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UNDER SECRETARY OF DEFENSE

1 100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1 100

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MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
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SUSTAINMENT
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SECURITY
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DIRECTOR OF COST ASSESSMENT AND PROGRAM
EVALUATION
CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF
DEFENSE
ASSISTANT SECRETARY OF DEFENSE FOR SPECIAL
OPERATIONS AND LOW INTENSITY CONFLICT
DIRECTOR OF ADMINISTRATION AND MANAGEMENT
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Pricing of Defense Articles Sold via Foreign Military Sales from Stock (FPM 24-01)

References: (a) United States Arms Export Control Act, as amended, June 30, 1976
(b) Title 10, United States Code, Section 101(e)(4)
(c) Department of Defense Financial Management Regulation, Volume 15,
Chapter 3, September 2022, and Volume 3, Chapter 15, February 2022
(d) Title 31, United States Code, Section 3302(b)
(e) Defense Security Cooperation Agency, Security Assistance Management
Manual, June 14, 2023

This memo provides guidance for determining the pricing of defense articles sold to eligible foreign countries and international organizations from Department of Defense (DoD) stock under Section 21 of the Arms Export Control Act (AECA), as amended (Section 21). Specifically, this memo provides guidance on whether to categorize a foreign military sale (FMS) under Section 21 as one with intent to replace or not to replace the article sold and clarifies how to price the sale following this categorization. This memo does not address potential charges included in FMS cases in accordance with the law and DoD policy, including charges detailed in Section 21(e)(1).

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Section 21 provides, in relevant part, that:

(a)(1) The President may sell defense articles and defense services from the stocks of the Department of Defense and the Coast Guard to any eligible country or international organization if such country or international organization agrees to pay in United States dollars—

(A) in the case of a defense article not intended to be replaced at the time such agreement is entered into, not less than the actual value thereof;

(B) in the case of a defense article intended to be replaced at the time such agreement is entered into, the estimated cost of replacement of such article, including the contract or production costs less any depreciation in the value of such article[.]

Therefore, to determine proper pricing of a defense article to be sold under Section 21, the U.S. Military Department or Service or Defense Agency providing the defense article (Implementing Agency or IA) will follow the below guidance:

1. Sale Without Intent to Replace the Defense Article

If, at the time an agreement for sale of defense article under Section 21 was entered into, the IA does not intend to replace the defense article being sold, then the price charged to the purchaser will be the actual value of the defense article being sold, which is DoD's acquisition cost of the item being sold, less any depreciation.

The proceeds from sales of defense articles sold without intent to replace that are paid with national funds of the FMS purchaser must be deposited into the Special Defense Acquisition Fund, consistent with Section 51 of the AECA and guidance in the DoD Financial Management Regulation (FMR) (see Volume 3, Chapter 15, subparagraph 3.5.6). The proceeds from sales of defense articles sold without intent to replace that consist of U.S. grant assistance, including funds for Building Partner Capacity programs and activities, must be deposited into the U.S. Treasury as miscellaneous receipts, per 31 U.S.C. § 3302(b).

2. Sale With Intent to Replace the Defense Article

If, at the time an agreement for sale of a defense article under Section 21 is entered into, the IA intends to replace the defense article being sold with any defense article to address a loss of capability or readiness from such sale, then the amount charged to the purchaser for the cost of replacement article must be one of the below:

(a) The estimated amount to replace the article sold with the identical type, model, and series of defense article, less any depreciation of the article sold; OR

(b) When replacement with an article described in subparagraph (a) will not meet IA requirements, the estimated amount necessary to replace the article sold with a newer model, modified version, or variant that serves as a functional equivalent to the defense article that is being sold, less any depreciation of the article sold; OR

- (c) When no replacement article described in either subparagraph above is obtainable, the amount equal to the last acquisition cost of the article sold, less any depreciation of such article.

The proceeds of defense articles sold with intent to replace must be deposited into the current procurement account necessary to facilitate the IA's replacement of the article (see DoD FMR Volume 15, Chapter 3, subparagraph 9.2).

For the purposes of this guidance, a newer model, modified version, or variant of a defense article sold is that article's "functional equivalent" if it allows the IA to meet the same operational objectives as the article sold under similar constraints or limitations (e.g., AIM-9M replaced with AIM-9X). When the desired replacement article is designed to accomplish a particular operational objective in an advanced or fundamentally different way (e.g., a guided missile vs. an unguided missile), or to accomplish distinct operational objectives beyond those made possible by the article sold (e.g., aircraft capable of vertical take-off and landing vs. horizontal only), the desired article will not be considered a functional equivalent. In cases where IAs intend to acquire such an article as a replacement for an article sold under Section 21, the amount charged to the purchaser must still comply with the pricing parameters detailed in subparagraphs (a), (b), and (c) above.

Some improvements to an IA's stock may result from FMS priced in accordance with this guidance. However, FMS under Section 21 must not be used as a tool to upgrade an IA's stock at the expense of an FMS purchaser and in a manner that takes undue advantage of such purchaser. When replacement sales under Section 21 may result in a price to the purchaser that is substantially higher than the actual value of the article sold, IAs and leaders administering FMS will ensure that the purchaser is fully aware of this cost-value differential and clearly desires to proceed with a transaction despite such differential prior to entering into any binding FMS agreement (e.g., a Letter of Offer and Acceptance). In such cases, FMS purchasers should understand that the price reflects the requirement for the U.S. Government to minimize readiness impacts to the DoD when executing the FMS program, and that the purchaser may realize greater value by choosing to forego an FMS purchase from DoD stock and seeking to obtain the desired articles through other means.

3. Munitions

Munitions that are serviceable retain their full value and should not be depreciated in accordance with standard depreciation timetables. For the purposes of this guidance, "munitions" has the meaning established in 10 U.S.C. 101(e)(4). Notwithstanding this definition, provisions in Defense Security Cooperation Agency (DSCA) Security Assistance Management Manual (SAMM) that restrict sales of specific categories of munitions under the FMS program (e.g., section C4.5) remain applicable.

This guidance is effective upon publication and will be used in determining the prices of defense articles to fulfill Letters of Request from FMS purchasers submitted to DoD on or after the date of this guidance's publication. The guidance in this memo applies notwithstanding any provision to the contrary in current DoD policy. DSCA will ensure that the guidance in this memo is incorporated as soon as possible into the SAMM, which may include additional

implementing guidance as necessary to ensure effective execution by IAs. Similarly, the Office of the Under Secretary of Defense (Comptroller) will ensure the financial management components of this guidance are appropriately reflected in the applicable sections of the DoD FMR. The Services are responsible for implementing internal controls that ensure proper categorization and pricing in accordance with this guidance.



Michael McCord