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# The First Thousand Days

## A Comparison: The LOA and DD Form 1513

by

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It has been just over three years since the United States of America Letter of Offer and Acceptance (LOA) was introduced on 1 June 1992. The new LOA replaced the United States Department of Defense Offer and Acceptance (DD Form 1513). Questions about differences in the two formats, especially the substance and applicability of the terms and conditions, occasionally arise. Even though the conversion period officially began on 1 June 1992, a purchaser may have received either the older DD Form 1513 or the new LOA depending on where the offer was in the acceptance cycle. A few DD Form 1513s were finalized and dated after 1 June 1992. And many older but still active FMS cases also employ the DD Form 1513 since no effort was made to replace them with the new LOA. Therefore, even the newest case managers must deal with both formats. The bottom line is that the purchaser is bound by the standard terms and conditions of the original document unless it was subsequently amended or modified.

What changes were made in the new LOA and how did these changes effect DoD and MILDEP country case managers? First, some of the changes were cosmetic, such as reducing the size of the document from legal size (8x14) to letter size (8 1/2x11). Second, some of the changes were administrative, such as rearranging the information and clarifying or simplifying the wording. Finally, some of the changes were substantive, such as increasing the Report of Discrepancy claim limits. The purpose of this article is to address all three areas and include any background information that might help one understand the rationale behind the changes.

Case managers within the USG and the purchaser country are exposed daily to the old DD Form 1513 and the new LOA. The standard terms and conditions as they appear on each agreement govern how the work will be performed, so it is important to know where to find a certain clause. More importantly, it is imperative that the case managers know which clauses were changed, added, expanded, or deleted.

### COSMETIC CHANGES BETWEEN THE TWO DOCUMENTS

Cosmetic changes were made for three reasons. First, between the time the original DD Form 1513 was introduced in the 1960's and the time of the new LOA, the Department of Defense had long entered the world of computers. Due to its size and layout, the older DD Form 1513 did not readily allow processing of the offer using standard computer programs or printers. Second, the first page was revised and setup as two pages to allow the purchaser to quickly see a summary of the key administrative and financial data. This forms the basis for an excellent "executive summary." On page 1 you will find the case identifier, a condensed listing of the items being purchased, the all important estimated cost and initial deposit requirement, the terms of sale, offer expiration date, authorized offer and acceptance representatives, and country-supplied transportation and billing information. Financial summaries, including the total estimated costs of the case and the quarterly payment schedule, are presented on page 2 of the LOA. Detailed logistical data begins on page 2 and is continued on additional pages as required. For further details see the Security Assistance Management Manual (SAMM) [DoD 5105.38-M, par. 70104].

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## ADMINISTRATIVE DIFFERENCES BETWEEN THE TWO DOCUMENTS

The most significant administrative change was the reorganization of the standard terms and conditions. Appendix 1, at the conclusion of this article, provides the case manager a quick cross-reference between the old DD Form 1513 and the new LOA. Other more subtle changes were made that effected the processing and tracking of the new LOA.

On the old DD Form 1513, the acceptance requirements were buried in Annex A, paragraph D.1, and required the purchaser to return three (3) copies of the DD Form 1513 to the Security Assistance Accounting Center (SAAC) and to the US Military Department. The new LOA requirement in the Signed Copy Distribution directs only one copy be returned to each agency and specifically requires that the case identifier be included with the payment to avoid delays in processing the fund transfer. Older case managers will notice that the reference to SAAC was changed to Defense Finance and Accounting Service-Denver Center, ATTN: DE/SAAC/I. In fact, the term SAAC is slowly fading from the FMS vocabulary.

The old DD Form 1513 contained some limited "Explanatory Notes" while the new LOA contains a greatly expanded "Letter of Offer and Acceptance Information." Additional references to the SAMM, type of assistance codes, offer release codes, and delivery term codes were added to the LOA Information area. Now the purchaser does not have to search around in other sources for this data. Also included in the expanded "Information To Be Entered By the Purchaser" are explanations of the Mark For Code, Freight Forwarder Code, and Procuring Agency. An expanded "financial" section was added which details the new rules for the initial deposit, use of the payment schedule, importance of the DD Form 645, and the use of bank-wire transfers to the US Treasury. One financial term and condition that disappeared completely in the process was the reference in the old DD Form 1513 Annex A, par. B.3.e (Terms of Sale-Credit Agreement). It is not reflected in the new LOA Standard Terms and Conditions.

To further aid the purchaser, a section on "Changes to the LOA" was added outlining the circumstances under which amendments and modifications would be processed. This expands upon the information in paragraph 4.1. Although item 7 on explanatory NOTES that covered the potential assessment of storage charges was deleted, the words "storage charges" were included in the new paragraph 4.3, but without mention of the 1.5 percent factor. However, storage charges are still applicable, and instructions are contained in the *Financial Management Regulation*, DoD 7000-14.R, Volume 15, paragraph 0708.

Other administrative changes include, but are not limited to the following:

(a) the deletion of the word "solely" from the next to last sentence in paragraph 1.2, since the purchaser can influence the selection of a contractor if they are able to justify a sole source;

(b) the inclusion of the word "dollar" in paragraph 1.3 to strengthen the requirement that only US funds are acceptable;

(c) the simplification in several places of the references to defense articles or services (including training) to simply defense articles or the performance of defense services (i.e., paragraph 1.4, 2.1);

(d) the deletion of the word "open" LOA in paragraph 4.2, since funds may be required to cover a closed case; and,

(e) the word "shall" was changed to "will" in many instances (i.e., paragraph 2.3, 6.1, 6.2) to be legally consistent throughout the LOA.

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## MAJOR DIFFERENCES BETWEEN THE TWO DOCUMENTS

Several clauses in the new LOA were amplified to clarify the DoD contracting process and the limits on the purchaser to access the process, as well as to highlight some political considerations, security assurances, export responsibilities, and proof of delivery documentation. An entirely new dispute resolution clause was also included in the rewrite.

In the new LOA paragraph 1.2, which expanded the old A.1., additional verbage was added to define exactly what is meant by the term inspection procedures and what the purchaser can expect. The LOA also now specifies that all sole source requests will be in writing. To avoid problems with procurement contracts, the LOA now clearly states the DoD will select the contractor on the same basis used to select contractors for USG requirements. Paragraph 1.4 includes a critical addition to enforce the concept that the LOA is established between the USG and the purchasing government, and any contracts signed to support the LOA are between the DoD and the US contractor. Simply put, if a USG contract is terminated, it does not mean that the LOA is canceled or suspended. The DoD will usually rebid the contract in accordance with the Federal Acquisition Regulation (FAR).

On a purely political note, paragraph 2.3 contains a restriction with regard to Cyprus. This clause had been required for some time and was usually found in the Supplementary Terms and Conditions attached to the old DD Form 1513.

In an atmosphere of expanded technology transfers and the protection of classified data, the wording in the new LOA paragraph 2.4 includes greater coverage of classification and security requirements. Again, these requirements may have been part of the Supplementary Terms and Conditions attached to the DD Form 1513. This is not the only area that covers the DoD concern with technology. The words "technology," "technical data rights," and "intellectual property" have been included in several paragraphs (e.g., 2.3, 2.4, 3.13 and 6.1.1).

A waiver of liability was added to the new paragraph 5.3 that clarifies the fact that the USG incurs no liability if export licenses are not granted, or if they are withdrawn before items are exported. Its effect on FMS cases is limited to exceptional cases where FMS shipments require an actual export license. One example is a "pilot pickup" by an aircraft and aircrew that are not part of the purchaser's military (SAMM, par. 80206.R).

In an effort to close the loop on accountability, paragraph 5.4 added several new provisions. In addition to other documents, the Foreign Military Sales Billing Statement (DD Form 645) can now be used as evidence of shipment and that title has passed. The Implementing Agency is still required to send all FMS shipments by traceable means (SAMM, par. 80206.P.1). Because it is so expensive and time consuming to properly adjudicate a potential discrepancy, the dollar limitation on the Standard Form 364 (Report of Discrepancy) was raised from \$100 to \$200. A figure of \$500 had been suggested as more in line with inflation, but was not included in the final version of the LOA. Additional provisions were also included to protect the purchaser if an entire shipment was not shipped and received. Finally the rewrite included a reminder that the purchaser must return all discrepant articles within 180 days (See DLAR 4140.60, *Processing Discrepancy Reports Against Foreign Military Sales Shipments*). Once again, most of these details, except the dollar limits, may be found in the Supplementary Terms and Conditions on the old DD Form 1513.

Due to the problems associated with the lengthy resolution and litigation of some older Iran FMS cases, paragraph 7 was incorporated into the new LOA. It is a completely new clause and it is not found on the DD Form 1513. The clause limits third party participation when disputes arise. Any LOA in the new format is covered by these restrictions.

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## SUMMARY

It is important for all parties to an FMS agreement to understand the significant changes in the LOA so that they can better manage the case when questions arise. A thorough check of the old DD Form 1513 Supplementary Terms and Conditions is mandatory to see if it contains wording that may now be standard. Some examples are the "Cyprus Clause" (now in paragraph 2.3) and the "Security Arrangements" (now in paragraph 2.4).

Because many provisions are based on legislation or a relatively inflexible baseline policy the new LOA format, for the most part, retained much of the language contained in the old DD Form 1513, often consolidated and stated more concisely in different paragraphs. In order to ensure that the Standard Terms and Conditions or Information were not inadvertently changed by a word processing program. SAMM, par. 70102.B, requires that they be preprinted and attached to the final LOA. This also eliminated the need to send the T&C to managers who did not need them (i.e., the copy sent to DFAS-DE/I).

Case managers will be working with both documents for years to come so it behooves them to understand the differences and similarities between the two documents. It is to be hoped that this short review will make the task a bit easier.

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**Appendix 1**  
**CROSS-REFERENCE BETWEEN NEW LOA (STANDARD TERMS AND CONDITIONS) & DD FORM 1513 (GENERAL CONDITIONS, ANNEX A)**

<u>Subject</u>	<u>New LOA</u>	<u>Annex A</u>
CONDITIONS - USG OBLIGATIONS	1	A
-Standard items without regard to make or model	1.1	A.5.a
-Furnish from stock or procurement	1.2	A.1
-Best efforts - dollar amount/availability	1.3	A.5.c
-Right to cancel or suspend LOA	1.4	A.6
-No duties of combatant nature	1.5	A.8
-No discrimination against US personnel	1.6	A.9
-Public inspection of LOA	1.7	F
CONDITIONS - GENERAL PURCHASER AGREEMENTS	2	B
-Right to cancel LOA	2.1	B.7
-Use of defense articles	2.2	B.8
--Mutual Defense Assistance Agreement	2.2.1	B.8.a
--Bilateral or regional defense treaty	2.2.2	B.8.b
--Internal security	2.2.3	B.8.c
-Not transfer title without USG consent	2.3	B.9
-Classification and security	2.4	B.9 (Note 1)
INDEMNIFICATION AND ASSUMPTION OF RISKS	3	C
-Indemnify USG	3.1	C.1
--Injury or death	3.1.1	C.1(i)
--Damage of Property	3.1.2	C.1(ii)
--Infringement; technical data	3.1.3	C.1(iii)
-Relieve contractors of risk	3.2	C.2
--Purchaser's property	3.2.1	C.2(i)
--Property of DoD	3.2.2	C.2(ii)
FINANCIAL TERMS AND CONDITIONS	4	
-Prices, total cost, estimates (availability, etc.)	4.1	A.5.b
--Cost increases (10%)	4.1.1	A.5.b(1)
--Changes in the payment schedule	4.1.2	A.5.b(2)
--Delivery Delays	4.1.3	A.5.b(3)
-Refund excess payments	4.2	A.7
-Failure to make timely payments	4.3	A.10
-Purchaser agrees:	4.4	B
--Pay total cost	4.4.1	B.1
--Pay in US dollars	4.4.2	B.2

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## **Appendix 1, Continued**

--Cash with acceptance	4.4.3	B.3.a
--Cash prior to delivery	4.4.4	B.3.b
--Dependable undertaking	4.4.5	B.3.c
--Payment on delivery	4.4.6	B.3.d
--Credit Agreements	(Note 2)	B.3.e
--Billings due and payable	4.4.7	B.3.f
--Interest on arrears	4.4.8	B.3.g
--Designate Procuring Agency/Paying Office	4.4.9	B.3.h
TRANSPORTATION AND DISCREPANCY PROVISIONS	5	A.4
-Title transfer at initial point of shipment	5.1	B.4
-Shipping instructions	5.2	B.5
-Insurance and export licenses	5.3	B.6
-Evidence of title transfer: ROD (SF364) procedures	5.4	
WARRANTIES	6	A.2
-Warranty clauses on exception basis	6.1	A.3.c
--Warrants title	6.1.1	A.2, A.3.b
--Exercise warranties	6.1.2	A.3.a
-Repair or replace defective items	6.2	
DISPUTE RESOLUTION	7	(Note 3)
-LOA subject to US Federal Procurement Law	7.1	
-Resolve any disagreements by consultations	7.2	
ACCEPTANCE	Signed Distribution Copy	D, D.1
	OED (Page 1)	D.2
	OED (Page 1)	D.3
ENCLOSURES	(Note 2)	E
EXPLANATORY NOTES	LETTER OF OFFER AND ACCEPTANCE INFORMATION (Note 4)	Bottom, ANNEX A, DD Form 1513

Note 1. Also see Annex A, Supplemental Information

Note 2: Not in the new LOA.

Note 3: Not in the old DD Form 1513.

Note 4: The EXPLANATORY NOTES on the old DD Form 1513 were expanded in the LETTER OF OFFER AND ACCEPTANCE INFORMATION area of the new format.