

Defense Acquisition University (DAU) Teaching Note

International Acquisition and Exportability (IA&E)

DoD acquisition workforce members in a wide variety of career fields are responsible for assessment, planning and implementation of IA&E activities within the Defense Acquisition System per [DoDI 5000.2](#). This DAU Teaching Note provides DoD personnel, U.S. Government (USG) stakeholders, and supporting industry with an overview of the IA&E aspects of the DAS to facilitate efficient and effective implementation of DoD IA&E efforts that support USG foreign policy and national security goals.

The importance of this increased emphasis on IA&E efforts in the DoDI 5000.02 is based on two fundamental principles:

- a) allied and friendly nation participation in DoD acquisition programs builds partner nation capabilities increasing their national and coalition operational effectiveness; and,
- b) partner nation involvement in our programs' development, production, and logistics support results in both direct and indirect cost savings, markedly enhancing U.S. and partner nation affordability throughout the life-cycle.

DoDI 5000.02 directs DoD Program Managers (PMs) to address IA&E considerations during a DoD program's Acquisition Strategy development and maturation throughout their program's life-cycle. Specifically, a PM is required by [DoDI 5000.02 Enclosure 2, subparagraph 6.a.\(1\)](#) to address the program's IA&E aspects within the Acquisition Strategy consistent with their understanding of opportunities in "domestic and international markets, foreign disclosure, exportability, technology transfer, and security requirements". This guidance is further emphasized and expanded upon in DODI 5000.02 Enclosure 2, paragraph 7.a., which states:

"Program management is responsible for integrating international acquisition and exportability considerations into the program's Acquisition Strategy at each major milestone or decision point. Program management will consider the potential demand and likelihood of cooperative development or production, Direct Commercial Sales, or Foreign Military Sales early in the acquisition planning process; and consider U.S. export control laws, regulations, and DoD policy for international transfers when formulating and implementing the acquisition strategy; in accordance with DoD Instruction 2040.02 (Reference (az)). Where appropriate, program managers will pursue cooperative opportunities and international involvement throughout the acquisition life cycle to enhance international cooperation and improve interoperability in accordance with DoD Instruction 2010.06 (Reference (ba))."

DoDI 5000.02 also provides policy guidance regarding exportability, technology protection, and countermeasures in the paragraphs for Acquisition Strategies ([DoDI 5000.02 Enclosure 2, subparagraph 6.a.\(1\)](#)) and Program Protection ([DoDI 5000.02 Enclosure 3, paragraph 13](#)).

The Defense Acquisition Guidebook (DAG) provides additional information and best practice advice on IA&E assessment, planning, and implementation in [DAG Chapter 1, paragraph 4.2.8](#) and the [DAG Chapter 1 IA&E Supplement](#) as well as Program Protection-related exportability features content in [DAG Chapter 9, paragraph 3.2.3](#).

The full text versions of the DoDI 5000.02, Defense Acquisition Guidebook, and Joint Capabilities Integration and Development System (JCIDS) documents – as well as a wide variety of other IA&E

references, learning material, websites, and other resources -- may be accessed via the [DAU.mil International Acquisition Management Community of Practice \(ICOP\) website](#).

IA&E Elements

There are six key IA&E Elements.

The first IA&E element is **IA&E Planning and Assessment**, which provides an overall framework for the five elements described in the following paragraph. Overarching guidance on how to conduct IA&E Planning and Assessment efforts is contained in [DAG Chapter 1, paragraph 4.2.8 "International Acquisition and Exportability Considerations"](#) and the [DAG Chapter 1 IA&E Supplement, CH 1-S-3. "Documenting International Acquisition and Exportability in the Acquisition Strategy"](#)

The other **five key elements of IA&E** are based on the competencies approved by the DoD International Acquisition Functional Integrated Product Team (FIPT) Leader:

- **International Cooperative Programs**
- **Sales and Transfers**
- **Technology Security & Foreign Disclosure (TSFD) and Export Control**
- **Defense Exportability Integration (DEI)**
- **International Contracting**

As noted above, DoD PMs are required to develop and update their program's Acquisition Strategy at each major acquisition milestone or decision point. The Office of SecDef (Acquisition and Sustainment) [Acquisition Strategy Template](#) and [Coalition Interoperability Template](#) should be used by DoD acquisition workforce personnel as guides to document the Acquisition Strategy - International Considerations aspects of each individual DoD acquisition program.

To assist the DoD acquisition workforce in its IA&E Planning and Assessment activities, DAU has developed [IA&E Assessment](#) and [Acquisition Strategy - International Considerations Job Support Tools \(JSTs\)](#) to assist DoD PMs, International Managers, Integrated Product Team (IPT) members, and DoD Component International Program Organizations (IPOs) in the initial development and update of their programs' Acquisition Strategy - International Considerations section prior to each Milestone Decision.

International Acquisition Program Forms

In addition to the IA&E Elements described in the paragraph above, there are four international acquisition program forms used to implement a wide variety of defense acquisition activities with allied and friendly nations on a daily basis. These four forms are based on a synthesis of U.S. and allied/friendly nation laws, regulations, and policies – informed and influenced by international law – which have evolved (and will continue to evolve) over years of actual practice in developing, establishing, and implementing international acquisition transactions.

- International Cooperative Programs (ICPs)
 - Foreign Military Sales (FMS) Programs
 - Direct Commercial Sales (DCS) Programs
 - Building Partner Capacity (BPC) Programs
- the three different forms of IA&E Sales and Transfers*

Each program form is conducted under specific enabling U.S. laws, regulations, and policies that are substantially different. Notwithstanding these differences, however, the first three international acquisition program forms may be used in “hybrid” combinations to plan and implement specific acquisition efforts with an allied/friendly nations or international organizations (e.g., NATO).

This section of the DAU Teaching Note provides a summary of each program form and ends with “quick reference’ **Comparison Table** that summarizes the key similarities and differences among the four forms.

International Cooperative Programs (ICPs)

An ICP is any acquisition program or technology project that includes participation by one or more foreign nations, through an *international agreement*, during any phase of a system’s life cycle ([DoDI 5000.02, Enclosure 2, paragraph 7.b](#)). These programs are conducted under OUSD(A&S) oversight and are referred to by OSD and the Military Departments (MILDEPs) by a variety of terms: Armaments Cooperation, International Armaments Cooperation (IAC), Defense Cooperation in Armaments (DCA), and International Cooperative Research and Development (ICR&D). Unlike the other forms of international cooperation, the DoD is a full partner in an ICP, providing an equitable share of program costs using appropriated funds, with the effort being jointly managed by the DoD and partner nation or nations to meet mutual requirements.

The core objectives of ICPs are: (1) operational - to increase military effectiveness through interoperability and partnership with allies and coalition partners, (2) economic - to reduce weapons acquisition cost by sharing costs and economies of scale, or avoiding duplication of development efforts with our allies and friends, (3) technical - to access the best defense technology worldwide, and help minimize the capabilities gap with allies and coalition partners, (4) political – to strengthen alliances and relationships with other friendly countries, and (5) industrial – to bolster domestic and allied defense industrial bases.

DoDD 5000.01 contains the following guidance on ICPs:

- PMs shall pursue international armaments cooperation to the maximum extent feasible, consistent with sound business practice and with the overall political, economic, technological, and national security goals of the U.S. ([DoDD 5000.01, Enclosure 1, paragraph E1.1.1](#))
- A preference for a cooperative development program with one or more allied nations over a new, joint, or DoD Component-unique development program. ([DoDD 5000.01, Enclosure 1, paragraph E1.1.18](#))

Title [10 U.S.C. 2350a\(e\)](#) requires an analysis of potential opportunities for international cooperation for all Acquisition Category (ACAT) I programs before the first milestone or decision point. To meet this statutory requirement, [DoDI 5000.02, Enclosure 1, Table 2](#) (under “Acquisition Strategy - Cooperative Opportunities”) requires that during the initial milestone decision (A, B, or C) the Acquisition Strategy or Course of Action Analysis (for urgent needs) must address the following:

- Is a similar project in development or production by NATO, a NATO organization, a member nation of NATO, a major non-NATO ally, or a friendly foreign country?
- If so, then the TDS or Acquisition Strategy must provide an assessment of that project as to whether or not it could satisfy or be modified to satisfy U.S. military requirements.
- An assessment of the advantages and disadvantages with regard to program timing, developmental and life-cycle costs, technology sharing, and Rationalization, Standardization, Interoperability of a cooperative development program.
- USD(A&S) provide a recommendation whether or not the feasibility and desirability of a cooperative development program should be explored.

While conducting the above cooperative opportunity analysis and to meet the DoDD 5000.01 requirement that PMs pursue international opportunities throughout the acquisition life cycle, if a full cooperative development Acquisition Strategy is impractical, program proponents should consider alternate forms of international cooperation that could be appropriate for the program. These could include cooperative production, FMS, licensed production, component/subcomponent co-development, or incorporation of subsystems from allied or friendly foreign sources. Program proponents should consult with the appropriate MILDEP, or DoD agency headquarters international office to obtain assistance in addressing international considerations. Milestone Decision Authorities (MDAs) may recommend forming ICPs based on Acquisition Strategy considerations or other factors. DoD Component Heads may also recommend forming ICPs. The MDA, with the advice and counsel of the DoD Components and the Joint Requirements Oversight Council (JROC), makes the decision to pursue an ICP. The decision process should consider the following:

- Demonstrated best business practices, including a plan for effective, economical, and efficient management of the ICP.
- Demonstrated DoD Component willingness to fully fund their share of the ICP.
- The long-term interoperability and political-military benefits that may accrue from international cooperation.
- The international program's management structure with the designated program manager (U.S. or foreign) fully responsible and accountable for cost, schedule, and performance.

The DoD Component remains responsible for preparation and approval of statutory, regulatory, and contracting reports and milestone requirements listed in [DoDI 5000.02, Enclosure 1](#). Documentation for decision reviews and periodic reports flow through the DoD Component acquisition chain, supported by the participating nation(s).

International cooperation can add stability to a program. [DoDI 5000.02, Enclosure 2, paragraph 7.b.\(2\)](#) states DoD components will notify and obtain the approval of the DAE for MDAP and MAIS programs before terminating or substantially reducing participation in ICPs under signed international agreements.

ICPs are conducted under the terms of an international agreement typically concluded under the authority of [10 U.S.C. 2350a](#) (Cooperative R&D with NATO, allied and friendly foreign countries) or [22 U.S.C. 2767](#) (Arms Export Control Act (AECA) Section 27). [DoDI 5000.02, Enclosure 2, paragraph 7.b.\(1\)](#) provides that all OUSD(A&S) and OUSD(R&E)-related international agreements may use the streamlined staffing procedures in [DAG Chapter 1 IA&E Supplement, CH-1-S-6 "International Agreement Procedures"](#) instead of those specified in [DoDD 5530.3, International Agreements](#). Proponents should contact their MILDEP or DoD agency headquarters international office for assistance

in developing international agreements. DAU has also published an [International Cooperative Program \(ICP\) JST](#) to assist PMs, IPTs, and DoD Component IPOs in this specialized area.

Further information on the full range of International Armaments Cooperation activities may be found in the [OUSD\(A&S\)/IC International Cooperation In Acquisition, Technology and Logistics \(IC in A&S\) Handbook](#).

Foreign Military Sales (FMS)

Foreign Military Sales (FMS) is a component of the Department of State's Security Assistance program and allows the transfer of military articles and services to friendly foreign governments and specified international organizations through, sales, grants, or leases. Security Assistance transfers are authorized under the premise that if these transfers are essential to the security and economic well-being of allied governments and international organizations, they are equally vital to the security and economic well-being of the United States. Security Assistance programs support U.S. national security and foreign policy objectives and increase the ability of our friends and allies to deter and defend against possible aggression, promote the sharing of common defense burdens, and help foster regional stability.

Under Executive Order 13637, the Secretary of State is responsible for continuous supervision and general direction of the Security Assistance program. Within the DoD, FMS programs are conducted under the oversight of the Under Secretary of Defense for Policy and are administered by the Defense Security Cooperation Agency (DSCA).

In an FMS program, the purchasing government is responsible for all costs that may be associated with the sale. There is a signed government-to-government agreement, normally documented in a Letter of Offer and Acceptance (LOA) between the USG and a foreign government. Unlike ICPs which often involve multilateral cooperation, FMS transactions are conducted on a bilateral basis. Each LOA is commonly referred to as an FMS case and is assigned a unique case identifier for accounting purposes. Under FMS, military articles and services, including logistics support and training, may be provided from DoD stocks or from new procurement. If the source of supply is new procurement, on the basis of having an LOA which has been accepted by the foreign government, the USG agency or MILDEP assigned as the Implementing Agency for the case is authorized to enter into contractual arrangements with U.S. industry to provide the articles or services requested.

Security Assistance authorizations and appropriations are provided primarily under two public laws: the Foreign Assistance Act (FAA) of 1961, as amended; and the Arms Export Control Act (AECA) of 1976, as amended. The [Security Assistance Management Manual \(SAMM\)](#) issued by DSCA defines policies and procedures for Security Assistance programs.

Usually an FMS system sale involves a weapon system that DoD has already developed, produced, tested, and fielded for its own use. DoD policy generally provides that the USG will only agree to sell systems through FMS that have been approved for full rate production for U.S. forces after completion of operational testing. The key acquisition decision point, from an FMS perspective, is completion of Operational Test and Evaluation (OT&E). If a foreign customer requests an LOA for a system that has not yet completed OT&E, a policy waiver is required in accordance with [DoD 5000.02 Enclosure \(2\), paragraph 7.c](#). In this situation, DSCA will request concurrence from USD(A&S) before offering an LOA for a system that is still under development. If the waiver is approved, the LOA includes a special note

identifying the risk that the USG may not place this system into production. This waiver policy is often referred to as a “Yockey Waiver” named after a former Under Secretary of Defense for Acquisition.

Sales may also involve the transfer of Excess Defense Articles (EDA). The term EDA is applied collectively to U.S. defense articles which are no longer needed by U.S. forces. Such defense articles may be made available for sale under FMS or as grant (no cost) transfers to specified eligible foreign countries under the provisions of FAA Section 516. EDA sold through FMS procedures are priced on the basis of their condition as described in DoD 7000.14-R, Financial Management Regulation, Volume 15. Prices range from a high of 50 percent of the original acquisition value for new equipment, to a low of 5 percent for equipment in need of repair. EDA equipment is offered on an “as is, where is” basis and in most cases the foreign nation pays for refurbishment and transportation.

The FMS process begins when the customer starts to develop requirements for a U.S. defense article or service. During this stage, there should be ongoing consultation between the customer and USG representatives, principally the in-country U.S. Security Cooperation Office (SCO) usually located within the U.S. embassy. As the customer defines its requirements, the nation may submit a Letter of Request (LOR) for either Price and Availability (P&A) data (rough order of magnitude pricing data provided for planning purposes) or a formal sales offer in the form of an LOA. P&A and LOA data are generated with the support of the DoD organization that procures comparable articles and services for the DoD.

When compiling LOA data, case managers should adhere to the Total Package Approach (TPA) to ensure that FMS customers are afforded the opportunity to acquire the full complement of articles and services necessary to field, maintain, and utilize major items of equipment efficiently and effectively. In addition to the weapons system itself, an LOA that follows the TPA concept will address such areas as training, technical assistance, publications, initial support, and follow-on support, among others.

Prior to providing an LOA to the customer for review and signature, LOAs meeting the financial thresholds contained in SAMM Section C5.5 must be notified to Congress for 15, 30, or 45 calendar-days, depending on the details of the sale and the foreign purchaser. If Congress objects to a proposed LOA, it must pass a joint resolution prior to the expiration date of the notification period. If the notification period passes without Congressional action, DSCA may then countersign the LOA and release it for official presentation to the foreign customer. Once the customer receives the LOA, it has until the Offer Expiration Date (OED) to sign the LOA and provide the initial deposit/payment to the Defense Finance and Accounting Service (DFAS).

After receiving the initial deposit, DFAS releases obligation authority to the Implementing Agency (MILDEP or Defense Agency) who can begin FMS case execution through requisitions from stock and/or initiation of contracting actions for new procurement. The Implementing Agency designates a program manager for major systems sales. The SAMM provides that acquisition in support of FMS cases will be conducted in the same manner as it is for U.S. requirements, thus affording the customer the same benefits and protections that apply to DoD procurements. FMS procurement requirements may be consolidated on a single contract with U.S. requirements or may be placed on a separate contract, whichever is most expedient and cost effective. Throughout execution of an FMS case, but particularly as delivery of articles and services nears completion, the case manager should make preparations to reconcile deliveries and financial accounting actions to facilitate prompt case closure after supplies and services have been delivered or provided.

When an FMS customer accepts an LOA, it enters a government-to-government agreement to purchase military items or services from the USG. In regard to the LOA, the FMS customer is the buyer and the USG is the seller. The USG may provide articles or services from stock but often must contract with industry to acquire items or services for delivery to the FMS customer. In the procurement contract, the USG is the buyer and the U.S. industry vendor is the seller. The USG is acting on the FMS customer's behalf and the FMS customer is not a legal participant in the contract with the U.S. vendor. As far as the vendor is concerned, it is under contract and directly obligated to the USG and has no direct contractual relationship with the FMS customer.

Contracting for FMS mirrors the process DoD uses for its own contracting actions. There are a few peculiarities associated with FMS contracts that are addressed in [Defense Federal Acquisition Regulation Supplement \(DFARS\) Subpart 225.7300](#), Acquisitions for Foreign Military Sales. DFARS Subpart 225.7303-2 permits certain costs to be allowable for FMS contracts such as international selling expenses and offset costs. Although by law and policy, the USG does not encourage or commit U.S. companies to offset agreements nor can it be a party to an offset agreement, the DFARS recognizes that contractors performing business in support of foreign governments or international organizations may incur certain additional legitimate business costs.

An offset is a package of additional benefits that the seller agrees to provide or perform in addition to delivering the primary product or service. A direct offset involves work directly related to the item being purchased such as permitting the purchaser to produce components or subsystems of the system being sold. An indirect offset involves goods or work which are unrelated to the item being purchased. For example, the contractor may agree to purchase, usually for resale, certain of the customer country's manufactured products, agricultural commodities, raw materials, or services. Contractors are permitted to build the cost of performing offsets into the contract price it charges the USG. Under the FMS pricing policy, the USG must recover all costs of conducting FMS through the LOA. As a result, if offsets are required by the purchasing country, the LOA price will be incrementally higher in order to cover the cost of the offset. If the LOA is funded with Foreign Military Financing (FMF) program funds, offset costs are not allowable in the contract.

FMS programs may also include coproduction where government-to-government agreements authorize the transfer of technology to permit a foreign company to manufacture all or part of a U.S.-origin defense article. Such transactions are based upon agreements referenced in LOAs and government-to-government international agreements. In some cases, the DoD transfers technical data packages to support coproduction programs under an LOA.

PMs involved in large scale, complex FMS Systems Acquisition efforts should also consider using the [FMS - Systems Acquisition JST](#) which was developed by DAU to assist PMs, IPTs, and DoD Component IPOs in this specialized area.

Direct Commercial Sales (DCS)

DCS involves the commercial export of defense articles, services, and training under the authority of AECA Section 38 made by U.S. defense industry directly to a foreign entity. Unlike the procedures employed for ICPs and FMS, DCS transactions are not administered by DoD and do not involve a government-to-government agreement. Rather, the USG control procedure is accomplished through licensing by the Department of State's Directorate of Defense Trade Controls (DDTC) following the

[International Traffic in Arms Regulations \(ITAR\)](#). The ITAR governs the export and import of defense-related articles and services on the United States Munitions List (USML) contained in ITAR part 121. The ITAR does not apply to information related to general scientific, mathematical or engineering principles commonly taught in schools and colleges or information that is in the public domain. The export of dual-use and civil commodities is governed by the Department of Commerce's Bureau of Industry and Security (BIS) under the authority of the Export Administration Act, following the [Export Administration Regulations \(EAR\)](#) for technologies identified on the Commerce Control List (CCL) contained in EAR part 774.

In a DCS program, U.S. industry seeks authority for the proposed export from DDTC via a license application. DDTC reviews the application and where appropriate seeks DoD advice through the Defense Technology Security Administration (DTSA). DTSA consults with cognizant MILDEPs and DoD agencies and provides the recommended DoD position to DDTC. It is normal for the DoD to recommend provisos which set limits on the terms of the export including technology transfer. DDTC responds to the U.S. industry applicant either approving the application, often with provisos, denying the application, or to request additional information.

Thirty days before issuing an export license for Major Defense Equipment (MDE) in excess of \$14 million or other defense articles and services in excess of \$50 million (for most countries), the Department of State submits a certification (i.e. a notification) to Congress. Dollar thresholds for notification for NATO countries, Japan, Australia, and New Zealand are \$25 million and \$100 million respectively. Unless the certification states that an emergency exists, an export license for the items is not issued within the thirty-calendar day Congressional review period. A license cannot be issued if Congress, within the review period, adopts a joint resolution objecting to the export. The Congressional review period for NATO, NATO members, Australia, Japan, and New Zealand is 15 days.

The details of the proposed sale by U.S. industry determine the appropriate licensing vehicle. Approvals may be in the form of export licenses for the export or import of defense articles and technical data through Department of State Publication (DSP) forms, or take the form of a Technical Assistance Agreement (TAA), a Manufacturing License Agreement (MLA) or a Warehousing and Distribution Agreement (WDA). Licensed production of a part or component of a defense system or a complete defense system is conducted under the terms of an approved MLA.

The USG is not a participant in the ensuing contract between the U.S. company and the foreign entity; however, it is common that some DoD support will be required for the effort. Federal Acquisition Regulation (FAR) Subpart 245.302 provides that a contractor may use USG property on work for foreign governments and international organizations when approved in writing by the contracting officer having cognizance of the property. Also DCS efforts involving major systems will typically have a companion FMS effort for sensitive equipment, training, or possibly follow-on support. These considerations are discussed later in this teaching note in the "Hybrid Programs" section.

FMS versus DCS Considerations

The DoD prefers that allies and friendly nations choose to purchase U.S. systems rather than foreign systems due to political, military, and economic advantages derived from the U.S. and its friends using the same military equipment. However, the DoD is generally neutral regarding the customer's choice to purchase by means of FMS from the USG or through DCS from U.S. industry. Although most defense

items or services can be purchased through either FMS or DCS, in limited instances, technology or security concerns may require that sales of specific items be restricted to FMS only. Some factors that are considered in requiring a system to be sold FMS only include the political and military relationship with the purchaser; the degree of difficulty to integrate the new system with existing purchaser capabilities and infrastructure; the need for interoperability; the sensitivity of the technology; and the feasibility of separating system components into a DCS portion and a FMS portion.

DoD Implementing Agencies do not engage in FMS-DCS comparison studies unless the Director, DSCA, grants an exception for a specific circumstance based on a foreign purchaser's request.

Hybrid Programs

The above types of international programs; ICPs, FMS, and DCS can be used in combined forms in a single program or during a specific program phase. The most frequent occurrence is a hybrid DCS and FMS program. These efforts require close coordination between the DoD, U.S. industry, and the foreign customer. The foreign purchaser, for business case or acquisition strategy reasons, may desire to divide a system acquisition effort into DCS and FMS portions. Also the DoD may restrict purchase of specific components or software to FMS only for technology security and foreign disclosure (TSFD) reasons. Examples include low observable/counter low observable capabilities, items, and technology, Communications Security (COMSEC) equipment controlled by the National Security Agency (NSA), and intelligence products controlled by the Defense Intelligence Agency (DIA) and National Geospatial-Intelligence Agency (NGA). Foreign purchasers frequently receive technical training from the MILDEPs for equipment purchased through DCS under the terms of an FMS training case. Systems acquired by DCS are eligible to obtain FMS sustainment support for common items. Hybrid international cooperative and FMS/DCS programs are also possible.

Building Partner Capacity (BPC) Programs

Beginning in 2006 as a result of 9/11, a new form of international cooperation was established to train and equip other nations. Congress has passed legislation for programs such as the Iraq Security Forces Fund (ISFF), the Afghanistan Security Forces Fund (ASFF), and the "Section 1206" program (designed to build partner nation counter-terrorism capabilities) over the years. These BPC programs are ***funded with U.S. Government (USG) appropriations*** and administered as cases within the Foreign Military Sales (FMS) infrastructure. These programs may provide defense articles and/or services to other USG departments and agencies under the authority of the Economy Act or other transfer authorities for the purpose of building the capacity of partner nation security forces and enhancing their capability to conduct counterterrorism, counter drug, and counterinsurgency operations, or to support U.S. military and stability operations, multilateral peace operations, and other programs.

A USG Requesting Authority, which is usually the Geographic Combatant Command, but could also be another DoD or non-DoD agency, defines and initiates the BPC requirement to support specific USG objectives. The Requesting Authority then submits an actionable Memorandum of Request (MOR) to an Implementing Agency. The BPC MOR is similar to the FMS Letter of Request (LOR), which is submitted by a foreign purchaser to initiate an FMS Program. The Implementing Agency and the Requesting Authority coordinate to document the requirements and costs on a pseudo LOA to enable BPC program execution through existing FMS infrastructure and automated systems. The pseudo LOA is not signed by the partner nation that will ultimately receive the articles and/or services, but serves to

document the transfer of articles and services to the USG Requesting Authority. The Implementing Agency prepares a Case Advisory document for the Benefitting Country, which advises the country of USG expectations that accompany the transfer of training and equipment. Specific BPC Programs are annually authorized by National Defense Authorization Acts (NDAAs) and are overseen by DSCA with policies and procedures specified in [eSAMM, Chapter 15, “Building Partner Capacity Programs.”](#)

ICP, FMS, DCS, and BPC Comparison

	International Cooperative Programs (ICP)	Foreign Military Sales (FMS)	Direct Commercial Sales (DCS)	Building Partner Capacity (BPC)
Legal Authority	AECA Section 27 & 10 U.S.C 2350a	AECA Sections 21 and 22	AECA Section 38	National Defense Authorization Acts
DoD Oversight	OUSD(A&S)	OUSD(Policy); DSCA	OUSD(Policy); DTSA	OUSD(Policy); DSCA
Primary Regulations	DoDD 5000.01 & interim DoDI 5000.02	Security Assistance Management Manual (SAMM)	International Traffic and Arms Regulations (ITAR)	SAMM, Chapter 15
Relationship	Partner	Buyer-seller	Buyer-seller	Provider-receiver
Form of Agreement	International Agreement	Letter of Offer and Acceptance (LOA)	State Department export license & commercial contract	Pseudo-LOA (not signed by foreign country)
Requirement	Mutual	Foreign customer (Letter of Request – LOR)	Foreign customer	USG Requesting Authority (Memorandum of Request – MOR)
Funding	Equitably shared	Foreign customer	Foreign customer	USG appropriated funds
Program Management	Joint	DoD Implementing Agency (IA)	Foreign purchaser	DoD IA
Contract Privity	Partner nation(s) and industry	DoD IA and industry	Foreign purchaser and U.S. industry	DoD IA & industry
Risks	Equitably shared	Foreign customer	Foreign customer	DoD
TSFD and Defense Exportability	Address in Acq Strategy and Int'l Agreement	Address in Acq Strategy and FMS LOA	Address in USG Export License process	Address in MOR process and Pseudo-LOA
Production Cooperation	Cooperative production	Coproduction	License production	N/A

International Contracting

DoD international contracting policies and practices are designed to facilitate implementation of U.S. laws and Department policies affecting foreign participation while maintaining constructive relationships with allied/friendly nations and international organizations. DoD PMs routinely engage in international contracting activities – even on so-called “domestic” programs that do not involve any of the four

international acquisition forms described in the preceding section – since U.S. and foreign industry routinely engage in subcontractor and supplier transactions in response to DoD acquisition requirements. PMs with questions on international contracting matters are encouraged to visit the DAU.mil [ICOP International Contracting webpage](#) or, for more complex issues, contact their DoD Component contract policy organizations and/or [OUSD/A&S/Defense Procurement and Acquisition Policy \(DPAP\)'s International Contracting](#) experts.

TSFD and DEI Considerations

Regardless of the type of international acquisition program being considered or implemented, DoD TSFD measures and U.S. Government export controls are required by U.S. laws and Executive Orders and cannot be ignored. These policies and procedures are designed to achieve a careful, deliberate balance between the risks of transferring controlled technology and information that provide U.S warfighters an advantage in combat against the benefits of international participation.

TSFD considerations may delay or compromise an international acquisition program if not properly planned. Preparing for TSFD considerations associated with international acquisition programs is often difficult because of failure to incorporate adequate program protection and defense exportability features in early program phases as well as other unknowns. However, PMs must work within their DoD Component and in some cases, with higher authorities, to ensure TSFD considerations are appropriately handled in international acquisition programs that fall within their area of responsibility. Any necessary disclosure authorizations must be in place in order to lawfully discuss certain types of DoD information. Failure to obtain those approvals may lead to false impressions, a possible loss of technology, and could potentially compromise a program.

Experience has shown that there are very few defense articles the United States will not sell or share with an ally at some time during the life cycle of the article. As noted above, the interim DoDI 5000.02 places greater emphasis on design and development of defense exportability features in DoD systems as part of Acquisition Strategy development and implementation. Almost all existing and future DoD programs are, or will be, engaged in international acquisition activities of some kind during the life-cycle. Therefore, defense exportability planning and incorporation of applicable program protection and other exportability features must be addressed by PMs and DoD Components throughout the acquisition process in both acquisition strategy and program protection activities. Early consideration of TSFD requirements as well as export control planning will enable international acquisition programs to achieve maximum benefit from international participation while avoiding negative impacts on cost, schedule, and performance goals or adverse effects to political military relations with allies and partner nations.

In view of its overarching importance, DAU has developed a [Defense Exportability Integration JST](#) for student and workforce use to assist the DoD acquisition workforce and other DoD/USG personnel and industry in this specialized area.

DAU IA&E Job Support Tools

In July 2016 DAU e-published the first-ever **International Acquisition and Exportability (IA&E) Job Support Tools (JSTs)** on the ICOP. These JSTs were developed in conjunction with the development of the ACQ 380 (International Acquisition Management) course. They are specifically designed to assist workforce members in planning and implementing IA&E activities at the Program Management Office

(PMO) and DoD Component International Program Office (IPO) level throughout the acquisition life-cycle.

- As mentioned above DAU's **International Acquisition and Exportability (IA&E) Assessment JST** and companion **Acquisition Strategy – International Considerations JST** focus on PMO-level IA&E planning and analysis from pre-Milestone A through Milestone C.
- Our **International Cooperative Program (ICP) JST** provides practical advice to PMOs, IPTs, and DoD Component IPO on how to identify, formulate, discuss, negotiate, and implement various types of ICP international agreements.
- Our **FMS - Systems Acquisition JST** provides practical advice on how to integrate FMS-related acquisition activities at the PMO/IPT level in concert with DoD Component IPOs and DSCA.
- Our **International Business Planning JST** addresses PMO-level Engineering and Manufacturing Development (EMD), Production and Deployment (P&D), and Operations and Support (O&S) IA&E considerations for programs with substantial international involvement.
- Our JST on **Defense Exportability Integration** is used by DAU students who are learning about best practice guidance in this area to assess and implement defense exportability solutions throughout the acquisition life-cycle.