



United States of America
Letter of Offer and Acceptance (LOA)
AT-P-SCM

Based on Australian Government Letter of Request LOR 3084-21/OPS2 of 18 May 2021.

Pursuant to the Arms Export Control Act, the Government of the United States (USG) offers to sell to the Commonwealth of Australia Office of the Minister Counsellor International Defence Materiel 1145 17th St, NW, Washington, DC 20036-4707, the defense articles or defense services (which may include defense design and construction services) collectively referred to as "items," set forth herein, subject to the provisions, terms, and conditions in this LOA.

This LOA provides for EA-18G (A46-311) aircraft (continued on page 2)

Estimated Cost: \$105,514,561

Initial Deposit: \$1,145,120

Terms of Sale:

Cash Prior to Delivery

Dependable Undertaking

Congressional Notification: 21-58

7 March 2022 per NIPO EMAIL 1MAR22

This offer expires on ~~30 December 2021~~ **XXXXXXXXXX**. Unless a request for extension is made by the Purchaser and granted by the USG, the offer will terminate on the expiration date.

This LOA consists of page 1 through page 23.

The undersigned are authorized representatives of their Governments and hereby offer and accept, respectively, this LOA:

<small>s47F</small>	<small>Digitally signed by s47F Date: 2021.12.01 18:59:44 -05'00'</small>	16 Nov 2021	<small>s47E(d)</small>	<small>Digitally signed by s47E(d) Date: 2022.03.01 16:04:17 -05'00'</small>	01 Mar 2022
U.S. Signature		Date	Purchaser Signature		Date
<small>s47F</small>			<small>s47E(d)</small>		
Director, INDOPACOM Division			Director Foreign Military Sales		
Typed Name and Title			Typed Name and Title		
Navy International Programs Office			Commonwealth of Australia		
Implementing Agency			Agency		

DSCA Reviewed/Approved 23 Nov 2021
DSCA Date

Information to be provided by the Purchaser:
Mark For Code Y, Freight Forwarder Code 2, Purchaser Procuring Agency Code D, Name
and Address of the Purchaser's Paying Office: Embassy of Australia
1145 17th Street NW
Suite GP410
Washington DC 20036

Case description continued: replacement. (EA-18G GROWLER REPLACEMENT OPTION B)

Items to be Supplied (costs and months for delivery are estimates):

(1) Itm Nbr	(2) Description/Condition	(3) Qty, Unit of Issue	(4) Costs (a) Unit	(b) Total	(5) SC/MOS/ TA	(6) Ofr Rel Cde	(7) Del Trm Cde
001	A1F 15000000EA18G (Y)(M)(R)(VIII) ADVANCED ELECTRONIC ATTACK AEA-18G AIRCRAFT A (Note(s) 1)	1 EA	\$71,028,692.00	\$71,028,692	S(28-30) TA3	A/Z	2/4/5/8
002	R9A 079100ENG SERV (N)(N)(R)(XXI) ENGINEERING SERVICES IN SUPPORT OF HARDWARE, SOFTWARE & CONTRACTUAL MODIFICATIONS A (Note(s) 2)	XX		\$17,802,264	X(-) TA4 Jan 2022 - Dec 2024	A/Z	4/5
003	L1C 010300A1RTRAN (N)(N)(R)(XXI) AIR TRANS, ACCESSORIAL ONLY A (Note(s) 3)	XX		\$1,556,897	X(1-42) TA4	A	4
004	L9B 0192D0DSTAGNG (N)(N)(R)(XXI) STAGING/CONSOLIDATION AT DOD ACTIVITY IN CONUS, AGGREGATION, PREPOSITIONING, STORAGE, CONTROL OF INVENTORY & CONSOLIDATION OF INCOMING ARTICLES INTO SINGLE SHIPMENT, AT REQUEST OF CUSTOMER A (Note(s) 4)	XX		\$1,002,750	X(1-42) TA4	A	4
005	L1O 010000TRNSPTN (N)(N)(R)(XXI) TRANSPORTATION COSTS A (Note(s) 5)	XX		\$50,275	P(1-42) TA5	A/Z	2/4/5/8
006	M1E 0205000TTECHA (N)(N)(R)(XXI) OTHER TECHNICAL ASSISTANCE A (Note(s) 6)	XX		\$2,262,188	X(-) TA4 Jan 2022 - Dec 2025	A	4

(1) Itm Nbr	(2) Description/Condition	(3) Qty, Unit of Issue	(4) Costs (a) Unit	(5) SC/MOS/ TA (b) Total	(6) Ofr Rel Cde	(7) Del Trm Cde
007 A	M1G020500ENGTECA (N)(N)(R)(XXI) ENGINEERING TECHNICAL ASSISTANCE (Note(s) 7)	XX		\$1,750,688 X(-) TA4 Jan 2022 - Jun 2025	A	4
008 A	M1R02070000L0GTA (N)(N)(R)(-) LOGISTICS TECHNICAL ASSISTANCE (Note(s) 8)	XX		\$1,783,538 X(-) TA4 Jan 2022 - Jun 2025	A	4
009 A	R9A FL1GHTTESTSVC (N)(N)(R)(VIII) FLIGHT TEST SVCS (Note(s) 9)	XX		\$5,005,500 X(1-42) TA4	A/Z	4/5

Estimated Cost Summary:

(8) Net Estimated Cost	\$102,242,792
(9) Packing, Crating, and Handling	0
(10) Administrative Charge	3,271,769
(11) Transportation	0
(12) Other	0
(13) Total Estimated Cost	\$105,514,561

To assist in fiscal planning, the USG provides the following anticipated costs of this LOA:

ESTIMATED PAYMENT SCHEDULE

<u>Payment Date</u>	<u>Quarterly</u>	<u>Cumulative</u>
Initial Deposit	\$1,145,120	\$1,145,120
15 Jun 2022	\$5,326,780	\$6,471,900
15 Sep 2022	\$8,516,564	\$14,988,464
15 Dec 2022	\$12,821,497	\$27,809,961
15 Mar 2023	\$16,618,997	\$44,428,958
15 Jun 2023	\$18,481,782	\$62,910,740

<u>Payment Date</u>	<u>Quarterly</u>	<u>Cumulative</u>
15 Sep 2023	\$16,869,462	\$79,780,202
15 Dec 2023	\$12,126,412	\$91,906,614
15 Mar 2024	\$7,373,719	\$99,280,333
15 Jun 2024	\$2,929,887	\$102,210,220
15 Sep 2024	\$1,870,531	\$104,080,751
15 Dec 2024	\$794,262	\$104,875,013
15 Mar 2025	\$491,001	\$105,366,014
15 Jun 2025	\$93,441	\$105,459,455
15 Sep 2025	\$55,106	\$105,514,561

The above stated Estimated Payment Schedule represents the Department of Defense's (DoD's) best estimate of its cash requirements to provide the articles and/or services identified on this Letter of Offer and Acceptance (LOA) document. As such, these values are incorporated into the quarterly Foreign Military Sales Billing Statement, DD Form 645. However, to more accurately reflect the DoD's ongoing cash requirements for your active LOAs, the Purchaser has entered into a Special Billing Arrangement that authorizes DSCA to issue a Special Bill Letter. This Special Bill Letter more accurately reflects the most current calculations of DoD's cash requirements for the Purchaser's FMS program. The amount due as stated on the periodic Special Bill Letter supersedes the Amount Due stated on the DD Form 645 and is the amount the Purchaser is obligated to pay. The amount due as stated on the Special Bill Letter is an official claim of the United States Government and is incorporated into this LOA for purposes of enforcement and claims.

Explanation for acronyms and codes, and financial information, may be found in the "Letter of Offer and Acceptance Information."

Signed Copy Distribution:

1. Upon acceptance, the Purchaser should return one signed copy of this LOA to Defense Finance and Accounting Service - Indianapolis ATTN: Security Assistance Accounting, DFAS-JAX/IN 8899 E. 56th Street Indianapolis, IN 46249-0230. Simultaneously, wire transfer of the initial deposit or amount due with acceptance of this LOA document (if required) should be made to ABA #021030004, U.S.Treasury NYC, Agency Location Code: 00003801, Beneficiary DFAS-JAX/IN Agency, showing "AT-P-SCM, payment from Australia"; or a check for the initial deposit, made payable to the US Treasury, mailed to Defense Finance and Accounting Services, ATTN: Disbursing Operations-FMS Processing Col 135D, 8899 E. 56th Street, Indianapolis, IN 46249, showing "AT-P-SCM, payment

from Australia". Wire transfer is preferred.

2. One signed copy should be returned to Department of the Navy, Navy International Programs Office, 1250 10th Street, SE Bldg 200, Suite 2000, Washington, DC 20374-5165.

Note 1. ADVANCED ELECTRONIC ATTACK AEA-18G AIRCRAFT.

Line 001 provides for one (1) United States Navy (USN) EA-18G Growler to be converted to a Royal Australian Air Force (RAAF) EA-18G configuration.

Individual aircraft parts and components will remain with the EA-18G Growler to the greatest extent possible. USN Government Furnished Equipment (GFE) not included as part of this sale are as follows:

1. Airborne Electronic Attack (AEA) Suite to include:

- a. s47E(d) [REDACTED]
- b. s47E(d) [REDACTED]
- c. s47E(d) [REDACTED]
- d. s47E(d) [REDACTED]
- e. s47E(d) [REDACTED]

2. F414-GE-400 Engines

3. s47E(d) [REDACTED]

4. s47E(d) [REDACTED]

5. s47E(d) [REDACTED]

6. Controlled Cryptographic Items (CCI) items may include the following:

- a. s47E(d) [REDACTED]
- b. s47E(d) [REDACTED]
- c. s47E(d) [REDACTED]
- d. s47E(d) [REDACTED]
- e. s47E(d) [REDACTED]
- f. s47E(d) [REDACTED]
- g. s47E(d) [REDACTED]
- h. s47E(d) [REDACTED]
- i. s47E(d) [REDACTED]

Additionally, Replacement in Kind (RIK) opportunities and/or additional subsystem components to remain in USN inventory may be identified at a later date and addressed on a case-by-case

basis with the Customer.

This line also provides provisions for equipment/parts that may not be readily available in RAAF GFE inventory and require requisition. Items will be reviewed with Customer on a case-by-case basis.

Note 2. ENGINEERING SERVICES IN SUPPORT OF HARDWARE, SOFTWARE & CONTRACTUAL MODIFICATIONS.

Line 002 provides for modification efforts to convert United States Navy (USN) EA-18G into Customer's current configuration to include paint and aircraft markings. Modifications will occur either at the Original Equipment Manufacturer (OEM) facility or a USN Depot "D" Level repair facility.

Note 3. AIR TRANS, ACCESSORIAL ONLY.

Line 003 provides for ferry flight preparation, material, and services, to support scheduled ferry events to the Original Equipment Manufacturer (OEM) facility or a USN Depot "D" Level repair facility, flight test facilities, and/or RAAF Base Amberley, Queensland, Australia.

Note 4. STAGING/CONSOLIDATION AT DOD ACTIVITY IN CONUS, AGGREGATION, PREPOSITIONING, STORAGE, CONTROL OF INVENTORY & CONSOLIDATION OF INCOMING ARTICLES INTO SINGLE SHIPMENT, AT REQUEST OF CUSTOMER.

Line 004 provides for the delivery, storage, maintenance, and preservation of the aircraft at the Original Equipment Manufacturer (OEM) facility, a United States Navy (USN) Depot "D" Level repair facility, USN Government Facility and/or to an in-country destination.

Note 5. TRANSPORTATION COSTS.

Line 005 provides for all transportation cost associated with the delivery transportation charges for Lines 002 and 009.

Note 6. OTHER TECHNICAL ASSISTANCE.

Line 006 provides for Other Technical Assistance (OTA) services required for the delivery and initial sustainment efforts for the Customer's converted United States Navy (USN) EA-18G aircraft.

This line also provides for support of program management, schedule management, risk management, engineering management, business and contracting management, logistics management, action item tracking, Technical Interchange Meetings (TIMs), and Project Management Review (PMR) meetings. Status updates will be provided monthly to include the Integrated Government Schedule (IGS) updates, risks and issues, and financial reports.

One (1) annual program review is provided under Standard Level of Services (SLS).

Note 7. ENGINEERING TECHNICAL ASSISTANCE.

Line 007 provides for Engineering Technical Assistance (ETA) for the delivery of the Customer's converted United States Navy (USN) EA-18G aircraft.

This line also includes engineering services consisting of USN engineering competencies and related engineering support requirements that are crucial for the conversion of the Customer's EA-18G aircraft. Engineering services include design efforts, modification, and testing necessary to verify and validate the configuration of the aircraft.

Note 8. LOGISTICS TECHNICAL ASSISTANCE.

Line 008 provides for Logistics Technical Assistance (LTA) for the delivery of the Customer's converted United States Navy (USN) EA-18G aircraft.

This line provides the following logistics efforts: updating of aircraft logbooks, subordinate component logbooks, aircraft maintainer inspection logs, material inspection and receiving reports, production quality assessments, weight and balance data, fatigue life data applicable to the aircraft, design effort and testing necessary to verify the performance of the aircraft.

Note 9. FLIGHT TEST SVCS.

Line 009 provides for flight testing to include proficiency flights and final aircraft validation and verification. Flight test supply support includes access to United States Navy (USN) supply system for component repair, replacement in kind, and requisition of new/reworked material needed to maintain the aircraft during flight test maintenance support.

Note 10. TRANSPORTATION CHARGES ABOVE THE LINE.

Any CONUS and/or OCONUS transportation costs for line(s) 002 and 009 are included in the above the line costs on line(s) 005.

Note 11. SHORT OFFER EXPIRATION DATE (OED).

To satisfy this requirement, this LOA must be signed and appropriate financial arrangements concluded by the OED shown on page 1 in order to meet the contractual requirements.

Note 12. COMMUNICATIONS SECURITY (COMSEC) ENHANCED END-USE MONITORING (EEUM) - NATO MEMBERS, AUSTRALIA OR NEW ZEALAND - FMS.

This LOA provides COMSEC products that require physical security and accountability as set forth in the following agreements and documents (not all may be applicable).

1. NATO Security Agreements including implementing directives and policies promulgated by

the NATO Military Committee, NATO Communications and Information Agency, (NCI Agency), NATO Office of Security and other NATO organizations.

2. Bilateral and/or multilateral Communications Security and other security agreements between the U.S. and the purchaser.

The purchaser is not authorized to perform repairs, maintenance beyond organizational-level maintenance nor receive information, training or material pertaining to repair and/or maintenance of the COMSEC equipment provided on this LOA without the express written consent of the U.S. National Security Agency (NSA).

The purchaser agrees that, upon U.S. Government request, the COMSEC products and the purchaser's inventory and accountability records will be made available to U.S. representatives for the purpose of conducting a compliance assessment with the requirements in agreements and documents above (not all may be applicable). This assessment will not be a COMSEC account audit and will not include an inspection of keying material.

Note 13. CONTINGENT FEES - CONTRACT REQUIREMENTS.

All U.S. Government contracts resulting from this Letter of Offer and Acceptance must contain one of the following provisions, unless the sales commission and fee have been identified and payment thereof approved in writing by Australia before contract award:

a. For firm fixed-price contracts or fixed-price contracts with economic price adjustment:

The contractor certifies that the contract price (including any subcontracts awarded hereunder) does not include any direct or indirect costs of sales commissions or fees for contractor sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to Australia.

b. For all other types of contracts:

Notwithstanding any other provision of this contract, any direct or indirect costs of sales commissions or fees for contractor (or subcontractor) sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to Australia will be considered as an unallowable item of cost under this contract.

Note 14. MODIFICATIONS OF U.S. DEFENSE ARTICLES.

In addition to the requirements of Standard Condition 2.5, the Purchaser agrees not to modify any defense article on this case from its original configuration at the point of delivery, and not to use it other than as originally intended or on another platform or system, unless the modification is carried out through another FMS case or the U.S. Department of State has provided written consent for such modification or use. In case of any questions, please contact the Political Military Bureau of the U.S. Department of

State's Third Party Transfer Team at PM_RSAT-TPT@state.gov.

Note 15. NONRECURRING COSTS - WAIVER APPROVED.

Nonrecurring Costs (NC) apply to line item(s) 001 of this LOA. The purchaser's request to waive these charges has been approved by DSCA memorandum I-USP001787-21, dated 17 September 2021. Therefore, these costs have not been included in this case.

Note 16. PERSONNEL PROTECTION AND RELATED COSTS.

1. Passports, Visas, Licenses, and Permits.

a. The U.S. Government and/or U.S. Government contractor cost and delivery estimates herein anticipate the purchaser will, within the framework of its laws, ensure the timely issuance of work, entry, or exit visas; work, vehicle operator, residence, or in-country travel permits; and any other appropriate licenses or permits required of the personnel, including dependents, to carry out this effort.

b. U.S. Government and/or U.S. Government contractors will be responsible for timely and complete submittal of the necessary information and forms directly to the appropriate purchaser agency for the required passports, visas, licenses, or permits. The U.S. Government and/or U.S. Government contractors will be responsible for the sponsorship of its employees and their dependents and will process said permits directly with the appropriate purchaser agency.

2. Access. U.S. Government and/or U.S. Government contractor cost and delivery schedules herein anticipate that U.S. personnel in country will be authorized, at no cost, reasonable access to all data, plans, reports, or other information and all existing and proposed offices, sites, and areas within the country as required to accomplish this effort.

3. Export of Data. U.S. Government and/or U.S. Government contractor personnel will not be required or expected to deliver to the purchaser, nor to any person or entity not a citizen of the U.S., any technical data produced or utilized under this LOA until the purchaser has been furnished with clear evidence that such delivery of the data is (1) approved by the U.S. State Department pursuant to the International Traffic in Arms Regulation, or (2) approval is not required.

4. Taxes, Duties, and Charges for Doing Business. U.S. Government and/or U.S. Government contractor contracts(s) implementing this LOA will include the clause entitled "Taxes Foreign Fixed-Price Contracts (June 2003)" set forth in Federal Acquisition Regulation (FAR) Subsection 52.229-6 and/or the clause entitled "Taxes-Cost-Reimbursement Contracts (March 1990)" set forth in FAR Subsection 52.229-8 depending on acquisition plans; therefore, price and delivery estimates within this LOA anticipate the following:

a. Property, materiel, equipment, household furniture, appliances, and supplies imported into the country by U.S. Government and/or U.S. Government contractors exclusively for use

in support of the U.S. Government and/or U.S. Government contractors and its personnel and consigned and marked as required or approved by the U.S. Government will be exempt from import and export duties, taxes, licenses, excises, imposts, and any other identifiable charges. The U.S. Government and/or U.S. Government contractor will maintain an inventory control and accounting system adequate to reflect the usage and disposition of all U.S. Government and/or contractor-owned property that has entered the country duty-free under this LOA.

b. The purchaser, its agencies, and political subdivisions will levy no taxes or fees (including taxes on individual or corporate income or property, customs and import duties, or other taxes on employee personal household goods, supplies and personal effects imported into the country for personal use) on the U.S. Government and/or U.S. Government contractor, its employees, or the dependents of such employees.

c. If any charges under 4.a. or 4.b. are imposed by the purchaser, costs thereby incurred by the U.S. Government and/or U.S. Government contractor will be reimbursed to the U.S. Government and/or U.S. Government contractor at cost, including applicable overhead and General and Administrative, but excluding profit, out of national funds to be provided by the purchaser under this LOA.

5. Security. U.S. Government and/or U.S. Government contractor price and delivery estimates anticipate that the purchaser will provide adequate security to protect personnel and property associated with this LOA and located on purchaser military bases, installations, or other designated work sites.

Note 17. STATUS OF FORCES AGREEMENT (SOFA) .

U.S. Government military and civilian personnel present in the territory of Australia for the purpose of implementing this LOA will be entitled to all of the rights, privileges, and immunities accorded in the Agreement Concerning United States Forces in Australia, with Protocol regarding the status of their forces, dated 9 May 1963, and any related implementing agreements.

Note 18. TRANSPORTATION SERVICES THROUGH DTS.

1. The U.S. Government agrees to provide transportation services for the items identified in this LOA to the point of delivery. The purchaser's property will be transported at the purchaser's risk.

2. The purchaser will accept U.S. Government delivery listings as the basis for billing and proof of shipment.

3. The purchaser will accept responsibility for clearance of materiel through its customs at the Point of Debarkation (POD) and for movement of the materiel from its POD to the ultimate in-country destination.

4. The purchaser will appoint a duly authorized official to accept and sign for materiel at the POD, and submit outturn message and report.
5. The purchaser will absorb losses of materiel the U.S. Government does not in fact recover from an independent carrier or handler, including where the U.S. Government is self-insured.
6. The purchaser will self-insure such shipments, or obtain commercial insurance without any right of subrogation of any claim against the U.S.
7. The U.S. Government will assist the purchaser in processing any claims that may arise for lost or damaged shipments, in the same manner it processes claims for U.S. Government-owned materiel. Collection of revenue, if any, resulting from approved claims will be credited to the purchaser's account.
8. If the purchaser proposes to take delivery and custody of the classified materiel in the U.S. and use its own facilities and transportation for onward shipment to its territory, a Transportation Plan is required. The Transportation Plan is developed by the DoD Component that prepares the LOA in coordination with the purchasing government as outlined in the Security Assistance Management Manual, Chapter 3. The purchaser may obtain assistance in the development of the Transportation Plan with its cleared freight forwarder. Further, the purchaser will notify the Implementing Agency of any changes as they occur to the Transportation Plan. The Implementing Agency that initiates the FMS transaction will designate the security officials who are authorized to evaluate the Transportation Plan to determine whether the plan adequately ensures protection of the highest level of classified materiel involved. The purchaser will be notified of the approval or disapproval of the plan and any changes. If disapproved, the purchaser will be notified of the reason for disapproval and, when possible, changes that would be acceptable to the U.S. Government. As an alternative, the U.S. Government will ship the classified materiel by the Defense Transportation System.

Note 19. CASE CLOSURE (ACCP).

The estimated closure date is 24 months after the date of projected final delivery or service performance, or 36 months for training cases.

Note 20. SUPPLY DISCREPANCY REPORT (SDR) TIME LIMITS.

Pursuant to paragraph 5.4 of the Standard Terms and Conditions with regard to Supply Discrepancy Reports (SDR), the purchaser agrees to report misdirected or unordered shipments. The purchaser further agrees to report such shipments containing items that are identified as classified/sensitive materiel, and/or arms, arms parts, or explosives, within 24 hours of discovery, regardless of dollar value, for disposition instructions from the U.S. Government. The purchaser agrees to ship such classified/sensitive materiel, and/or arms, arms parts, or explosives within 30 days of U.S. Government direction for such return. For all other items, the purchaser agrees to ship discrepant articles within 180 days of receiving U.S. Government direction for such return. When appropriate, the U.S. Government may direct an expedited return of an exemplar of the discrepant articles prior to issuing

further direction.

Note 21. CONTRACT ADMINISTRATION SERVICES (CAS) SURCHARGE - WAIVER.

For any lines on this LOA document with a Source of Supply of 'X' or 'P', the Contract Administration Services (CAS) surcharge rate apply: for Contract Administration, .45%; for Quality Assurance and Inspection, .45%; and for Contract Audit, .10%. CAS has only been applied to the portion of "X"-coded line items expected to come from procurement. A waiver is authorized for the following CAS component(s): Quality Assurance and Inspection based on agreement dated 11 April 2013.

Note 22. ADMINISTRATIVE SURCHARGE.

An administrative surcharge of 3.2% has been applied to lines 001-009.

Estimated Deliveries by Quarter

LINE NUMBER : 001
MASL : 15000000EA18G
DESCRIPTION : ADVANCED ELECTRONIC ATTACK AEA-18G AIRCRAFT
ITEM CODE : AEA-18G

<u>Calendar Year</u>	<u>Quarter 1</u>	<u>Quarter 2</u>	<u>Quarter 3</u>	<u>Quarter 4</u>
2024	0	1	0	0

Item Quantity : 1

Total Quantity For Line 001 : 1

LETTER OF OFFER AND ACCEPTANCE STANDARD TERMS AND CONDITIONS

Section

- 1 Conditions - United States Government (USG) Obligations
- 2 Conditions - General Purchaser Agreements
- 3 Indemnification and Assumption of Risks
- 4 Financial Terms and Conditions
- 5 Transportation and Discrepancy Provisions
- 6 Warranties
- 7 Dispute Resolution

1 Conditions - United States Government (USG) Obligations

1.1 Unless otherwise specified, items will be those which are standard to the U.S. Department of Defense (DoD), without regard to make or model.

1.2 The USG will furnish the items from its stocks and resources, or will procure them under terms and conditions consistent with DoD regulations and procedures. When procuring for the Purchaser, DoD will, in general, employ the same contract clauses, the same contract administration, and the same quality and audit inspection procedures as would be used in procuring for itself; except as otherwise requested by the Purchaser and as agreed to by DoD and set forth in this LOA. Unless the Purchaser has requested, in writing, that a sole source contractor be designated, and this LOA reflects acceptance of such designation by DoD, the Purchaser understands that selection of the contractor source to fill requirements is the responsibility of the USG, which will select the contractor on the same basis used to select contractors for USG requirements. Further, the Purchaser agrees that the U.S. DoD is solely responsible for negotiating the terms and conditions of contracts necessary to fulfill the requirements in this LOA.

1.3 The USG may incorporate anti-tamper (AT) protection into weapon systems and components that contain critical program information (CPI). The AT protection will not impact operations, maintenance, or logistics provided that all terms delineated in the system technical documentation are followed.

1.4 The USG will use its best efforts to provide the items for the dollar amount and within the availability cited.

1.5 Under unusual and compelling circumstances, when the national interest of the U.S. requires, the USG reserves the right to cancel or suspend all or part of this LOA at any time prior to the delivery of defense articles or performance of defense services. The USG shall be responsible for termination costs of its suppliers resulting from cancellation or suspension under this section. Termination by the USG of its contracts with its suppliers, other actions pertaining to such contracts, or cessation of deliveries or performance of defense services is not to be construed as cancellation or suspension of this LOA itself under this section.

1.6 U.S. personnel performing defense services under this LOA will not perform duties of a combatant nature, including duties relating to training and advising that may engage U.S. personnel in combat activities outside the U.S., in connection with the performance of these defense services.

1.7 The assignment or employment of U.S. personnel for the performance of this LOA by the USG will not take into account race, religion, national origin, or gender.

1.8 Unless otherwise specified, this LOA may be made available for public inspection consistent with the national security of the United States.

2 Conditions - General Purchaser Agreements

2.1 The Purchaser may cancel this LOA or delete items at any time prior to delivery of defense articles or performance of defense services. The Purchaser is responsible for all costs resulting from cancellation under this section.

2.2 The purchaser notes its obligations under International Humanitarian Law and Human Rights Law. The Purchaser agrees, except as may otherwise be mutually agreed in writing by the Purchaser and the USG, to use the defense articles sold hereunder only:

2.2.1 for internal security;

2.2.2 for legitimate self-defense;

2.2.3 for preventing or hindering the proliferation of weapons of mass destruction and of the means of delivering such weapons;

2.2.4 to permit the Purchaser to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the Purchaser to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security; or

2.2.5 for the purpose of enabling foreign military forces in less developed countries to construct public works and to engage in other activities helpful to social and economic development.

2.2.6 for purposes specified in any Mutual Defense Assistance Agreement between the USG and the Purchaser; or,

2.2.7 for purposes specified in any other bilateral or regional defense agreement to which the USG and the Purchaser are both parties.

2.3 The Purchaser agrees that the USG retains the right to verify reports that defense articles and services have been used for purposes not authorized or for uses not consented to by the USG.

2.4 The Purchaser will not transfer title to, or possession of, the defense articles, components and associated support materiel, related training or other defense services (including plans, specifications, or information), or technology furnished under this LOA to anyone who is not an officer, employee, or agent of the Purchaser (excluding transportation agencies) or of the USG, and shall not use or permit their use for purposes other than those authorized, unless the written consent of the USG has first been obtained. The Purchaser will ensure, by all means available to it, respect for proprietary rights in any items and any plans, specifications, or information furnished, whether patented or not. The Purchaser also agrees that the defense articles offered will not be transferred to Cyprus or otherwise used to further the severance or division of Cyprus, and recognizes that the U.S. Congress is required to be notified of any substantial evidence that the defense articles sold in this LOA have been used in a manner that is inconsistent with this provision.

2.5 The Purchaser agrees not to divert articles and services received under this LOA for purposes or uses other than those for which it was furnished, including, but not limited to, any use that could contribute to the acquisition, design, development or production of a "missile," as defined in section 74 of the Arms Export Control Act (AECA) (22 U.S.C. 2797c). The items will be used only for the purposes stated and such use will not be modified nor the items modified or replicated without the prior consent of the USG; neither the items nor replicas nor derivatives thereof will be retransferred without the consent of the USG. The USG has the right to take action under section 73(a) of the AECA (22 U.S.C. 2797b(a)) in the case of any export or transfer of any Missile Technology Control Regime (MTCR) equipment or technology that contributes to the acquisition, design, development or production of missiles in a country that is not an MTCR adherent.

2.6 The Purchaser will maintain the security of such article or service and will provide substantially the same degree of security protection afforded to such article or service by the United States Government. To the extent that items, including plans, designs, specifications, technical data, or information, furnished in connection with this LOA may be classified by the USG for security purposes, the Purchaser certifies that it will maintain a similar classification and employ measures necessary to preserve such security, equivalent to those employed by the USG and commensurate with security agreements between the USG and the Purchaser. If such security agreements do not exist, the Purchaser certifies that classified items will be provided only to those individuals having an adequate security clearance and a specific need to know in order to carry out the LOA program and that it will promptly and fully inform the USG of any compromise, or possible compromise, of U.S. classified material or information furnished pursuant to this LOA. The Purchaser further certifies that if a U.S. classified item is to be furnished to its contractor pursuant to this LOA: (a) the item will be exchanged through official Government channels, (b) the specified contractor will have been granted a facility security clearance by the Purchaser at a level at least equal to the classification level of the U.S. information involved, (c) all contractor personnel requiring access to such items will have been cleared to the appropriate level by the Purchaser, and (d) the Purchaser is also responsible for administering security measures while the item is in the contractor's possession. If a commercial transportation agent is to be used for shipment, the Purchaser certifies that such agent has been cleared at the appropriate level for handling classified items. These measures will be maintained throughout the period during which the USG may maintain such classification. The USG will use its best efforts to notify the Purchaser if the classification is changed.

2.7 Pursuant to section 505 of the Foreign Assistance Act of 1961, as amended (FAA) (22 U.S.C. 2314), and section 40A of the AECA (22 U.S.C. 2785), the USG will be permitted, upon request, to conduct end-use monitoring (EUM) verification with respect to the use, transfer, and security of all defense articles and defense services transferred under this LOA. The Purchaser agrees to permit scheduled inspections or physical inventories upon USG request, except when other means of EUM verification shall have been mutually agreed. Upon request, inventory and accountability records maintained by the Purchaser will be made available to U.S. personnel conducting EUM verification.

2.8. Any offset arrangement is strictly between the Purchaser and the U.S. defense contractor. The U.S. Government cannot be a party to any offset agreement that may be required by the Purchaser in relation to the sales made in this LOA. The USG assumes no obligation to administer or satisfy any offset requirements or bear any of the associated costs. If the FMS customer wishes to obtain information regarding offset costs, the FMS customer should request information directly from the U.S. defense contractor. Indirect offset costs may be deemed reasonable without further analysis in accordance with the Defense Federal Acquisition Regulation

Supplement. Although offsets, as defined in the Defense Federal Acquisition Regulation Supplement, are not within the scope of the DoD contracts entered into to fulfill the requirements of this LOA, offset costs may be reimbursed through such contracts.

3 Indemnification and Assumption of Risks

3.1 The Purchaser recognizes that the USG will procure and furnish the items described in this LOA on a non-profit basis for the benefit of the Purchaser. The Purchaser therefore undertakes to indemnify and hold the USG, its agents, officers, and employees harmless from any and all loss or liability (whether in tort or in contract) which might arise in connection with this LOA because of:

3.1.1 Injury to or death of personnel of the Purchaser or third parties,

3.1.2 Damage to or destruction of (a) property of DoD furnished to the Purchaser or suppliers specifically to implement this LOA, (b) property of the Purchaser (including the items ordered by the Purchaser pursuant to this LOA, before or after passage of title to the Purchaser), or (3) property of third parties, or

3.1.3 Infringement or other violations of intellectual property or technical data rights.

3.2 Subject to express, special contractual warranties obtained for the Purchaser, the Purchaser agrees to relieve the contractors and subcontractors of the USG from liability for, and will assume the risk of, loss or damage to:

3.2.1 The Purchaser's property (including items procured pursuant to this LOA, before or after passage of title to Purchaser), and

3.2.2 Property of DoD furnished to suppliers to implement this LOA, to the same extent that the USG would assume for its property if it were procuring for itself the items being procured.

4 Financial Terms and Conditions

4.1 The prices of items to be procured will be billed at their total cost to the USG. Unless otherwise specified, the cost of items to be procured, availability determination, payment schedule, and delivery projections quoted are estimates based on the best available data. The USG will use its best efforts to advise the Purchaser or its authorized representatives of:

4.1.1 Identifiable cost increases that might result in an overall increase in the estimated costs in excess of ten percent of the total value of this LOA,

4.1.2 Changes in the payment schedule, and

4.1.3 Delays which might significantly affect estimated delivery dates. USG failure to advise of the above will not change the Purchaser's obligation under all subsections of section 4.4.

4.2 The USG will refund any payments received for this LOA which prove to be in excess of the final total cost of delivery and performance and which are not required to cover arrearages on other LOAs of the Purchaser.

4.3 The Purchaser's failure to make timely payments in the amounts due may result in delays in contract performance by DoD contractors, claims by contractors for increased costs, claims by contractors for termination liability for breach of contract, claims by USG or DoD contractors for storage costs, or termination of contracts by the USG under this or other open Letters of Offer and Acceptance of the Purchaser at the Purchaser's expense.

4.4 The Purchaser agrees to the following:

4.4.1 To pay to the USG the total cost to the USG of the items even if costs exceed the amounts estimated in this LOA.

4.4.2 To make payment(s) by check or wire transfer payable in U.S. dollars to the Treasurer of the United States.

4.4.3 If Terms of Sale specify "Cash with acceptance", to forward with this LOA a check or wire transfer in the full amount shown as the estimated Total cost, and agrees to make additional payment(s) upon notification of cost increase(s) and request(s) for funds to cover such increase(s).

4.4.4 If Terms of Sale specify payment to be "Cash prior to delivery", to pay to the USG such amounts at such times as may be specified by the USG (including initial deposit) in order to meet payment requirements for items to be furnished from the resources of DoD. USG requests for funds may be based on estimated costs to cover forecasted deliveries of items. Payments are required 90 days in advance of the time DoD plans such deliveries or incurs such expenses on behalf of the Purchaser.

4.4.5 If Terms of Sale specify payment by "Dependable Undertaking," to pay to the USG such amounts at such times as may be specified by the USG (including initial deposit) in order to meet payments required by contracts under which items are being procured, and any damages and costs that may accrue from termination of contracts by the USG because of Purchaser's cancellation of this LOA. USG requests for funds may be based upon estimated requirements for advance and progress payments to suppliers, estimated termination liability, delivery forecasts, or evidence of constructive delivery, as the case may be. Payments are required 90 days in advance of the time USG makes payments on behalf of the Purchaser.

4.4.6 If the Terms of Sale specify Foreign Military Financing (FMF), the Purchaser will pay to the USG such costs as may be in excess of the approved FMF funding amount.

4.4.7 If Terms of Sale specify "Payment on delivery", that bills may be dated as of the date(s) of delivery of the items, or upon forecasts of the date(s) thereof.

4.4.8 That requests for funds or billing are due and payable in full on presentation or, if a payment date is specified in the request for funds or bill, on the payment date so specified, even if such payment date is not in accord with the estimated payment schedule, if any, contained in this LOA. Without affecting Purchaser's obligation to make such payment(s) when due, documentation concerning advance and progress payments, estimated termination liability, or evidence of constructive delivery or shipment in support of requests for funds or bills will be made available to the Purchaser by DoD upon request. When appropriate, the Purchaser may request adjustment of any questioned billed items by subsequent submission of a discrepancy report.

4.4.9 To pay interest on any net amount by which it is in arrears on payments, determined by considering collectively all of the Purchaser's open LOAs with DoD. Interest will be calculated on a daily basis. The principal amount of the arrearage will be computed as the excess of cumulative financial requirements of the Purchaser over total cumulative payments after quarterly billing payment due dates. The rate of interest paid will be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the USG as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.

4.4.10 To designate the Procuring Agency and responsible Paying Office and address thereof to which the USG will submit requests for funds and bills under this LOA.

4.4.11 Any articles, equipment, materials, supplies, goods, or other commodities purchased with USG assistance funds appropriated and allocated pursuant to foreign operations, export financing, and related programs appropriations acts in support of this LOA, whether provided directly by the USG or through procurement contracts or otherwise in support of this LOA, shall be exempt from all value added taxes and customs duties imposed by the recipient country or the full amount of the tax or customs duty must be reimbursed by the Purchaser. This exemption is in addition to any other tax exemption provided by the Purchaser through separate agreements or other means.

5 Transportation and Discrepancy Provisions

5.1 The USG agrees to deliver and pass title to the Purchaser at the initial point of shipment unless otherwise specified in this LOA. With respect to items procured for sale to the Purchaser, this will normally be at the manufacturer's loading facility; with respect to items furnished from USG stocks, this will normally be at the U.S. depot. Articles will be packed, crated, or otherwise prepared for shipment prior to the time title passes. If "Point of Delivery" is specified other than the initial point of shipment, the supplying U.S. Department or Agency will arrange movement of the articles to the authorized delivery point as a reimbursable service but will pass title at the initial point of shipment. The USG disclaims any liability for damage or loss to the items incurred after passage of title irrespective of whether transportation is by common carrier or by the U.S. Defense Transportation System.

5.2 The Purchaser agrees to furnish shipping instructions which include Mark For and Freight Forwarder Codes based on the Offer Release Code.

5.3 The Purchaser is responsible for obtaining insurance coverage and customs clearances. Except for articles exported by the USG, the Purchaser is responsible for ensuring that export licenses are obtained prior to export of U.S. defense articles. The USG incurs no liability if export licenses are not granted or they are withdrawn before items are exported.

5.4 The Purchaser agrees to accept DD Forms 645 or other delivery documents as evidence that title has passed and items have been delivered. Title to defense articles transported by parcel post passes to the Purchaser at the time of parcel post shipment. Standard Form 364 (Supply Discrepancy Report (SDR)) will be used in submitting claims to the USG for overage, shortage, damage, duplicate billing, item deficiency, improper identification, improper documentation, or non-shipment of defense articles and non-performance of defense services. The Standard Form 364 will be submitted promptly by the Purchaser. The USG will disallow any claim, including a claim for shortage or nonperformance, received more than 1 year after delivery or more than 1 year after passage of title to the defense articles, whichever comes first, or received more than 1 year after the end of the scheduled period of performance for defense

services, unless the USG determines that unusual and compelling circumstances involving latent defects justify consideration of the claim. Claims for non-shipment or non-receipt of an entire lot will be disallowed by the USG if such claims are received more than 1 year after the scheduled delivery date or initial billing, whichever is later. The Purchaser agrees to return discrepant articles to the USG's custody promptly in accordance with any direction provided by the USG. The Purchaser may submit SDRs for documentation purposes regardless of the dollar value, but only SDRs valued at \$200 or more will be reviewed for possible compensation regardless of the type of discrepancy. This minimum value includes the value of the item plus any transportation and handling costs.

6 Warranties

6.1 The USG does not warrant or guarantee any of the items sold pursuant to this LOA except as provided in section 6.1.1. DoD contracts include warranty clauses only on an exception basis. If requested by the Purchaser, the USG will, with respect to items being procured, and upon timely notice, attempt to obtain contract provisions to provide the requested warranties. The USG further agrees to exercise, upon the Purchaser's request, rights (including those arising under any warranties) the USG may have under contracts connected with the procurement of these items. Additional costs resulting from obtaining special contract provisions or warranties, or the exercise of rights under such provisions or warranties, will be charged to the Purchaser.

6.1.1 The USG warrants the title of items sold to the Purchaser hereunder but it makes no warranties other than those set forth herein. In particular, the USG disclaims liability resulting from infringement or other violation of intellectual property or technical data rights occasioned by the use or manufacture outside the U.S. by or for the Purchaser of items supplied hereunder.

6.1.2 The USG agrees to exercise warranties on behalf of the Purchaser to assure, to the extent provided by the warranty, replacement or correction of such items found to be defective, when such materiel is procured for the Purchaser.

6.2 Unless the condition of defense articles is identified to be other than serviceable (for example, "as-is"), DoD will repair or replace at no extra cost defense articles supplied from DoD stocks which are damaged or found to be defective in respect to materiel or workmanship when it is established that these deficiencies existed prior to passage of title, or found to be defective in design to such a degree that the items cannot be used for the purpose for which they were designed. Qualified representatives of the USG and of the Purchaser will agree on the liability hereunder and the corrective steps to be taken.

7 Dispute Resolution

7.1 This LOA is subject to U.S. law and regulation, including U.S. procurement law.

7.2 The USG and the Purchaser agree to resolve any disagreement regarding this LOA by consultations between the USG and the Purchaser and not to refer any such disagreement to any international tribunal or third party for settlement.

LETTER OF OFFER AND ACCEPTANCE INFORMATION

1. GENERAL. This provides basic information pertaining to the LOA for U.S. and Purchaser use. Additional information may be obtained from the Security Assistance Management Manual, DoD 5105.38-M, the in-country Security Cooperation Organization (SCO), the DSCA Country Program Director, or from the Implementing Agency (IA).

2. INFORMATION ENTERED BY THE USG.

a. Terms of Sale, and Purchaser responsibilities under those Terms, are described on the LOA. A list of all Terms of Sale, with explanations for each, is shown in DoD 5105.38-M.

b. Description/Condition. The item description consists of coding for use in U.S. management of the LOA (starting with Generic/MASL and codes, loaded automatically based on the MASL, that identify whether the line item is Significant Military Equipment (SME)/Major Defense Equipment (MDE), controlled under the Missile Technology Control Regime (MTCR), subject to special End-Use Monitoring (EUM), and controlled under an identified Category of the International Traffic in Arms Regulations (ITAR) U.S. Munitions List (USML). Codes used are listed below:

SME/MDE

- Y MDE
- S SME that is not MDE
- N Non-SME

Missile Technology Control Regime (MTCR)

- M Contains MTCR-controlled components
- N Contains no MTCR-controlled components

End-Use Monitoring (EUM)

- R Routine
- E Enhanced

International Traffic in Arms Regulations (ITAR) U.S. Munitions List (USML) Category

- I Firearms, Close Assault Weapons and Combat Shotguns
- II Guns and Armament
- III Ammunition/Ordnance
- IV Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
- V Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents
- VI Vessels of War and Special Naval Equipment
- VII Tanks and Military Vehicles
- VIII Aircraft and Associated Equipment
- IX Military Training Equipment and Training
- X Protective Personnel Equipment and Shelters
- XI Military Electronics
- XII Fire Control, Range Finder, Optical and Guidance and Control Equipment
- XIII Auxiliary Military Equipment
- XIV Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
- XV Spacecraft Systems and Associated Equipment
- XVI Nuclear Weapons, Design and Testing Related Items
- XVII Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
- XVIII Directed Energy Weapons
- XIX Gas Turbine Engines and Associated Equipment
- XX Submersible Vessels, Oceanographic and Associated Equipment
- XXI Miscellaneous Articles
- Not a USML Item

This is followed by a short description of what is to be provided. Unless otherwise noted in the LOA, all items listed are in Condition Code A, Serviceable-Issuable without Qualification, or B, Serviceable-Issuable with Qualification, and are new, used, repaired, or reconditioned material which is serviceable and issuable for its intended purpose. In some instances, reference to a note in the Terms and Conditions may complement or replace these codes.

c. The Unit of Issue is normally "EA" (with associated quantity; for example, 40 EA) or "XX" (unit of issue not applicable; for example, services or several less significant items consolidated under one LOA Item Number), or blank. When XX or blank, a quantity

or Unit Cost is not shown.

d. The Source of Supply Code (SC) in the Articles or Services to be Supplied Section is one or more of the following:

- S Shipment from DoD stocks or performance by DoD personnel
- P From new procurement
- R From rebuild, repair, or modification by the USG
- X Mixed source, such as stock and procurement, or undetermined
- E Excess items, as is
- F Special Defense Acquisition Fund (SDAF) items

e. Availability lead time cited is the number of months (MOS) estimated for delivery of defense articles or performance of defense services. The lead time starts with Implementation of this Offer, including the conclusion of appropriate financial arrangements, and ends when items are made available to transportation.

f. Type of Assistance (TA) Codes below may also be found in DoD 4000.25-1-M:

- 3 Source Code S, R, or E; Cash Sale from Stock with Payment in Advance, based on Arms Export Control Act (AECA) Section 21(b).
- 4 Source Code X; Source Undetermined with Payment in Advance, AECA Sections 21(b), 22(a), 29.
- 5 Source Code P; Cash Sale from Procurement with Payment in Advance, AECA Section 22(a).
- 6 Source Code S, R, or E, Payment on Delivery; AECA Section 21(d).
- 7 Source Code P, Dependable Undertaking with 120 days Payment after Delivery; AECA Section 22(b).
- 8 Source Code S, R, or E, Stock Sales with 120 days Payment after Delivery; AECA Section 21(d).
- A FAA Excess Defense Articles - non-reimbursable, provided under the authority of Section 516 of the Foreign Assistance Act (FAA) of 1961, as amended.
- M MAP Merger/USG Grant; FAA Section 503(a)(3).
- N FMS Credit (Nonrepayable); AECA Sections 23 or 24.
- U Source Code P; Cooperative Logistics Supply Support Arrangement (CLSSA) Foreign Military Sales Order (FMSO) I.
- V Source Code S; CLSSA FMSO II stocks acquired under FMSO I.
- Z FMS Credit; AECA Sections 23 or 24.

g. Training notes: AP - Annual training program; SP - Special training designed to support purchases of U.S. equipment; NC - This offer does not constitute a commitment to provide U.S. training; SC - U.S. training concurrently being addressed in separate LOA; NR - No U.S. training is required in support of this purchase.

h. Offer Release Codes (Ofr Rel Cde) and Delivery Term Codes (Del Trm Cde) below may also be found in DoD 4500.9-R. The following Offer Release Codes also pertain to release of items for shipment back to Purchaser on repair LOAs:

- A Freight and parcel post shipments will be released automatically by the shipping activity without advance notice of availability.
- Y Advance notice is required before release of shipment, but shipment can be released automatically if release instructions are not received by shipping activity within 15 calendar days. Parcel post shipments will be automatically released.
- Z Advance notice is required, before release of shipment. Shipping activity will follow up on the notice of availability until release instructions are furnished. Parcel post shipments will be automatically released.
- X The Implementing Agency (IA) and country representative have agreed that the:

-- IA will sponsor the shipment to a country address. Under this agreement, the Freight Forwarder Code must also contain X and a Customer-within-country (CC) Code must be entered in the Mark For Code on the front page of the LOA. The MAPAD must contain the CC Code and addresses for each type of shipment (parcel post or freight).

-- Shipments are to be made to an assembly point or staging area as indicated by clear instructions on exception requisitions. Under this agreement, the Freight Forwarder Code must contain W. A Mark For Code may be entered in the Mark For Code space on the front page of the LOA, and the MAPAD must contain the Mark For Code if the Mark For Address is to be used on the shipment to the assembly point or staging area.

i. For the following Delivery Term Codes, DoD delivers:

- 2 To a CONUS inland point (or overseas inland point when the origin and destination are both in the same geographic area)
- 4 Not applicable (Purchaser has full responsibility at the point of origin. Often forwarded collect to country freight forwarder.)
- 5 At the CONUS POE on the inland carrier's equipment
- 7 At the overseas inland destination on board the inland carrier's equipment

- 8 At the CONUS POE on board the vessel or aircraft
- 9 At the overseas POD alongside the vessel or aircraft

Delivery Term Codes showing DoD transportation responsibility for repair LOAs are shown below. The LOA will provide a CONUS address for each item identified for repair. The Purchaser must assure this address is shown on all containers and documentation when materiel is returned.

- A From overseas POE through CONUS destination to overseas POD on board the vessel or aircraft
- B From overseas POE through CONUS destination to CONUS POE on board the vessel or aircraft
- C From CONUS POD on board the vessel or aircraft through CONUS destination to CONUS POE on board the vessel or aircraft
- D From CONUS POD on board the vessel or aircraft through the CONUS destination to overseas POD on board the vessel or aircraft
- E Not applicable (Purchaser has complete responsibility.)
- F From overseas inland point through CONUS destination to overseas inland destination
- G From overseas POE through CONUS destination to overseas POD alongside vessel or aircraft
- H (For classified items) From CONUS inland point to CONUS POE alongside vessel or aircraft
- J (For classified cryptographic items) From CONUS inland point to overseas inland destination

3. INFORMATION TO BE ENTERED BY THE PURCHASER.

Mark For and Freight Forwarder Codes are maintained in the Military Assistance Program Address Directory (MAPAD), DoD 4000.25-8-M. The Purchaser Procuring Agency should show the code for the Purchaser's Army, Navy, Air Force, or other agency that is purchasing the item(s). The Name and Address of the Purchaser's Paying Office is also required.

a. Mark For Code. This Code should be entered for use in identifying the address of the organization in the Purchaser country that is to receive the items. This includes return of items repaired under an LOA.

(1) This address will be added by the U.S. DoD to the Ship To address on all freight containers. It will also appear on items forwarded by small parcel delivery service, including parcel post. The address should include the port of discharge name and designator (water or air); country name, country service name, street, city, state or province, and (if applicable) in-country zip or similar address code.

(2) Shippers are not authorized to apply shipment markings. If codes and addresses are not published, containers will be received at the freight forwarder or U.S. military representative in-country unmarked for onward shipment with resultant losses, delays, and added costs. The USG will sponsor shipment of this materiel to FOB U.S. point of origin.

b. Freight Forwarder Code. When Offer Release Code X applies, Code X or W, discussed under Offer Release Code X above, must be entered.

c. Purchaser Procuring Agency Codes:

- B Army
- D Air Force
- K Marine Corps
- P Navy
- T Other

4. FINANCIAL

a. The method of financing is shown in the LOA, Amendment, or Modification. The initial deposit required with Purchaser signature of the LOA is an integral part of the acceptance.

b. LOA payment schedules are estimates, for planning purposes. DFAS-JAX/IN will request payment in accordance with the payment schedule unless DoD costs, including 90-day forecasted requirements, exceed amounts required by the payment schedule. When this occurs, the U.S. will use its best efforts to provide a new schedule via LOA Modification at least 45 days prior to the next payment due date. The Purchaser is required to make payments in accordance with quarterly DD Forms 645 issued by DFAS-JAX/IN regardless of the existing payment schedule.

c. The DD Form 645 serves as the bill and statement of account. An FMS Delivery Listing identifying items physically or constructively delivered and services performed during the billing period, will be attached to the DD Form 645. DFAS-JAX/IN forwards these forms to the Purchaser within 45 days before payments are due and Purchasers must forward payments in U.S. dollars to the USG

in time to meet prescribed due dates. Costs in excess of amounts funded by FMF agreements must be paid by the Purchaser. Questions concerning the content of DD Forms 645 and requests for billing adjustments should be submitted to the Defense Finance and Accounting Services, ATTN: Disbursing Operations-FMS Processing Col 135D, 8899 E.56th Street, Indianapolis, IN 46249.

d. The preferred method for forwarding cash payments is by bank wire transfer to the Department of the Treasury account at the Federal Reserve Bank of New York using the standard federal reserve funds transfer format. Wire transfers will be accepted by the Federal Reserve System (FRS) only from banks that are members of the FRS; therefore, non-U.S. banks must go through a U.S. correspondent FRS member bank. The following information is applicable to cash payments:

Wire transfer--

ABA #021030004

U.S. Treasury NYC

Agent Location Code 00003801

Beneficiary DFAS-JAX/IN Agency

Payment from (country or international organization) for Letter of Offer and Acceptance (Identifier at the top of the first page of the LOA)

Check mailing address--

Defense Finance and Accounting Services

ATTN: Disbursing Operations-FMS Processing Col 135D

8899 E.56th Street

Indianapolis, IN 46249

e. To authorize payments from funds available under FMF loan or grant agreements, the Purchaser may be required to submit a letter of request to the Defense Finance and Accounting Services, ATTN: Disbursing Operations-FMS Processing Col 135D, 8899 E.56th Street, Indianapolis, IN 46249. Purchasers should consult applicable FMF agreements for explicit instructions. Questions pertaining to the status of FMF financing and balances should be directed to DSCA/CFM.

f. Payments not received by DFAS-JAX/IN by the due date may be subject to interest charges as outlined in paragraph 4.4.8 of the LOA Standard Terms and Conditions.

g. The values on the LOA are estimates. The final amount will be equal to the cost to the USG. When deliveries are made and known costs are billed and collected, DFAS-JAX/IN will provide a "Final Statement of Account" which will summarize final costs. Excess funds will be available to pay unpaid billings on other statements or distributed as agreed upon between the Purchaser and the DSCA Deputy for Country Financial Management.

h. The Purchaser may cancel this LOA upon request to the IA. If this LOA is canceled after implementation, an FMS administrative surcharge may be assessed that equals one-half of the applicable FMS administrative surcharge rate times the ordered LOA value, or the applicable FMS administrative surcharge rate times the actual LOA value at closure, whichever is higher.

5. CHANGES TO THE LOA. Changes may be initiated by the USG or by requests from the Purchaser. After acceptance of the basic LOA, these changes will take the form of Amendments or Modifications.

a. Amendments encompass changes in scope, such as those which affect the type or number of significant items to be provided. Amendments require acceptance by the USG and the Purchaser in the same manner as the original LOA.

b. Modifications include changes that do not constitute a change in scope, such as increases or decreases in estimated costs or delivery schedule changes. Modifications require signature only to acknowledge receipt by the Purchaser.

c. When signed, and unless alternate instructions are provided, copies of Amendments and Modifications should be given the same U.S. distribution as the basic LOA.

d. Requests for changes required prior to acceptance by the Purchaser should be submitted to the IA for consideration. Any change made by the Purchaser and not authorized by the IA is considered a counteroffer. See DoD 5105 38-M for more information.

6. CORRESPONDENCE. Questions or comments regarding this LOA should identify the Purchaser request reference and the identification assigned by the IA within the Department of Defense.

Copy to:

DFAS-JAX/IN Indianapolis, IN
NAVY IPO (270)
NAVAIRSYSCOM (PMA265)
NAVSUP WSS (763)
COMPACFLT (N501)
USPACOM (J45)



Australian Government
Department of Defence

BM41533742

s47E(d)

Digitally signed by
s47E(d)
Date: 2022.02.23
10:43:25 +10'00'

DGACS (through: OC ACEASPO) (AMB-1416-1-49)
(through: DFG Financial Analyst) (AMB-1416-1-1.42)
(through: MPB Senior Contracting Officer) (AMB-861-1-123)

SECTIONS 23 AND 60 APPROVAL FOR FOREIGN MILITARY SALES CASE AT-P-SCM—ADDITIONAL EA-18G AIRCRAFT

References:

- A. *Public Governance, Performance Accountability Act 2013* (PGPA Act)
- B. Letter of Offer and Acceptance (LOA)—AT-P-SCM (BM34806379)
- C. *AIR 5349 Phase 3 Airborne Electronic Attack Capability – Replacement A46-311 Second Pass Approval* (CJOAD/OUT/2021/U1023580) [Held on DSN]
- D. *Review of Liability Risk Assessment (LRA) for FMS Case AT-P-SCI against the scope of AT-P-SCM* (BM41473873)
- E. Defence Procurement Manual

RECOMMENDATIONS

That you:

- a. **APPROVE** the commitment of up to A\$141,767,498 (2022-23 PBS Price Basis) IAW Section 23(3) of reference A on FMS case AT-P-SCM for the procurement of an additional EA-18G aircraft from the Government of the United States (USG).
- b. **APPROVE** the contingent liability IAW Section 60 of reference A on FMS case AT-P-SCM for the procurement of an additional EA-18G aircraft from USG.

Background

- 1. Project AIR5349PH3 was established in 2011 to deliver the Growler Airborne Electronic Attack capability to Defence to provide the ability to generate force level electronic warfare effects. The capability consists of EA-18G aircraft, mission systems, ordnance and training systems that enable Air Force to raise, train and sustain a force capable of contributing to joint and coalition operations.
- 2. Following delivery of the twelve EA-18G aircraft in 2017, the Air Force lost aircraft A46-311 on 28 Jan 2018 while participating in an exercise with the United States at Nellis Air Force Base. The aircraft sustained catastrophic damage following an uncontained engine failure that subsequently caused a fuel fire. Although some aircraft and mission systems were recoverable, the airframe and engines were deemed beyond economic repair.
- 3. Air Force currently has eleven EA-18G aircraft delivered under Project AIR5349PH3 to provide airborne electronic attack capability but require twelve aircraft to meet preparedness directives and support Final Operating Capability declaration. The Project has been directed to procure, modify and introduce an additional EA-18G aircraft into service to restore the A46 EA-18G Growler fleet to twelve aircraft. The scope does not include any

additional consideration in relation to Fundamental Inputs to Capability, as this is already captured in the broader scope of AIR5349PH3.

4. The USN provided a Letter of Offer and Acceptance for FMS case AT-P-SCM on 01 Dec 21 at reference B for the provision of a surplus USN EA-18G aircraft converted to the RAAF configuration baseline. The offer had an initial expiry date of 30 Dec 21, which was subsequently revised to 28 Feb 22 to allow additional time to achieve the necessary approvals to proceed with offer acceptance.

Value for Money

5. AIR5349PH3 is already established to deliver the Growler Airborne Electronic Attack capability to Defence, and is therefore postured to deliver this additional scope within current approved project budget. Procurement of a surplus USN EA-18G aircraft, converted to RAAF configuration baseline, is the only viable option to address the identified capability deficiency by restoring the Air Force A46 Growler fleet to twelve aircraft.

6. The proposal was endorsed at Capability Manager Gate Review on 08 Dec 21, and by an out of session Investment Committee during the week of 24 Jan 22. A Ministerial Submission was subsequently released by the Secretary and CDF on 16 Feb 22 seeking MINDEF and MINFIN approval to expand project scope and use project savings toward the procurement, which is anticipated prior to the offer expiry to enable case acceptance.

Technical Risk

7. Defence Science and Technology Group independently assessed the technical risk associated with the proposal to procure an additional EA-18G aircraft from USN at reference C. As the capability being acquired is a functionally identical replacement of the existing platform and does not present any risk associated with technology development or novel integration, the technical risk level is assessed as LOW with high confidence.

8. The additional EA-18G aircraft will be purchased without engines, which are not included in reference B. The Commonwealth will provide two serviceable F414-GE-400 engines from inventory as Government Furnished Equipment to facilitate the modification to RAAF configuration baseline. These engines have been subject to applicable design change and modification following the A46-311 accident to minimise the risk of catastrophic uncontained engine failure that could again lead to the loss of an aircraft.

9. The aircraft will undergo maintenance inspection, modification and testing (including flight testing) necessary to verify and validate the configuration and performance in order to support Australian airworthiness certification. Upon completion of acceptance and certification by the Commonwealth, the aircraft will be made available to Military Air Operator to undertake air operations.

Risk Assessment and Liability

10. ACEASPO reviewed the liability risk assessment for the acquisition of the fleet of twelve new build A46 Growler aircraft, FMS case AT-P-SCI, against the scope of the AT-P-SCM FMS case Letter of Offer and Acceptance. The review at reference D concluded the original assessment remains largely extant, with key risks unchanged.

11. The risk assessment identifies the most probable event causing a contingent liability has less than a remote (ie < 5%) chance of occurring, and the most probable expenditure that could arise from the indemnity is immaterial and within the delegated limits of the Section 60 approver. Therefore, Finance Minister approval of the Section 60 is not required.

12. In summary, for the purposes of Section 60 approval, the most probable expenditure arising from this indemnity is immaterial with approximately cost of less than AUD\$1m. The probability of such expenditure arising for those events is remote (< 5%), and the benefit gained by acquiring the capability via an FMS arrangement and benefiting from the economies of scale created, far outweighs the potential cost incurred by the contingent liability. A detailed analysis and review at reference D includes a summary of the findings against the original procurement of twelve Growler aircraft, and recommendations to contemporise the original assessment for this undertaking.

Procurement Method

13. The proposed method of procurement is limited tender to the USN through Foreign Military Sale. The procurement method meets the conditions for limited tender in accordance with the Commonwealth Procurement Rules (CPR) per 10.3 (iii) due to an absence of competition for technical reasons, as the equipment and services are subject to export controls and are only available from the USN and USG appointed Contractors.

14. The proposed procurement is deemed to be a covered procurement for the purposes of Division 2 of the CPR. However, the services provided under this procurement fall within one or more of the Defence exemption categories as detailed within Chapter 1.2 of reference E. Specifically, the Defence exemption categories applicable to this acquisition are:

- a. FSC 15 - Aircraft and Airframe Structural Components.
- b. FSC 16 - Aircraft Components and Accessories.

15. The procurement also falls within one of the exemption categories as detailed within Appendix A of the CPR. Specifically, the exemption category applicable to this acquisition includes procurement of goods or services (including construction) outside Australian Territory, for consumption outside Australian Territory.

Industry Aspects

16. Australian Industry will be used to assist with the introduction of the additional aircraft into service, where extant arrangements are capable of meeting sustainment outcomes for the A46 Growler fleet. Australian Industry was considered as a possible option to undertake aircraft modification to Air Force configuration baseline but discounted due to increased risk associated with schedule, capacity and technical complexity.

Funds Availability

17. The cost is based on the offered LOA contract price. The acquisition has been forecasted and budgeted for at previous estimates exercises. Contingency is not being used to fund the proposal. The funding identified is adequate for the proposed commitment and expenditure and is consistent with the purpose for which it was allocated. The following financial codes will be used for this procurement:

Account Code: 23104	Cost Centre: N/A	WBS: AIR05349PH3-210000	Fund: 79999
---------------------	------------------	-------------------------	-------------

18. The planned spread of commitment and expenditure (based on current contract rates and PBS 2022/23 price basis), for this proposal is contained in Table 1 below.

	FY21/22	FY22/23	FY23/24	Total
Commitment/Estimate Expenditure (USD)	50,000,000	50,000,000	5,514,561	105,514,561
Commitment/Estimate Expenditure (AUD equivalent)	67,376,364	67,087,079	7,304,054	141,767,498
GST				n/a
				141,767,498

Table 1. Total Estimated Commitment/Contract Value (AUD equivalent at PBS 2022/23 price basis)

19. The above spend spread represents the latest forecast and programmed budget as at Budget Estimates 2022/23. AIR5349PH3 has received approval to accelerate FY21/22 spend by an additional \$10m USD (\$13.6m AUD). The achievability is subject to timely disbursement and negotiations with the USN to accelerate payment for this activity once the LOA is implemented.

20. GST is not applicable to the FMS arrangement being approved in this submission. However, when Defence imports the goods acquired under FMS, it will be a taxable importation with any cost not directly attributed to the project.

Financial Advice

21. Specialist financial advice has been obtained on the financial aspects of the proposed commitment of relevant money. The following authorities have been consulted in the preparation of this submission:

- a. s47E(d) – Acquisition Financial Analyst (ACEASPO) – DFG
- b. s47E(d) – Assistant Director Finance AF Sustainment (ACEASPO) – DFG

Contracting, Legal and other Advice

22. Consideration has also been given to obtaining relevant specialist advice on the proposed commitment of relevant money. The following authorities have been consulted in the preparation of this submission:

- a. s47E(d) – Senior Contracting Officer – Materiel Procurement Branch.

PROPOSER

s22	s47E(d)		
	2022.02.22		
	15:16:38 +10'00'		
s47E(d)	s22	PM AIR5349PH3	s47E(d)
(Name)	(PMKeys No)	(Appt)	(Position No)

SPECIALIST ADVICE - FINANCE

I have reviewed this submission and endorse the financial aspects of this procurement.			
s47E(d)	Digitally signed by s47E(d) Date: 2022.02.23 10:32:42 +10'00'		
s47E(d)	s22	AD Finance AF Sustainment	s47E(d)
(Name)	(PMKeys No)	(Appt)	(Position No)

SPECIALIST ADVICE – MATERIEL PROCUREMENT BRANCH

I have reviewed this submission and endorse the contracting and commercial aspects of this procurement.			
s47E(d)	Digitally signed by s47E(d) Date: 2022.02.22 15:24:31 +10'00'		I support the referenced LRA review and the contingent liability associated with the indemnities under this FMS acquisition.
s47E(d)	s22	Snr Contracting Officer	s47E(d)
(Name)	(PMKeys No)	(Appt)	(Position No)

SECTION 23 – COMMITMENT APPROVAL

As Section 23 - Commitment Approver I confirm that:

- I have an appropriate delegation.
- I am exercising the degree of care and diligence that a reasonable person in my position, holding my responsibilities, would exercise.
- I am acting honestly, in good faith, and for a proper purpose.
- I am not gaining, or seeking to gain, a benefit for myself or any other person, nor am I causing or seeking to cause detriment to Defence, the Commonwealth, or any other person.
- I have disclosed any and all material personal interests relating to Defence and its affairs.
- I am satisfied that the commitment of relevant money promotes the efficient, effective, economical, and ethical use of relevant money, and that it does so in a way that is not inconsistent with the policies of the Australian government.
- I am complying with the Secretary's *Directions to All Delegates* contained within the Defence Financial Delegations.
- I am not approving a payment to myself, nor am I approving my own coincidental private expenditure.
- I have taken reasonable steps to ensure that all applicable requirements of the Commonwealth Procurement Rules and mandatory Defence policy have been met.

s47E(d)

Digitally signed

by s47E(d)

Date: 2022.02.24

09:31:15 +11'00'

L Lee, AM

(Name)

s22

(PMKeys No)

DG ACS

(Appt)

s47E(d)

(Position No)

SECTION 60 – CONTINGENT LIABILITY APPROVAL

The decision for the Commonwealth to grant the proposed indemnity is in accordance with the policies of the Commonwealth.

Approval is given to grant the indemnity described above. As a Defence delegate I confirm that:

- the risks arising from the indemnity are borne by the party best placed to manage them, there is or will be a process in place to manage the risks;
- the benefits to the Commonwealth in granting the indemnity outweigh the risks involved;
- the decision to grant the indemnity which creates a contingent liability is within my delegation as set out in Schedule 5 of Financial Delegations (as applicable); and
- the requirements of RMG 414 have been considered and complied with as required.

s47E(d)

Digitally signed by

s47E(d)

Date: 2022.02.24

09:31:31 +11'00'

L Lee, AM

(Name)

s22

(PMKeys No)

DG ACS

(Appt)

s47E(d)

(Position No)



AIR FORCE



~~SECRET AUSTEO~~
~~SENSITIVE. CABINET~~

i

O3102526

Document History

Version number	Summary of Changes
V1.0	Initial Signed
V2.0	Amendment for 'preferred option'.
V3.0	Amended to CP for OoS TAP outcomes
V4.0	Amended for Combined Pass
V5.0	Amended for Government Submission

Authorisation

Project Sponsor Endorsement	Program Sponsor Endorsement
<p>Digitally signed by s47E(d) Date: 2022.01.28 14:26:16 +11'00'</p> <p>s47E(d)</p> <p>Director Combat Capability</p> <p>28 Jan 22</p>	<p>s47E(d) Digitally signed by s47E(d) on 2022.01.28 14:14:50 +11'00' @defence.gov.au</p> <p>P Robinson AIRCDRE DG Air Combat Capability</p> <p>28 Jan 22</p>
Head Air Force Capability	
<p>s47E(d) Digitally signed by s47E(d) on 2022.01.31 11:22:19 +11'00'</p> <p>Rob Denney, AM AVM HAC</p> <p>28 Jan 22</p>	

~~SECRET-AUSTEO~~
~~SENSITIVE-CABINET~~

ii

AIR FORCE CAPABILITY

Air ISREW



Investment Committee – Gate 2 – Business Case AIR5349 Phase 3 – Airborne Electronic Attack Capability	
Capability Manager	Chief of Air Force
Domain	Air and Space
Program	Air Intelligence, Surveillance, Reconnaissance and Electronic Warfare (Air ISREW)
Stage	Combined Pass
Government Approval Level	Two Minister
Dependencies	Air Combat Program
IIP Provision	Nil variation expected

Sponsors Recommendations	Contestability
1. Agree to the procurement of a surplus US Navy EA-18G Growler to restore the Australian EA-18G Growler fleet to its planned 12 aircraft, at a cost of \$158.8m (including \$7.6m in contingency, 2021-22 MYEFO Price Basis), across FY2021/22-FY2023/24, from existing approved funding.	Agree/Disagree
2. s47E(a) [REDACTED]	Noted/Discuss
3. s47E(a) [REDACTED]	Noted/Discuss

~~SECRET-AUSTEO~~
~~SENSITIVE-CABINET~~

Page 1 of 12

Air combat power is a critical capability for the Joint Force

1. (O) Air Combat power is a critical Defence capability that supports Government's strategic objectives to shape, deter and respond. It protects Australia and its deployed forces from adversary threats, giving Australia a credible capability to hold at risk an adversary's forces and infrastructure at distance from Australia¹. To achieve this Australia requires a technologically advanced strike and air combat capability that can defeat threats as far from Australia or its deployed forces as possible².
2. (O) The Air Intelligence, Surveillance, Reconnaissance and Electronic Warfare (Air ISREW) Capability Program supports delivery of Air Combat power by sensing, detecting and targeting threats. It expands Defence's capability to respond to grey-zone activities and, together with the Air Combat Capability Program, enhances Australian Defence Force (ADF) lethality for high intensity operations that are the most likely and highest priority to protect Australia's security³.
3. s47E(d)
In 2013, the Project was approved to acquire 12 EA-18G Growler ('Growler'), which is an F/A-18F Super Hornet airframe modified to mount electromagnetic spectrum sensors and jamming pods (see Figure 1). s47E(d)



Figure 1: (O) EA-18G Growler

¹ 2020 Force Structure Plan Para 5.6

² 20 Defence Strategic Update Para 3.17

³ 2020 Defence Strategic Update Para 2.13

~~SECRET-AUSTEO~~
~~SENSITIVE-CABINET~~

Page 2 of 12

Growler provides a key Airborne Electronic Attack (AEA) capability

4. (O) The Growler is a key Air Power capability that supports Australian efforts to shape, deter and respond to advanced threats in the evolving strategic environment. Warfare increasingly relies on using the electromagnetic spectrum (the spectrum). An effective Defence Force must be able to exploit the spectrum. The Growler is known as a 'force level electronic warfare' asset. It supports and protects other elements of the Joint Force, such as aircraft, ships and ground forces, and helps them fulfil their missions. It does this by employing electronic warfare capabilities such as:

- a. detecting, identifying and locating adversary radio-frequency emitting systems (such as radars and radio communications) and relaying that information to friendly forces;
- b. using radio-frequency 'jamming' techniques to degrade or deceive adversary communications and radars with noise or false information. This prevents adversaries from effectively controlling their own forces, or detecting and targeting friendly capabilities such as fast jets on a strike mission; and
- c. using anti-radiation missiles which 'lock on' to radio-frequency emitters to destroy them, such as targeting radars for an adversary surface-to-air missile that may be threatening friendly forces.

s47E(d)

s47E(d)

s47E(d)

Defence acquired 12 Growlers and Initial Operational Capability was declared in 2019

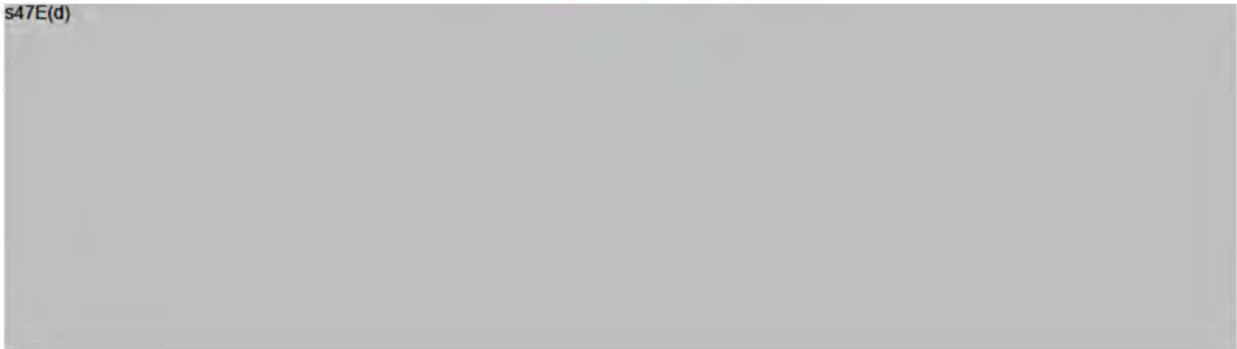
7. (O) Government approved the acquisition of 12 new-build Growlers in May 2013 at a cost per aircraft of approximately USD 78 million⁴ (\$113 million Budget FY16/17). The 12 Growlers were delivered between July 2015 and July 2017, and are operated by Number 6 Squadron based at RAAF Amberley. Initial Operating Capability was declared on 30 Apr 2019, providing an effective AEA capability in a limited role set since that date.

⁴ EA-18G Growler aircraft only. This value does include ALQ-99 Tactical Jamming Systems and other alternate mission equipment.

~~SECRET-AUSTEO~~
~~SENSITIVE-CABINET~~

Page 3 of 12

s47E(d)



s47E(d)



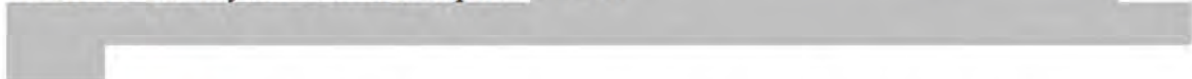
A single Growler was destroyed in January 2018 reducing the fleet size

10. (O) On 28 January 2018, an Australian Growler experienced a catastrophic un-contained failure in the right engine during take-off at Nellis Air Force Base, Nevada, USA, sustaining significant fire damage as shown in Figure 2.



Figure 2: A46-311 post-incident at Nellis Air Force Base January 2018

11. (S) In June 2018, Defence advised the former Minister for Defence that based on assessments by the US Navy (USN) and the aircraft manufacturer Boeing, the aircraft was determined as beyond economic repair⁵. s47E(d)



12. (S) Defence advised the Minister of efforts through the USN for the recovery of economic losses resulting from the accident⁶. The US Defense Department was unable to

⁵ MS18-000732

⁶ MS18-001377

~~SECRET-AUSTEO~~
~~SENSITIVE-CABINET~~

Page 4 of 12

compensate Australia for the cost of the aircraft; however, the USN pursued an extensive legal analysis and contractual review to identify any opportunity for Australian compensation. Under the terms and conditions of the Foreign Military Sales (FMS) case with the USN, Boeing did not bear any liability for engine defects or deficiencies. Therefore, the USN was unable to seek damages for the entire cost of the aircraft.

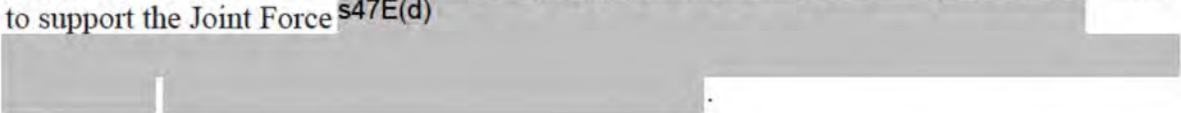
s47E(d)



s47E(d)



15. ~~(S)~~ **Fleet Size.** A fleet size of 12 aircraft was determined during the original project approval as the minimum fleet size required to allow Defence to provide AEA effects to support the Joint Force s47E(d)



s47E(d)



s47E(d)



s47E(d)



s47E(d)



~~SECRET-AUSTEO~~
~~SENSITIVE-CABINET~~

Page 5 of 12

s47E(d)

s47E(d)

s47E(d)

s47E(d)

s47E(d)

s47E(d)

The strategic environment has evolved since 2013

19. (S) The strategic guidance provided in the 2009 Defence White Paper has changed significantly since the Growler fleet was first approved in 2013. s47E(d)

s47E(d)

~~SECRET-AUSTEO~~
~~SENSITIVE-CABINET~~

Page 6 of 12

s47E(d)

A large rectangular area of the document is redacted with a solid grey fill.

s47E(d)

A rectangular area of the document is redacted with a solid grey fill.

s47E(d)

A rectangular area of the document is redacted with a solid grey fill.

s47E(d)

A rectangular area of the document is redacted with a solid grey fill.

s47E(d)

A large rectangular area of the document is redacted with a solid grey fill.

s47E(d)

A rectangular area of the document is redacted with a solid grey fill.

s47E(d)

A rectangular area of the document is redacted with a solid grey fill.

s47E(d)

A rectangular area of the document is redacted with a solid grey fill.

s47E(d)

A large rectangular area of the document is redacted with a solid grey fill.

Defence investigated options to ensure the fleet size remains effective for the Joint Force

s47C

A large rectangular area of the document is redacted with a solid grey fill.

s47E(d)

A rectangular area of the document is redacted with a solid grey fill.

~~SECRET AUSTEO~~
~~SENSITIVE. CABINET~~

Page 7 of 12

24. ~~(S)~~ s47C

The surplus Growler option provides the lowest acquisition and ongoing technical risk, with an airframe that will seamlessly incorporate into the Australian fleet and accept all future upgrades with no additional non-recurring engineering. s47C

s47C

incorporated into the 6SQN fleet at RAAF Base Amberley.

25. ~~(S)~~ The US Navy have identified a candidate surplus aircraft which was procured by the US Navy, briefly operated, and then placed into long term storage in accordance with authorised maintenance procedures. The US Navy advise the candidate surplus airframe is Bureau Number: 169219 with 246 flight hours accrued. Based on the very low flight hour accrual, this replacement aircraft will have more remaining flight hour life than the other 11 aircraft in RAAF inventory. While Air Force and CASG will undertake the necessary pre-acceptance inspections, the condition of the airframe is not considered a risk, due to storage procedures.

26. ~~(S)~~ Table 2 provides a summary of the options that were presented to the current Minister for Defence in May 2021¹⁷:

Table 2: ~~(S)~~ Summary Air Force Assessment of Options (May 2021)

	s47C	Option B Purchase Surplus USN EA-18G	s47C
Cost (USD) ¹⁸		\$98,087,875	
Acquisition Cost Risk		Low	
Sustainment Cost Risk		Low	
Acq Technical Risk		Low	
Sustainment Tech Risk		Low	
Predicted Schedule		~2 years	
Value for money		High	
Other Capability Impact		Nil	

27. ~~(S)~~ The Minister agreed to proceed with option B and authorised Defence to release a FMS Letter of Request to the USN to acquire a surplus USN Growler. In response,

s47C

¹⁷ MS21-900410 – Growler Airborne Electronic Attack (AIR5349 Phase 3) Approval (O2853671)

¹⁸ May 2021 Cost Estimate

~~SECRET AUSTEO~~
~~SENSITIVE. CABINET~~

Page 8 of 12

the USN provided a Letter of Offer and Acceptance (LOA) to the Commonwealth on 3 Dec 21¹⁹.

28. ~~(S)~~ The FMS acquisition will be managed within existing organisational structures within ACEASPO²⁰ for AIR5349 Phase 3. Sustainment implementation will be similarly supported within ACEASPO, with relatively seamless integration of the new aircraft into existing Australian commercial support arrangements and sustainment FMS cases, which are scaled to support a 12 aircraft Growler fleet.

The aircraft systems will need to be modified for sale to Australia

s47E(d)



30. As detailed in Note 1 of the LOA, the USD \$71.0M cost for the replacement Growler airframe does not include some items classified under FMS as Government Furnished Equipment (GFE). Figure 3 provides an illustration of these aircraft systems. These parts will be removed by the USN during the replacement Growler modification process and replaced like-for-like with Australian GFE from serviceable stock.

¹⁹ United States Foreign Military Sales Letter of Offer and Acceptance AT-P-SCM

²⁰ Air Combat Electronic Attack Systems Program Office manages the Super Hornet and Growler fleets.



32. ~~(O.S)~~ The engines to be fitted to the replacement Growler will be drawn from existing RAAF inventory, s47C

s47C

~~SECRET-AUSTEO~~
~~SENSITIVE-CABINET~~

Page 10 of 12

s47C

33. ~~(O.S)~~ Once the non-recurring engineering and modification effort is complete, and Defence conducts aircraft acceptance activities, the new Growler will be identical to the existing fleet aircraft from a functional perspective. Accordingly, there is no integration risk relating to this proposal. This proposal is scoped and costed to deliver a fully modified and functional RAAF EA-18G Growler aircraft.

Australian Industry

34. ~~(O.S)~~ There are no Australian Industry Capability (AIC) opportunities related to the modification and acquisition of the replacement Growler due to the FMS nature of the acquisition. All modification work will be conducted in the United States.

35. ~~(O.S)~~ The acquisition of a replacement aircraft to return the Growler fleet to the original 12 aircraft will restore Australian industry support for sustainment of the capability to the original planned level.

Cost estimate

36. ~~(O.S)~~ Table 3 summarises the acquisition costs from the cost model (all prices are in MYEFO 2021/22 out-turned price and exchange, unless otherwise indicated). The cost model was derived from the LOA received on 3 Dec 21.

Table 3: ~~(O.S)~~ Replacement Growler Cost Estimate (2021-22 MYEFO Price Basis)

Description	Cost (\$M)
EA-18G aircraft	94.484
Engineering modification services	24.020
Ferry flight preparation	2.101
Aircraft storage and inventory control	1.353
Transportation (logistics) costs	0.068
Project management technical assistance	3.052
Engineering technical assistance	2.362
Logistics technical assistance	2.407
Flight test services	6.754
FMS administrative fee	4.415
Ancillary Cost (Non-FMS)	10.252
Total (Exc. Contingency)	151.267
Contingency	7.563
Total (Inc. Contingency)	158.830

~~SECRET-AUSTEO~~
~~SENSITIVE-CABINET~~

Page 11 of 12

The project has identified a funding source

37. ~~(C.S)~~ AIR5349 Phase 3 will fund the acquisition through project savings and unallocated funds across FY21/22 to FY23/24. Project savings are a result of sound requirements validation throughout EA-18G Growler introduction to service by Air Force Headquarters and the CASG project office, as well as cost conscious execution of contracts between the USN and its suppliers. Additionally, the project has some flexibility available in FY phasings with other residual project scope elements. The AIR5349 Phase 3 budget, along with funds allocation for acquisition costs are summarised in Table 4.

Table 4: ~~(C.S)~~ Replacement Growler Spend Spread and Affordability (2021-22 MYEFO Price Basis)

(\$m)	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	Total (Exc. Cont)	Contingency	Total (Inc. Cont)
AIR 5349 Phase 3 approved acquisition provision	169.8	178.2	70.1	109.5	527.6	249.7	777.3
Cost	113.1	19.0	19.2		151.3	7.6	158.9
Remaining (programmed) funds	56.7	159.2	85.3	109.5	376.3	242.1	618.4

Note: The remaining AIR 5349 funds are programmed for full expenditure across other procurements (eg. ALQ-99 maintenance capability, Mobile Threat Training System). At this stage, there are no remaining funds that can be returned to the IIP for re-allocation.

38. ~~(C.S)~~ AIR 5349 Phase 3 is currently forecasting full expenditure of programmed funding, which extends beyond the replacement Growler, therefore, there is no residual approved funding to be returned to the IIP for re-allocation. No additional funding is required to progress this proposal to Gate 2.

39. ~~(C.S)~~ **Sustainment.** Air Force is already funded for sustainment of 12 Growler aircraft via CAF21 Product Schedule, so the preferred option would not substantively impact existing sustainment funding.

Schedule

40. ~~(C.S)~~ Approval of this proposal in FY2021-22 would see ownership of the new EA-18G Growler transfer to Australia in FY2021-22 while the aircraft remains in the United States for modification to Australian configuration. The aircraft would be incorporated into the RAAF fleet in time to ameliorate the availability decrease from FY23/24 identified in Table 1.

~~SECRET-AUSTEO~~
~~SENSITIVE: CABINET~~

Page 12 of 12

Risks

41. ~~(O.S)~~ Table 4 provides a Capability Manager risk assessment²² of the preferred option.

~~(O.S)~~ Table 5: CM Risk Assessment

Risk Category	RISK LEVEL			
	HIGH	MED-HIGH	MED-LOW	LOW
	I	II	III	IV
Acquisition				
Requirements				
Technology				
Schedule				
Commercial				
Project Integration				
Defence Integration				
Financial				
Strategic				
Industry				
Sustainment				
In-Service Requirements				
Obsolescence				
Commercial				
FIC				
Financial				
Strategic				
Operational				
Industry				

42. ~~(O.S)~~ The Acquisition Schedule has been assessed as MED-LOW owing to the timeline to execute the LOR/LOA process and achieve Government approval in sufficient time to meet the preferred option, and to reflect the uncertainty in delivery schedule due to external factors.

43. ~~(O.S)~~ Defence Science and Technology Group has independently assessed this proposal to replace A46-311 as LOW risk, with high confidence, as the capability being acquired is a functionally identical replacement of the existing platform and therefore does not present any risks associated with technology development or novel integration²³.

²² The assessment has been conducted against the Smart Buyer risk categories, but due to time available has been conducted by the CM without Smart Buyer consultation.

²³ Defence Science and Technology Group Technology Risk Assessment Minute – AIR 5349 Phase 3 Airborne Electronic Attack Capability - Replacement A46-311 Second Pass Approval (CJOAD/OUT/2021/U1023580)

The image shows a screenshot of a spreadsheet template for Form 1042-S. The spreadsheet is organized into three main columns, each representing a Form 1042-S. The first column is highlighted in pink. Each column contains rows for 'Name', 'Address', 'City', 'State', 'Zip', 'Country', 'Taxpayer's Name', 'Taxpayer's Address', 'Taxpayer's City', 'Taxpayer's State', 'Taxpayer's Zip', 'Taxpayer's Country', 'Taxpayer's Name', 'Taxpayer's Address', 'Taxpayer's City', 'Taxpayer's State', 'Taxpayer's Zip', 'Taxpayer's Country'. The 'Form 1042-S' section is highlighted in pink.

[illegible][illegible]

GROUP	LOA NOTE 1	ITEM	Part Number	NSN	Price Source	Effective Date	Unit Price (USD)
Airborne Electronic Attack	§47E(d)	§47E(d)	§47E(d)	§47E(d)	FEDLOG	Oct-21	1 067 680.00
		§47E(d)	§47E(d)	§47E(d)	FEDLOG	Oct-21	1 317 407.00
		§47E(d)	§47E(d)	§47E(d)	FEDLOG	Oct-21	995 805.00
		§47E(d)	§47E(d)	§47E(d)	FEDLOG	Oct-21	16 636.00
		§47E(d)	§47E(d)	§47E(d)	FEDLOG	Oct-21	590 776.00
		§47E(d)	§47E(d)	§47E(d)	FEDLOG	Oct-21	261 292.00
ENGINES	§47E(d)	ENGINE TURBO-JET	§47E(d)	§47E(d)	DD645	Jun-18	3 772 820.67
EJECTION SEATS	§47E(d)	Ejection Seat - Front	?	?	DD645	Jun-16	254 066.34
		Ejection Seat - Rear	?	?	DD645	Jun-16	252 080.63
AN/APG-79	§47E(d)	AN/APG-79(V)	§47E(d)	?	DD645	Sep-16	4 100 000.00
		RECEIVER RAD	§47E(d)	§47E(d)	Assumed to be included in above set		
MISSION COMPUTER	§47E(d)	COMPUTER DIGITAL	§47E(d)	§47E(d)	DD645	Jun-16	271 444.51
CCI	§47E(d)	§47E(d)	§47E(d)	§47E(d)	FEDLOG	Oct-21	261 292.00
	§47E(d)	§47E(d)	§47E(d)	§47E(d)	DD645	Sep-16	311 046.00
	§47E(d)	§47E(d)	?	?	SCI Case Database	Sep-20	93 149.00
	§47E(d)	§47E(d)	§47E(d)	§47E(d)	FEDLOG	Oct-21	211 507.00
	§47E(d)	§47E(d)	§47E(d)	§47E(d)	FEDLOG	Oct-21	144 144.00
	§47E(d)	§47E(d)	§47E(d)	§47E(d)	FEDLOG	Oct-21	4 018.00
	§47E(d)	§47E(d)	§47E(d)	§47E(d)	FEDLOG	Oct-21	811.70
	§47E(d)	§47E(d)	§47E(d)	§47E(d)	FEDLOG	Oct-17	2 743.00
	§47E(d)	§47E(d)	§47E(d)	§47E(d)	FEDLOG	Oct-21	70 864.00
	§47E(d)	§47E(d)	§47E(d)	§47E(d)	FEDLOG	Aug-21	17 793.00
	§47E(d)	§47E(d)	§47E(d)	§47E(d)	FEDLOG	Oct-21	18 407.00
		§47E(d)	§47E(d)	§47E(d)	FEDLOG	Oct-21	650 990.00

Escalation of Unit Price (Column I) to current dollars (MYEFO 2021 -22)			
Escalation factors from Cost Model			
Budget Cycle (original basis)	Indicative me Period	Escalation Rate (to current basis)	Unit Price (USD) Escalated to current dollars (MYEFO 2021-22)
MYEFO 2021-22	Sep - Dec 21	1.0000	1 067 680.00
MYEFO 2021-22	Sep - Dec 21	1.0000	1 317 407.00
MYEFO 2021-22	Sep - Dec 21	1.0000	995 805.00
MYEFO 2021-22	Sep - Dec 21	1.0000	16 636.00
MYEFO 2021-22	Sep - Dec 21	1.0000	590 776.00
MYEFO 2021-22	Sep - Dec 21	1.0000	261 292.00
Budget 2018-19	May - Aug 18	1.0922	4 120 622.70
Budget 2016-17	May - Aug 16	1.1583	294 290.60
Budget 2016-17	May - Aug 16	1.1583	291 990.5
MYEFO 2016-17	Sep - Dec 16	1.1583	4 749 119.75
MYEFO 2016-17	Sep - Dec 16	1.1583	-
Budget 2016-17	May - Aug 16	1.1583	314 420.12
MYEFO 2021-22	Sep - Dec 21	1.0000	261 292.00
MYEFO 2016-17	Sep - Dec 16	1.1583	360 291.39
MYEFO 2020-21	Sep - Dec 20	1.0298	95 927.6
MYEFO 2021-22	Sep - Dec 21	1.0000	211 507.00
MYEFO 2021-22	Sep - Dec 21	1.0000	144 144.00
MYEFO 2021-22	Sep - Dec 21	1.0000	4 018.00
MYEFO 2021-22	Sep - Dec 21	1.0000	811.70
MYEFO 2017-18	Sep - Dec 17	1.1248	3 085.24
MYEFO 2021-22	Sep - Dec 21	1.0000	70 864.00
Budget 2021-22	May - Aug 21	1.0000	17 793.00
MYEFO 2021-22	Sep - Dec 21	1.0000	18 407.00
MYEFO 2021-22	Sep - Dec 21	1.0000	650 990.00

Summary for Cost Model Input		
Government Furnished Equipment	Unit Price (USD) Escalated to current dollars (MYEFO 2021-22)	Unit of Measure
Airborne Electronic Attack components	.250	per Item
F 1 -GE- 00 Engines	.121	per Item
Aircrew Common Ejection Seats (NACES)	0.586	per System
Active Electron c Scanned Array (AESA) Radar	.7 9	per Item
Advanced Mission Computers	0.31	per Item
Cryptograph c Control Items	1.839	per Item
total	15 859	

FMS De escalation
Calculate Australian Financial Years for payments based on LOA provided

Table 1: FMS payments in Out turned USD

[illegible]

561 This is the total of payments by Year and this should total the amount of the FMS case payments (in Out -turned).

Table 2: LOA line items / cost elements in Out turned USD

[illegible]

Information above this line is to be input using data from the LOA. Below this line are the automatically generated de-escalated information to be input into CEAMOT

Table 3: Payments in Constant USD

FY	2021 22	2022 23	2023 24	2024 25	2025 26	2026 27	2027 28	2028 29	2029 30	2030 31	2031 32	2032 33	2033 34	2034 35	2035 36	2036 37	2037 38	total
USDOO inflator	100.0%	101.8%	103.6%	105.5%	107.4%	109.3%	111.3%	113.3%	115.3%	117.4%	119.5%	121.7%	123.9%	126.1%	128.4%	130.7%	133.0%	

[illegible]**Table 4: LOA line items / cost elements in Constant USD**[illegible]

Table 5: Spend spread to be used in CEAMOT Quantities (Manual Method)

[illegible]