

## C4 - Foreign Military Sales Program General Information

Chapter 4, Foreign Military Sales (FMS) Program General Information, describes general legal, regulatory, and policy requirements relating to the FMS program, including eligibility requirements and what may and may not be purchased.

Section	Title
C4.1.	<a href="#">Who May Purchase Using the Foreign Military Sales Program</a>
C4.2.	<a href="#">General Foreign Military Sales Legal, Regulatory, And Policy Terms of Sale</a>
C4.3.	<a href="#">General Foreign Military Sales Policies</a>
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### C4.1. - Who May Purchase Using the Foreign Military Sales Program

**C4.1.1. Presidential Determination.** The USG may sell, grant, or lease defense articles and services to a country or international organization only if the President makes a determination that the prospective purchaser is eligible based on the criteria summarized in [Table C4.T1](#). Additionally, DoD and other agencies may have statutory authorization to expend appropriated funds on Building Partner Capacity (BPC) cases, which are usually administered under the Foreign Military Sales (FMS) system and for which the USG is the purchaser. BPC cases are described in detail in [Chapter 15](#) and [Chapter 15-Legacy](#) (for programs as identified in the [Chapter 15](#) introduction).

**Table C4.T1. Presidential Determination Criteria for Foreign Military Sales Eligibility**

#	Eligibility Criteria
1	The President finds that 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 has agreed not to transfer title to, or possession of, any defense article or related training or other defense service so furnished to it or produced in a cooperative project, to anyone not an officer, employee, or agent of that country or international organization, and not to use or permit the use of such an article or related training or other defense service for purposes other than those for which furnished, unless the consent of the President (Department of State (State)) has first been obtained;
3	The country or international organization has agreed that it shall maintain the security of such article or service and provide substantially the same degree of security protection afforded to such article by the United States; and
4	The country or international organization is otherwise eligible to purchase or lease defense articles or defense services.

Source: Foreign Assistance Act (FAA) of 1961, as amended, section 505(a) (22 U.S.C. 2314(a)), and Arms Export Control Act (AECA) section 3(a) (22 U.S.C. 2753(a)).

**C4.1.2. Purchasers Currently Eligible.** Questions regarding eligibility should be referred to the DSCA (Office of Strategy, Plans, and Policy (SPP)). [Tables C4.T2A](#) through [Table C4.T2D](#), list the FMS country and international organization codes.

**Table C4.T2. Security Cooperation Customer and Regional Codes and FMS Eligibility Tables**

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[Table C4.T2A. Security Cooperation Customer and Regional Codes and Foreign Military Sales Eligibility](#)

[Table C4.T2B. Security Cooperation Customer and Regional Codes and Foreign Military Sales Eligibility  
\(DSCA/Defense Finance and Accounting Service Reserved\)](#)

[Table C4.T2C. Security Cooperation Customer and Regional Codes and Foreign Military Sales Eligibility  
\(North Atlantic Treaty Organization\)](#)

[Table C4.T2D. Security Cooperation Customer and Regional Codes and Foreign Military Sales Eligibility  
\(Regions\)](#)

[Table C4.T2. All Entries](#)

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### C4.1.3. Other Factors Determining Eligibility.

**C4.1.3.1.** Defense articles and services are not generally sold to foreign purchasers under the AECA unless they are part of the national defense establishment, under the direction and control of the ministry responsible for defense matters. Prior DSCA and State approval must be obtained for the sale or lease of defense articles, defense services, or training to foreign organizations and personnel that are not part of the Defense Ministry. Requests should be directed to the State, Bureau of Political-Military Affairs, Office of Regional Security and Arms Transfers (State(PM/RSAT)) at [PM-RSAT@state.gov](mailto:PM-RSAT@state.gov) for host-nation funded items and [PMSecurityAssistance@state.gov](mailto:PMSecurityAssistance@state.gov) for grant items. DSCA and any relevant Implementing Agency (IA) should be informed of the request.

**C4.1.3.2. Changes in Eligibility Status.** An eligibility determination is not a guarantee that a sale will be made. Sales may be suspended, and certain items may not be releasable to the requesting country for policy reasons or requirements of law. [Table C4.T3](#), provides reasons that could cause a country to lose its eligibility status. Availability of, or conditions for, waivers are specific to each provision of law. If State determines that it is necessary to limit or suspend security assistance (SA) to a particular country, the Director, DSCA, issues instructions to the security cooperation (SC) community. Details about this process can be found in [Section C6.6](#). Questions relating to a country's current eligibility should be referred to DSCA (Office of International Operations (IOPS)).

**Table C4.T3. Reasons for Change of Eligibility Status (not inclusive)**

<b>Unnecessary Military Expenditures</b>
When the President finds that any economically less-developed country is diverting development assistance to military expenditures or is diverting its own resources to unnecessary military expenditures to a degree that materially interferes with its development, such country will be immediately ineligible for further sales and guarantees until the President is assured that such diversion will no longer take place. ( <a href="#">AECA section 35 (22 U.S.C. 2775)</a> ). Applies to sales, credits, and guaranties subsequent to such a determination; existing sales, credits, and guaranties need not be terminated
<b>Support to Terrorists</b>
The United States shall not provide any assistance to any country if the Secretary of State determines that the government of that country: repeatedly provided support to international terrorists ( <a href="#">FAA section 620A (22 U.S.C. 2371)</a> ); provided assistance or military equipment to the government of any country for which the Secretary has made a determination under <a href="#">FAA sections 620G (22 U.S.C. 2377)</a> and <a href="#">620H (22 U.S.C. 2378)</a> ; knowingly transferred Man-Portable Air Defense Systems (MANPADs) to a government or organization that supports terrorism ( <a href="#">P.L.109-472, Section 12 – Statement of Policy</a> ); or granted sanctuary from prosecution to any individual or group which has committed an act of international terrorism or otherwise supports international terrorism ( <a href="#">Section 7022, P.L. 111-8</a> ). The President may waive the application of <a href="#">Section 7022</a> to a country if he determines that national security or humanitarian reasons justify a waiver.
<b>Communist Countries</b>
No assistance shall be furnished to any Communist country unless the President exercises the waiver authority under <a href="#">FAA section 614(a) (22 U.S.C. 2364(a))</a> , and reports to Congress that such assistance is vital to the security of the United States and promotes the independence of the recipient country from international communism ( <a href="#">FAA section 620(f) (22 U.S.C. 2370(f))</a> ).
<b>Indebted to any U.S. Citizen or Person</b>
No assistance shall be provided to the government of any country which is indebted to any U.S. citizen or person for goods or services furnished (where available legal remedies are exhausted, the debt is not denied or contested, etc.) ( <a href="#">FAA section 620(c) (22 U.S.C. 2370(c))</a> ).
<b>Nationalized, Expropriated, or Seized U.S. Property, or Imposed Discriminatory Taxes</b>
The President shall suspend assistance to the government of any country when the government has nationalized, expropriated, or seized U.S. property, or have imposed discriminatory taxes. Assistance shall also be suspended if a country has initiated steps to repudiate or nullify existing agreements with U.S. citizens or entities without taking proper compensatory action ( <a href="#">FAA section 620(e) (22 U.S.C. 2370(e))</a> ).
<b>Uses Equipment and/or Services in Substantial Violation of an Agreement with the United States</b>
Any assistance to any country shall be terminated if such country uses equipment and/or services in substantial violation of an agreement between the United States and that government <a href="#">FAA section 505(d) (22 U.S.C. 2314(d))</a> , and <a href="#">AECA section 3(c) (22 U.S.C. 2753(c))</a> .
<b>Default in Payment to the USG in Excess of Six Months</b>
No assistance shall be furnished to any country which is in default in payment to the USG on interest or principal on any FAA-authorized loan in excess of six months ( <a href="#">FAA section 620(g) (22 U.S.C. 2370(g))</a> ).
<b>Illicit Drug Production or Drug Transiting</b>
Fifty percent of U.S. assistance shall be withheld for any country determined to be a major illicit drug producing or drug transiting country and to have failed to take adequate steps to include preventing such drugs from being produced or transported, sold to USG personnel or their dependents, or from being smuggled into the United States ( <a href="#">FAA section 490(a) (22 U.S.C. 2291j)</a> ).
<b>Deliver or Receive Nuclear Enrichment or Reprocessing Equipment, Material, or Technology, or Transfer a Nuclear Device to a Non-Nuclear-Weapon State</b>
No assistance may be used to provide assistance to any country that the President determines delivers or receives nuclear enrichment or reprocessing equipment, material, or technology (and has not entered into an agreement with the International Atomic Energy Agency (IAEA) to place all such equipment under an IAEA safeguards system), or transfers a nuclear device to a non-nuclear-weapon state ( <a href="#">AECA Sections 101 (22 U.S.C. 2799aa)</a> , <a href="#">102 (22 U.S.C. 2799aa-1)</a> , and <a href="#">103 (22 U.S.C. 2799aa-2)</a> ). Often referred to as the Symington-Glenn Amendment.
<b>Default in Payment to the USG in Excess of Twelve Months</b>
No assistance may be provided to any country in default in payment to the USG on interest or principal for a period of more than one calendar year on any foreign assistance or loan (e.g., a development assistance, Foreign Military Financing (FMF), or Exchange Stabilization Fund loan), ( <a href="#">Section 7012, P.L. 111-8</a> ). (Renewed in the annual Foreign Operations Appropriations Act, and commonly referred to as the Brooke Amendment.)
<b>Prohibits or Restricts Transport or Delivery of U.S. Humanitarian Assistance</b>

No assistance shall be furnished to any country when it is made known to the President that the government of such country prohibits or otherwise restricts, directly or indirectly, the transport or delivery of U.S. humanitarian assistance ([FAA section 620l](#) ([22 U.S.C. 2378-1](#))).

#### Severing of Diplomatic Relation

No assistance shall be furnished to any country which severs diplomatic relations with the United States or with which the United States severs such relations ([FAA section 620\(t\)](#), ([22 U.S.C. 2370\(t\)\)\)](#).

#### Consistently Intimidates or Harasses Individuals in the U.S.

No letters of offer may be issued, no credits or guarantees may be extended, and no export licenses may be issued to any country determined by the President to be engaged in a consistent pattern of acts of intimidation or harassment directed against individuals in the United States ([AECA section 6](#) ([22 U.S.C. 2756](#))).

#### Trafficking in Persons

No assistance may be provided to any country that does not comply with minimum standards for the elimination of trafficking in persons and is not making significant efforts to bring itself into compliance with such standards ([P.L. 106-386, Section 110](#). Also see [FAA section 134](#) ([22 U.S.C. 2152d](#))).

#### Tax U.S. Assistance

No assistance may be provided to any country that does not agree that assistance provided by the United States shall be exempt from taxation, or reimbursed, by the foreign government ([Section 7013, P.L. 111-8](#)).

#### Recruit and Use Child Soldiers

No assistance may be provided to any country that is clearly identified as having governmental armed forces or government-supported armed groups, including paramilitaries, militias, or civil defense forces, that recruit and use child soldiers ([Section 404\(a\)](#), [P.L. 110-457](#)).

#### Prevents a U.S. Person from Providing Defense Articles/Services on the Basis of Race, Religion, National Origin, or Sex

No sales should be made, and no credits or guarantees extended to or for any country, the laws, regulations, official policies, or governmental practices of which prevent any U.S. person from participating in the provision of defense articles/services on the basis of race, religion, national origin, or sex ([FAA section 505\(g\)](#), ([22 U.S.C. 2314\(g\)\)\)](#). A similar provision prohibits military sales, sales credits, or guarantees ([AECA section 5](#) ([22 U.S.C. 2755](#))).

#### Military Coup or Decree

No assistance shall be furnished to any country whose duly elected head of government is deposed by military coup or decree ([Section 7008, P.L. 111-8](#)).

#### Gross Violations of Human Rights

No security assistance may be furnished to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights ([FAA section 502b](#) ([22 U.S.C. 2304](#))).

#### Failure to Complete Written Agreement Regarding Provision of U.S. Grant Assistance to Leahy Prohibited Units (effective January 1, 2022)

In circumstances when the operational partner unit or units that employ such assistance cannot be identified prior to the transfer of assistance, no USG assistance under the FAA of 1961 or the AECA may be provided unless the recipient government agrees not to provide any such assistance to a unit prohibited from receiving assistance under the Leahy law. Section 7035(b)(7) of Division K of the Consolidated Appropriations Act, 2021 ([P.L. 116-260](#)).

### C4.2. - General Foreign Military Sales Legal, Regulatory, And Policy Terms of Sale

**C4.2.1. Sales Determinations.** When the eligibility criteria in [Section C4.1.](#) have been met, the Secretary of State determines whether there will be a sale to a partner or international organization and the amount thereof, whether there will be a lease to a partner or international organization, and whether there will be any other delivery or performance under any sale or lease. See [Appendix 8, Lease of Defense Articles](#) for information on leases. For Building Partner Capacity (BPC) cases see [Chapter 15](#) and [Chapter 15-Legacy](#) (for programs as identified in the [Chapter 15](#) introduction. Decisions to issue licenses or approve sales under the Arms Export Control Act (AECA) or to furnish military assistance under the Foreign Assistance Act (FAA) must take into account the extent to which such exports, sales, or assistance contribute to an arms race, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements ([FAA, section 511](#) ([22 U.S.C. 2321d](#)); see also [AECA, section 38\(a\)\(2\)](#) ([22 U.S.C. 2778\(a\)\(2\)](#)), and [42\(a\)](#) ([22 U.S.C. 2791\(a\)](#))).

**C4.2.2. Retransfer Restrictions.** All purchasers or grant recipients must agree that they will not transfer title or possession of any defense article or related training or other defense services to any other country without prior consent from the U.S. Department of State (State) pursuant to [AECA section 3\(a\)\(2\)](#) ([22 U.S.C. 2753\(a\)\(2\)](#)) and [FAA, section 505\(a\)](#), ([22 U.S.C. 2314\(a\)](#)). Special care must be taken to ensure that minor repair parts, fuel, or other defense articles that lose their identity when co-mingled, are controlled by the recipient government using procedures that assure all retransfers are properly approved. See [Chapter 8](#) for information on re-transfers.

**C4.2.3. Proper Use of Materiel and End Use Monitoring.** Sales and assistance may be made to countries only for purposes of internal security, legitimate self-defense, for preventing or hindering the proliferation of weapons of mass destruction and of the means of delivering such weapons, civic action, or to permit the recipient country to participate in regional or collective arrangements consistent with the United Nations (UN) Charter, or requested by the UN ([AECA, section 4](#) ([22 U.S.C. 2754](#)); and [FAA, section 502](#) ([22 U.S.C. 2302](#))). Proper use of U.S.-origin items is a joint responsibility of the recipient and U.S. personnel. U.S. representatives have primary responsibility until items are physically transferred to the recipient. The recipient then assumes this responsibility, including transfer to a third party or other disposal or change in end use, based on agreements under which transfers are made. See [Chapter 8](#) for information on End Use Monitoring (EUM).

**C4.2.4. English Language.** The Security Cooperation Organization (SCO) chief must ensure that a forwarding letter accompanies each contractual document (e.g., Letter of Offer and Acceptance (LOA)) emphasizing that the English language text is the official binding version. The host country is responsible for translating documents. When the SCO chief determines an informal translation of an English text is in the U.S. interest, the U.S. may provide an informal translation, for purposes of communicating between USG and purchaser representatives only, using the same practices as the U.S. Diplomatic Mission. Translators must clearly mark the translated document “Informal and unofficial translation - English text governs.”

### C4.3. - General Foreign Military Sales Policies

Detailed procedures for Foreign Military Sales (FMS) programs including writing Letters of Offer and Acceptance (LOAs) and managing cases are found in [Chapter 5](#) and [Chapter 6](#). The following broad policies apply and should be noted early in the FMS process. See [Chapter 9](#) for detailed financial policy information. Broad financial policies that should be noted early in the FMS process are available at [Section C9.3](#).

**C4.3.1. International Competitions for Defense Articles and/or Services.** Foreign governments and international organizations (partners) often compete weapon system procurements. These are referred to as international competitions for defense articles and/or services. The partner solicits bids or proposals from defense industries in the international market. Depending on the partner's acquisition process, the solicitation may be a formal request for information, a tender or proposal, an invitation to bid, or a similar document that states the review criteria for proposal submissions. Given the size of the U.S. industrial base, the U.S. response may consist of more than one offering. In the international competition, the partner evaluates proposals submitted by both the U.S. and non-U.S. competitors against the solicitation criteria.

**C4.3.1.1. Foreign Solicitation.** In an international competition, the partner releases its solicitation in the international market. When submitted through appropriate channels (See [Section C5.1.3](#).) the solicitation is a Letter of Request (LOR) and initiates USG processes (e.g., National Disclosure Policy (NDP)-1, technology transfer, and other reviews) to determine whether it is in the U.S. best interest to participate in the international competition. The U.S. response in an international competition may include FMS, Direct Commercial Sales (DCS), international cooperative agreement, or a combination of these programs. See [Section C5.2](#) for more information on LOR responses. Most foreign solicitations are released to international defense industries rather than to Governments; however, the FMS process should not be excluded from the response solely on the basis of how the foreign solicitation was released or conditioned.

**C4.3.1.2. Lead Agency for Advocacy.** DSCA is the DoD focal point for policy regarding U.S. participation in international competitions. The Military Departments (MILDEPs) and defense contractor team develop the proposal, which is presented by the appropriate MILDEP as the representative of the USG. [Table C4.T4](#) identifies the lead agency and advocacy for the USG responses.

**Table C4.T4. Lead Agency and Advocacy in International Competitions**

Number of United States Responses	Number of Services Involved	Lead Department of Defense Agency	United States Government Advocacy
One	One	MILDEP responsible for the weapon system or technology offered	The one U.S. system offered is articulated as the formal U.S. position.
More than one	One	MILDEP responsible for the weapon systems or technologies offered	USG personnel may not favor the merits of one U.S. proposal over another. U.S. advocacy must be generic - the U.S. proposals are combat proven, interoperable with many nations, technologically superior, worldwide supportable, etc. This neutral stance extends to USG presence in meetings with foreign officials. If USG personnel are present for one U.S. contractor presentation, every effort must be made to be present for all briefings on other U.S. offerings. Only when one U.S. MILDEP and/or contractor team remains in the international competition can the United States advocate one U.S. offering. This occurs if all other MILDEP and/or contractor teams self-eliminate or the partner formally states these proposals are no longer under consideration.
	More than one	DSCA	

**C4.3.1.3. Responsibilities of the Department of Defense Lead Managing the United States Government Response.** The DoD lead facilitates the USG's deliberative processes in order to develop the policy decisions that affect the proposals as early as possible. The DoD lead obtains the views of the key USG stakeholders: Department of State (State), the Department of Commerce (DOC), Office of the Under Secretary of Defense for Policy (OUSD(P)), Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)), Defense Technology Security Administration (DTSA), DSCA, and the MILDEPs. The DoD lead ensures MILDEP and/or contractor teams submit proposals that are consistent with internal U.S. decisions, are as responsive as possible to the requirements of the partner's solicitation and meet the solicitation's schedule. In cases of multiple U.S. offerings, the DoD lead must facilitate all U.S. proposals impartially so that there is no perception that one offering is preferred over another and there is no biased interpretation of policy. The DoD lead must bring together all competing MILDEP and/or contractor teams to highlight issues, perform joint problem solving, establish plans and agreements, ensure that the U.S. entrants are being held to the same standards, address cross-cutting issues, and coordinate responses with the partner.

**C4.3.1.4. Defense Security Cooperation Agency International Competition Guidance.** DSCA (Office of International Operations, Weapons Directorate (IOPS/WPN)) provides guidance for International Competitions as necessary.

International Competitions are further detailed in the Common Access Card (CAC)-Enabled SAMM site, which is located at: <https://dod365.sharepoint-mil.us/sites/OSDDSCA-CUI-SAMM>. Contact DSCA (IOPS/WPN) at [dscan.cr.iops.list.wpns-all-members@mail.mil](mailto:dscan.cr.iops.list.wpns-all-members@mail.mil) for more information.

DoD CAC holders: If you have questions regarding access to the site, please contact DSCA (Office of Strategy, Plans, and Policy, Execution Policy and Analysis Directorate (SPP/EPA)) at [dscan.cr.spp.mbx.epa@mail.mil](mailto:dscan.cr.spp.mbx.epa@mail.mil).

**C4.3.2. Total Package Approach.** The Total Package Approach (TPA) ensures that FMS purchasers can obtain support articles and services, to include construction of necessary support facilities, required to introduce and sustain equipment and to operate in a responsible and effective manner consistent with U.S. intent in approving the transfer. The complete sustainability package must be offered to the purchaser when preparing Price and Availability (P&A) data or LOAs. In some instances, the MILDEPs, in coordination with the Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD (A&S)), may identify possible co-sustainment options to support regional sustainment for platform, weapon systems, sub-systems, and components. When the MILDEP Implementing Agency (IA) and OUSD (A&S) determine these options to be viable, the MILDEP IA notifies DSCA (Office of International Operations, Regional Execution Directorate (IOPS/REX)) of these possible solutions so DSCA (IOPS/REX) can begin discussions with the partner. In addition to the system itself, other items to consider in a total package include training, technical assistance, initial support, software, ammunition, follow-on support, intelligence mission data, etc.

**C4.3.3. False Impressions.** Problems can occur when foreign purchasers expect to obtain certain articles and services from the USG but conditions prevent these sales. National Disclosure Policy (NDP) specifically requires avoidance of creating false impressions. USG personnel must consider releasability, disclosure, sanctions, and all required coordination before indicating to a potential purchaser that a sale from the USG is possible. See [Section C3.2.2](#).

**C4.3.4. Neutrality.** As a matter of policy, the USG is generally neutral as to whether a partner purchases U.S.-origin defense articles or services commercially or through Government-to-Government (G2G) channels (e.g. FMS). However, by exception the USG may determine that select defense articles, services, or technology be transferred on a G2G basis in order to protect its most sensitive and sophisticated technologies.

**C4.3.5. Government-to-Government Only Determinations.** The Arms Export Control Act (AECA) ([22 USC 2751](#)) grants the President the authority to designate defense articles or services as transferable exclusively through G2G channels. The President delegated this authority to the Secretary of State. G2G-Only designated defense articles and services are consolidated into the G2G-Only List. DSCA coordinates and submits G2G-Only recommendations to State on behalf of the DoD.

**C4.3.6. Government-to-Government Only Criteria.** Defense articles and services may be designated as G2G-Only on the basis of one or more of the following criteria:

1. *Technological Sensitivity and Sophistication:* The most sensitive and sophisticated technology requires the highest degree of protection, which the FMS system can uniquely apply to the transfer and monitoring of defense articles. The test for determining the most sensitive and sophisticated technology is whether its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to U.S. critical military or intelligence advantage.
2. *Treaty, Agreement, or Legal Requirement:* Any item required to be sold on a G2G basis due to a legislative requirement, treaty obligation, or G2G agreement with a foreign partner to which the United States is a party.
3. *USG Source of Supply:* Items that are solely sourced from the USG, or that are critically dependent on provision of USG-sourced equipment, data, and/or services.

**C4.3.7. Applicability.** Items included on the G2G-Only list are eligible for transfer under any USG-directed export authority, including but not limited to FMS, Building Partner Capacity (BPC), Presidential Drawdown Authority, AECA Section 30 Sales Agreements, or cooperative production or Research and Development agreements. In some cases, exports under these authorities are conducted by U.S. industry under an export license authorization. Inclusion of a defense article, component, or service on the G2G-Only list should not be understood to prohibit approval of an export license in furtherance of a USG authorized G2G program. Articles and services that require a Presidential determination to support, such as those covered by [22 U.S.C. 2378-1](#) and [42 U.S.C. 2121](#), may only be transferred via Government-to-Government channels. Such items are not included specifically in the G2G-Only list.

**C4.3.7.1.** In order to support uniform application of export policy and provide transparency to industry, the G2G-Only list is designed to provide a consolidated reference for defense articles or services where mode of sale has been limited as a matter of policy. The list applies to transfers of articles or services made to a foreign ultimate end-user and is not meant to limit or prohibit exports or imports of components which support a USG program or contract (e.g. foreign sub-contract suppliers to a U.S. Prime vendor executing a USG program) unless explicitly stated.

**C4.3.8. G2G-Only List.** For additional information on items contained in the G2G-Only List in the [CAC-Enabled SAMM](#) or contact DSCA (IOPS/WPNS) at [dscan.cr.iops.list.wpns-all-members@mail.mil](mailto:dscan.cr.iops.list.wpns-all-members@mail.mil).

**C4.3.9. Direct Commercial Sales Preference.** Companies may prefer that a sale be made commercially rather than using FMS procedures. When a company receives a request for proposal from a country and prefers DCS, the company may request that DSCA (Office of Strategy, Plans, and Policy (SPP)) issue a DCS preference for that particular sale. The company's request must include a copy of the purchaser's solicitation for a price quotation. Approved DCS preferences should be held within Security Cooperation Organizations (SCOs) and at the item manager level to allow proper screening of LORs. The process outlined in this section is a best efforts commitment by DoD. Failure on the part of the DoD Component to comply with these procedures will not invalidate any resultant FMS transaction. Before approving DCS preference for a specific transaction, the following are considered:

**C4.3.9.1. Article or Service Exclusions.** Items provided on blanket order lines and those required in conjunction with a system sale do not normally qualify for DCS preference.

**C4.3.9.2. Specific Sale Exclusions.** Articles or services that may otherwise qualify for DCS preference may be required to be sold through FMS procedures to certain countries and for sales financed with Military Assistance Program (MAP) or, in most cases, with Foreign Military Financing (FMF) funds. The Director, DSCA, may also recommend to State that it mandate FMS for a specific sale.

**C4.3.9.3. Price and Availability or Letter of Offer Acceptance Requests.** DCS preferences are valid for one year. If during this time period, the Implementing Agency (IA) receives a request from the purchaser for the same item, it should notify the purchaser of the DCS preference, using the following text:

**Figure C4.F1. Implementing Agency Notification to the Purchaser of Direct Commercial Sales Preference**



[Company] has advised us that it is actively negotiating with you a program under which [article or service] is to be provided commercially.

Although it has no preference as to whether this item is procured through FMS or on a commercial basis, DSCA does not normally provide price and availability information that could conflict with information formally requested from commercial firms. If a commercial transaction is undertaken, the USG shall not be a party to the contract; therefore, all aspects of contract performance must be between your government and the company.

Before we can provide FMS data, you must confirm that all commercial efforts have ceased and advise DSCA of the reason for this decision.

**C4.3.9.4.** The IA must determine whether commercial activity has ceased, determine whether guidance in [Section C4.3.10](#), applies, or seek further guidance from DSCA (SPP).

**C4.3.10. Concurrent Foreign Military Sales and Commercial Negotiations.** Purchasers should avoid concurrent FMS and commercial requests. Concurrent negotiations occur when a purchaser seeks information both through FMS and from a U.S. commercial source to compare FMS and commercial pricing for the same item in an attempt to gain a negotiating advantage. IAs may not participate in FMS-commercial comparison studies unless the Director, DSCA, grants an exception for a specific circumstance. If the purchaser's national policy or specific circumstances require that both FMS and commercial data be obtained for the item to be procured, the purchaser should submit a request for exception with justification to DSCA (SPP).

**C4.3.10.1. Foreign Military Sales Data Obtained First.** If the purchaser obtains FMS data and later determines it should request a commercial price quote, the purchaser should cancel the LOR prior to requesting commercial data. If an LOA has been offered and the purchaser then solicits formal bids from private industry for the same item, the IA should query the purchaser as to its intentions and indicate that the LOA may be withdrawn.

**C4.3.10.2. Commercial Data Obtained First.** If the purchaser requests FMS data after soliciting bids from contractors, the purchaser must supply information to the IA showing that commercial acquisition efforts have ceased before any FMS data is provided.

**C4.3.11. Travel in Support of Security Cooperation Programs.** U.S. military and DoD civilian employees who travel to and from a foreign country on security cooperation (SC) business, regardless of whether the travel is financed by FMS administrative or case funds, must use the same commercial air carrier, class of service, and routing that the transportation officer requires of other DoD travelers. Waivers from the normal travel procedures will be granted to SC travelers on the same basis and in the same manner as provided for DoD personnel traveling on regular defense business. See the [Joint Travel Regulations \(JTR\)](#) for [Uniformed Service Members and DoD Civilian Personnel](#).

**C4.3.12. Use of Federal Acquisition Regulation and DoD Federal Acquisition Regulation Supplement.** 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 deviations are authorized in the [Defense Federal Acquisition Regulation Supplement \(DFARS\)](#). If 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 MILDEP's proposed sole source denial memorandum must be forwarded to DSCA (IOPS), DSCA (SPP), and DSCA (Front Office, Office Of the General Counsel (FO/OGC)) for coordination.

**C4.3.13. Diversion of Materiel.** DoD policy requires a determination that the sale of a defense item will not degrade U.S. defense efforts by taking needed equipment from U.S. stocks (withdrawals) or disrupting deliveries of critical items from production for U.S. Forces (diversions) unless the sale of the item is in the overall U.S. national interest. See [Section C6.4.6](#), for information regarding diversions.

**C4.3.14.** Purchasers must self-insure FMS shipments or obtain commercial insurance without any right of claim against the United States. This includes for returns. When requested by the purchaser, the IA may obtain insurance and include it as a separate LOA line item. For FMS cases already implemented, an Amendment can add authorized insurance coverage. Whenever an IA provides these services to a purchasing country or organization, it should obtain insurance from a U.S. insurance firm if possible. Providing insurance is an exceptional arrangement, and the purchaser should be encouraged to make arrangements for insurance on subsequent cases.

**C4.3.15. Classification of Security Cooperation Information.** SC information shall be unclassified unless State, the USD(P), the Assistant Secretary of Defense for International Security Affairs (ASD(ISA)), or the Director, DSCA, directs classification in a particular situation, or unless the national security classification criteria of [Executive Order \(EO\) 13526](#), [Department of Defense Manual \(DoDM\) 5200.01 Vol. 1](#), and corresponding MILDEP regulations warrant classification for national defense purposes.

**C4.3.15.1. Purchaser Requests to Classify Security Assistance/Security Cooperation Information.** Under exceptional circumstances and when approved by any of the organizational elements above in [Section C4.4.13](#), and DSCA, security assistance (SA)/SC information may be classified at the request of the purchaser. See [Section 5.4.10](#), for information the purchaser must provide when making such a request. FMS purchasers should be discouraged from requesting classification of FMS cases and related information. Under certain circumstances, [10 U.S.C. 130c](#) protects purchaser's sensitive FMS information from public dissemination, although information so protected would not necessarily be classified. Congress has set a high standard for classification of FMS cases, and when congressional notification is required, [AECA, section 36\(b\)\(1\) \(22 U.S.C. 2776\)](#) requires a description of the damage to national security of the United States that could be expected to result from public disclosure of the information as justification.

**C4.3.15.2. Factors Determining Classification.** The primary factors considered by the State, USD(P), and the Director, DSCA, in requiring classification of FMS information are: whether the purchaser considers the information to be classified, the extent to which disclosure of the information would reveal the purchaser's order of battle, taking into consideration the nature and quantity of defense articles sold and the degree to which the purchaser relies on the United States as a source of military supply; the extent to which disclosure of the information could be expected to stimulate demands by third countries upon the United States or upon other supplying nations for defense articles, thus encouraging global or regional instability or fostering an arms race; and to prevent unauthorized disclosure of the fact that a specific defense article is or may be sold to a particular foreign government.

**C4.3.15.3. Levels of Classification.** All SC information that is classified is CONFIDENTIAL unless State, USD(P), or the Director, DSCA, directs a higher level of classification, or unless the national security classification criteria of [EO 13526](#), [DoDM 5200.01 Vol. 1](#), and corresponding MILDEP regulations warrant a higher level of classification for national defense purposes.

**C4.3.16. Department of Defense Support to Direct Commercial Sales.** U.S. industry may request defense articles and services from the DoD to support a DCS to a partner or international organization. Defense articles and/or services provided to U.S. industry must be accomplished pursuant to applicable statutory authority including [AECA, section 30 \(22 U.S.C. 2770\)](#), which authorizes the sale of defense articles or defense services to U.S. companies at not less than their estimated replacement cost (or actual cost in the case of services) for incorporation into end items to be sold by such company on a direct commercial basis to a friendly partner or international organization. Appendix 8, [Section 30 Sales](#) further clarifies authorized DoD support (articles or services) under this section. It is

important that defense industry representatives identify early in the DCS planning process whether support from the DoD will be required. If DoD support is deemed necessary, meetings with DoD representatives should be arranged to discuss the level of support required and the method for funding the associated costs.

#### C4.4. - What May Be Purchased Using the Foreign Military Sales Program

The Foreign Military Sales (FMS) program transfers defense articles and services to eligible countries and international organizations. [Arms Export Control Act \(AECA\) section 47 \(22 U.S.C. 2794\)](#) defines the terms “defense article” and “defense service.” The [U.S. Munitions List \(USML\) \(22 CFR part 121\)](#) designates specific items that fall into these categories and includes an asterisk (\*) by Significant Military Equipment (SME). Any item of SME that has a nonrecurring research and development cost of more than \$50 million or a total production cost of more than \$200 million is considered Major Defense Equipment (MDE). See [Chapter 9](#) and [Appendix 1](#) for the rules and charges regarding Nonrecurring Cost Recoupment (NCR) charges for MDE.

**C4.4.1. Source of Supply.** Defense articles or services may be sold from DoD stocks, or the DoD may enter into contracts to procure defense articles or services on behalf of eligible foreign countries or international organizations. DoD procurements for FMS use standard [Federal Acquisition Regulation \(FAR\)](#) contract clauses and contract administration practices except where deviations for FMS are authorized in the [Defense Federal Acquisition Regulation Supplement \(DFARS\)](#). Implementing Agencies (IAs) may procure from foreign sources as required to conduct FMS acquisitions in accordance with the DFARS under the same acquisition and contract management procedures used for other defense acquisitions to meet U.S. standard inventory requirements. IAs should not enter into such sales arrangements for equipment not in the U.S. inventory unless DSCA (Office of Strategy, Plans, and Policy (SPP)), and DSCA (Front Office, Office of the General Counsel (FO/OGC)) have approved an exception.

**C4.4.2. Materiel Standards.** It is DoD policy that defense articles sold under FMS programs should reflect favorably upon the United States. Defense articles offered and sold under FMS are new or unused or, as a result of refurbishment, possess original appearance insofar as possible and, as a minimum, have serviceability standards prescribed for issue to U.S. Forces. If the purchaser desires exclusively new equipment, this requirement is stated in the Letter of Offer and Acceptance (LOA). If the purchaser wishes to purchase “as is” (no assurance of serviceability), this is also stated in the LOA. In addition to full disclosure of item condition, the purchaser is informed of unusual safety or environmental risks known at the time of sale. This information is included in the LOA with reference to separate publications or correspondence as appropriate.

**C4.4.3. Logistics Support.** The DoD considers the support of U.S. origin defense articles critical to the success of the security assistance (SA) program. Systems in use with U.S. Forces are supported through the DoD procurement system. Support items that are stocked, stored, and issued due to common application with end items in use should be provided even though the end items may have been acquired commercially or system support buyout is complete. See [Chapter 6](#).

**C4.4.3.1.** When a system is to be phased out of the DoD inventory, countries that have acquired the system under FMS are given the opportunity to determine item requirements and to place final orders designed to maintain system capability through its service life. These orders are consolidated to ensure economic buys. See [Section C6.4.7](#).

**C4.4.3.2.** DoD will take reasonable steps to support systems that are not used by U.S. Forces including items that were never adopted by U.S. Forces. Support is provided for these items when mutually satisfactory arrangements are made with the country involved and supply sources are available. Effort is made to support non-standard items, whether acquired commercially or through FMS, when this effort serves U.S. interests.

**C4.4.4. Communications Security Equipment.** A Combatant Commander’s (CCDR’s) requirements to communicate with foreign governments via secure transmissions will necessitate a requirement for release and delivery of U.S. communications security (COMSEC). Transfer of U.S. COMSEC must be done in conjunction with a Combatant Command’s (CCMD’s) interoperability requirement or otherwise support a U.S. policy objective. See [Section C3.1](#), and [Section C3.2](#), for information on the technology transfer process. See [Section C3.7.3](#), for information on information security (INFOSEC) case processing.

**C4.4.5.** Coproduction policy is provided in [Department of Defense Instruction \(DoDI\) 2010.06](#). Per [DoDI 5530.03](#), the Director, DSCA must provide written approval to enter into negotiations for coproduction programs pursuant to an LOA. Requests for DSCA authority must include a description of the project as well as fiscal and legal memoranda. Discussions on coproduction programs may be initiated by the IA or by authorized representatives of foreign governments or international organizations. When partially or fully implemented through [DoDI 5530.03](#) agreements, the IA’s recommendation is forwarded to DSCA for authorization to proceed and includes the information shown in [Table C4.T5](#).

**Table C4.T5. Information Required for Defense Security Cooperation Agency Authorization of Coproduction Agreements**

#	Required Information
1	The program origin, nature, scope, and supporting rationale
2	Implications of proposed technology transfer, including the scope and limitations of any needed National Disclosure Policy (NDP)-1 exceptions
3	Impact on U.S. industry prime and subcontractors, and the views of these producers
4	Impact on any other authorized foreign production of the same article
5	Impact on the U.S. production base for the article

**C4.4.5.1. Foreign Military Financing Funded Coproduction Program.** [AECA, section 42\(b\) \(22 U.S.C. 2791\(b\)\)](#) requires the Department of State (State) to advise Congress prior to use of Foreign Military Financing (FMF) to finance coproduction or licensed production in a foreign country. DSCA (Office of International Operations (IOPS)) memoranda to State advises of the country, type of proposed transaction (FMS LOA or Direct Commercial Sales), description of program, the extent of foreign production, and impact on employment and production within the United States. Normally approval is staffed concurrently with the related [AECA, section 36\(b\) \(22 U.S.C. 2776\(b\)\)](#) notification. DSCA (IOPS) shall not approve release of an FMS LOA or FMF funding until State has advised Congress.

**C4.4.6. Monitoring Coproduction Agreements.** LOAs or DoDI 5530.03 agreements are structured to assure there are acceptable monitoring provisions for each program and the IA receives adequate data to prepare status reports. When USG responsibilities can be satisfied only with access by USG personnel, a note must be included in the LOA and the DoDI 5530.03 agreement. See [Appendix 6](#) Coproduction Reporting and/or Validation for the exact note wording.

**C4.4.7. Design and Construction Services.** AECA, section 29 (22 U.S.C. 2769) authorizes the sale of design and construction services to eligible foreign countries and international organizations provided that full costs are paid to the United States.

**C4.4.7.1.** Design and construction services are offered under normal FMS procedures. Management and oversight of design and construction services is performed by construction agents designated by [Department of Defense Directive \(DoDD\) 4270.5](#). When part of a larger program, construction services may be provided in two ways:

1. via the total package LOA under the cognizance of the managing IA (with a separate construction agent line included in the LOA), or
2. by the construction agent under the terms of a separate LOA. See SAMM [Appendix 8](#) for more guidance on FMS design and construction services.

**C4.4.7.2.** The U.S. Army Corps of Engineers is responsible for construction cases when it is the construction agent designated by [DoDD 4270.5](#). For other construction cases, the IA will provide construction services through its designated construction agent. In this latter situation, the IA and construction agent will conclude an internal agreement to provide for USG management of the construction by the construction agent and to define program management relationship.

**C4.4.8. White Phosphorous Munitions.** Requests for white phosphorus munitions should be submitted in accordance with the procedures explained in [Table C5.T1G](#). Requests should indicate the type of ammunition, the quantity, and the intended use. Requests should be accompanied by the U.S. Mission's opinion as to whether the amount requested is reasonable in relation to the intended use, current on-hand inventories, and predictable usage rates of such items. Requests must also contain assurance from the host Government that white phosphorus munitions are used only for purposes such as signaling and smoke screening. DSCA (IOPS) shall coordinate the request. Upon approval, DSCA (IOPS) advises the DoD Component and provides the special conditions that must be included in the LOA.

**C4.4.9. M-833 and Comparable Depleted Uranium Rounds.** [FAA, section 620J \(22 U.S.C. 2378a\)](#) allows the sale of M-833 depleted uranium ammunition and comparable anti-tank rounds containing a depleted uranium penetrating component to North Atlantic Treaty Organization (NATO) member countries, [Major Non-NATO Allies](#), and countries for which a Presidential national security interest determination has been completed. Such a determination ([Presidential Determination \(PD\) No. 94-37 of July 19, 1994](#)) has been completed for the M-833 round for Bahrain and Saudi Arabia and the M-829 round for Saudi Arabia and Kuwait.

**C4.4.10. Ship Transfers.** Vessels 20 years old or more and no more than 3,000 tons (light load displacement) or less may be transferred after 30 continuous days of the date that the U.S. Navy (USN) notifies Congress of its intent to make the transfer. Naval vessels that are less than 20 years old or more than 3,000 tons may be transferred only after enactment of legislation authorizing the transfer. [10 U.S.C. 8677](#) prescribes these criteria and Congressional oversight provisions. See [Section EDA.5](#) for information on Excess Defense Articles (EDA) Congressional Notification (CN) requirements.

**C4.4.11. Technical Data Packages for Defense Articles Manufactured by Watervliet Arsenal.** Technical Data Packages (TDPs) from a government-owned and operated defense plant manufacturing large caliber cannons (e.g., Watervliet Arsenal) to a foreign government, or assistance to a foreign government in producing defense items currently manufactured or developed in a government-owned and operated defense plant manufacturing large caliber cannons, may be transferred if the statutory exceptions in [10 U.S.C. 7542](#) are met. The Secretary of the Army must determine if these requirements can be met before committing to such transfers; notify the Congress of every transfer agreement; and submit a semiannual report to Congress on the operation of this law and all agreements entered into under it.

**C4.4.12. Stinger/Man-Portable Air Defense System.** Transfer of U.S.-origin Man-Portable Air Defense Systems (MANPADs) and components is based upon the recipient's ability and commitment to implement security and accountability controls at least equivalent to those employed by the United States, which exceed the Wassenaar Arrangement's elements for export controls of MANPADs. All organizations involved within the security cooperation (SC) enterprise and their personnel, to include Military Departments (MILDEPs) and Security Cooperation Organizations (SCOs), must get specific approval from DSCA (Office of International Operations, Weapons Directorate (IOPS/WPN)) prior to any discussions on MANPADS with any potential purchaser. This includes discussion of sales for replacement batteries, parts, components, or expendables for MANPADS. This requirement stands even for countries previously sold MANPADS or approved for MANPADS sales. See [Table C5.T1F](#), and [Chapter 8](#) for more information on Stinger/MANPADS.

**C4.4.13. Foreign Liaison Officer Support.** Countries may locate a representative in the United States to assist with their programs. LOAs may be written to cover administrative costs (e.g., office space, secretarial support) for these personnel. See [Section C4.5.1](#) for the types of foreign representative services and expenses that may not be included on an LOA. For more information about visits, assignments, and exchanges of foreign nationals See [DoDD 5230.20](#).

**C4.4.14. Night Vision Devices.** Night Vision Devices (NVDs) are man-portable devices that incorporate image intensification, infrared, thermal, or sensor-fused technologies. NVDs fall under Category XII(c) of the USML ([22 CFR part 121](#)) and are designated as sensitive, unclassified SME. The [Defense Technology Security Administration \(DTSA\)](#) is responsible for NVD export policy and requires the case-by-case review of all requests for the international transfer of such items through FMS or direct export licensing. Each review considers input from the MILDEPs, the acquisition community, and the Joint Chiefs of Staff. Image intensifier tubes ordered as spare parts or replacements for destroyed, lost, stolen, or missing devices also require a case-by-case review except when replacing defective or damaged tubes that are returned to the USG on a direct exchange or repair and return basis. Unless otherwise requested in writing by the purchaser, FMS customer requests for NVDs, and for image intensifier tubes ordered as spare parts or replacements must be fulfilled with image intensifiers that meet U.S. military specifications, except for Figure of Merit (FoM), Halo, and other specific, associated performance parameters required to meet export authorization provisos. NVDs taken from DoD stock may not be sold or transferred without an accompanying data sheet verifying that the technical capabilities of the image intensifier tubes do not exceed export restrictions. Detailed guidance on procedures for processing NVD requests is contained in the [NVD Handbook](#). Also see [Chapter 8](#) for End Use Monitoring (EUM) responsibilities.

**C4.4.15. Medical Countermeasures.** Requests from partner nations to procure medical countermeasures, such as drugs, vaccines, other medical interventions against biological and chemical agents, and associated equipment, require the approval of the Office of the Assistant Secretary of Defense for Homeland Defense and Global Security/Countering Weapons of Mass Destruction (ASD (HD&GS/CWMD)). It is essential that IAs provide copy of the Letter of Request (LOR) to DSCA (SPP) no later than 10 working days from LOR receipt to allow sufficient time for staffing with ASD (HD&GS/CWMD). DSCA (SPP) will inform the IA if the request is denied.



**C4.4.16. Geospatial Intelligence.** Geospatial Intelligence (GEOINT) provides the capability to visually depict physical features and geographically referenced activities on the Earth. It consists of imagery, imagery intelligence, and geospatial information (topographic, aeronautical and hydrographic maps, and charts data). GEOINT is essential to the guidance systems in many weapons. National Geospatial-Intelligence Agency (NGA) GEOINT data are either shared with the international community through agreements and arrangements under the authority of the Director of the NGA and/or the Director of National Intelligence or can be purchased from NGA. IAs are responsible for coordinating the release of the GEOINT data with NGA in advance. See [Table C5.T1D](#) for additional information.

**C4.4.17. Command, Control, Communications, Computer, Intelligence, Surveillance and Reconnaissance.** Transfers of U.S. Command, Control, Communications, Computer, Intelligence, Surveillance and Reconnaissance (C4ISR) to eligible countries and international organizations must support a CCDR's interoperability requirements or U.S.G policy objectives. A partner nation's desire to be interoperable with the United States is insufficient justification for release. Coordination with DSCA, the respective CCMD, IAs, and the SCO is necessary prior to the partner nation submitting a C4ISR LOR. See [Section C3.7.3](#) for more information on C4ISR and [Table C5.T1C](#) for more information on processing LORs for C4ISR.

**C4.4.18. Air-to-Surface and Indirect Fire Surface-to-Surface Munitions and their Delivery Systems.** The Total Package Approach requires consideration of targeting infrastructure necessary for the effective and responsible employment of air-to-surface (A/S) munitions greater than or equal to 105mm in diameter, ship-to-shore munitions, indirect fire surface-to-surface (S/S) munitions, and the associated A/S and S/S delivery systems. A U.S. targeting solution is required unless the IA has determined that the country has a sufficient previously-established U.S., indigenous, or third-party solution for targeting infrastructure, as applicable under [Table C4.T6](#). The IAs will coordinate to designate a lead IA for this process if more than one IA is involved in case development. In international competitions involving more than one U.S. bidder, DSCA will provide guidance to the IAs to ensure a common targeting solution is offered across platforms, where applicable. If a common targeting solution is not otherwise available, the lead IA will offer the Digital Imagery Exploitation Engine (DIEE) targeting solutions managed by the default Program Office, Air Force Life Cycle Management Center (AFLCMC), regardless of the requested munition(s) or delivery system.

**C4.4.18.1.** The IA must follow the process in this section for all LORs upon which the IA will act, whether LORs for LOA, Pre-LOR Assessment Requests (PARs), or for Price and Availability (P&A) responses that include LOA-quality data in response to a competition. If this process was followed for a P&A response, it may not need to be executed again once the related LOR for the same munitions and/or delivery system (i.e., same Military Articles and Services List (MASL)) is received. If the request is not one of the types of requests identified above, responses should note, at a minimum, that the case may require an additional advanced target development capability, including a target coordinate mensuration, weaponneering, and/or collateral damage estimation capability.

**C4.4.18.2.** Within 14 calendar days of receipt of an actionable LOR for LOA, or P&A that includes in-scope munitions, delivery systems, and/or components, the lead IA shall enter LOR Advisory data into the DSCA (IOPS/WPN) Targeting Infrastructure Management Portal (not publicly available) or submit the LOR Advisory to DSCA (IOPS/WPN) via Non-classified Internet Protocol Router Network (NIPRNET) email [dscanocr.iops.list.wpns-civ-mil@mail.mil](mailto:dscanocr.iops.list.wpns-civ-mil@mail.mil). The information required for an LOR Advisory is detailed in [Figure C5.F1b](#). An IA Advisory is not required for types/families of munitions/fuzes that have already been reviewed and approved during previous LOR advisories. Collateral Damage Estimation (CDE) and weaponneering requirements vary by munition, so partner requests must go through this process for each munition/fuze type or family not previously approved.

**C4.4.18.2.1.** DSCA will inform the IA no later than 14 calendar days after receipt of the Advisory, if it concurs or disagrees with the IA recommendation on the inclusion/exclusion of a U.S. targeting solution. If DSCA disagrees with the exclusion of a targeting solution, it will facilitate an interagency decision, with the IA, geographic Combatant Command (CCMD), and Department of State Bureau of Political-Military Affairs (State (PM)), on the targeting infrastructure requirements. The IA may continue to process the LOR while awaiting DSCA's response. Once any resulting P&A or LOA has been offered to the customer, the IA may provide, on a case-by-case basis, any P&A or LOA preparation impact analysis to the DSCA (Office of Administration, Performance, Improvement, and Effectiveness Directorate (ADM/PIE)), who will adjust the timelines and standards for these individual cases, if appropriate.

**C4.4.18.3.** Regardless of whether a targeting requirement is identified in the LOR, DoD will build a targeting solution into transfers that require it. The targeting solution may be in a separate LOA. A targeting solution must account for software, data, training, and applicable publications, in line with [Table C4.T6](#). However, if DoD personnel participate in a LOR generation discussion with a partner for an in-scope item, they will recommend the inclusion, at a minimum, of the following standard language:

*"Advanced target development capability to support the effective use of U.S.-origin munitions, including the following: [identify munitions here]. This capability should include, at a minimum, a target coordinate mensuration [if munition is coordinate-seeking], weaponneering, and collateral damage estimation capability."*

**C4.4.18.4.** Targeting infrastructure, as referenced throughout [Section C4.4.18](#), refers to advanced target development (ATD). ATD includes three capabilities: target coordinate mensuration (TCM), weaponneering, and CDE. Targeting infrastructure associated with ATD includes the software, data, and training necessary to conduct TCM, weaponneering, and CDE. TCM, weaponneering, and CDE improve mission effectiveness and help partner nations fulfill their obligations under the law of armed conflict. TCM (previously referred to as Precision Point Mensuration (PPM)) is the process of generating geographic points at a level of precision and accuracy necessary for the effective employment of a coordinate-seeking weapon. TCM refers to the measurement of a feature or location to determine an absolute latitude, longitude, and elevation of a target. Weaponneering is the process of determining the specific means required to create a desired effect on a given target by considering the effects of target vulnerability, warhead damage mechanisms, warhead fusing, delivery errors, damage criteria, and weapon reliability. Without accurate weaponneering analysis, military forces risk mission failure (not achieving the desired effect on the target) or unnecessary collateral damage. Accurate weaponneering results in efficient target-weapon pairing, optimizing the number of weapons required to achieve the desired effect on a target. CDE is the process of determining the potential for collateral damage resulting from target engagement. Without CDE, military forces risk unforeseen or unnecessary collateral damage.

**Table C4.T6. Targeting Infrastructure Requirements by Munition Type**

Munition Guidance Type	TCM	Weaponneering	CDE
Coordinate-seeking/feature-seeking <sup>1</sup>	X	X	X
Laser		X	X

Electro-optical/infrared		X	X
Radar-seeking <sup>1</sup>		X	X
Standoff <sup>1</sup>	X	X	X
Unguided <sup>2</sup>		X	X
<p>Notes:</p> <ol style="list-style-type: none"> <li>1. In addition to TCM, weaponeering, and CDE, weapon-specific requirements may include additional targeting hardware or software unique to the munition, additional mission planning system software or components, additional Intelligence Mission Data (IMD), and/or other infrastructure capabilities required to support munition employment. While these additional requirements may be critical to effective employment of a given munition and necessary to satisfy the Total Package Approach (TPA), they are beyond the scope of this policy.</li> <li>2. For unguided S/S munitions and delivery systems, targeting solutions are prescribed by supplemental Army policy, issued by Deputy Assistant Secretary of the Army for Defense Exports and Cooperation (DASA (DE&amp;C)), and may not include a full weaponeering capability. <a href="#">Section C4.4.18.7.</a></li> </ol>			

**C4.4.18.5.** The IAs shall maintain and update, as necessary, weapon-specific checklists for every in-scope munition or category of munitions that account for, at a minimum, the requirements in [Table C4.T6](#). While IAs may, in accordance with applicable foreign disclosure and technology transfer policies, tailor targeting solutions as necessary based on the needs and existing capabilities of the partner, the default targeting package for A/S and guided S/S munitions or their delivery systems shall consist of the following:

- [Targeting Solution – Software](#): The default approach will be to provide DICE TCM (as applicable – see [Table C4.T6](#)), DICE Quick Weaponeering, and DICE CDE.
  - [GEOINT IMD](#). Classified Enhanced Targeting Data (ETD) and other products. NSA is the release authority for classified and limited distribution GEOINT data. See [Section 4.4.16](#).
- [Weaponeering Data](#): The default approach will be to provide the Probability of Kill Look Up Tool (PKLUT) with weapons effects data for a standard target set, which can be used as a stand-alone tool and integrated into DICE Quick Weaponeering (QW) software. Defense Intelligence Agency (DIA) approved the release of a set of target names in the development of baseline weaponeering capabilities for any partner nation for whom relevant Category 2 data has been approved. Joint Technical Coordinating Group for Munitions Effectiveness (JTCG/ME) will update this list and seek a renewal of the DIA approval whenever required.
- [CDE Data](#): The default approach will be to provide CDE collateral effects radii (CER) Tables consistent with current approved, releasable U.S. CDE CER Tables to support DICE CDE, through the ATD case, and Population Density Tables (PDT), sourced separately via the relevant combatant command.
- [Training](#): The default approach will be to provide introduction to targeting, TCM, weaponeering, and CDE training. NSA accreditation of the partner nation's TCM program is not necessary to satisfy Total Package Approach requirements and meet an initial operating capability. If the partner nation seeks full interoperability with the United States, to include an NSA-accredited TCM program, subject to applicable foreign disclosure and technology transfer policies, additional training and certification will be required, significantly increasing the overall timeline to meet this capability.
- [Applicable Publications](#): DoD will provide applicable instructions and methodologies in support of TCM and CDE.

PDTs are sourced separately from the FMS process via the relevant geographic combatant command. The IA informs the partner nation of the requirement for the partner nation to submit a request through the SCO for release of PDTs. The SCO will provide the request to the relevant CCMD intelligence sharing office. Release of specific areas does not need to be approved by the CCMD before an ATD case is offered or delivered. Draft language for partner nation to provide to SCO requesting PDTs: [insert country name and service(s)] has purchased [insert U.S. munitions and/or delivery platforms]. We will also be receiving U.S. collateral damage estimation (CDE) tables and training on the U.S. CDE methodology. We request PDTs for [insert geographic area(s)] in order to be able fully to conduct CDE. Our point of contact for this request is: [insert name], available at [insert phone and email].

**C4.4.18.6.** If the partner nation has the ability to conduct some but not all aspects of targeting required under [Table C4.T6](#), the IA may determine that a partial U.S. targeting solution is required in order for the partner to have the appropriate targeting infrastructure as required under U.S. policy.

**C4.4.18.6.1.** In assessing whether indigenous or third-party ATD capabilities are sufficient, the IA may base the determination on a reasonable, informed judgment that the partner nation can generate Target Location Error Category I coordinates according to Joint Publication 3-09.3 (not for public release) (as applicable), and has methodical, data driven processes to conduct weaponeering and/or CDE. The IA should base this determination on all available information, including the country team assessment (CTA) and as discussions with the partner nation as needed. Additional verification of capabilities is not required. IAs may include additional guidance on evaluations of ATD capabilities in supplemental policies they promulgate.

**C4.4.18.6.2.** If the United States, or another country besides the one purchasing munitions and/or delivery systems, is conducting or will conduct all aspects of targeting required by [Table C4.T6](#), the IA should provide a deficiency memo as detailed in [Section C4.4.18.9](#).

**C4.4.18.7.** Unguided indirect fire surface-to-surface munitions have an alternative default solution. DASA (DE&C) has issued supplemental policy guidance to include requirements and process for those systems. Where the default is not appropriate for a particular system, the IA will incorporate an alternate into its system-specific checklist.

**C4.4.18.8.** Requirements for a partner to establish interoperability with the United States are outside the scope of this policy. If a partner requests TCM interoperability, contact NGA's FMS Team at [fms@nga.mil](mailto:fms@nga.mil) for more details. To establish interoperability for CDE, the SCO shall confirm CCMD support and contact the Joint Targeting School (JTS).

**C4.4.18.9.** If at any time in the process it becomes clear that the partner is unwilling to accept or the IA is unable to offer (i.e., due to disclosure policy or other challenges) the targeting infrastructure required for responsible and effective employment of the munition, the lead IA will submit a Targeting Infrastructure Deficiency Advisory to DSCA (IOPS/WPNS). To best inform policy decision-makers, the advisory shall, at a minimum, identify the targeting deficiency, the cause of the deficiency, risks of delivering the munition or platform without the targeting infrastructure, any rationale for otherwise offering the munition or platform despite the deficiency (e.g., partner plans to employ weapon only in coalition operations, partner tactics support alternative employment method, etc.), current method of targeting, and past engagement on ATD and the policy. DSCA will provide a DoD-coordinated risk assessment to State (PM). DSCA, with the concurrence of State (PM), will provide guidance to the IA on how to proceed.

**C4.4.19. Working dogs.** A working dog is a specially trained canine bred, procured, or acquired to perform various tasks and duties in support of military operations. Training areas for working dogs include protection of military installations, resources, and personnel, explosive detection, illegal narcotic detection, search and rescue, patrol, and tracking. Only FMS Purchasers are eligible to obtain working dogs and must be willing to allow the USG to conduct an initial pre-site survey and inspection of any kennel facility prior to delivery of the animals. The IA, in consultation with the SCO and DSCA (Office of Administration, Performance, Improvement, and Effectiveness Directorate, Assessment, Monitoring and Evaluation Division (DSCA/ADM/PIE/AME)), will conduct the required site surveys, inspections, and annual welfare checks. For Building Partner Capacity (BPC) programs see [Section C15.2.13.1](#) and [Section C15-Legacy.1.13.1](#) (for programs as identified in the [Chapter 15](#) introduction).

## **C4.5. - What May Not Be Purchased Using the Foreign Military Sales Program**

Certain items may be transferred using Foreign Military Sales (FMS) procedures only by exception. Questions concerning what may or may not be authorized for a particular country should be directed to DSCA (Office of International Operations (IOPS)). The following categories of items may not be included in Letters of Offer and Acceptance (LOAs) without special staffing or approvals as noted below.

**C4.5.1. Administrative Expenses for Foreign Government Representatives.** The USG does not serve as the disbursing agent for funds received under LOAs for commercial services or items directly obtained by foreign government or FMS purchaser authorized officials. This disbursing agent limitation does not apply to the use of LOA funds required for defense articles and defense services provided by DoD, another federal agency, or through a DoD procurement contract. LOA funds are not available to pay for commercial transportation, commercial lodging, per diem, or other administrative expenses obtained by foreign government or FMS purchaser authorized officials even though such expenses may be indirectly related to FMS support. Foreign purchasers may not use LOAs to lease commercial or General Services Administration (GSA) vehicles. Foreign purchasers are responsible for making and paying for these arrangements outside the FMS process.

**C4.5.1.1.** The only exceptions to this prohibition are:

**C4.5.1.1.1.** The FMS purchaser may request that LOAs funding DoD-provided training include the payment of Travel and Living Allowance (TLA), commercial vehicle expenses (limited to rental passenger vehicles, taxis, and other equivalent hired transportation) when DoD transportation services are not available, and unanticipated expenses for commercial health care for international students receiving training under an LOA. See [Section C10.7.5](#) regarding expenses allowed on LOAs for International Military Students (IMSS).

**C4.5.1.1.2.** The FMS purchaser may request that the fully nationally-funded LOA utilized for obtaining FMS support for its dedicated foreign training detachment include its detachment personnel's expenses. Foreign detachment personnel are not considered IMS because the purpose of the foreign training detachment is for the FMS purchaser to train its authorized officials, rather than obtaining DoD-provided training. Allowable expenses on nationally-funded FMS cases supporting foreign detachments include the following payments for its authorized officials while participating in the dedicated foreign training detachment on DoD installations in the United States: 1) commercial medical, travel, lodging, and/or vehicle services directly procured from a commercial source by the FMS purchaser's authorized official; and/or 2) per diem. If requested by the FMS purchaser, the authorized dependents of the detachment officials can receive disbursement services limited to payment of medical services, which are paid through the FMS LOA to a commercial provider. FMS LOA funds are not permitted to be used to provide disbursing agent support for commercial medical insurance. An FMS purchaser's dedicated foreign training detachment is limited to the FMS purchaser's authorized officials participating in non-DoD training within a dedicated space on a DoD installation in the United States for a committed multi-year time period with FMS-procured major defense equipment. Since these detachment officials are not IMS, a Security Cooperation Training Management System (SC-TMS) generated invitational travel authorization cannot be processed. The lack of a SC-TMS generated invitational travel authorization does not preclude an Implementing Agency (IA), if necessary, from issuing its own invitational travel authorization. If requested by the FMS purchaser, the FMS LOA may also include such administrative expenses for the foreign training detachment personnel while they are participating as their government's representative in DoD-hosted exercises in the United States.

**C4.5.1.2.** For disbursing agent support, the commercial services and per diem must be on a dedicated line using the Military Articles and Services List (MASL) "ADMCOMSERVOFF, Administrative Commercial Services, FMS Purchaser Officials" that is limited to 10% of the current total case value. This line includes the standard "Administrative Disbursing Services" LOA note in [Appendix 6](#). Further, any DoD services to administer these payments must be case-funded, as stated in [Table C9.T2a](#).

**C4.5.2. Cluster Munitions.** No military assistance will be furnished for cluster munitions, no defense export license for cluster munitions may be issued, and no cluster munitions or cluster munitions technology will be sold or transferred, unless (1) the submunitions of the cluster munitions have a 99 percent or higher functioning rate; and (2) the agreement applicable to the assistance, transfer, or sale of the cluster munitions or cluster munitions technology specifies that the cluster munitions will only be used against clearly defined military targets and will not be used where civilians are known to be present ([Section 7056\(b\) of the](#)

Department of State, Foreign Operations and Related Programs Appropriations Act 2009, Division H of the Omnibus Appropriations Act, 2009, P.L. 111-8). See [Appendix 6](#) for the required LOA Note on Cluster Munitions. Cluster munitions are munitions composed of a non-reusable canister or delivery body containing multiple, conventional explosive submunitions. This applies to systems delivered by cruise missiles, artillery, mortars, missiles, tanks, rocket launchers, or naval guns that deploy payloads of explosive submunitions that detonate via target acquisition, impact, or altitude, or that self-destruct (or a combination of both). Cluster munitions technology includes, but is not limited to, cluster munition components, accessories, attachments, parts, firmware, software, or other related technical data. This restriction does not apply to technology used to clear or disarm unexploded cluster munitions.

**C4.5.3. Anti-Personnel Landmines.** All Security Cooperation Organization (SCO) and other DoD personnel to include Military Departments (MILDEPs) must get specific approval from DSCA (Office of International Operations, Weapons Directorate (IOPS/WPN)) prior to any discussions on landmines with any potential purchaser.

**C4.5.4. Napalm.** Napalm, including napalm thickener, dispensers, and fuses, will not be provided through FMS or commercial contracts.

**C4.5.5. Riot Control Agents.** Riot control agents will not be provided via FMS, but certain types are available on a commercial basis. Such proposed commercial sales require that an export license be obtained from the Department of State, Directorate of Defense Trade Controls (State (DDTC)).

**C4.5.6. Military Uniforms.** U.S. combat military uniforms may be eligible for sale or transfer to foreign countries via FMS. Each type of uniform must be designated as excess by the U.S. Armed Forces (U.S. military and U.S. Coast Guard), must no longer be actively used by the U.S. Armed Forces or Reserves, and cannot contain Identification Friend or Foe (IFF) technology. Contact DSCA (SPP) for a list of combat military uniforms that are eligible for FMS. See [10 U.S.C. 771](#) and [14 U.S.C. 2707](#).

**C4.5.7. Certain Training.**

**C4.5.7.1. Counterterrorism Training.** Counterterrorism training may be requested through the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict (ASD (SO/LIC)) under the Regional Defense Fellowship Program (RDFP). DSCA should be informed of any request for antiterrorism or counterterrorism training. Foreign officers nominated to receive such training are vetted using the same DoD and/or State procedures in place for all International Military Education and Training (IMET) and FMS training.

**C4.5.7.2. Military Intelligence Training.** Limited military intelligence training is available. The scope of this type of training is limited to training that is directly related to combat or operational intelligence, or to intelligence management of combat or operational intelligence at the joint military staff level. In case of doubt about whether or not a particular course or type of training falls into one of these two categories, the SCO should obtain a clarification from DSCA (IOPS).

**C4.5.7.3. Police Training.** The Arms Export Control Act (AECA) does not prohibit police training or related programs; however, subject to certain exceptions, the Foreign Assistance Act (FAA), section 660 (22 U.S.C. 2420), generally prohibits use of funds available to carry out the FAA for police training. DSCA (IOPS) and State approval must be obtained before offering defense articles or services related to police training through FMS procedures.

**C4.5.7.3.1.** With certain exceptions, the FAA prohibits using funds authorized under that Act to conduct any police training or related programs either in a foreign country or in the United States. All related military assistance under the FAA, not just training, is subject to this prohibition with certain statutory exceptions as found in [FAA, section 660 \(22 U.S.C. 2420\)](#).

**C4.5.7.3.2.** Police training in the context of the FAA prohibition includes military police as well as civilian police if the military police perform on-going civilian law enforcement functions. Neither the name given to a unit nor the ministerial authority under which it operates is sufficient to determine whether a particular unit is a "police unit." The determining factor is the nature of the functions performed by the unit. Assistance in foreign countries for any civilian law enforcement function (except maritime law enforcement or international narcotics control) is prohibited.

**C4.5.7.3.3.** The prohibitions discussed above do not apply to units with the sole function of internal security that involves combat operations against insurgents, or legitimate self-defense of national territory against foreign invasion, whether or not the unit is called police.

**C4.5.7.3.4.** If some personnel from a smaller unit within a larger unit that is eligible for assistance are detailed to on-going civilian law enforcement functions, then just the smaller unit is prohibited from receiving grant support under the FAA. However, no grant funds may be used in any program of internal intelligence or surveillance on behalf of any foreign government either within the United States or abroad.

**C4.5.7.3.5.** If foreign students are authorized to attend military police training, foreign governments must certify that the students are not involved in any civilian law enforcement functions for at least two years after receiving the training. Law enforcement includes apprehension and control of political offenders and opponents of the government in power (other than prisoners of war), as well as persons suspected of common crimes.