



Foreign Military Sales (FMS) 101

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12 Sep 19



OFFICE OF DEFENSE COOPERATION, UK



FOREIGN MILITARY SALES: Authorities and Definition

What is FMS?

The Foreign Military Sales program (FMS) utilizes the DoD procurement system to support government-to-government sales of defense articles or services.



Overseen by the Department of State

- Supervises and determines which sales, leases and transfers will be made
- Reviews and approves export license requests for direct commercial sales



Executed by the Department of Defense

- Establishes military requirements and determines what is available for sale or lease
- Implements the FMS Program



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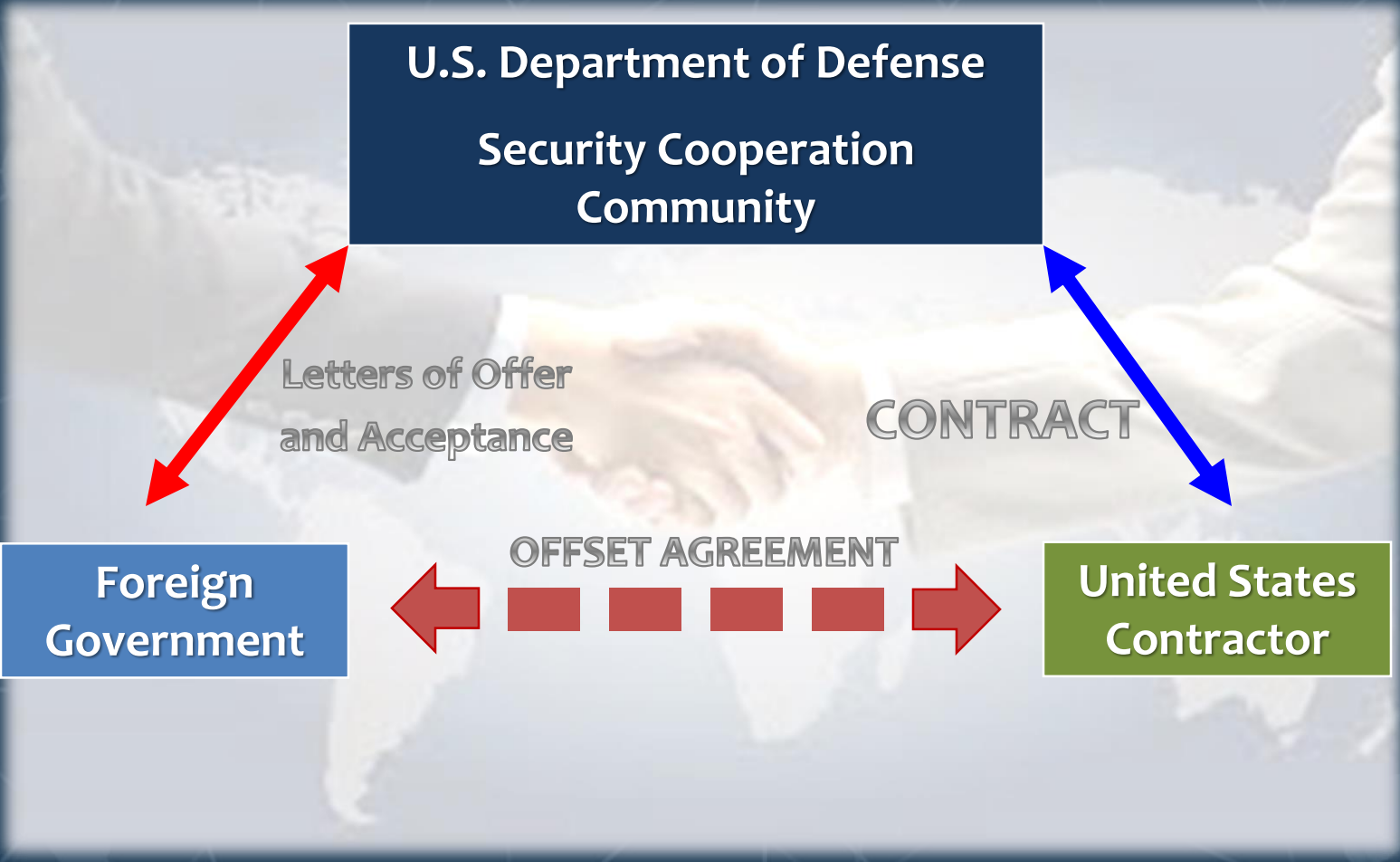
FMS Services Offered

- Defense Equipment
- Defense Services
- Defense Education and Training

- **Foreign partners may be supplied with U.S. defense articles, services, and training via:**
 - Foreign Military Sales (FMS)
 - Direct Commercial Sales (DCS)
 - Hybrid Sales (Combined FMS and DCS)
 - Lease
 - Excess Defense Articles

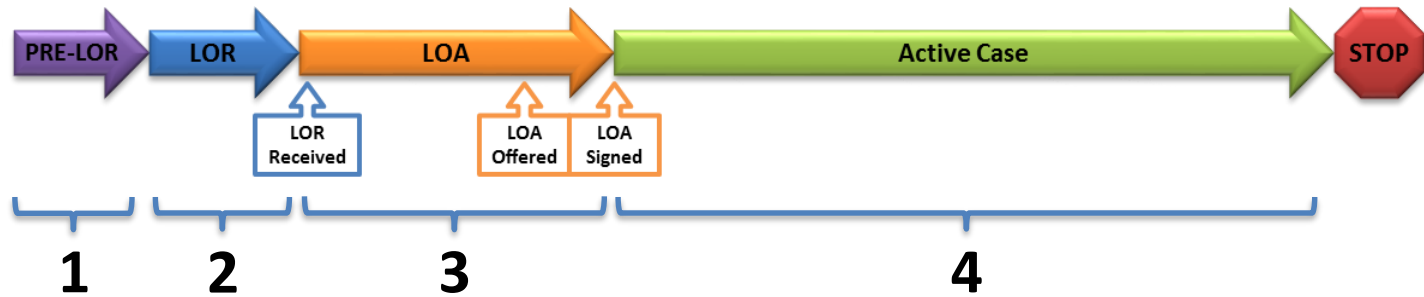


FMS Buyer/Seller Relationship





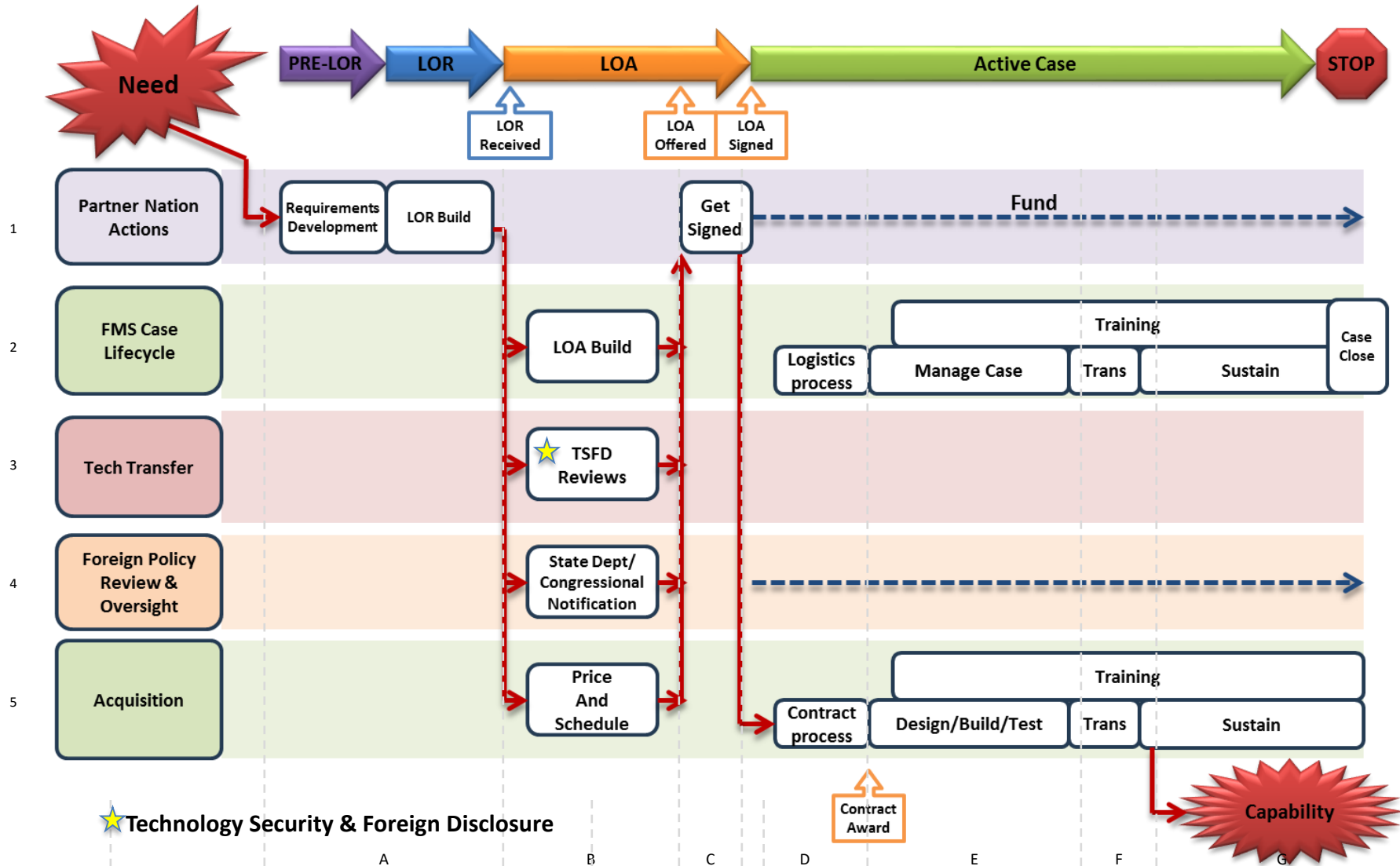
Foreign Military Sales (FMS) System



1. Partner nation develops identified **capability gaps and requirements**
2. Partner nation (with assistance from US, if required) develops a Letter of Request
3. The US develops a Letter of Offer and Acceptance (a government-to-government foreign military sales contract)
4. The case is executed, equipment or services delivered, and life-cycle support provided (if required)



Foreign Military Sales (FMS) System





Key Players Involved in Case Development/Execution



Case development depends on synchronized activities/actions:

- The partner nation (operator, requirements development team, and procurement teams)
- The Implementing Agency (e.g. US Air Force); overseen by Defense Security Cooperation Agency (DSCA); assisted by ODC London
- The technology transfer/foreign disclosure community; overseen by Office of the Under Secretary of Defense for Policy (USD (P))
- The US Government (USG) political community; Department of State (DoS) and Congress
- The USG acquisition community



Foreign Military Sales (FMS) Process

Pre-Case Development Security Assistance Management Manual (SAMM C4 and C5)

Preliminary and Definition

- Defense requirements
- Evaluation of options/sources
- Indefinite time period

Request

- Pricing and Availability (P&A) or Letter of Offer and Acceptance (LOA)
- Letter of Request (LOR)
- Country Team Assessment
- Indefinite time period

PRE LOR

LOR

Case Development SAMM C5

Offer

- LOR validation/evaluation
- LOA development
- Congressional Notification
- LOA offer
- Anticipated Offer Date (45-150 days)

Acceptance

- LOA signature
- Initial Deposit
- Offer Expiration Date (OED)
- +/- 60 days country review

LOA

Case Execution SAMM C6

Implementation

- Obligation Authority (OA)
- FMS computer systems
- 10-15 days average

Execution

- Articles, services, training
- Performance reporting and expenditures
- Longest phase

Closure

- Reconciliation
- Typically 2 years from supply/services complete

ACTIVE CASE



Partner Nation



These actions by the Partner Nation will impact the case development process:

- Requirements are poorly defined in Letter of Request (LOR)
- Partner nation changes requirements once LOR is submitted
- Partner nation requests nonstandard equipment
- Partner nation requests integration of foreign equipment into US system, or US equipment into foreign end item
- Partner nation has **insufficient funds** available to cover the estimated total case value



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SAMM C4 and C5

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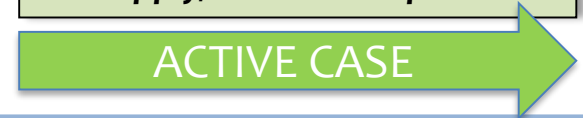
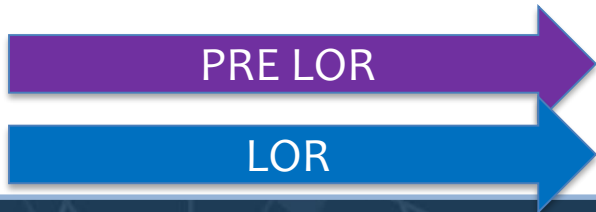
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The Implementing Agency (1)



The case development process will be delayed each time the Implementing Agency is required to:

- Address poorly defined requirements in the Letter of Request
 - Note: Pre-Letter of Offer and Acceptance (LOA) meetings must be coordinated to clarify customer requirements
- Respond to requirement changes after the LOR is submitted
 - Up to 150 days are required each time the LOA must be reworked
- Research partner nation requests for nonstandard equipment
 - Implementing Agency must first determine source and availability of nonstandard equipment



The Implementing Agency (2)



Partner nation requests integration of foreign equipment into US system, or US equipment into a foreign end item

- Implementing Agency must first determine disclosure, compatibility and integration requirements
- Potential third-party transfer agreements must be approved by the State Department (DoS)



Technology Transfer/Foreign Disclosure



- A National Disclosure Policy Committee decision may be required before the LOA can be offered
- Various DoD committee reviews may need to be coordinated by the Technology Security and Foreign Disclosure Office (TSFDO) under USD(P) before the LOA can be offered
- Any requested additions or changes to Significant Military Equipment (SME) from the partner nation after the LOA has been implemented, may require another foreign disclosure review before the change can be approved



Department of State and Congress



Congressional notification, if required, must occur when both the House and Senate are in session

- Congressional recesses can add up to another 30 days to the case development timeline



Acquisition Community



- Implementing Agencies' program offices must obtain estimated prices and delivery schedules from vendors before a contract is awarded
- Additional pre-contract meetings may be needed between the program office and partner nation to clarify requirements (definitization conference)



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PRE LOR

LOR

LOA

ACTIVE CASE



Acquisition Community



- Source selection and/or contract negotiations do not occur until after the LOA is implemented
 - **Contract award can take from 6 to 36 months after LOA implementation**
- Partner nation requirements may compete with Department of Defense (DoD) and other international partners



Issues that Delay Case Execution



- Partner nation runs out of money
 - LOA execution slows or stops until a payment schedule can be reworked; penalties may apply on existing contracts
- Partner nation changes the requirement
 - A major change in scope may require a new LOA and contract renegotiation
 - Addition or change to Significant Military Equipment (SME)/Major Defense Equipment (MDE) may require another foreign disclosure decision and Congressional re-notification
- Contractor fails to perform
 - DoD seeks another source; LOA is not cancelled, but many actions occurring after case implementation must be redone at partner nation's expense. Delivery schedules must be recalculated after new contract is awarded



Issues that would Cause the LOA to be Cancelled Prior to Completion



- Partner nation requests cancellation and pays termination costs
- Department of State suspends diplomatic relations with partner nation in response to partner nation's action which violates the Arms Export Control Act or Foreign Assistance Act; partner nation pays termination costs
- Contractor fails to perform and DoD is unable to locate another source



The Advocacy Center



- An office within the International Trade Administration, U.S. Department of Commerce
- Coordinates U.S. government interagency advocacy on behalf of U.S. exporters bidding on public-sector contracts
- Process starts with submitting Advocacy Questionnaire



ODC's Role



- Assist connection of capability gaps with industry solutions in procurement process
- Assist partner nation in scoping LOR
- Prepare Country Team Assessment
- Facilitate case-related training for partner nation (e.g. helicopter mechanics)



Bottom Line



The bottom line is:

Procurement of items for FMS is exactly the same as US military procurement for US needs.

There is no profit or loss for the US Government, and the partner nation military enjoys all the advantages (pricing, quality control, technical expertise, large/well-trained/ experienced acquisition force) and disadvantages (highly regulated processes, sometimes slow, inability to include offsets) of the US military



ODC London Points of Contact and Resources



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Defense Security Cooperation Agency: www.dsca.mil

Advocacy Center: <https://2016.export.gov/advocacy>



QUESTIONS?

