TYPED NAME AND TITLE

Type or stamp the name and title of the U.S. representative who signed Block (4).

6. Block (6) ADDRESS

Enter the name of the issuing organization along with the address (e.g., DA, DACS-SA, Pentagon, Wash., D.C.).

7. Block (7) DATE

Enter the day, month and the year that the LOA is submitted to DSAA for countersignature.

8. Block (8) THIS OFFER EXPIRES

Enter the appropriate data, normally 60 days from the date in Block (7). The date to be entered may be less than 60 days, if required (e.g., inclusion of requirements on a new contract due to be signed in less than 60 days, a contract about to expire, validity period of the P&A data.) A period in excess of 60 days may be entered when DSAA has approved an expiration date of more than 60 days from the date in Block (7) for specific countries. (See paragraph 4, Chapter D, for further guidance.)

9. Block (9) COUNTERSIGNATURE

The authorized representative within DSAA Comptroller for countersignature of the LOA should sign in this block. Signature should not occur unless all the necessary information is contained on the DD Form 1513.

10. Block (10) TYPED NAME AND TITLE

Type the name and title of the DSAA Comptroller authorized representative for countersignature who signed Block (9).

11. Block (11) DSAA ACCOUNTING ACTIVITY

⋮ The following address should be placed in this block. AFAPC-SAAC, Lowry AFB, Denver, Colorado 80279.

12. Block (12) ITEM OR REFERENCE NO.

For programs which involve more than one item, enter a separate number for each item. Commence with number 1 and number consecutively to the last item; for reference to another description enter the exact reference number. In the case of weapons systems procurement, the reference identifier will relate to an attachment to DD Form 1513. This attachment will include descriptive information on the generic items procured.

13. Block (13) ITEM DESCRIPTION

Enter the National Stock Number (NSN) and/or part number, as appropriate, and a complete description of the material/services. For cases involving major systems/end items all complementing/supporting material and services should be described.

14. Blocks (14 through 17)

Quantity, unit of issue, unit cost and total cost are self-explanatory. Enter information or N/A, as appropriate.

15. Block (18) AVAILABILITY AND REMARKS

Enter one or more codes from paragraph 3, 4, and 5 of the EXPLANATORY NOTES on page 3 of the DD Form 1513. Also enter specific delivery dates, as applicable.

16. Block (19) and (20)

Offer Release Code and Delivery Term Code—See instructions contained in Figure D-7, of this Chapter.

17. Block (21) ESTIMATED COST

Enter estimated material/services costs in whole dollars. These costs should not include any administrative or accessorial charges.

18. Block (22) ESTIMATED PACKING, CRATING AND HANDLING COST

Enter the value in whole dollars based on the prescribed percentages as set forth in DODI 2140.1, or actual costs if appropriate. If the charge is appropriate only to certain items, indicate the lines to which the charge was applied, or exclusion, in parenthesis. Do not show the percentage rate used in determining the cost contained in this block.

**INSTRUCTIONS FOR PREPARING THE UNITED STATES DEPARTMENT OF DEFENSE
AMENDMENT TO OFFER AND ACCEPTANCE (DD Form 1513-1)**

1. Block (1) PURCHASER

a. For a country, enter "Government of (name of country)" and show the office and address of the purchaser's activity designated to receive the LOA (e.g., Defense Attache, 1111 24th Street, N.W., Washington, D.C. 20301).

b. For an international organization, enter the title of the organization along with the appropriate office and address.

2. Block (2) PURCHASER'S REFERENCE

A reference will always be shown. The reference may be a letter, telegram, conference, meeting, oral request, etc. The reference will always include any pertinent data (e.g., letter serial, number, message date time group (DTG)). In the event that the reference is from other than the purchaser, delete the word "Purchaser" and indicate the source of the request.

3. Block (3) AMENDMENT NO.

Enter a consecutive "numerical" amendment number. Do not reuse a number once it has been assigned to an Offer to Amend. When an offer is allowed to expire, and a subsequent amendment is issued, it will be annotated to show that the preceding amendment was not accepted by the purchaser.

4. Block (4) CASE IDENTIFIER

Enter the appropriate country code, implementing agency code and case designator (e.g., UK-P-DLG).

5. Block (5) SIGNATURE

This block should be filled in by an authorized U.S. Military Department or Defense Agency representative prior to forwarding the amendment to DSAA Comptroller for the required countersignature.

6. Block (6) TYPED NAME AND TITLE

Type or stamp the name and title of the U.S. representative who signed Block (5).

7. Block (7) ADDRESS

Enter the name of the issuing organization along with the address (e.g., DA, DCAS-SA, Pentagon, Wash., D.C.).

8. Block (8) DATE

Enter the day, month and the year that the Amendment is submitted to DSAA for countersignature.

9. Block (9) THIS OFFER EXPIRES

Enter the appropriate date, normally 60 days from the date in Block (8). (See paragraph 4, Chapter D, for further guidance.)

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10. Block (10) COUNTERSIGNATURE

The authorized representative within DSAA Comptroller for countersignature of the amendment should sign in this block. Signature should not occur unless all the necessary information is contained on the DD Form 1513.1.

11. Block (11) TYPED NAME AND TITLE

Type the name and title of the DSAA Comptroller authorized representative for countersignature who signed Block (10).

12. Block (12) PURPOSE OF THE AMENDMENT

Describe the purpose of the amendment (e.g., to add a new line item and adjust costs accordingly). Do not rely on this block for any required amendment action. Details must be entered in Blocks (13) through (21).

13. Block (13) ITEM OR REFERENCE NO.

Enter reference to a specific part of the basic case or previous amendment (e.g., Item 1, Atch 2, basic; Item 1, Block (19), Amendment 2).

14. Block (14) through (19)

Enter complete description of amendment action. Describe whether the action is an addition, modification, or deletion. If there is a cost change, also enter the amount of increase or decrease. If a previous offer to amend has expired, explain and indicate that an affect on cost does not apply to the amendment being processed. Do not make such entries for unaccepted (and unexpired) offers to amend.

15. Blocks (20) and (21) OFFER RELEASE CODE AND DELIVERY TERM CODE

Fill in as appropriate in accordance with the instructions contained in Figure D-7, this Chapter.

16. Blocks (22) through (27)

In column (a), enter complete information from the previous accepted document (DD Form 1513 or DD Form 1513-1). In column (b) enter new costs.

Care should be taken when computing entries in Blocks 23 through 26 that administrative and accessorial charges are applied only to the appropriate items. If the administrative or accessorial charges are revised, do not show the percentage rate used in determining the cost contained in the applicable block.

17. Block (28) TERMS

Entries will be made only if the Terms have changed and are described in Block (12). State any new Terms in Block (28). Annex A of the DD Form 1513 is not used with the DD Form 1513-1 unless revisions to Annex A are a part of the amendment action.

18. Blocks (29) through (32)

These blocks should be filled in by the purchaser. Signed copies of the DD Form 1513-1 must be returned in order to complete acceptance. If terms remain, or are changed to "Cash with Acceptance" an appropriate payment must be received with the completed documents.

TRANSPORTATION INSTRUCTIONS, DD FORM 1513

1. When all items on the Offer and Acceptance document (DD Form 1513) require a single code in Blocks 19, 20, 33, and 34, the appropriate code as determined below will be entered in the respective blocks of the DD Form 1513:

Block (19) : Enter one of the following codes opposite each materiel line item, as applicable :

<i>Code</i>	<i>Explanation</i>
A	Freight and parcel post shipments will be released automatically by the shipping activity without advance notice (Notice of Availability).
Y	Advance notice is required before release of shipment, but shipment can be released automatically if release instructions are not received by shipping activity within 15 calendar days. Parcel post shipments will be automatically released.
Z	Advance notice is required before release of shipment. Shipping activity will follow-up on the notice of availability until release instructions are furnished. Parcel post shipments will be automatically released.
X	The U.S. Service and country representative have agreed that the: <ul style="list-style-type: none"> a. U.S. Service will sponsor the shipment to a country address. Under this agreement Block (34) (Freight Forwarder Code) must contain "X" and a customer-within-country (CC) Code must be entered in Block (33) (Mark for Code). The MAPAD must contain the CC Code and addresses for each type address required, i.e., parcel post, freight, documentation. b. Shipments are to be made to an assembly point or staging area as indicated by clear text instructions on exception requisitions. Under this agreement Block (34) must contain Code "W". A Mark for Code may be entered in Block (33) and the MAPAD must contain the Mark for Code if the Mark for address is to be used on the shipment to the assembly point or staging area.

Block (20) : Enter one of the following codes opposite each materiel line item as applicable :

<i>Code</i>	<i>Explanation</i>
2	Delivery to Destination Inland Origin to Inland Destination Within CONUS or Within the Same Overseas Geographic Area.
3	Delivery Alongside Vessel at Port of Exit.
4	Collect Commercial Bill of Lading to Commercial Port of Exit.
5	Delivery to Commercial Port of Exit by GBL.
6	Delivery to Overseas Port of Discharge (Shipment by Capability of DTS).
7	Delivery to Destination, specified point in recipient country).
8	Delivery to Vessel (onboard)—Port of Exit.
9	Delivery to Port of Discharge (Landed).

If Delivery Term Codes and addresses are not published, the U.S. shippers are not authorized to apply these markings. This causes containers to be received at the freight forwarder or U.S. military representative in-country unmarked for onward shipment with resultant shipping delays, misdirected and lost shipments, and unnecessary work at the freight forwarder port of exit and/or the port of discharge. The U.S. Government will sponsor shipment of this materiel to FOB U.S. Point of Origin.

Block (33) : Enter the *MARK FOR Code* from DOD 5105.38D, that identifies the organization in-country which is to receive the materiel. This address will be added to the SHIP TO address on all containers whether parcel post or freight. As a minimum, it should consist

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of the port of discharge name and designator (water and air); street, city, and state/province address of organization; country name; and country service name.

All data necessary to personnel of the port of exit, port of discharge, in-country custom authorities and oversea inland carriers to route materiel after receipt at port of exit should be included in this address. It should be brief, to the extent possible, and still retain clarity to all users. It should be in the language of the country, when this is possible, using English characters. Addressees should not be punctuated and should be properly blocked.

If the MARK FOR addresses are not published in DOD 5105.38D, or are incomplete, submit new or changed addresses with a request for expedited publication to the Defense Automatic Addressing System Office, ATTN: MAPAD Custodian, Gentile Air Force Station, Dayton, Ohio 45444. (Furnish a copy to Commander, U.S. Army International Logistics Command, ATTN: DRSIL-NS/LP, New Cumberland Army Depot, New Cumberland, PA 17070).

When Code "X" is authorized and entered in Blocks 33 and 34, a customer-within-country (CC) Code must be entered in Block 33. The MAPAD must contain the CC Code and Address for each type address required, i.e., parcel post, freight, documentation.

Block (34): Enter the appropriate freight forwarder code contained in MAPAD. When Code "X" is authorized and entered in Block 19, a Code "X" or "W" must be entered in Block 34.

2. When the Offer and Acceptance document (DD Form 1513) contains items which require multiple codes in Blocks 19, 20, 33 and 34 (example: explosives, classified, different priorities, others), the appropriate blocks will be completed as indicated below:

a. BLOCK 19: If more than one offer/release code is applicable, Block 19 will contain "See Note ____" and appropriate explanatory notes will be included in the DD Form 1513.

b. BLOCK 20: If more than one Delivery Term Code is applicable, Block 20 will contain "See Note ____" and appropriate explanatory notes will be included in the DD Form 1513.

c. BLOCK 33: If more than one Mark For Code is applicable, Block 26 will contain "See Note ____" and appropriate explanatory Notes will be included in the DD Form 1513.

d. BLOCK 34: If more than one Freight Code is applicable or a Freight Forwarder Code and a Code "X" is applicable, Block 34 will contain "See Note ____" and appropriate explanatory notes will be included in the DD Form 1513.

**ADDITIONAL TERMS AND CONDITIONS
SAFEGUARDS FOR CONTRACTOR PERSONNEL****1. PASSPORTS, VISAS, LICENSES, AND PERMITS**

a. The Contractor shall be responsible for timely and complete submittal of the necessary information and forms directly to the appropriate government agency for the required passports, visas, licenses, or permits.

b. To ensure the effective and timely performance of this contract, the Government of (country) (GO)___ will, within the framework of the laws of GO___, ensure the timely issuance of work visas, multiple entry visas, exit visas, work permits, vehicle operator permits, residence permits, in-country travel permits, and any other appropriate licenses or permits as may be required of the Contractor, and its subcontractors, or their personnel and dependents. The Contractor and his subcontractors shall be responsible for the sponsorship of their employees and their dependents and shall process said permits directly with the appropriate GO___ agency.

c. The GO___ will receive, without regard to race, religion, sex, or ethnic or national origin, persons of other than (country) nationality imported into (country), under proper authority, to work exclusively on efforts covered by the provisions of this contract, who have U.S. Government issued passports, provided they are technically qualified for the work and meet the security requirements of the GO___, and will impose on such person no fee or charges for entry, exit, quarantine, nor will they require work or residence permits for personnel working under this contract.

d. If, notwithstanding the above agreements, (company) incurs costs arising out of any of the conditions described above, the price of the contract implementing this LOA shall be increased accordingly and the costs reimbursed to the Contractor out of funds which will be provided by the GO___ under this LOA, and the contract delivery schedule shall be appropriately adjusted. Reimbursement shall be limited to those costs incurred, including applicable overhead and G&A, but excluding profit.

2. ACCESS

Contractor and subcontractor personnel in (country) in connection with this Program shall be authorized reasonable access to all information (data, plans, and reports) and all existing and proposed offices, routes, sites, and areas within (country) as required to accomplish this effort. The GO___ shall provide permits, licenses, visas, rights of entry, and any necessary arrangements to insure prompt access by Contractor and subcontractor personnel.

3. EXPORT OF DATA

The Contractor or subcontractor shall not be required to deliver to the Government of (country) nor to any person or entity not a citizen of the United States of America, any technical data produced or utilized under this Program until the Country has been furnished with evidence acceptable to it that such delivery of the data is (1) approved by the Office of Munitions Control of the U.S. State Department pursuant to the International Traffic in Arms Regulations of that Agency, or (2) approval is not required.

Figure D-8

4. CURRENCY REVALUATION

a. The financial procedures in this Program are based on the principle that neither the United States nor any U.S. or foreign subcontractors shall realize financial benefit nor incur financial loss by reason of fluctuation in the official rate of currency exchange or currency revaluation. For the purpose of this Program, a currency revaluation is defined as a change in the official rate of exchange between the U.S. dollar and the _____ (country currency) _____ which occurs as a direct result of sovereign decree.

b. If a currency revaluation, or a fluctuation in the exchange rate results in a financial gain or loss to the Contractors, the price of the contract(s) shall be adjusted upward or downward. Such adjustment in contract price shall be negotiated based upon a proposal submitted by the Contractor.

c. _____ (country) _____ currency required by the Contractor for non-United States expenditures in the performance of this Program will be purchased from the Contractor from the GO__.

5. TAXES, DUTIES AND CHARGES FOR DOING BUSINESS

a. It is agreed that the contract implementing this LOA will include the clause entitled "Taxes, Duties, and Charges for Doing Business (1977 JAN)" set forth in ASPR section 7-103.10(d).

b. The GO__ further agrees with respect to the _____ (company) _____ (hereinafter referred to as "the Contractor") :

(1) All property, material, equipment, household furniture, appliances and supplies imported into _____ (country) _____ by the Contractor or its subcontractors exclusively for use in support of the Contractor and its personnel and consigned and marked, as required or approved by the USG shall be exempt from import and export duties, taxes, licenses, excises, imposts, and any other identifiable charges. Duty-free import of major appliances for personnel support shall be limited to one (1) each: stove, refrigerator, freezer, washing machine, clothes dryer, and two (2) each televisions per family, plus a reasonable number of spare and replacement major appliances for use as maintenance requirements dictate. Any of the foregoing which does not become a part of the completed work or otherwise consumed, may at the Contractor's discretion, be removed from _____ (country) _____ or disposed of in _____ (country) _____ free of any restrictions or claims which may arise by reasons of such removal or disposal, except that any applicable custom duty, tax or charges will be paid in the event of sale or disposal in _____ (country) _____ to a purchaser other than an agency of the GO__ or other person entitled to duty-free importation. The Contractor shall maintain an inventory control and accounting system adequate to reflect the usage and disposition of all Contractor-owned property which has entered _____ (country) _____ duty-free under this contract.

(2) The GO__ ; its agencies, and political subdivisions shall levy no taxes or fees (including taxes on individual or corporate income or property, customs or import duties and other taxes on employee personal household goods, supplies and personal effects imported into _____ (country) _____ for personal use) on the Contractor, its subcontractors, the employees of either and the dependents of such employees. Duty-free entry of employee/dependent personal household goods, supplies or personal effects shall be limited to (1) the shipment of personal household goods, supplies and personal effects identified by

Figure D-8

(company) as the employees' initial shipment; (2) the personal household goods, supplies or personal effects shipped or carried by an employee or his dependents when returning from leave or duty outside (country) to the extent such items are allowed duty-free entry under the GO__ customs laws in effect on 1 June 1977; and (3) the shipment of an additional 100 pounds per family member of personal household goods, supplies and personal effects identified by (company) as the employees' employment extension shipment. Duty-free import of major appliances for personnel support is limited to those items described above and imported in the name of the Contractor; in their individual capacity. Contractor employees are not authorized duty-free import of major appliances or automobiles. Furthermore, this tax exclusion does not apply to the GO__ taxes levied on the purchase of personal household goods, supplies or personal effects or automobiles in the country of (country) by the employees of the Contractor or employees of its subcontractors. This paragraph does not apply to (country) employees of the Contractor or (country) subcontractors or their employees.

c. If, notwithstanding the above agreements, taxes, duties, or similar charges are imposed by the GO__ under the excepted circumstances described above, costs thereby incurred by the Contractor shall serve to increase the contract price and will be reimbursed to the Contractor at cost, including applicable overhead and G&A, but excluding profit, out of funds which will be provided by the GO__ under this LOA.

d. The GO__ agrees that the appropriate agency of the GO__ will implement any policy guidance necessitated by this provision.

6. LIMITATION OF CONTRACTOR LIABILITY

a. The GO__ agrees, with respect to the Contractor:

(1) To waive any or all claims which it has or may have against the Contractor, its agents, officers, and employees, for damage, loss or destruction of property, or for injury to or death of persons, arising out of the Contractor's participation in this program in the absence of gross negligence or willful misconduct on the part of the Contractor, its agents or employees.

(2) To indemnify and hold harmless the Contractor, its agents, officers, and employees against all claims arising directly or indirectly by reason of injury to or death of persons or loss of or damage to property, out of the Contractor's participation in this Program, in the absence of gross negligence or willful misconduct on the part of the Contractor, its agents or employees.

(3) In the event any other Contractor or party asserts any claim or commences any action in the (country) courts or elsewhere against the Contractor because of program efforts, the GO__ agrees to cooperate fully in the defense of such claim or action including the furnishing of witnesses and evidence at the GO__ expense. Except for claims or losses arising out of any breach of this contract or subcontractors thereunder or violations of any statute of the United States by the Contractor, the GO__ agrees to indemnify the Contractor against any judgments or losses which may result from claims or litigation and to reimburse the Contractor for the expense resulting from any such action.

(4) To accept full responsibility for the security and safekeeping of GO__ real and personal property located on its military bases or installations. The Contractor, its agents,

Figure D-8

officers, or employees shall not be liable for any damage arising directly out of a breach or failure of the GO___ security procedures, however caused.

(5) The GO___ shall provide adequate security to protect the personnel and property of the USG, and its Contractors or subcontractors located on GO___ military bases or installations.

(6) The term "agents" as used in this paragraph includes subcontractors.

b. If, notwithstanding the above agreements, (company) incurs costs arising out of any of the conditions described above, the price of the contract implementing this LOA shall be increased accordingly and the costs reimbursed to the Contractor out of funds which will be provided by the GO___ under this LOA. Reimbursement shall be limited to those costs incurred, including applicable overhead and G&A, but excluding profit.

7. SPECIAL CONTINGENCIES PROVISION

a. It is understood that no contingency pricing has been included in this LOA for items (1) through (4) set forth in paragraph b, below.

b. The GO___ agrees, with respect to the Contractor, that in the event of the following situation(s) occurring as a result of effort performed in support of this LOA in (country), an adjustment to the resulting contract(s) will be made for:

(1) Costs incurred due to actions brought against the Contractor or subcontractors under (country) Labor or Social Insurance Laws, provided such actions were not caused by conduct proscribed by other laws or willful contravention of (country) Labor or Social Laws.

(2) Additional costs incurred resulting from GO___ prevention of shipment of Contractor or employee belongings in or out of (country) within 120 days of the date such property is made available for shipment where transportation is otherwise reasonably available.

(3) An increase or decrease in costs incurred by the Contractor resulting from war, armed conflict, insurrection, nationalization, civil or military strife, or similar conditions, or acts of God where the safety of the Contractor and subcontractor personnel is threatened, and where retention or replacement of such personnel is required; and damage or loss as a result of conditions listed above to property owned by the Contractor, subcontractor, or employees. Whether to retain or replace such personnel shall be within the sole discretion of the USG.

(4) An increase or decrease in costs incurred by the Contractor or its subcontractors resulting from the GO___ changing any laws, regulations, or policy in effect on the acceptance date of this LOA.

c. It is understood that no adjustment shall be made due to the above situations:

(1) to the extent that performance would have been delayed or interrupted or that costs would have been incurred due to any circumstances not set forth in b, above; or

(2) to the extent that performance would have been delayed or interrupted or that costs would have been incurred due to the fault or negligence of the Contractor; or,

Figure D-8

(3) for which an adjustment is otherwise provided or excluded under any other provision of the resulting contract, such other provision shall be enforced in accordance with its terms.

d. The adjustments provided for in this provision may be made in the delivery or performance dates and any other provision of the contract implementing this LOA, affected by the above conditions. Upward or downward adjustments may also be made in the contract price, but shall be limited to actual costs, including overhead and G&A, but excluding profit. ASPR Section XV, Cost Principles, shall be used in determining the amount of any price adjustment, and is not superseded by any provision herein. Costs reimbursed to the Contractor under this provision shall be paid out of funds which will be provided by the GO___ under this LOA.

Figure D-8

**ADDITIONAL TERMS AND CONDITIONS
TRANSPORTATION AND SERVICES**

1. USG agrees to provide transportation services for the items identified on the face of this Letter of Offer to the Point of Delivery. Purchaser property will be transported at Purchaser's risk.
2. Purchaser will accept USAF delivery listings as the basis for billing and proof of shipment.
3. Purchaser will accept responsibility for clearance of materiel through its customs at the point of debarkation, and for movement of the materiel from its port of debarkation to the ultimate in-country destination.
4. Purchaser will appoint a duly authorized official to accept and sign for materiel at the port of debarkation, and submit outturn message and report.
5. Purchaser will absorb losses of materiel the USAF does not in fact recover from an independent carrier or handler, including where the USAF is self-insured.
6. Purchaser will self-insure such shipments, or obtain commercial insurance without any right of subrogation of any claim against the United States.
7. The USG will assist the purchaser in processing any claims that may arise for lost or damaged shipments, in the same manner it processes claims for U.S. Government-owned materiel. Collection of revenue, if any, resulting from approved claims will be credited to the purchaser's account.

APPENDIX D

FINANCIAL ANNEXES TO LETTERS OF OFFER

1. Introduction

This chapter prescribes the requirement for a Financial Annex in each Letter of Offer. The purpose of the Financial Annex is to supplement and amplify terms included in Paragraph B "The Purchaser" of Annex A of the Letter of Offer and Acceptance (DD Form 1513), and to provide clear understanding between the USG and the purchaser as to the rate and timing of the payments to be made by the purchaser. This appendix also prescribes the criteria to be used when forecasting payment schedules to be included in the Financial Annex.

2. Purpose of Financial Annexes

The Financial Annexes specify the purchaser's projected payment dates and amounts, and describe the interface of the payment schedule with the FMS billing system. Thus, misunderstandings as to when payments are expected to be made to the USG should be eliminated. The Annexes also provide budgetary planning data for the purchaser. It is necessary to accept a degree of uncertainty in financial forecasting to achieve these goals.

3. Policies

a. All Letters of Offer except FMSO I will include a Financial Annex.

b. Depending on the Terms of Sale and Method of Funding of the Letter of Offer, Financial Annexes in the form of Figures App D-1 through App D-8 will be used.

c. Each Financial Annex financed under Terms of Sale of dependable undertakings or

FMS credit will include a payment schedule. This payment schedule will:

(1) Include specific calendar dates when each payment is anticipated.

(2) Include specific amounts due on each calendar date. These amounts will be equal in total to the amount reflected in the estimated total cost block (26) of the DD Form 1513 for the case involved.

d. The Security Assistance Accounting Center (SAAC) will issue billings in amounts and at times as needed to assure sufficient trust fund monies are on hand to meet military department and contractor claims for payment regardless of payment schedules.

e. Revisions to the payment schedule of the financial annex are mandatory when:

(1) Price increases cause substantive revisions of the rates of payment from that shown on the existing Financial Annex. The revised payment schedule to the Financial Annex should be included on the price increase notification (DD Form 1513-2) to the purchasing country.

(2) Actual cash expenditures for FMS transactions exceed the cash flow received from the purchasing country in accordance with the payment schedule on the financial annex. Every effort should be made to estimate initial cash flow requirements accurately to avoid continual revision to the payment schedule.

(3) A formal amendment (DD Form 1513-1) to the case is made which adjusts the total estimated costs of the case. Such amendments should reflect the revised payment schedule to the financial annex.

(4) Adjustments are made to multi-year

payment schedules (normally done annually).

Unless otherwise noted above, the DD Form 1513-2, Notice of Modification, should be used to advise the purchasing country of revisions to the payment schedule of the financial annex.

4. Preparation of Payment Schedules

a. The preparation of payment schedules require budgetary estimates under conditions of inflationary uncertainty and uncertainty as to the specific dates when:

(1) Purchasers will accept and return the Letter of Offer for implementation;

(2) Requisitions for items will be initiated;

(3) Contracts will be let;

(4) Progress payments must be made to contractors;

(5) Deliveries of items, particularly spare parts and support equipment, will occur; and

(6) Personnel costs will be incurred.

b. Actual outlays therefore can be expected to vary from initial payment schedules. This does not negate, however, the requirement to develop a payment schedule for each case. In general, payment schedules will include estimates of outlays for sales from DOD stocks, sales from procurement, DOD services and training, administrative charges, accessorial and transportation charges. The paragraphs that follow provide criteria for developing payment schedules in anticipation of these costs.

(1) All payment dates on Financial Annexes other than initial deposits should be 30 days after the end of each calendar year quarter. Payment amounts should equal the anticipated outlays for the next 90 days after payment date. The timing and amounts of claims for payment will coincide with existing FMS billing procedures as described in DODI 2140.3. The payment schedule should specify the initial deposit required at the time of case acceptance. The amount of initial deposit must be sufficient to cover outlays/deliveries anticipated until the first follow-on payment is scheduled for receipt.

(2) When the exact date a purchaser will accept a Letter of Offer is uncertain, and a payment is needed a specific number of days after that acceptance, assume that the purchaser will accept the Letter of Offer 60 days after it is offered, and specify the first payment date accordingly.

(3) The schedule for payments related to materiel to be sold from stock will be based on estimated deliveries during each 90 day period cited in paragraph 4.b.1 above. The basis of forecasting anticipated delivery will be the use of historical delivery information of specific generic codes or other materiel categories and should be supported by an analysis showing the means of forecasting.

(4) Payment schedules for materiel obtained through procurement requiring progress payments to the contractors will be estimated based on historical cost curves. These curves should be systematically developed for all major DOD weapon systems and should be reviewed periodically for validity. Payment schedules should include both the estimated disbursements to contractors as well as appropriate contract holdback percentage.

(5) For case lines involving concurrent spare parts, estimate dollar deliveries consistent with the delivery of the end items being supported.

(6) For cases involving purchaser-initiated requisitions (i.e. open-end or blanket order cases expressed in dollars) over a 1-year period, phase payments quarterly for one-fourth of the estimated case value. The first payment should be scheduled 90 days after the estimated date of case acceptance and initial deposit.

(7) For cases involving personal services, develop a monthly phasing based upon the scheduled dates and elements of cost of services being provided.

(8) For training cases involving foreign student entry into courses, schedule the payment in consonance with known or estimated entry into the training courses involved. Open-end or blanket order training cases will require an initial deposit of 25% when the case exceeds \$25,000.

MILITARY ASSISTANCE AND SALES MANUAL—PART III

(9) For cases involving royalties or pro-rata nonrecurring costs or asset use charges, schedule the payment in consonance with production schedules of the end item for which the payment is being collected.

(10) Schedule administrative and accessorial costs in consonance with payment

schedules for the primary items or services being provided under the case.

c. Chapter G, Part III should be consulted for Terms of payment to be cited on page 1 of the DD Form 1513.

d. If the Terms of payment indicate the use of more than one financial annex, attach each appropriate annex.

Case _____

**SUPPLEMENTARY FINANCIAL TERMS AND CONDITIONS—
CASH WITH ORDER AND ACCEPTANCE**

Financing terms of this transaction require 100% of the case value to be deposited with acceptance of the Letter of Offer and Acceptance (DD Form 1513) (LOA) under Section 21(b) or 22(a) of the Arms Export Control Act. This document supplements the obligation of the Purchaser under Paragraph B.3.a. of Annex A of the LOA.

Quarterly statements for deliveries under this LOA will be forwarded by the Security Assistance Accounting Center (SAAC). The Statement of Foreign Military Sales Transactions, DD Form 645, will be issued quarterly and will serve as a statement of account. Two attachments to the statement will be provided. Attachment 1 will be an "FMS Delivery Listing". Attachment 2 will be an "FMS Expenditure Listing". All requests for billing or supply adjustments should be submitted to the SAAC.

It is emphasized that the deposit of \$_____ must accompany the purchaser's acceptance of this LOA as an integral element of acceptance. In the event the funds required exceed those available, additional billings will be presented based on actual cash requirements. In such case, the United States will use its best efforts to provide a Notice of Modification (DD Form 1513-2) at least 45 days prior to the next payment due date.

It is understood also that the values reflected on the LOA are estimates, and that the final amount to be charged for items or services, furnished will be equal to the final total cost to the United States. When final deliveries are made, and all costs are known, the SAAC will provide a "Final Statement of Account" which will indicate final costs of the case. Should this amount be more than funds collected, a final billing (immediately due and payable) will be concurrently provided. Should the amount be less than funds collected, such funds will be refunded upon subsequent request, or otherwise disposed of at the option of the purchaser, unless payments are overdue against other Foreign Military Sales cases.

Figure App D-1

Change 19, 15 June 1978

Case _____

**SUPPLEMENTARY FINANCIAL TERMS AND CONDITIONS—
CASH PRIOR TO DELIVERY**

Financial terms for this case require payment in advance of materiel delivery or service performance pursuant to Section 21 (b) of the Arms Export Control Act. This document supplements the obligation of the Purchaser under paragraph B.3.b. of Annex A of the Letter of Offer and Acceptance (DD Form 1513).

The Purchaser agrees to make payments in such amounts and at such times as may be specified by the U.S. Government (including any initial deposit) in order to meet payment requirements arising from this case.

Quarterly billings for amounts due under this case will be forwarded by the Security Assistance Accounting Center (SAAC), and payments (in U.S. dollars) will be forwarded to that organization in time to meet prescribed due dates. The Statement of Foreign Military Sales Transactions, DD Form 645, will serve as a statement of account and as a billing statement. Two attachments to the statement will be provided. Attachment 1 will be an "FMS Delivery Listing". Attachment 2 will be an "FMS Expenditure Listing". Billings will be forwarded by the SAAC not later than 45 days before such payments are due. All requests for billing or supply adjustments should be submitted to the SAAC.

To assist the Purchaser in developing fiscal plans and annual budgets, the U.S. Government provides its best estimate to anticipated costs of this case in the following estimated payment schedule:

ESTIMATED PAYMENT SCHEDULE

Payment Date Initial Deposit	Amount
---------------------------------	--------

It is emphasized that the initial deposit of \$ _____ must accompany the purchaser's acceptance of this LOA as an integral element of acceptance. The above estimated payment schedule is provided for the convenience of the purchaser—it is neither binding on the U.S. Government nor will it be used as a basis for requesting payment from the purchaser. The purchaser will be required to make payments in accordance with quarterly billings (DD Form 645) issued by the SAAC. In the event that actual cash requirements differ materially from the estimated payment schedule, the United States will use its best efforts to provide a revised payment schedule (DD Form 1513-2) at least 45 days prior to the next payment due date.

It is understood that the values reflected on the Letter of Offer and Acceptance are estimates, and that the final amount to be charged for items or services furnished will be equal to the final total cost to the United States. When final deliveries are made, and all costs are known, the SAAC will provide a "Final Statement of Account," which will indicate final costs of the contract. Should this amount be more than funds collected, a final billing (immediately due and payable) will be concurrently provided. Should the amount be less than funds collected, such funds will be refunded upon subsequent request, or otherwise disposed of at the option of the purchaser, unless payments are overdue against other Foreign Military Sales cases.

Figure App D-2

Case _____

**SUPPLEMENTARY FINANCIAL TERMS AND CONDITIONS—
FMS CREDIT**

This transaction is financed under FMS credit terms of sale, under Section 23 or 24 of the Arms Export Control Act. This document supplements the obligation of the Purchaser under paragraph B.3.e. of Annex A of the Letter of Offer and Acceptance (DD Form 1513).

As prescribed in the LOA terms, this case will be billed on a dependable undertaking basis. The Purchaser agrees to pay to the USG such amounts at such times as may be requested by the USG (including any initial deposit set forth under "Terms") in order to meet payments required by contracts under which items are being procured.

Quarterly billings for amounts due under this case will be forwarded by the Security Assistance Accounting Center (SAAC), and payments (in U.S. dollars) will be forwarded to that organization in time to meet prescribed due dates. The Statement of Foreign Military Sales Transactions, DD Form 645, will serve as a statement of account and as a billing statement. Two attachments to the statement will be provided. Attachment 1 will be an "FMS Delivery Listing". Attachment 2 will be an "FMS Expenditure Listing". Billings will be forwarded by the SAAC not later than 45 days before such payments are due. All requests for billing or supply adjustments should be submitted to the SAAC.

To authorize payments of the billing from credit funds available under the appropriate Credit Agreement, the Purchaser is requested to forward a copy of the billing without attachments directly to the Defense Security Assistance Agency, Credit Programs Division, 1400 Wilson Boulevard, Suite 535, Architect Building, Arlington, VA 22209. The request for payment by the Purchaser from credit funds should identify the Credit Agreement from which the payment is to be made and the appropriate disbursement date. Specific instructions as to how to process payment requests are included in applicable provisions of the Credit Agreement.

In the event full payment is not made by the prescribed due date, interest shall be charged as outlined in General Conditions, paragraph B.3.g. of Annex A of the Letter of Offer (DD Form 1513). The principal of the arrearage shall be computed as the excess of total financial requirements shown in column 12 over cumulative collections (cash or credit) shown in column 13 of the Statement of Foreign Military Sales Transactions after the payment due date. Interest that is assessed on FMS payment arrearages is in addition to any interest that may accrue pursuant to FMS Credit Agreements.

To assist the Purchaser in developing fiscal plans and annual budgets for use of credit resources, the U.S. Government provides its best estimate of anticipated costs of this case in the following estimated payment schedule:

ESTIMATED PAYMENT SCHEDULE

Payment Date Initial Deposit	Amount
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It is emphasized that the initial deposit of \$ _____ must accompany the purchaser's Letter of Acceptance as an integral element of acceptance. The above estimated

MILITARY ASSISTANCE AND SALES MANUAL—PART III

payment schedule is provided for the convenience of the purchaser—it is neither binding on the U.S. Government nor will it be used as a basis for requesting payment from the purchaser. The purchaser will be required to make payments in accordance with quarterly billings (DD Form 645) issued by the SAAC. In the event the actual cash requirements differ materially from the estimated payment schedule, the United States will use its best efforts to provide a revised payments schedule (DD Form 1513-2) at least 45 days prior to the next payment due date.

It is understood that the values reflected on the Letter of Offer and Acceptance are estimates and the final amount to be charged for items or services furnished will be equal to the final total cost to the United States. When final deliveries are made, and all costs are known, the SAAC will provide a "Final Statement of Account" which will indicate final costs of the case. Should this amount be more than funds collected, a final billing (immediately due and payable) will be concurrently provided. Should the amount be less than funds collected, such funds will be available for payment of other unpaid billings for other cases or will be otherwise disposed of at the mutual agreement of the Purchaser and the Comptroller, DSAA.

Figure App D-3
(Continued)

Case _____

**SUPPLEMENTARY FINANCIAL TERMS AND CONDITIONS—
PAYMENT AND DELIVERY**

This case is financed under Terms of Sale of payments upon delivery of each item or service involved under Section 21(d) of the Arms Export Control Act. This document supplements the obligation of the Purchaser under paragraph B.3.d. of Annex A of the Letter of Offer and Acceptance (DD Form 1513).

Billings for amounts due under this case will be forwarded by the Security Assistance Accounting Center (SAAC), and payments (in U.S. dollars) will be forwarded to that organization in time to meet prescribed due dates. Either the billing itself, or the letter which transmits the billing will prescribe the date upon which the payment is due.

The billing will include a priced listing of items and services which have been delivered and for which payment is required. The Purchaser will make full payment for such billing by the prescribed due date, whether or not the listed items actually have been received at the final in-country destination before the payment is due.

Claims resulting from discrepant shipments will be settled separately in accordance with Paragraph A3 and B6 of Annex A of the Letter of Offer and Acceptance (DD Form 1513). Payments for billings otherwise due will not be withheld pending settlement for such claims.

In the event full payment is not made by the prescribed due date, interest shall be charged as outlined in General Conditions, paragraph B.3.g. of Annex A of the Letter of Offer (DD Form 1513).

It is understood that the values reflected on the Letter of Offer and Acceptance are estimates, and that the final amount to be charged will be equal to the cost to the United States in fulfilling this case. When final deliveries are made, and all costs are known, the SAAC will provide a "Final Statement of Account" which will indicate final costs of the case. Should this amount be more than funds collected, a final billing (due upon receipt) will be provided concurrently. Should the amount be less than funds collected, such funds will be refunded upon subsequent request, or otherwise disposed of at the option of the purchaser, unless payments are overdue against other Foreign Military Sales cases.

Case _____

**SUPPLEMENTARY FINANCIAL TERMS AND CONDITIONS—
FMS TRAINING**

Financing terms for this case require payment prior to student entry into training program under Section 21(b) of the Arms Export Control Act. This document supplements the obligation of the Purchaser under paragraph B.3.b. of Annex A of the Letter of Offer and Acceptance (DD Form 1513).

The Purchaser agrees to make payments in such amounts and at such times as may be specified by the U.S. Government (including any initial deposit) in order to meet financial payment requirements arising from this training case.

Quarterly billings for amounts due under this case will be forwarded by the Security Assistance Accounting Center (SAAC), and payments (in U.S. dollars) will be forwarded to that organization in time to meet prescribed due dates. The Statement of Foreign Military Sales Transactions, DD Form 645, will serve as a statement of account and as a billing statement. Two attachments to the statement will be provided. Attachment 1 will be an "FMS Delivery Listing", showing performance based upon student entry into training courses. Attachment 2 will be an "FMS Expenditure Listing". Billings will be forwarded by the SAAC not later than 45 days before such payments are due. All requests for billing adjustments should be submitted to the SAAC.

To assist the Purchaser in developing fiscal plans and annual budgets, the U.S. Government provides its best estimate of anticipated costs of this case in the following estimated payments schedule:

ESTIMATED PAYMENT SCHEDULE

Payment Date Initial Deposit	Amount
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It is emphasized that the initial deposit of \$_____ must accompany the purchaser's acceptance of this LOA as an integral element of acceptance. The above estimated payments schedule is provided for the convenience of the purchaser—it is neither binding on the U.S. Government nor will it be used as the basis for requesting payment from the purchaser. The purchaser will be required to make payments in accordance with quarterly billings, DD Form 645, issued by the SAAC. In the events the actual cash requirements differ materially from the Estimated Payment Schedule the United States will use its best efforts to provide a revised payment schedule (DD Form 1513-2) at least 45 days prior to the next payment due date.

It is understood that the values reflected on the Letter of Offer and Acceptance are estimates, and that the final amount to be charged for training services furnished will be equal to the final total cost to the United States. When all training has been performed, and all costs are known, the SAAC will provide a "Final Statement of Account" which will indicate final costs of the agreement. Should this amount be more than funds collected, a final billing (immediately due and payable) will be concurrently provided. Should the amount be less than funds collected, such funds will be refunded upon subsequent request, or otherwise disposed of at the option of the purchaser, unless payments are overdue against other Foreign Military Sales cases.

Figure App D-5

Case _____

**SUPPLEMENTARY FINANCIAL TERMS AND CONDITIONS—
PROCUREMENT FOR CASH SALES (DEPENDABLE UNDERTAKINGS)**

This transaction is financed under dependable undertaking terms of sale pursuant to Section 22(a) of the Arms Export Control Act and predecessor legislation. This document supplements the obligation of the Purchaser under paragraph B.3.c. of Annex A of the Letter of Offer and Acceptance (DD Form 1513).

The Purchaser agrees to pay to the USG such amounts at such times as may be required by the U.S. Government (including any initial deposit set forth under "Terms") in order to meet payments required by contracts under which items are being processed.

Quarterly billings for amounts due under this agreement will be forwarded by the Security Assistance Accounting Center (SAAC), and payments (in U.S. dollars) will be forwarded to that organization in time to meet prescribed due dates. The Statement of Foreign Military Sales Transactions, DD Form 645, will serve as a statement of account and as a billing statement. Attachment 1 will be an "FMS Delivery Listing". Attachment 2 will be an "FMS Expenditure Listing". Billings will be forwarded by the SAAC not later than 45 days before such payments are due. All requests for billing or supply adjustments should be submitted to the SAAC.

In the event full payment is not made by the prescribed due date, interest shall be charged as outlined in General Conditions, paragraph B.3.g. of Annex A of the Letter of Offer (DD Form 1513).

To assist the Purchaser in developing fiscal plans and annual budgets, the U.S. Government provides its best estimate of anticipated costs of this case in the following payments schedule:

ESTIMATED PAYMENT SCHEDULE

Payment Date Initial Deposit	Amount
---------------------------------	--------

It is emphasized that the initial deposit of \$_____ must accompany the purchaser's Letter of Acceptance as an integral part of acceptance. The above estimated payments schedule is provided for the convenience of the purchaser—it is neither binding on the U.S. Government nor will it be used as the basis for requesting payments from the purchaser. The purchaser will be required to make payments in accordance with quarterly billings, DD Form 645, issued by the SAAC. In the event the actual cash requirements differ materially from the Estimated Payments Schedule, the United States will use its best efforts to provide a revised payments schedule (DD Form 1513-2) at least 45 days prior to the next payment due date.

It is understood that the values reflected on the Letter of Offer and Acceptance are estimates, and the final amount to be charged for items or services furnished will be equal to the final total cost to the United States. When final deliveries are made, and all costs are known, the SAAC will provide a "Final Statement of Account" which will indicate final costs of the case. Should this amount be more than funds collected, a final billing (immediately due and payable) will be concurrently provided. Should the amount be less than funds collected, such funds will be refunded upon subsequent request, or otherwise disposed of at the option of the purchaser, unless payments are overdue against other Foreign Military Sales cases.

Figure App D-6

Case _____

**SUPPLEMENTARY FINANCIAL TERMS AND CONDITIONS—
PAYMENT 120-DAYS AFTER DELIVERY**

The transaction is financed under payment 120-days after delivery terms of sale pursuant to Section 21(d) (last sentence) and Section 22(b) of the Arms Export Control Act and predecessor legislation. This document supplements the obligation of the Purchaser under paragraph B.3. of Annex A of the Letter of Offer and Acceptance (DD Form 1513).

Billings for amounts due under this case will be forwarded by the Security Assistance Accounting Center (SAAC), and payments (in U.S. dollars) will be forwarded to that organization in time to meet prescribed due dates. Either the billing itself, or the letter which transmits the billings will prescribe the date upon which the payment is due.

The billing will include a priced listing of items and services which have been delivered and for which payment is required. The Purchaser will make full payment for such billings by the prescribed due date, whether or not the listed items actually have been received at the final in-country destination before the payment is due.

Claims resulting from discrepant shipments will be settled separately in accordance with paragraph A3 and B6 of Annex A of the Letter of Offer and Acceptance (DD Form 1513). Payments for billing otherwise due will not be withheld pending settlement for such claims.

In the event full payment is not made by the prescribed due date, interest shall be charged as outlined in General Conditions, paragraph B.3.g. of Annex A of the Letter of Offer (DD Form 1513).

To assist the Purchaser in developing fiscal plans and annual budgets, the U.S. Government provides its best estimate of anticipated costs of this case in the following payments schedule:

ESTIMATED PAYMENT SCHEDULE

Payment Date	Amount
--------------	--------

The above estimated payments schedule is provided for the convenience of the purchaser—it is neither binding on the U.S. Government nor will it be used as the basis for requesting payment from the purchaser. The purchaser will be required to make payments in accordance with FMS billing, DD Form 645, issued by SAAC. In the event the actual cash requirements differ materially from the Estimated Payments Schedule, the United States will use its best efforts to provide a revised payments schedule (DD Form 1513-2) at least 45 days prior to the next payment due date.

It is understood that the values reflected on the Letter of Offer and Acceptance are estimates, and the final amount to be charged for items or services furnished will be equal to the final total cost to the United States. When final deliveries are made, and all costs are known, the SAAC will provide a "Final Statement of Account" which will indicate final costs of the case. Should this amount be more than funds collected, a final billing (immediately due and payable) will be concurrently provided. Should the amount be less than funds collected, such funds will be refunded upon subsequent request, or otherwise disposed of at the option of the purchaser, unless payments are overdue against other Foreign Military Sales cases.

Figure App D-7

Case _____

**SUPPLEMENTARY FINANCIAL TERMS AND CONDITIONS—
SOURCE NOT PREDETERMINED**

This transaction may be subject to financing under Section 21 and/or Section 22 of the Arms Export Control Act, since the source of materiel/services cannot be predetermined. This document supplements the obligations of the purchaser under paragraph B.3. of Annex A of the Letter of Offer and Acceptance (DD Form 1513).

Purchaser agrees to make payments in such amounts and at such times as may be specified by the U.S. Government (including any initial deposit) in order to meet payment requirements arising from this case.

Quarterly FMS billings for amounts due under this case will be forwarded by the Security Assistance Accounting Center (SAAC), and payments (in U.S. dollars) will be forwarded to that organization in time to meet prescribed due dates. The Statement of Foreign Military Sales Transactions, DD Form 645, will serve as a statement of account and as a billing statement. Two attachments will be provided with the statement. Attachment 1 will be an "FMS Delivery Listing". Attachment 2 will be an "FMS Expenditure Listing". Billings will be forwarded by the SAAC not later than 45 days before such payments are due. All requests for billing or supply attachments should be submitted to the SAAC.

To assist purchaser in developing fiscal plans and annual budgets, the U.S. Government provides its best estimate to anticipated costs of this case in the following estimated payments schedule:

ESTIMATED PAYMENT SCHEDULE

Payment Date Initial Deposit	Amount
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The initial deposit of \$_____ must accompany the purchaser's acceptance of this LOA as an integral element of acceptance. The above estimated payment schedule is provided for the convenience of the purchaser—it is neither binding on the U.S. Government nor will it be used as a basis for requesting payment from the purchaser. The purchaser will be required to make payments in accordance with quarterly billings (DD Form 645) issued by the SAAC. In the event the actual case requirements differ materially from the estimated payment schedule, the United States will use its best efforts to provide a revised payments schedule (DD Form 1513-2).

It is understood that the values reflected on the Letter of Offer and Acceptance are estimates, and that the final amount to be charged for items or services furnished will be equal to the final total cost to the United States. When all costs are known, the SAAC will provide a "Final Statement of Account" which will indicate final costs of the contract. Should this amount be more than funds collected, a final billing (immediately due and payable) will be provided concurrently. Should the amount be less than funds collected and payments are not overdue on the other MS cases, such funds will be refunded upon subsequent request, or otherwise disposed of at the option of the purchaser.

Figure App D-8