ENACTMENT OF SECURITY ASSISTANCE APPROPRIATION AUTHORIZATIONS FOR FISCAL YEARS 1986 - 1987

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Public Law 99-83, the "International Security Development and Cooperation Act of 1985," was signed by President Reagan on 8 August 1985. This Act provides authorized funding levels for U.S. foreign assistance programs (including security assistance) for both FY 1986 and FY 1987, and is the first such formal authorization act for this purpose since P.L. 97-113 (for FY 82-83) was enacted in 1981. Funding authorities for FY 84-85 were provided in annual "continuing appropriations resolutions." Congressional action on a companion foreign assistance appropriations bill for FY 86 was pending as this issue of The DISAM Journal went to press. A detailed analysis of the many new provisions of P.L. 99-83, and the anticipated appropriations bill, will be provided in the Winter 1985-86 issue of The DISAM Journal. This brief summary is confined to an analysis of security assistance authorization levels for FY 1986-1987.

The following lists the total program values established in P.L. 99-83, comparing them to the FY 1985 Continuing Resolution and the Administration's FY 1986 funding request. Also included are the appropriation levels reported out on 1 Aug 85 to the House of Representatives by the House Committee on Appropriations (HAC), the only formal Congressional action taken on the appropriations bill prior to the publication of this issue of the Journal. Dollars are expressed in thousands.

Programs	FY 1985 Continuing Resolution	FY 1986 Administration Request	FY 1986-87 Authorization Bill	HAC Report 1 Aug 85
Foreign Military Sales Financing Program (FMSFP)	$ 4,939,500	$ 5,655,000	$ 5,371,000	$5,071,000
Military Assistance Program (MAP)	805,100	949,350	805,100	739,648
International Military Education and Training Program (IMET)	56,221	65,650	56,221	54,490
Economic Support Fund (ESF)	3,841,000	4,024,000	3,800,000	3,651,287
Peacekeeping Operations (PKO)	44,000	37,000	37,000	34,000
TOTALS	$9,685,821	$10,731,000	$10,069,321	$9,550,425

The authorized program levels for FY86 and FY 87 represent an overall decrease for each year of $661,679,000, or 6.2 percent below the Administration's total funding request. The decreases for MAP and IMET (which were both held at the FY85 CR funding levels), are considerably greater, at 15.2 percent and 14.4 percent, respectively, of the request levels. ESF was reduced by $224M (or 5.6 percent) below the request level, and $41M below the FY85 CR authorization. The funding authorization for PKO was identical to that requested, with the $7M reduction from the FY85 CR level a result of the programmed funding termination of the Caribbean Peacekeeping Force on Grenada.

The FMSFP authorization, while also below the requested level by $284M (or 5 percent) does reflect a $431.5M (or 8.7 percent) increase above the FY85 CR. However, this increase is more than absorbed by the $525M increase in the authorizations for Israel (from $1.4B to $1.8B) and Egypt (from $1.175B to $1.3B). When these two countries' FMSFP authorizations are deleted from both the FY85 CR and the FY 86-87 authorization, there is an actual 4 percent decrease (or $93.5M) in the funding available for the remaining FMSFP recipient countries.

These decreases in funding authorizations, together with extensive Congressional earmarking (or fencing) of selected country funding for FMSFP, MAP, and ESF, will severely limit the ability of the Administration to fund adequately the non-earmarked countries (the majority). Moreover, as reflected in the even greater appropriations reductions for all security assistance programs in the report of the House Committee on Appropriations, Congress may well reduce the appropriation levels below the authorized program levels. Should this occur, it would further intensify the problem of allocating program/country funds for FY 86.

LEGISLATIVE AMENDMENTS REGARDING RECIPROCAL MILITARY TRAINING

[The following is a reprint of a message from the Defense Security Assistance Agency (DSAA-COMPT-TMD, DTG 102313ZSEP85; subject as above.]

Ref: Arms Export Control Act (AECA) and Foreign Assistance Act (FAA) of 1961, as amended.

The 99th Congress amended the AECA and FAA to allow reciprocal unit and individual professional military education exchanges with friendly countries and international organizations. This message summarizes the legislative changes and provides guidance on implementation.

The legislative amendments, with clarifying definitions, are summarized below:

a. The AECA was amended by the insertion of a new chapter (2C) and a new section (30A) titled "Exchange of Training and Related Support." The chapter empowers the President to provide training and related support to military and civilian defense personnel of a friendly foreign country or international organization. Such training and related support is specifically to be provided by a secretary of a military department and only when the recipient foreign country or international organization agrees, pursuant to an agreement or other arrangement, to provide comparable training and related support on a reciprocal basis. For this purpose the terms "agreement or other arrangement" are synonymous with the term "international agreement."

b. The FAA was amended by the addition to the IMET chapter of a new section (544) titled "Exchange Training." The new section authorizes the President to provide for attendance of foreign military personnel at professional military education (PME) institutions in the U.S. (other than service academies) without charge, if such attendance is part of an international agreement to be negotiated which provides for the exchange of students on a one-for-one, reciprocal basis each fiscal year, between the PME institutions participating in the exchange. For this purpose, PME institutions will include the U.S. Army War College and Command and General Staff College, the USAF Air War College and Air Command and Staff College, the U.S. Naval Command College and Naval Staff College, the U.S. Marine Command College and Staff College, and the National Defense University's (NDU) National War College (NWC), Industrial College of the Armed Forces, and Armed Forces Staff College.

General guidance for the implementation of legislation is as follows:

a. AECA, Chapter 2C, Sec. 30A, Exchange of Training. The following points apply:

(1) The legislative history which preceded enactment of this legislation clearly indicates that the intent was to implement unit exchanges. Therefore, this legislative provision will be used only for exchanges of units

authorized by TO&E or TDA or other unit authorizing document and will not be used for exchanges of individuals or other ad hoc units.

(2) The legislation requires that reciprocal exchanges take place within one year of one another. It further requires that if the U.S. fails to provide an exchange unit to commence to be trained within that time, after having provided training and related support for a foreign unit, the U.S. must first obtain full cost reimbursement from the foreign government for the training and related support provided.

(3) The legislation requires that a report be provided by 1 February to the Congress describing all training exchanges carried out under this legislation and the full costs incurred thereof during the preceding fiscal year. The report is to be provided to ASD (Comptroller) by 1 January of each year, with the first report due by 1 January 1987. An information copy is to be forwarded to DSAA Comptroller (ATTN: Training Management Division). Legislative authority authorizing unit exchanges may not be used until procedures have been finalized and published as requested in Part II below.

b. FAA, Chapter 5, Part II, Section 544, Exchange Training. The following points apply:

(1) The law requires that the student exchanges be on a one-for-one reciprocal basis and occur within the same U.S., repeat U.S. fiscal year. IMET, MAP and FMSCR funds may not be used to reimburse DOD for any cost incurred in exchange training, nor may charges be made against FMS cases.

(2) While the law does not currently require a report to the Congress, good management practice requires that complete records be kept within DOD. Accordingly, request a report of all exchanges under Section 544, FAA occurring during the preceding fiscal year be forwarded to DSAA (ATTN: Training Management Division) by 1 January of each year, with the first report due by 1 January 1987. An information copy is to be forwarded to ASD (Comptroller).

(3) Above legislative authority (PME exchanges) may be used as of 1 October 1985; the next change to the Security Assistance Management Manual (DOD 5105.38-M) (SAMM) will reflect this guidance.

PART II for HQDA

The U.S. Army is requested to take the lead and draft, in concert with the other military departments, separate standardized implementing regulations for each of the exchange authorities, to include uniform international agreement formats and report formats in accordance with general guidelines outlined above. The unit exchange draft is to be submitted to ASD (Comptroller) for review and coordination within OSD not later than 15 October 1985. Pricing guidance will be provided by ASD (Comptroller) to the military services as appropriate. The PME exchange draft will be submitted to DSAA for review and coordination within OSD not later than 15 October 1985.

A COMPARISON OF DIRECT COMMERCIAL SALES AND FOREIGN MILITARY SALES FOR THE ACQUISITION OF U.S. DEFENSE ARTICLES AND SERVICES

[The following is an extract of the general summary of a pamphlet, entitled as above, which has been prepared by the Defense Security Assistance Agency, and will soon be distributed throughout the security assistance community.]

GENERAL SUMMARY OF MAJOR ISSUES

Unless an item or service is available only via FMS, there are few absolutes which dictate the selection by a foreign government of either FMS or commercial channels for any given requirement. Moreover, the selection of one system for a particular acquisition does not require the exclusive use of that same system for subsequent purchases. Rather, there are many considerations involved in such acquisition decisions which are unique to the individual purchaser, as well as to the articles being purchased. The final decision on procurement channels tends to vary from country to country, and even from purchase to purchase. From the foreign purchaser's perspective, the most important of these considerations are summarized below.

PURCHASER CAPABILITY TO NEGOTIATE A DIRECT CONTRACT WHICH WILL ASSURE TIMELY DELIVERY AT A FAIR PRICE

Under the FMS system, purchases for foreign governments are made by a well-established DOD contracting network. There is no foreign purchaser involvement in contract negotiations; the purchaser's responsibility is limited to agreeing to requirements and estimated costs as they are stated in USG Letters of Offer and Acceptance (LOAs). DOD is committed, in general, to the procurement of defense articles through the FMS system under the same contractual provisions used for its own procurements. For the contracting and administrative services provided by DOD, the foreign purchaser is charged an appropriate fee in the LOA, just as commercial contractors include appropriate General and Administrative (G&A) costs in their direct commercial contracts.

It is not necessary for a purchaser to duplicate fully the DOD contracting network in order to make a wise commercial purchase. However, the greater the experience and skill level of the purchaser's contracting staff, and the greater the level of competition the purchaser can generate, the more likely the purchaser is to obtain the best possible commercial transaction to meet his objectives.

The FMS system is based on the same competitive procurement philosophy as is the DOD system, which is designed to assure maximum quantity purchases at the lowest feasible price, from either the original item manufacturer or the prime weapons system contractor. This approach minimizes the price markup, thereby reducing the contract cost to the USG. Under the FMS system, the USG, in lieu of the purchaser, assumes primary responsibility for

acquiring items at the best possible price (quality and other factors considered), and for providing the essential contract administration. Often, FMS and DOD orders are consolidated to obtain economy-of-scale buys, and therefore, significantly lower unit prices.

In addition to accepting the management responsibility and associated management costs of direct commercial contracts, the ability of the purchaser to enter into favorable and successful competitive contracts for a given program is also greatly dependent on the scope and complexity of the program; i.e., the more contracts that have to be entered into, the larger and more skilled must be the purchaser's contracting staff. At one end of the spectrum of complexity is the procurement of a complete weapon system involving a great many end items, a multiplicity of components from numerous suppliers, support equipment, technical assistance, training, etc. At the other end of the spectrum is the procurement of an individual end item requiring little or no follow-on support or services. Such variables are considered automatically in the FMS system. They may also be addressed within a direct commercial contract for a total system purchase from a prime contractor which possesses the capacity to furnish such support.

LOGISTICS AND TRAINING SUPPORT NEEDS

An important consideration in the purchase of U.S. defense articles involves the nature of the follow-on support and training which will be required from U.S. sources. If the system or items being purchased are being used by the U.S. military, and are known to require substantial logistical, technical, and training support, an FMS purchase might prove the desired form of procurement, for it would permit the purchaser to capitalize on U.S. experience and existing USG logistics inventories and training facilities. Under a Cooperative Logistics Supply Support Arrangement (CLSSA), the entire DOD inventory and contracting systems can be drawn upon in support of the purchaser's requirements; and this can be accomplished simply by the submission of requisitions for individual parts. In effect, the DOD logistics structure serves as a procurement staff for the purchaser by procuring his required individual items from the current U.S. sources.

There are some U.S. contractors who also are capable of providing full logistics support for the items which they sell. Corporate reputations depend on good performance; and where contractors have the capability of furnishing such support, the results can be expected to be as stated in their contracts.

To the extent that an item provided directly by a contractor is standard and meets USG military specifications (MILSPEC), a CLSSA can be established via the FMS system. However, DOD has had mixed and sometimes unsatisfactory experience with the use of CLSSAs to support items which have been procured through commercial channels, because such items are often nonstandard or contain nonstandard components. Direct commercial sales are encouraged by DOD when the purchaser requires an item which is not supportable by the DOD logistics system, or when the item is not in the DOD inventory.

DEGREE OF PURCHASER NEED AND DESIRE FOR THE INVOLVEMENT OF U.S. MILITARY PERSONNEL

The choice of FMS or direct commercial procurement channels by a foreign government is often conditioned by its judgement as to the degree of U.S. military advice and assistance which will be needed during the procurement planning phase. This judgement, in turn, depends primarily on the complexity of the defense article or system being purchased. Planning and purchase considerations may involve the following: a complex weapons system configuration; undetermined levels of spare parts and support equipment; operational and logistics support training requirements; selection of suppliers' advice in deployment doctrine and tactics; and a perceived need for military-to-military contact throughout and beyond the procurement period for the item. The FMS system inherently engages the military personnel of the purchasing government and U.S. military personnel in a joint problem-solution process designed to procure, deploy, and support the item involved. Whether this ongoing contact between the military services of the two countries is necessary, or even desirable, is a binational consideration which is most often conditioned by the degree of other associations between the two military establishments. Whatever level of continuing inter-military contact is maintained, it is important to recognize that the FMS process creates a government-to-government relationship in the defense field; and this is true regardless of whether or not more formal relationships (e.g., alliances) have been established.

For their part, contractor personnel can be expected to be fully familiar with the products they sell directly to foreign governments. Thus, the types of advice and assistance which are furnished through the FMS system, also can frequently be provided by various contractor personnel.

PRICE OF ITEM OR SERVICE PURCHASED

When a foreign government purchases a weapon system and associated follow-on support entirely via FMS, usually the total acquisition cost will be somewhat less than if the same package was purchased entirely from commercial sources. However, this generalization does not necessarily apply with respect to the specific purchase of a given defense article or service.

It is difficult to predict for any particular acquisition whether it would be less expensive for the customer to employ the FMS system or direct commercial channels. This is especially true in those cases where the items/systems and related services to be purchased are not fully equivalent. The likelihood of price differences between FMS and commercial procurements depends on such significant variables as the specific item/system being purchased, the risks which must be undertaken by the contractor (e.g., late delivery penalty charges, warranty maintenance, etc.), and the presence of commercial competition. For a weapons system purchase involving a multitude of manufacturers [i.e., government furnished equipment (GFE) manufacturers], the FMS system provides for procurements directly from as many original manufacturers as possible, which minimizes the purchase price. If a country's procurement staff is sufficiently large and skilled, a comparable procurement approach can be duplicated in commercial purchases. However, such purchases often are based on the procurement of all system items and components from a single prime contractor. Since the prime contractor must procure various items from

subcontractors, this results in prime contractor markup costs which are passed on to the purchaser, thereby possibly increasing the total cost above that which might accompany a similar FMS acquisition.

Direct commercial purchases often can be made at prices below those of FMS when similar versions of the purchased items are produced by two or more manufacturers. This is particularly true when both U.S. and non-U.S. suppliers are in competition for the sale and are proposing items which are competitive but not identical. Items sold under intense competitive circumstances occasionally may be obtained at fixed price quotes below cost/profit margins allowable under DOD contracting regulations. Price advantages under direct commercial sales also may be possible during periods of rapid inflation in the U.S., especially if the contractor has the ability to make quick deliveries from off-the-shelf inventories or rapid new production. Under this circumstance, direct commercial sales may keep total costs at an amount lower than is possible under the DOD contracting system.

As a further cost consideration, the FMS system provides for an estimated price, with estimated payment schedules. The final price of an FMS item or service generally will not be known until after it is delivered. The final price is determined by actual USG contract cost and other management costs which are required to be charged under the provisions of U.S. laws and regulations. Although the final FMS price may exceed the estimated price, this would be an exception, for most final prices fall below the original estimates. Commercial prices, on the other hand, typically provide a fixed price, with fixed payment schedules, thereby enabling the purchaser to know the final price at the time of contract signature.

PROCUREMENT LEAD TIME OF ITEM PURCHASED

Advance planning is the key to assuring that items can be delivered from production at the time they are needed by the purchaser. The purchasing government must first review the threat to its security and then carefully determine the military capability it must develop to meet the threat. Such determination must be made both in terms of materiel requirements and the time when they are needed. Early efforts should be made to obtain procurement planning data from either FMS or commercial sources. This will permit firm decisions to be made, with appropriate consideration for procurement lead times. In sum, timely planning is crucial in order to obtain the required military capability when it is needed.

Generally speaking, defense articles which are in production can be procured more quickly via commercial channels than through the FMS system. The FMS acquisition process involves the development, review, and acceptance of the LOA, plus the assembling of requirements for economic/consolidated purchasing cycles, as well as contract negotiations, and production lead times preceding item availability; the commercial system, however, involves only the latter two time requirements. Although LOA acceptance can be delayed by purchaser requests for amendments or extension of the LOA expiration date, similar purchaser requests may also occur for commercial contracts. In general, industry prepares its proposal more quickly than the USG prepares and processes LOAs.

It is also quite possible that governments with a well-developed purchasing capability can negotiate competitive commercial sales contracts more quickly than DOD. The more detailed the competitive contract negotiation process, the longer the purchaser must wait for the product, unless the contractor proceeds at risk, i.e., produces items in anticipation of future contracts. Such an inventory of at-risk-produced items might be readily available through commercial contracts, but would not be available to DOD except in cases of national emergency.

As a further consideration, protracted commercial negotiations are often required to achieve an agreed upon price. The length of the contract negotiations, however, is independent of the time for actual production and delivery of the equipment. In both FMS and direct commercial sales, the delivery time clock starts when an LOA or commercial contract is signed. Prior extensive planning will minimize delivery time, regardless of which system is used.

It is important to understand, however, that once the delivery period in a commercial contract has been established, it seldom can be changed. In cases of emergency for the purchaser, and assuming the materiel is available in DOD inventories, it may be possible for the FMS purchaser to achieve faster delivery through shipment from DOD stocks or through the diversion of items that are under production for DOD procurements. This is true because DOD can subsequently replenish its inventory with the items that are being procured for the purchaser. The possibility of such diversions or withdrawals from DOD stocks in bona fide emergencies should be weighed carefully by a purchasing government before a choice is made between commercial or FMS procurement.

FLEXIBILITY IN CONTRACTING

Governments with extensive business ties to the West, and which are equipped to undertake direct commercial contracts, may determine that the terms of sale and greater flexibility offered by direct commercial contracts provide benefits to their weapons system acquisition requirements beyond those available through FMS. For example, arrangements involving coproduction in the purchaser's country, as well as flexible offset terms (whereby the contractor agrees to make offsetting purchases from the purchasing country), may be negotiated more readily in direct contracts than under FMS. However, few U.S. firms can enter into licensed production or coproduction agreements without some level of USG involvement. It is true that the USG will not finance or guarantee offset agreements, and thus the contractor must assume full responsibility for negotiating and fulfilling all offset obligations. Nevertheless, there have been many successful coproduction and commercial offset programs conducted for sales under FMS procedures.

As noted previously, there are other areas in which commercial sales may provide greater flexibility for the purchaser than does FMS. These instances normally include cases which require special equipment configurations tailored to the purchaser's particular needs, and special warranty provisions. Nevertheless, both the FMS and direct commercial sales systems can each provide a mix of materials, workmanship, and performance warranties to fit the customer's needs and financial capabilities. Under FMS procedures, the USG will act as the negotiating intermediary when the purchasing government wants something beyond the DOD standard materials, workmanship, and design warranties which are provided to the U.S. military services.