THE DEPUTY SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-1000

JAN 9 2002

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
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UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
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DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES
DIRECTOR, DEFENSE PROCUREMENT

SUBJECT: Department of Defense Policy on Foreign Customer Participation in the Letter of Offer and Acceptance (LOA) and Contracting Development Process

As part of the Foreign Military Sales (FMS) reinvention initiative, one objective is to provide FMS customers more visibility into pricing for LOAs and FMS contracts. This is our important element in our continuing process to improve transparency and meet the special needs of FMS customers during the LOA development phase of an FMS sale.

In an effort to provide sufficient information to potential FMS customers concerning LOA prices, program managers shall work closely with contracting officers, security assistance personnel, and representatives from the U.S. companies involved, to identify price information that can be shared with the FMS customer. With respect to government charges for the LOA, the guidance set forth in Defense Security Cooperation Agency memorandum I-0111158/99 dated September 13, 1999, should be used in deciding the type and amount of data to be provided. FMS customers are entitled to enough information relating to LOA prices to enable them to demonstrate they have exercised due diligence in deciding to purchase a particular weapon system or service. Prices on varying alternatives, quantities, and options should normally be provided to help FMS customers determine what they will buy and help them make price/performance trade-off decisions. However, because each situation is unique, the type and amount of information about prices provided to potential FMS customers may vary based on individual circumstances.

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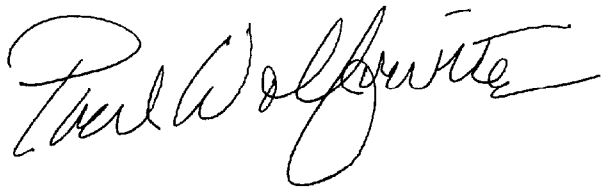
During the contracting process between the contractor and the DoD, the contracting officer shall consult with the FMS customer about major contractual matters especially any matter that could be perceived as being inconsistent with or significantly different from the LOA. As specified in Defense Federal Acquisition Regulations Systems (DFARS) 225.7304(b)(3), FMS customers are not allowed to observe negotiations involving cost or pricing data, unless a deviation is granted in accordance with DFARS Subpart 201.4. FMS customers will be allowed to participate in discussions with industry regarding technical specifications, price-performance trade-off decisions, delivery schedules, special warranty provisions, and other requirements unique to the FMS customer. The degree of participation of the FMS customer during contract formation is left to the discretion of the contracting officer after consultation with the contractor. U.S. Government personnel shall not release any contractor proprietary data, except in those limited cases where the contractor authorizes release of specific data.

If an FMS customer requests additional information concerning FMS contract prices, the contracting officer shall, after consultation with the contractor, provide sufficient information to demonstrate the reasonableness of the price and reasonable responses to relevant questions concerning contract price. This may include tailored responses, top level pricing summaries, historical prices, or an explanation of any significant differences between the actual contract prices and the estimated contract price included in the initial LOA price.

The Director of Defense Procurement shall modify the DFARS to incorporate the guidance contained herein.