



DEFENSE SECURITY COOPERATION AGENCY

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MEMORANDUM FOR THE DEPUTY UNDER SECRETARY OF THE AIR FORCE FOR
INTERNATIONAL AFFAIRS
DEPUTY ASSISTANT SECRETARY OF THE ARMY FOR
DEFENSE EXPORTS AND COOPERATION
DEPUTY ASSISTANT SECRETARY OF THE NAVY FOR
INTERNATIONAL PROGRAMS
DIRECTOR, DEFENSE CONTRACT MANAGEMENT
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DIRECTOR FOR SECURITY ASSISTANCE, DEFENSE
FINANCE AND ACCOUNTING SERVICE –
INDIANAPOLIS OPERATIONS
DIRECTOR, DEFENSE INFORMATION SYSTEMS AGENCY
DIRECTOR, DEFENSE LOGISTICS AGENCY
DIRECTOR, DEFENSE LOGISTICS INFORMATION
SERVICE
DIRECTOR, DEFENSE REUTILIZATION AND MARKETING
SERVICE
DIRECTOR, DEFENSE THREAT REDUCTION AGENCY
DIRECTOR, NATIONAL GEOSPATIAL- INTELLIGENCE
AGENCY
DEPUTY DIRECTOR FOR INFORMATION ASSURANCE,
NATIONAL SECURITY AGENCY

SUBJECT: Assignment of Code “H2” for Fiscal Year (FY) 2011 Section 1206 Global Train and Equip Programs, DSCA Policy 10-54, [SAMM E-Change 169]

REFERENCE: DSCA Memorandum, dated December 23, 2009, Subject: Guidance for Development of FY10 Section 1206 Programs
DSCA Memorandum, dated January 8, 2010, Subject: Assignment of Code "G7" for Fiscal Year (FY) 2010 Section 1206 Global Train and Equip Programs
DSCA Memorandum, dated June 4, 2010: Amendment to the Guidance for Development of FY 2010 Section 1206 Programs

The referenced memoranda contain procedural guidance which is to be applied in preparation of documents pertaining to the FY2011 Section 1206 program. This policy memorandum augments the referenced guidance regarding preparation of FY2011 Section 1206 Letters of Offer and Acceptance (LOAs). Effective immediately, SAMM Table C4.T2., Country and International Organization Codes and FMS Eligibility, is updated to add code “H2” to track funds provided for FY2011 Section 1206 programs, under the Continuing Appropriations



Act (CAA) 2011, P.L. 111-242. These funds will remain available for obligation until December 3, 2010.

Once the CAA expires and the FY11 National Defense Appropriations Act is issued, this memorandum, to include the instructions for preparing “H2” cases and LOA notes, will be revised to cite the appropriate public law. All cases in any phase of the LOA process, development, writing, or review, will need to be restated and all implemented cases will need to be Modified prior to case closure to replace references to CAA P.L. 111-242 with the full year appropriations public law.

As a matter of policy, all Pseudo LOA documents using the “H2” code should be expended, as well as fully reconciled and closed, on or before July 31, 2016.

The Defense Security Cooperation Agency must authorize and will assign use of this code for Pseudo LOA documents. The following information applies:

Organization	FMS Code	Combatant Command I	Regional Grouping II	FMS/ AECA Eligible III	Accel. Case Closure Eligible
National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163), as amended, and Continuing Appropriations Act, 2011 (Public Law 111-242) for Section 1206 programs	H2	NR	NR	AECA Only	N/A

This change will be included in the automated version of the SAMM found on the DSCA Web Page as SAMM E-Change 169.

Attached are specific LOA notes and instructions for Section 1206 Programs funded with appropriations available to the Department of Defense for obligation in FY2011.

If you have any questions concerning this guidance, please contact Ms. Marie Kokotajlo, DSCA-STR/POL, marie.kokotajlo@dscamail, (703) 604-1107.



Scott Schless
Principal Director
Strategy

Attachment:
As stated

Instructions for Preparing Pseudo Letters of Offer and Acceptance (LOAs)
Section 1206 Programs (P.L. 109-163, as amended, and CAA P.L. 111-242)

Contracts to carry out a Pseudo LOA may not rely on Title 10 United States Code (U.S.C.) Section 2304 (c) (4), implemented by the Federal Acquisition Regulation (FAR) 6.302-4, International Agreement (directed source), as authority to award using other than full and open competition. Any sole source purchases must be justified and approved in accordance with other statutory authority found in Title 10 U.S.C. using procedures applicable to United States Government appropriated-funded purchases.

Instructions for Preparing P.L. 109-163, as amended/CAA P.L. 111-242 Pseudo LOAs
1. Case Identifier. DSCA (Strategy Directorate) will assign a case identifier composed of the program code (e.g., “H2” for Section 1206 Programs), the Implementing Agency code of the DoD Component providing the support, and a three-letter activity designator. Implementing Agencies have identified unique activity designators to meet their requirements, identified in SAMM Figure C5.F5.
2. Nickname Field. Insert the country/organization receiving the support, the Pseudo case authority, and then the text “(Non-FMS)” (e.g. “Bandaria, Sec 1206 PL109-163, as amd/PL111-242 (Non-FMS)”).
3. Purchaser’s Reference Field. Include the following statement below in the Purchaser’s Reference Field of the Customer Request: “Based on funds provided and the written request from [insert Program Originator’s name (e.g., Department of State, Combatant Commands, etc.)] to the Defense Security Cooperation Agency, dated [insert date of the written request]. The legal authority is Section 1206, P.L. 109-163, as amended, and CAA P.L. 111-242. See Note [insert LOA note number for Authority for Sale note] for additional information.”
4. Terms of Sale Field. The Term of Sale for Section 1206 Program Pseudo LOAs is Cash with Acceptance, P.L. 109-163, as amended, and CAA P.L. 111-242.
5. Authority Field. Insert “1206PL109-163 as amd/PL111-242,” (in DSAMS only).
6. Authority Fiscal Year. Insert “FY 2011” (in DSAMS only).
7. S1 Description Field. Insert the country code of the benefitting country (or program code, if more than one country is benefitting) followed by a dash and then a short description of the articles and services being provided. (This field allows no more than 45 characters.)
8. Purchaser Signature Field (Customer Signatory Name on Distribution Tab of Case Detail). Insert the authority and the statement that no purchaser signature is required (i.e., “P.L. 109-163, as amended/CAA P.L. 111-242 (Non-FMS - No Purchaser Signature Required)”).
9. Purchaser Mailing Address. Insert “Department of Defense”
10. MASL. Use valid existing MASLs for items being transferred or contact DSCA to approve new MASLs, if required.
11. Delivery Term Code. Use the Delivery Term Code (DTC) for Defense Transportation System that will provide shipment all the way into recipient country. This is generally accomplished through DTC 7 or, in limited cases, DTC 9.
12. Offer Expiration Date. The Offer Expiration Date on the LOA should be no later than the last date the funds are required to ensure they will be obligated prior to expiring.
13. Benefitting Country. Various. Specify the benefitting country for each line.

Notes for P.L. 109-163, as amended/CAA P.L. 111-242 Pseudo LOAs

Note Name	Note Usage	Note Text
<p>Authority for Sale – Section 1206 of P.L. 109-163, as amended, and CAA P.L. 111-242 Programs</p>	<p>Mandatory for all programs under Section 1206 of P.L. 109-163, as amended, and CAA P.L. 111-242 Pseudo LOAs for FY2011.</p>	<p>“This sale is made under the authority of Section 1206 of P.L. 109-163, as amended, CAA P.L. 111-242 and the United States Arms Export Control Act (AECA). Any reference in this Letter of Offer and Acceptance to the United States AECA, to defense articles, and to defense services shall be construed instead to be a reference to P.L. 109-163, as amended, CAA P.L. 111-242 and the AECA. Any reference in this LOA to ‘purchaser’ shall be construed as a reference to the Department of Defense.”</p>
<p>Case Closure – Section 1206 of P.L. 109-163, as amended, and CAA P.L. 111-242 Programs</p>	<p>Mandatory for all programs under Section 1206 of P.L. 109-163, as amended, and CAA P.L. 111-242 Pseudo LOAs for FY2011.</p>	<p>“This case must be fully reconciled and closed by July 31, 2016.”</p>
<p>Funds Expiration, Purpose, Availability and Amount – Section 1206 of P.L. 109-163, as amended, and CAA P.L. 111-242 Programs</p>	<p>Mandatory for all programs under Section 1206 of P.L. 109-163, as amended, and CAA P.L. 111-242 Pseudo LOAs for FY2011.</p>	<p>“The funds financing this Pseudo Letter of Offer and Acceptance (LOA) are expiring funds and are subject to all the requirements and restrictions under the heading of Section 1206 of P.L. 109-163, as amended, and CAA P.L. 111-242. The funds provided are in support of authority to build the capacity of foreign military forces and carry the same time, purpose, and availability restrictions associated with fund source 9710100, DoD Operations and Maintenance (O&M) or other funds that may be available for use in FY2011.</p> <ol style="list-style-type: none"> a. Failure to obligate FY2011 O&M funds during the period of availability ending on December 3, 2010 will render them unavailable for new obligations. b. All funds must be expended on or before July 31, 2016. c. Total funds available for expenditure against this Pseudo LOA are limited to the value of [insert dollar value]. d. Amendments or Modifications to this Pseudo LOA are only authorized with DSCA written approval.”

<p>Nonrecurring Costs – USG Appropriation</p>	<p>Mandatory for LOAs when an NC charge has been established, but the case is financed by a USG appropriation.</p> <p>Mandatory for Amendments or Modifications when the case is financed by a USG appropriation and (1) lines items are added and the NC charge applies to the new lines; or (2) quantities are increased on line items for which NC charges have been established.</p> <p>See Chapter 9, C9.4.5.</p>	<p>“Nonrecurring Costs (NC) have been established for line item(s) [insert line item numbers] of this case. These charges are not included on this case because the case is financed with a USG appropriation.”</p>
<p>Title and Custody Transfer - Section 1206 of P.L. 109-163, as amended, and CAA P.L. 111-242 Programs</p>	<p>Mandatory for all programs under Section 1206 of P.L. 109-163, as amended, and CAA P.L. 111-242</p>	<p>“The U.S. Government will retain title to and custody of the defense articles to be transferred under the authority of Section 1206 of P.L. 109-163, as amended, and CAA P.L. 111-242 (hereinafter "program materiel") until delivery/receipt by the recipient country. A designated U.S. Government representative will confirm and document delivery/receipt of the program materiel to an authorized recipient country representative or agent. The U.S. Government representative will keep documentation showing when, where, and to whom delivery was made and will provide a copy of this documentation to the Defense Security Cooperation Agency 1206 Program Office and the [insert U.S Army Security Assistance Command, Navy International Programs Office, or Deputy Under Secretary of the Air Force/International Affairs].”</p>