



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

SEP 03 2004

In reply refer to:
I-04/007305/P2

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: FMS Transformation: Letters of Offer and Acceptance (LOA) Associated with Excess Defense Articles (EDA) Grant Transfers (DSCA 04-30)

In response to comments from the Military Departments (MILDEPs) regarding the current method of processing Excess Defense Articles (EDA) grant transfers and our inter-agency working group on export controls, DSCA is implementing a change that utilizes the Defense Security Assistance Management System (DSAMS) to handle EDA grants. Currently DSCA uses DoD messages to authorize the MILDEPs to offer EDA. These messages contain a Record Control Number (RCN), a description of the item(s), quantity (if not a blanket order) and the current value of the item(s). There are some disadvantages to using messages only, as this method does not lend itself well to automated tracking. Specifically, the change will entail items transferred by EDA grant authorities to appear as lines on Letters of Offer and Acceptance (LOAs), in lieu of the established practice of identifying the EDA grant items in a note on LOAs prepared for associated services related to EDA grant transfers. This new method will undergo a six-month test period effective the date of this memorandum.

Grant EDA LOAs will be prepared similarly to Foreign Military Sales (FMS) LOAs. (Attachment 1 is a set of instructions for preparing an LOA for EDA grant transfers and Attachment 2 is a sample EDA grant LOA.) If there are services or other non-grant material associated with the transfer of grant EDA items (e.g., packing, crating, handling, transportation, refurbishment, spare parts), the LOA should reflect multiple Terms of Sale (the items themselves will be EDA grant and the associated services will be cash with acceptance, FMS credit, etc.) and the services or other non-grant material should be included as subsequent line items.

In addition to the benefits of standardizing the way EDA grant transfers are handled, this change will improve management control and reporting. Also, it will greatly assist the MILDEPs in providing accurate data for EDA, Wassenaar, Transparency in Armaments (TIA) and Small Arms Light Weapons (SALW) delivery reports.

Following a successful test period the Security Assistance Management Manual (SAMM) will be updated to reflect these new procedures. If you have any questions regarding the LOA process for grant EDA transfers, please contact Ms. Lisa Moskowitz, DSCA/P3-Policy and Plans Division, (703) 601-3842.

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments:

1. Instructions
2. Sample LOA

DISTRIBUTION LIST

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Instructions for Preparing Letter of Offer and Acceptance (LOAs) for Excess Defense Articles (EDA) Grant Transfers

Use the following instructions to prepare grant EDA Lines/LOAs in DSAMS:

- Case Nickname Field: Enter “**EDA Grant**”.
- Term of Sale: Enter “EDA Grant” (this is a new Term of Sale). If there are non-EDA grant items on the LOA, there will be multiple Terms of Sale.
- Basic Case Description: Include the statement “is for the EDA Grant Transfer of [quantity] of [material nomenclature] under FAA Section 516...”
- Item Number: The **EDA Grant Item(s)** should be the first line(s) on the case.
- MASL Number: Use the **actual MASL(s)** for the item(s) being transferred.
- Quantity: If the MASL unit of issue is other than “XX,” enter the applicable quantity. If the MASL unit of issue is “XX”, enter the quantity in the Item Description Field.
- Item Description: Include the Total Acquisition Value and quantity if the MASL unit of issue is “XX”.
- Type of Assistance: Enter “A – FAA Excess Defense Articles – Non-Reimbursable” (this is a new Type of Assistance Code).
- Source of Supply: Enter “E – Excess”
- Condition Code: Leave Blank
- Offer Release: Leave Blank
- Delivery Term: Leave Blank
- Base Unit Price: Enter “\$0”
- **Standard Terms and Conditions** remain the same.

As already required, corresponding line item note(s) must include an item description, nomenclature, quantity, original acquisition value, current value and location of the item (in most cases this will be note 1). **For Customs purposes, also include in Note 1 the phrase “Grant value is \$0” to correspond with the \$0 value in line 1.** All other required notes, such as the “as is, where is” condition statement; associated services description; etc., must be included. (See SAMM Chapter 5, Table C5.T5 and Chapter 11, Table C11.T8 for language and other details.)

Note: The EDA Sales process remains the same. SAMM Chapter 5, Table C5.T5 (EDA sales) provides the required language for mandatory EDA sale notes. The SAMM, Chapter 11, C11.5 provides a detailed explanation of the EDA program.



**United States of America
Letter of Offer and Acceptance (LOA)
BN-Q-CJF**

EDA GRANT

Based on Government of Bandaria letter dated 15 April 2002 No. 6785

Pursuant to the Arms Export Control Act, the Government of the United States (USG) offers to sell to the Embassy of Bandaria, Office of the Ground Attaché 1234 Massachusetts Ave, NW Washington, DC 29999, the defense articles or defense services (which may include defense design and construction services) collectively referred to as "items," set forth herein, subject to the provisions, terms, and conditions in this LOA.

This LOA is for the EDA Grant Transfer of 20 UH-1H Helicopters under FAA Section 516, and refurbishment, transportation, and Test Flight of the Grant EDA Items.

Estimated Cost: \$7,237,873

Initial Deposit: \$7,237,873

Terms of Sale:

Cash with Acceptance

EDA Grant

This offer expires on 4 July 2004. Unless a request for extension is made by the Purchaser and granted by the USG, the offer terminates on the expiration date.

This LOA consists of page 1 through page 12.

The undersigned are authorized representatives of their Governments and hereby offer and accept, respectively, this LOA:

_____	_____	_____	_____
U.S. Signature	Date	Purchaser Signature	Date

_____	_____
Typed Name and Title	Typed Name and Title

<u>Defense Security Cooperation Agency</u>	_____
Implementing Agency	Agency

<u>DSCA Reviewed/Approved</u>	_____
DSCA	Date

Information to be provided by the Purchaser:
 Mark For Code _____; Freight Forwarder Code _____; Purchaser Procuring Agency Code _____;
 Name and Address of the Purchaser's Paying Office _____

Items to be supplied (costs and months for delivery are estimates):

(1) Itm Nbr	(2) Description/Condition	(3) Qty, Unit of Issue	(4) Costs		(5) SC/MOS/ TA	(6) Ofr Rel Cde	(7) Del Trm Cde
			(a) Unit	(b) Total			
001 U	A4U 1520000877637 (Y) HELICOPTER UH-1H Excess UH-1H Utility Helicopters (condition requires refurbishment) with -22 engine configuration. (Note(s) 1) EXCESS DEFENSE ARTICLE ACQUISITION VALUE IS \$922,704	20 EA	\$0.00	\$0.00	E(12) TAA NC	--	--
002 H	R9Z 079Z000THSERV (N) OTHER SERVICES	XX		\$6,671,339	P(12) TA5 NR	--	--
003	L2A 019200PREPASV (N) PREPARATION FOR AIRLIFT, FMS SERVICE ONLY	XX		\$240,000	S(12) TA3	A	4
004	B2G 9B2G00MAVRSUP (N) AIRLIFT, SAAM, FMS SERVICE ONLY	XX		\$150,000	S(12) TA3	A	4

Estimated Cost Summary:

(8) Net Estimated Cost	\$7,061,339
(9) Packing, Crating, and Handling	0
(10) Administrative Charge	176,534
(11) Transportation	0
(12) Other	0
(13) Total Estimated Cost	\$7,237,873

To assist in fiscal planning, the USG provides the following anticipated costs of this LOA:

ESTIMATED PAYMENT SCHEDULE

<u>Payment Date</u>	<u>Quarterly</u>	<u>Cumulative</u>
Initial Deposit	\$7,237,873	\$7,237,873

Explanation for acronyms and codes, and financial information, may be found in the "Letter of Offer and Acceptance Information."

Signed Copy Distribution:

1. Upon acceptance, the Purchaser should return one signed copy of this LOA to the Defense Finance and Accounting Service, Denver (DFAS Denver), ATTN: DFAS-ADY/DE, 6760 E. Irvington Place, Denver, CO 80279-2000. Simultaneously, wire transfer of the initial deposit or amount due with acceptance of this LOA document (if required) should be made to financial institution identifier 021030004 TREAS NYC, Agency Location Code 00003801, showing "Payment from Government of Bandaria for BN-Q-SEH," or a check for the initial deposit, made payable to the U.S. Treasury, mailed to DFAS-ADCTA/DE, P.O. Box 173659, Denver, CO 80217-3659, showing "Payment from Government of Bandaria for BN-Q-SEH." Wire transfer is preferred.

2. One signed copy should be returned to Director, Defense Security Cooperation Agency, 1111 Jefferson Davis Highway, Suite 303, Arlington, VA 22202-4306.

Note 1. LINE ITEM 001 – EDA UH-1H UTILITY HELICOPTERS.

The Excess Defense Articles listed below are being provided at no cost under Section 516 of the Foreign Assistance Act of 1961, as amended.

Item	Quantity	Location	Condition Code	RCN
UH-1H Helicopter	20	CONUS	H-7	A030
EXCESS DEFENSE ARTICLES. ACQUISITION VALUE IS			\$922,074	
CURRENT VALUE IS			\$ 92,207	

Equipment in line item 001 is offered in "as is where is" condition and may not meet serviceability standards normally prescribed by the U.S. Military for sale to security assistance purchasers. Items may be missing basic issue items and accessories; be in excess of hour/mileage standards; and may not have applicable publications/records. Acceptance of this Letter of Offer and Acceptance (LOA) does not imply or commit the U.S. Government to accept separate requests for rehabilitative services, supply of shortages, future supportability, or training. These services will be provided only if available within the resources of the U.S. Military at the time a request is made by the purchaser and at the purchaser's expense. Standard Form 364, Supply Discrepancy Report (SDR), cannot be submitted against the equipment in Line Item 001.

Note 2. LINE ITEM 002 –Other Services.

Line Item 002 provides refurbishment of 20 UH-1H helicopters, re-assembly assistance, and test flight in Bandaria.

Note 3. LINE ITEM 003 – Preparation for Airlift, FMS Service Only.

Line Item 003 provides preparation for 20 UH-1H helicopters for air shipment.

Note 4. LINE ITEM 004 – Airlift, SAAM, FMS Service Only.

Line Item 004 provides special air transportation for 20 UH-1H helicopters.

Note 5. EXCESS DEFENSE ARTICLES (EDA) – SERVICES ASSOCIATED WITH AN EDA GRANT TRANSFER.

This LOA provides funds for refurbishment, packing, crating, handling, transportation (PCH&T), and flight test of the equipment listed in Line 001 that is being provided on a grant basis under the Foreign Assistance Act of 1961, section 516, as amended. These services will be provided only if available within the resources of the U.S. Military at the time a request is made by the purchaser and at the purchaser's expense. Any Standard Form 364 submitted against this LOA is limited to services provided under the case and cannot be submitted against the materiel listed in Line 001.

Note 6. EXCESS DEFENSE ARTICLES (EDA) – STORAGE CHARGES FOR GRANT EDA.

If the purchaser does not arrange to remove the materiel listed in Line 001 within 60 days after implementation of the LOA, a storage charge will be determined by applying 1.5 percent annually (.125 percent monthly) against the original acquisition value of the materiel. Storage charges will commence with the materiel release order date. These costs will be recouped by adding a storage line to this LOA via modification.

This note is required only if applicable

Note 7. MISSILE TECHNOLOGY CONTROL REGIME (MTCR).

Paragraph 2.3 of the Standard Terms and Conditions of this LOA discusses use and transfer restrictions on articles and services provided under this LOA and emphasizes that the purchaser "shall not use or permit their use for purposes other than those authorized, unless the written consent of the USG has first been obtained." The customer agrees not to divert articles and services received under this LOA for purposes or uses other than those for which furnished to include, but not limited to, any use that could contribute to the acquisition, design, development or production of a "missile," as defined in section 74 of the AECA (22 U.S.C. 2797c). The items will be used only for the purpose stated and such use will not be modified nor the items modified or replicated without the prior consent of the USG; neither the items nor replicas nor derivatives thereof will be retransferred without the consent of the USG. The USG also reserves the right to take action under section 73(a) of the AECA (22 U.S.C. 2797b(a)) in the case of any export or transfer of any MTCR equipment or technology that contributes to the acquisition, design, development or production of missiles in a country that is not an MTCR adherent.

Note 8. ANTI-TAMPER (AT) MEASURES.

The United States Government (USG) may incorporate Anti-Tamper (AT) protection into weapon systems and components. The AT protection will not impact operations, maintenance, or logistics provided that all terms delineated in the system technical documentation is followed.

Note 9. UNAUTHORIZED USE OF DEFENSE ARTICLES.

Defense articles furnished under this LOA may be used only for those authorized purposes set forth in section 2.2 of the Standard Terms and Conditions, unless the written consent of the U.S. Government has been obtained for a different use. The U.S. Government retains the right to verify reports that such defense articles have been used for purposes not authorized or for uses not consented to by the U.S. Government.

Note 10. NONRECURRING COSTS.

No nonrecurring costs apply to this Letter of Offer and Acceptance.

Note 11. OFFSET COSTS.

The Department of Defense is not a party to any offset agreements/ arrangements that may be required by the purchaser in relation to the sales made in this LOA and assumes no obligation to administer or satisfy any offset requirements or bear any of the associated costs. To the extent that the purchaser requires offsets in conjunction with this sale, offset costs may be included in the price of contracts negotiated under this LOA. If the purchaser desires visibility into these costs, this should be discussed with the contractor at the time the offset agreement is signed. The contracting officer will ensure that the offset costs priced into the FMS contract are reasonable and consistent with the offset agreement.

Note 12. CONTRACT ADMINISTRATION SERVICES (CAS) SURCHARGE.

For any lines on this LOA document with a Source of Supply of "X" or "P," the Contract Administration Services (CAS) surcharge rates apply: for contract administration, .65%; for quality assurance and inspection, .65%; for contract audit, .2%; and for overseas CAS, .2%.

Note 13. TRANSPORTATION AND SERVICES.

- A. USG agrees to provide transportation services for the items identified in this LOA to the point of delivery. Purchaser's property will be transported at the purchaser's risk.
- B. Purchaser will accept USG delivery listings as the basis for billing and proof of shipment.
- C. Purchaser will accept responsibility for clearance of materiel through its customs at the Point of Debarkation (POD) and for movement of the materiel from its POD to the ultimate in-country destination.
- D. Purchaser will appoint a duly authorized official to accept and sign for materiel at the POD, and submit outturn message and report.
- E. Purchaser will absorb losses of materiel the USG does not in fact recover from an independent carrier or handler, including where the USG is self-insured.
- F. Purchaser will self-insure such shipments, or obtain commercial insurance without any right of subrogation of any claim against the United States.
- G. 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 USG-owned materiel. Collection of revenue, if any, resulting from approved claims will be credited to the purchaser's account.
- H. If the purchaser proposes to take delivery and custody of the classified material in the U.S. and use its own facilities and transportation for onward shipment to its territory, a Transportation Plan is required. The Transportation Plan is developed by the DoD Component that prepares the LOA in coordination with the purchasing Government as outlined in the Security Assistance Management Manual, Chapter 3. Purchasers may obtain assistance in the development of the Transportation Plan with their cleared freight forwarder. Further, the purchaser will notify the Implementing Agency of any changes as they occur to the Transportation Plan. The Implementing Agency that initiates the FMS transaction shall designate the security officials who are authorized to evaluate the Transportation Plan to determine whether the plan adequately ensures protection of the highest level of classified material involved. The purchaser will be notified of the approval or disapproval of the plan and any changes. If disapproved, the purchaser will be notified of the reason for disapproval and, when possible, changes that would be acceptable to the USG. As an alternative, the USG will ship the classified material by the Defense Transportation System.

Note 14. CASE CLOSURE.

The estimated closure date is 24 months after the date of projected final delivery.

Note 15. ADMINISTRATIVE SURCHARGE.

An administrative surcharge of 2.5% has been applied to Lines 002, 003, and 004.

LETTER OF OFFER AND ACCEPTANCE STANDARD TERMS AND CONDITIONS

Section

- 1 Conditions -United States Government (USG) Obligations
- 2 Conditions - General Purchaser Agreements
- 3 Indemnification and Assumption of Risks
- 4 Financial Terms and Conditions
- 5 Transportation and Discrepancy Provisions
- 6 Warranties
- 7 Dispute Resolution

1 Conditions -United States Government (USG) Obligations

1.1 Unless otherwise specified, items will be those which are standard to the U.S. Department of Defense (DoD), without regard to make or model.

1.2 The USG will furnish the items from its stocks and resources, or will procure them under terms and conditions consistent with DoD regulations and procedures. When procuring for the Purchaser, DoD will, in general, employ the same contract clauses, the same contract administration, and the same quality and audit inspection procedures as would be used in procuring for itself; except as otherwise requested by the Purchaser and as agreed to by DoD and set forth in this LOA. Unless the Purchaser has requested, in writing, that a sole source contractor be designated, and this LOA reflects acceptance of such designation by DoD, the Purchaser understands that selection of the contractor source to fill requirements is the responsibility of the USG, which will select the contractor on the same basis used to select contractors for USG requirements. Further, the Purchaser agrees that the U.S. DoD is solely responsible for negotiating the terms and conditions of contracts necessary to fulfill the requirements in this LOA.

1.3 The USG will use its best efforts to provide the items for the dollar amount and within the availability cited.

1.4 Under unusual and compelling circumstances, when the national interest of the U.S. requires, the USG reserves the right to cancel or suspend all or part of this LOA at any time prior to the delivery of defense articles or performance of defense services. The USG shall be responsible for termination costs of its suppliers resulting from cancellation or suspension under this section. Termination by the USG of its contracts with its suppliers, other actions pertaining to such contracts, or cessation of deliveries or performance of defense services is not to be construed as cancellation or suspension of this LOA itself under this section.

1.5 U.S. personnel performing defense services under this LOA will not perform duties of a combatant nature, including duties relating to training and advising that may engage U.S. personnel in combat activities outside the U.S., in connection with the performance of these defense services.

1.6 The assignment or employment of U.S. personnel for the performance of this LOA by the USG will not take into account race, religion, national origin, or sex.

1.7 Unless otherwise specified, this LOA may be made available for public inspection consistent with the national security of the United States.

2 Conditions - General Purchaser Agreements

2.1 The Purchaser may cancel this LOA or delete items at any time prior to delivery of defense articles or performance of defense services. The Purchaser is responsible for all costs resulting from cancellation under this section.

2.2 The Purchaser agrees, except as may otherwise be mutually agreed in writing, to use the defense articles sold hereunder only:

2.2.1 for purposes specified in any Mutual Defense Assistance Agreement between the USG and the Purchaser

2.2.2 for purposes specified in any bilateral or regional defense treaty to which the USG and the Purchaser are both parties, if section 2.2. is inapplicable; or,

2.2.3 for internal security, individual self-defense, or civic action, if sections 2.2.1 and 2.2.2 are inapplicable.

2.3 The Purchaser will not transfer title to, or possession of, the defense articles, components and associated support materiel, related training or other defense services (including plans, specifications, or information), or technology furnished under this LOA to anyone who is not an officer, employee, or agent of the Purchaser (excluding transportation agencies), and shall not use or permit their use for purposes other than those authorized, unless the written consent of the USG has first been obtained. The Purchaser will ensure, by all means available to it, respect for proprietary rights in any items and any plans, specifications, or information furnished, whether patented or not. The Purchaser also agrees that the defense articles offered will not be transferred to Cyprus or otherwise used to further the severance or division of Cyprus, and recognizes that the U.S. Congress is required to be notified of any substantial evidence that the defense articles sold in this LOA have been used in a manner that is inconsistent with this provision.

2.4. To the extent that items, including plans, designs, specifications, technical data, or information, furnished in connection with this LOA may be classified by the USG for security purposes, the Purchaser certifies that it will maintain a similar classification and employ measures necessary to preserve such security, equivalent to those employed by the USG and commensurate with security agreements between the USG and the Purchaser. If such security agreements do not exist, the Purchaser certifies that classified items will be provided only to those individuals having an adequate security clearance and a specific need to know in order to carry out the LOA program and that it will promptly and fully inform the USG of any compromise, or possible compromise, of U.S. classified material or information furnished pursuant to this LOA. The Purchaser further certifies that if a U.S. classified item is to be furnished to its contractor pursuant to this LOA: (a) item will be exchanged through official Government channels, (b) the specified contractor has been granted a facility security clearance by the Purchaser at a level at least equal to the classification level of the U.S. information involved, (c) all contractor personnel requiring access to such items have been cleared to the appropriate level by the Purchaser, and (d) the Purchaser will assume responsibility for administering security measures while in the contractor's possession. If a commercial transportation agent is to be used for shipment, the Purchaser certifies that such agent has been cleared at the appropriate level for handling classified items. These measures will be maintained throughout the period during which the USG may maintain such classification. The USG will use its best efforts to notify the Purchaser if the classification is changed.

3 Indemnification and Assumption of Risks

3.1 The Purchaser recognizes that the USG will procure and furnish the items described in this LOA on a non-profit basis for the benefit of the Purchaser. The Purchaser therefore undertakes to indemnify and hold the USG, its agents, officers, and employees harmless from any and all loss or liability (whether in tort or in contract) which might arise in connection with this LOA because of:

3.1.1 Injury to or death of personnel of Purchaser or third parties, or

3.1.2 Damage to or destruction of (a) property of DoD furnished to Purchaser or suppliers specifically to implement this LOA, (b) property of Purchaser (including the items ordered by Purchaser pursuant to this LOA, before or after passage of title to Purchaser), or (3) property of third parties, or

3.1.3 Infringement or other violations of intellectual property or technical data rights.

3.2 Subject to express, special contractual warranties obtained for the Purchaser, the Purchaser agrees to relieve the contractors and subcontractors of the USG from liability for, and will assume the risk of, loss or damage to:

3.2.1 Purchaser's property (including items procured pursuant to this LOA, before or after passage of title to Purchaser), and

3.2.2 Property of DoD furnished to suppliers to implement this LOA, to the same extent that the USG would assume for its property if it were procuring for itself the items being procured.

4 Financial Terms and Conditions

4.1 The prices of items to be procured will be billed at their total cost to the USG. Unless otherwise specified, the cost of items to be procured, availability determination, payment schedule, and delivery projections quoted are estimates based on the best available data. The USG will use its best efforts to advise the Purchaser or its authorized representatives of:

4.1.1 Identifiable cost increases that might result in an overall increase in the estimated costs in excess of ten percent of the total value of this LOA,

4.1.2 Changes in the payment schedule, and

4.1.3 Delays which might significantly affect estimated delivery dates. USG failure to advise of the above will not change the Purchaser's obligation under all subsections of section 4.4.

4.2 The USG will refund any payments received for this LOA which prove to be in excess of the final total cost of delivery and performance and which are not required to cover arrearages on other LOAs of the Purchaser.

4.3 Purchaser failure to make timely payments in the amounts due may result in delays in contract performance by DoD contractors, claims by contractors for increased costs, claims by contractors for termination liability for breach of contract, claims by USG or DoD contractors for storage costs, or termination of contracts by the USG under this or other open Letters of Offer and Acceptance of the Purchaser at the Purchaser's expense.

4.4 The Purchaser agrees:

4.4.1 to pay to the USG the total cost to the USG of the items even if costs exceed the amounts estimated in this LOA.

4.4.2 to make payment(s) by check or wire transfer payable in U.S. dollars to the Treasurer of the United States.

4.4.3 if Terms of Sale specify "Cash with acceptance", to forward with this LOA a check or wire transfer in the full amount shown as the estimated Total cost, and agrees to make additional payment(s) upon notification of cost increase(s) and request(s) for funds to cover such increase(s).

4.4.4 if Terms of Sale specify payment to be "Cash prior to delivery", to pay to the USG such amounts at such times as may be specified by the USG (including initial deposit) in order to meet payment requirements for items to be furnished from the resources of DoD. USG requests for funds may be based on estimated costs to cover forecasted deliveries of items. Payments are required 90 days in advance of the time DoD plans such deliveries or incurs such expenses on behalf of the Purchaser.

4.4.5 if Terms of Sale specify payment by "Dependable Undertaking," to pay to the USG such amounts at such times as may be specified by the USG (including initial deposit) in order to meet payments required by contracts under which items are being procured, and any damages and costs that may accrue from termination of contracts by the USG because of Purchaser's cancellation of this LOA. USG requests for funds may be based upon estimated requirements for advance and progress payments to suppliers, estimated termination liability, delivery forecasts, or evidence of constructive delivery, as the case may be. Payments are required 90 days in advance of the time USG makes payments on behalf of the Purchaser.

4.4.6 if Terms of Sale specify "Payment on delivery", that bills may be dated as of the date(s) of delivery of the items, or upon forecasts of the date(s) thereof.

4.4.7 that requests for funds or billing are due and payable in full on presentation or, if a payment date is specified in the request for funds or bill, on the payment date so specified, even if such payment date is not in accord with the estimated payment schedule, if any, contained in this LOA. Without affecting Purchaser's obligation to make such payment(s) when due, documentation concerning advance and progress payments, estimated termination liability, or evidence of constructive delivery or shipment in support of requests for funds or bills will be made available to the Purchaser by DoD upon request. When appropriate, the Purchaser may request adjustment of any questioned billed items by subsequent submission of a discrepancy report.

4.4.8 to pay interest on any net amount by which it is in arrears on payments, determined by considering collectively all of the Purchaser's open LOAs with DoD. Interest will be calculated on a daily basis. The principal amount of the arrearage will be computed as the excess of cumulative financial requirements of the Purchaser over total cumulative payments after quarterly billing payment due dates. The rate of interest paid will be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the USG as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.

4.4.9 to designate the Procuring Agency and responsible Paying Office and address thereof to which the USG will submit requests for funds and bills under this LOA.

5 Transportation and Discrepancy Provisions

5.1 The USG agrees to deliver and pass title to the Purchaser at the initial point of shipment unless otherwise specified in this LOA. With respect to items procured for sale to the Purchaser, this will normally be at the manufacturer's loading facility; with respect to items furnished from USG stocks, this will normally be at the U.S. depot. Articles will be packed, crated, or otherwise prepared for shipment prior to the time title passes. If "Point of Delivery" is specified other than the initial point of shipment, the supplying U.S. Department or Agency will arrange movement of the articles to the authorized delivery point as a reimbursable service but will pass title at the initial point of shipment. The USG disclaims any liability for damage or loss to the items incurred after passage of title irrespective of whether transportation is by common carrier or by the U.S. Defense Transportation System.

5.2 The Purchaser agrees to furnish shipping instructions which include Mark For and Freight Forwarder Codes based on the Offer Release Code.

5.3 The Purchaser is responsible for obtaining insurance coverage and customs clearances. Except for articles exported by the USG, the Purchaser is responsible for ensuring that export licenses are obtained prior to export of U.S. defense articles. The USG incurs no liability if export licenses are not granted or they are withdrawn before items are exported.

5.4 The Purchaser agrees to accept DD Forms 645 or other delivery documents as evidence that title has passed and items have been delivered. Title to defense articles transported by parcel post passes to the Purchaser at the time of parcel post shipment. Standard Form 364 will be used in submitting claims to the USG for overage, shortage, damage, duplicate billing, item deficiency, improper identification, improper documentation, or non-shipment of defense articles and non-performance of defense services and will be submitted promptly by the Purchaser. DoD will not accept claims related to items of \$200 or less for overages, shortages, damages, non-shipment, or non-performance. Any claim, including a claim for shortage (but excluding a claim for non-shipment/non-receipt of an entire lot), received after 1 year from passage of title to the article or from scheduled performance of the service will be disallowed by the USG unless the USG determines that unusual and compelling circumstances involving latent defects justify consideration of the claim. Claims, received after 1 year from date of passage of title or initial billing, whichever is later, for non-shipment/non-receipt of an entire lot will be disallowed by the USG. The Purchaser agrees to return discrepant articles to USG custody within 180 days from the date of USG approval of such return.

6 Warranties

6.1 The USG does not warrant or guarantee any of the items sold pursuant to this LOA except as provided in section 6.1.1. DoD contracts include warranty clauses only on an exception basis. If requested by the Purchaser, the USG will, with respect to items being procured, and upon timely notice, attempt to obtain contract provisions to provide the requested warranties. The USG further agrees to exercise, upon the Purchaser's request, rights (including those arising under any warranties) the USG may have under contracts connected with the procurement of these items. Additional costs resulting from obtaining special contract provisions or warranties, or the exercise of rights under such provisions or warranties, will be charged to the Purchaser.

6.1.1 The USG warrants the title of items sold to the Purchaser hereunder but makes no warranties other than those set forth herein. In particular the USG disclaims liability resulting from infringement or other violation of intellectual property or technical data rights occasioned by the use or manufacture outside the U.S. by or for the Purchaser of items supplied hereunder.

6.1.2 The USG agrees to exercise warranties on behalf of the Purchaser to assure, to the extent provided by the warranty, replacement or correction of such items found to be defective, when such materiel is procured for the Purchaser.

6.2 Unless the condition of defense articles is identified to be other than serviceable (for example, " As-is"), DoD will repair or replace at no extra cost defense articles supplied from DoD stocks which are damaged or found to be defective in respect to materiel or workmanship when it is established that these deficiencies existed prior to passage of title, or found to be defective in design to such a degree that the items cannot be used for the purpose for which they were designed. Qualified representatives of the USG and of the Purchaser will agree on the liability hereunder and the corrective steps to be taken.

7 Dispute Resolution

7.1 This LOA is subject to U.S. Federal procurement law.

7.2 The USG and the Purchaser agree to resolve any disagreement regarding this LOA by consultations between the USG and the Purchaser and not to refer any such disagreement to any international tribunal or third party for settlement.

LETTER OF OFFER AND ACCEPTANCE INFORMATION

1. GENERAL. This provides basic information pertaining to the LOA for U.S. and Purchaser use. Additional information may be obtained from the Security Assistance Management Manual, DoD 5105.38-M, the in-country Security Assistance Office, the DSCA Country Director, or from the implementing agency.

2. INFORMATION ENTERED BY THE USG

a. Terms of Sale, and Purchaser responsibilities under those Terms, are described on the LOA. A list of all Terms of Sale, with explanations for each, are shown in DoD 5105.38-M.

b. Description/Condition. The item description consists of coding for use in U.S. management of the LOA (starting with Generic/MASL and MDE "(Y)" or non-MDE "(N)" data such as that in DoD 5105.38-M) plus a short description of what is to be provided. When items are serviceable, Code "A" (new, repaired, or reconditioned materiel which meets U.S. Armed Forces standards of serviceability) may be used; otherwise, Code "B" (unserviceable or mixed condition without repair, restoration, or rehabilitation which may be required) may be used. In some instances, reference to a note in the Terms and Conditions may complement or replace these codes.

c. The Unit of Issue is normally "EA" (each, or one; for example, 40 EA) or blank (unit of issue not applicable; for example, services or several less significant items consolidated under one LOA Item Number). When blank, a quantity or Unit Cost is not shown.

d. The Source Code (SC) in the Articles or Services to be Supplied Section is one or more of the following:

- S - Shipment from DoD stocks or performance by DoD personnel
- P - From new procurement
- R - From rebuild, repair, or modification by the USG
- X - Mixed source, such as stock and procurement, or undetermined
- E - Excess items, as-is
- F - Special Defense Acquisition Fund (SDAF) items

e. Availability lead time cited is the number of months (MOS) estimated for complete delivery of defense articles or performance of defense services. The lead time starts with Acceptance of this Offer, including the conclusion of appropriate financial arrangements, and ends when items are made available to transportation.

f. Type of Assistance (TA) Codes are as follows:

- 3 - Source Code S, R, or E; based on Arms Export Control Act (AECA) Section 21(b).
- 4 - Source Code X; AECA Sections 21(b), 22(a), 29, or source undetermined.
- 5 - Source Code P; AECA Section 22(a).
- 6 - Source Code S, R, or E, payment on delivery; AECA Section 21(d).
- 7 - Source Code P, dependable undertaking with 120 days payment after delivery; AECA Section 22(b).
- 8 - Source Code S, R, or E, stock sales with 120 days payment after delivery; AECA Section 21(d).
- M - MAP Merger; Foreign Assistance Act (FAA) Section 503(a)(3).
- N - FMS Credit (Nonrepayable); AECA Sections 23 or 24.
- U - Source Code P; Cooperative Logistics Supply Support Arrangement (CLSSA) Foreign Military Sales Order (FMSO) I.
- V - Source Code S; CLSSA FMSO II stocks acquired under FMSO I.
- Z - FMS Credit; AECA Sections 23 or 24.

g. Training notes: AP - Annual training program; SP - Special training designed to support purchases of U.S. equipment; NC - This offer does not constitute a commitment to provide U.S. training; SC - U.S. training concurrently being addressed in separate LOA; NR - No U.S. training is required in support of this purchase.

h. Offer Release Codes (Ofr Rel Cde) and Delivery Term Codes (Del Trm Cde) below may also be found in DoD 4500.9-R. The following Offer Release Codes also pertain to release of items for shipment back to Purchaser on repair LOAs:

A - Freight and parcel post shipments will be released automatically by the shipping activity without advance 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 Implementing Agency (IA) and country representative have agreed that the:

-- IA will sponsor the shipment to a country address. Under this agreement, the Freight Forwarder Code must also contain X and a Customer-within-country (CC) Code must be entered in the Mark For Code on the front page of the LOA. The MAPAD must contain the CC Code and addresses for each type of shipment (parcel post or freight).

-- Shipments are to be made to an assembly point or staging area as indicated by clear instructions on exception requisitions. Under this agreement, the Freight Forwarder Code must contain W. A Mark For Code may be entered in the Mark For Code space on the front page of the LOA 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.

i. For the following Delivery Term Codes, DoD delivers:

2 - To a CONUS inland point (or overseas inland point when the origin and destination are both in the same geographic area)

3 - At the CONUS POE alongside the vessel or aircraft

4 - Not applicable (Purchaser has full responsibility at the point of origin. Often forwarded collect to country freight forwarder.)

5 - At the CONUS POE on the inland carrier's equipment

6 - At the overseas POD on board the vessel or aircraft

7 - At the overseas inland destination on board the inland carrier's equipment

8 - At the CONUS POE on board the vessel or aircraft

9 - At the overseas POD alongside the vessel or aircraft

Delivery Term Codes showing DoD transportation responsibility for repair LOAs are shown below. The LOA will provide a CONUS address for each item identified for repair. The customer must assure this address is shown on all containers and documentation when materiel is returned.

A - From overseas POE through CONUS destination to overseas POD on board the vessel or aircraft

B - From overseas POE through CONUS destination to CONUS POE on board the vessel or aircraft

C - From CONUS POD on board the vessel or aircraft through CONUS destination to CONUS POE on board the vessel or aircraft

D - From CONUS POD on board the vessel or aircraft through the CONUS destination to overseas POD on board the vessel or aircraft

E - Not applicable (Purchaser has complete responsibility.)

F - From overseas inland point through CONUS destination to overseas inland destination

G - From overseas POE through CONUS destination to overseas POD alongside vessel or aircraft

H - (For classified items) From CONUS inland point to CONUS POE alongside vessel or aircraft

J - (For classified cryptographic items) From CONUS inland point to overseas inland destination

3. INFORMATION TO BE ENTERED BY THE PURCHASER. Mark For and Freight Forwarder Codes are maintained in the Military Assistance Program Address Directory (MAPAD), DoD 4000.25-8-M). The Purchaser Procuring Agency should show the code for the Purchaser's Army, Navy, Air Force, or other agency that is purchasing the item(s). The Name and Address of the Purchaser's Paying Office is also required.

a. Mark For Code. This Code should be entered for use in identifying the address of the organization in the Purchaser country that is to receive the items. This includes return of items repaired under an LOA.

(1) This address will be added by the U.S. DoD to the Ship To address on all freight containers. It will also appear on items forwarded by small parcel delivery service, including parcel post. The address should include the port of discharge name and designator (water or air); country name, country service name, street, city, state or province, and (if applicable) in-country zip or similar address code.

(2) Shippers are not authorized to apply shipment markings. If codes and addresses are not published, containers will be received at the freight forwarder or U.S. military representative in-country unmarked for onward shipment with resultant losses, delays, and added costs. The USG will sponsor shipment of this materiel to FOB U.S. point of origin.

b. Freight Forwarder Code. When Offer Release Code X applies, Code X or W, discussed under Offer Release Code X above, must be entered.

4. FINANCIAL

a. The method of financing is shown in the LOA, Amendment, or Modification. The initial deposit required with Purchaser signature of the LOA is an integral part of the acceptance.

b. LOA payment schedules are estimates, for planning purposes. DFAS-ADY/DE will request payment in accordance with the payment schedule unless DoD costs, including 90-day forecasted requirements, exceed amounts required by the payment schedule. When this occurs, the U.S. will use its best efforts to provide a new schedule via LOA Modification at least 45 days prior to the next payment due date. The Purchaser is required to make payments in accordance with quarterly DD Forms 645 issued by DFAS Denver regardless of the existing payment schedule.

c. The DD Form 645 serves as the bill and statement of account. An FMS Delivery Listing identifying items physically or constructively delivered and services performed during the billing period, will be attached to the DD Form 645. DFAS Denver forwards these forms to the Purchaser within 45 days before payments are due and Purchasers must forward payments in U.S. dollars to the USG in time to meet prescribed due dates. Costs in excess of amounts funded by FMF agreements must be paid by the Purchaser. Questions concerning the content of DD Forms 645 and requests for billing adjustments should be submitted to the Defense Finance and Accounting Service, ATTN: DFAS-ADY/DE, 6760 E. Irvington Place, Denver, CO 80279-2000.

d. The preferred method for forwarding cash payments is by bank wire transfer to the Department of the Treasury account at the Federal Reserve Bank of New York using the standard federal reserve funds transfer format. Wire transfers will be accepted by the Federal Reserve System (FRS) only from banks that are members of the FRS, therefore, non-U.S. banks must go through a U.S. correspondent FRS member bank. The following information is applicable to cash payments:

Wire transfer--

United States Treasury

New York, New York

0210300040

DFAS Denver

Agency Code 00003801

Payment from (country or international organization) for Letter of Offer and Acceptance (Identifier at the top of the first page of the LOA)

Check mailing address—

DFAS-ADCTA/DE
PO Box 1736590
Denver, CO 80217-36590

e. To authorize payments from funds available under FMF loan or grant agreements, the Purchaser may be required to submit a letter of request to the Defense Finance and Accounting Service, ATTN: DFAS-ADY/DE, 6760 E. Irvington Place, Denver, CO 80279-2000. Purchasers should consult applicable FMF agreements for explicit instructions. Questions pertaining to the status of FMF financing and balances should be directed to DSCA/COMPT-FM.

f. Payments not received by DFAS-ADY/DE by the due date may be subject to interest charges as outlined in paragraph 4.4.8 of the LOA Standard Terms and Conditions.

g. The values on the LOA are estimates. The final amount will be equal to the cost to the USG. When deliveries are made and known costs are billed and collected, DFAS-ADY/DE will provide a "Final Statement of Account" which will summarize final costs. Excess funds will be available to pay unpaid billings on other statements or distributed as agreed upon between the Purchaser and DSCA (Business Operations/Comptroller).

h. The Purchaser may cancel this LOA upon request to the implementing agency. An administrative charge that equals one-half of the applicable administrative charge rate times the ordered LOA value, which is earned on LOA acceptance, or the applicable administrative charge rate times the actual LOA value at closure, whichever is higher, may be assessed if this LOA is canceled after implementation.

5. CHANGES TO THE LOA. Changes may be initiated by the USG or by requests from the Purchaser. After acceptance of the basic LOA, these changes will take the form of Amendments or Modifications.

a. Amendments encompass changes in scope, such as those which affect the type or number of significant items to be provided. Amendments require acceptance by the USG and the Purchaser in the same manner as the original LOA.

b. Modifications include changes that do not constitute a change in scope, such as increases or decreases in estimated costs or delivery schedule changes. Modifications require signature only to acknowledge receipt by the Purchaser.

c. When signed, and unless alternate instructions are provided, copies of Amendments and Modifications should be given the same U.S. distribution as the basic LOA.

d. Requests for changes required prior to acceptance by the Purchaser should be submitted to the implementing agency for consideration. See DoD 5105.38-M.

6. CORRESPONDENCE. Questions or comments regarding this LOA should identify the Purchaser request reference and the identification assigned by the implementing agency within the Department of Defense.