

Defense Acquisition University (DAU) Teaching Note

Department of Defense (DoD) International Agreements Process

The DoD has had a business process in place for many years that supports the negotiation and conclusion (signing) of International Agreements (IAs). The procedures are detailed in DoD Directive (DoDD) 5530.3 of June 11, 1987, a very old directive. There are certain cases within DoD where the 5530.3 procedures are used, but for the acquisition workforce the Office of the Under Secretary of Defense (Acquisition, Technology & Logistics) (USD(AT&L)) * initiated a streamlined process in the late 1990s that relies on silence procedures to help improve the speed of the approvals. Streamlining is described as follows (Chapter 1 Supplement 6 of the Defense Acquisition Guidebook):

DoD Components are encouraged to use the OUSD(AT&L) * “streamlined agreement procedures” for all AT&L *-related IAs to comply with the more extensive IA documentation and coordination requirements described in DoDD 5530.3, “International Agreements.” [Military Departments] MILDEPS and other DoD Components using these agreement procedures should obtain authority through this process from the Director, International Cooperation, OUSD (AT&L) *, prior to initiating negotiations on or concluding such IAs. Refer to the International Cooperation in Acquisition, Technology and Logistics Handbook for further guidance on IA procedures.

This teaching note is designed to help students understand the different parts of the IA business process (pictured below) so that they are in a position to capitalize effectively on potential cooperative opportunities. It focusses on the streamlined process described above.



* As of February 1, 2018 USD(AT&L) transitions to USD(A&S) (Acquisition and Sustainment)

Getting Started

Exploratory discussions with potential cooperative partners are almost always required before beginning development of an IA. These exploratory discussions help define a potential cooperative project and its feasibility. They also collect information required for the U.S. business case, which will be reflected in the Summary Statement of Intent (SSOI), including the following types of information:

- What the project accomplishes
- Responsibilities of the parties
- Duration and schedule of the project
- Funding availability
- Organization and management structure
- Contracting considerations

If the exploratory discussions and subsequent analysis lead to a decision to proceed with an international program requiring an IA, it is a really important best practice to plan thoroughly so all the moving pieces fit together nicely. It is important to harmonize the U.S. Acquisition Strategy with those of the potential partner nations. Items such as performance trade-offs, detailed cost estimations, and realistic scheduling need to be considered in relation to the Acquisition Strategies of all the partner nations.

Develop the SSOI

The SSOI is a short, concise, document written to conform to an OSD-provided template. It has fourteen paragraphs that cover the equities of all IA reviewers, including topics such as fiscal, legal, technology transfer/disclosure, and industrial base impact. The SSOI essentially makes the business case for the project. It should tell the story of the proposed international project clearly, without the use of jargon, technical terms, or internal inconsistencies, so that a layman can understand the intentions for the project. A good, clear SSOI allows all reviewers to gain a full understanding of the project quickly, and increases the chances for rapid approval.

As mentioned above, thorough exploratory discussions provide most of the information necessary to complete the SSOI template.

Drafting the IA

The next step in the process is for the DoD Component to develop the draft IA. Guidance for agreement preparation is based on agreement type. If the IA is to fall under an existing master, framework, or umbrella MOU, the proponent will likely find a template in the existing MOU. In these cases, the IA should conform to the template. For stand-alone MOUs and Loan Agreements, the MILDEP IPOs or equivalent organizations use the International Agreement Generator (IA Generator) to develop a draft agreement.

The IA Generator is a DoD-sponsored, menu-driven, computer software system. It is a U.S.-only resource and has three main structural components:

- Text - proposed text and/or alternatives for each article/section
- Instructions - development and negotiation instructions associated with each article/section
- Guidance - relevant DoD policy guidance associated with each article/section

Once the IA has been drafted, it is an important best practice to perform an administrative review to ensure paragraphs are marked properly, references to other articles/sections are correct, any annexes are numbered consistently, etc. Simple administrative errors can often lead to lengthy discussions during internal staffing and at the negotiation table, when the goal of negotiating should be to agree on text that defines the project.

Request for Authority to Develop (RAD)

The next step in the process is to staff the SSOI and draft IA text to obtain authority to negotiate the proposed IA. This is called the RAD. RAD staffing is conducted at different levels depending on the type of IA.

For Project Agreements or Project Arrangements (PAs) and Equipment and Material Transfers (E&MTs) under master, framework, or umbrella MOUs:

- OUSD(A&S)/IC has delegated RAD approval to the MILDEPs and the Missile Defense Agency
- For these DoD Components, RAD approval is accomplished through internal component staffing. In these cases, once the Component has completed staffing, it can begin to negotiate the IA.
- For DoD Components without this delegated authority, RAD approval is provided by OUSD(A&S)/IC.

For Memorandums of Understanding (MOUs)

- All DoD Components must request RAD from OUSD(AT&L)/IC
- This is initiated by a MILDEP International Program Organization (IPO) or equivalent organization forwarding the SSOI and a draft of the IA text under a cover memo to OUSD(A&S)/IC.

For IAs that receive RAD approval from OUSD(A&S)/IC, the following information is applicable. As mentioned earlier in this teaching note, OUSD(A&S)/IC uses a RAD staffing procedure largely based on silence procedures. However, there are three offices that must provide a positive response, rather than silence, as an indication of concurrence. They are:

- OSD General Counsel
- OSD Comptroller
- OSD Security Policy

After the required coordination is conducted and any questions are resolved, OUSD(A&S)/IC approves the RAD request by forwarding an approval memo to the requesting DoD Component providing authority to negotiate the IA. The OSD review process, coordinated by OUSD(A&S)/IC, is well disciplined and transparent with frequent status updates provided to the DoD Components.

Conduct Negotiations

After receiving authority to develop, it is time to provide the draft IA text to the potential partner nations. Actual negotiations can take several forms depending on the complexity of the IA.

Negotiation of PAs and Equipment and Material Transfers (E&MTs) is normally accomplished through email or through a combination of face-to-face negotiation sessions, e-mail, and video teleconferencing or conference calls. More complex PAs and E&MTs require more intensive negotiation activities; less complex ones can be negotiated virtually with a minimum of effort to save time and money.

Negotiation of Master Research, Development, Test & Evaluation; Test and Evaluation Program; Program-specific; and Framework or Umbrella MOUs almost always involve face-to-face discussions, and frequently require multiple negotiating sessions. The MILDEP IPO or equivalent office designates a lead negotiator who is often supported by legal counsel as well as project personnel.

Negotiations conclude when the negotiators agree on the IA text. The next step is national staffing for all partner nations, which for the United States is the Request for Final Approval (RFA).

Request for Final Approval (RFA)

After negotiations have ended, the DoD Component completes the following tasks for an RFA:

- Updates the SSOI to reflect the contents of the negotiated agreement
- Conducts any required internal staffing
- Submits an RFA to USD(A&S)/IC

The RFA, at a minimum, consists of a transmittal memo, the negotiated IA text, and an updated SSOI. At times, there are other documents required in the RFA package, for example, a Project Certification if the underlying legal authority is from Section 27 of the Arms Export Control Act (AECA). The MILDEP IPOs can provide guidance on any additional documentation necessary.

OUSD(A&S)/IC typically conducts a short internal staffing, then makes a distribution of the RFA to a wide range of stakeholder offices, many of which received the RAD package at the beginning of the business process. Except for OSD General Counsel, OSD Comptroller, and OSD Security Policy, all other reviewer input is conducted using silence procedures.

After all staffing is completed, USD(A&S)/IC grants RFA by sending a memo to the requesting DoD Component.

What's Next

Once the DoD Component receives RFA, there are several more things to consider. First, before actual signature, all the participating nations should discuss and settle on the level of seniority of the individuals that sign. The level should be roughly the same in all nations. Second, sometimes foreign partners will require that the IA be concluded in both English and their language. This can be done, but advanced planning is needed for translation and certification of language conformity. DoDD 5530.3 provides details on the way to do this.

After all nations have signed the IA, the last administrative step is to comply with the Case Act. Case Act reporting involves the DoD Component providing the following to the Department of State and the OSD General Counsel within 20 days after the IA enters into force:

- Background statement
- Copy of the IA

DoDD 5530.3 provides more details on complying with the Case Act.

Execute the IA

After all the partner nations have signed the IA, the project should proceed as soon as possible. This allows all signatories to capitalize on the full duration of the IA consistent with the harmonized Acquisition Strategies.