(3) Assist in preparing the price and availability data.

[56 FR 36367, July 31, 1991, as amended at 62 FR 2617, Jan. 17, 1997; 63 FR 43889, Aug. 17, 1998]

### 225.7303 Pricing acquisitions for FMS.

(a) Price FMS contracts using the same principles as are used in pricing other defense contracts. Application of the pricing principles in FAR parts 15 and 31 to an FMS contract may result in prices that differ from other defense contract prices for the same item due to the considerations in this section.

(b) If the foreign government has conducted a competition resulting in adequate price competition (see FAR 15.403–1(b)(1)), the contracting officer must not require the submission of cost or pricing data. The contracting officer should consult with the foreign government through security assistance personnel to determine if adequate price competition has occurred.

[64 FR 49683, Sept. 14, 1999]

### 225.7303–1 Contractor sales to other foreign customers.

If the contractor has made sales of the item required for the foreign military sale to foreign customers under comparable conditions, including quantity and delivery, price the FMS contract in accordance with FAR part 15.

### 225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) In pricing FMS contracts where non-U.S. Government prices as described in 225.7303–1 do not exist, except as provided in 225.7303–5, recognize the reasonable and allocable costs of doing business with a foreign government or international organization, even though such costs might not be recognized in the same amounts in pricing other defense contracts. Examples of such costs include, but are not limited to—

(1) Selling expenses (not otherwise limited by FAR part 31), e.g.—

(i) Maintaining international sales and service organizations;

(ii) Sales commissions and fees in accordance with FAR subpart 3.4;

(iii) Sales promotions, demonstrations, and related travel for sales to foreign governments. Paragraph 126.8 of the International Traffic in Arms Regulations (ITAR) (22 CFR part 121) may require Government approval for these costs to be allowable. If Government approval is required for promotion or demonstration costs to be allowable, the approval must be obtained.

(iv) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(2) Product support and post-delivery service expenses, such as—

(i) Operations or maintenance training, training or tactics films, manuals, or other related data; and

(ii) Technical field services provided in a foreign country related to accident investigations, weapon system problems, operations/tactics enhancement, and related travel to foreign countries.

(3) Offset costs.

(i) A U.S. defense contractor may recover all costs incurred for offset agreements with a foreign government or international organization if the LOA is financed wholly with customer cash or repayable foreign military finance credits.

(ii) The U.S. Government assumes no obligation to satisfy or administer the offset requirement or to bear any of the associated costs.

(4) Costs that are the subject of advance agreement under the appropriate provisions of FAR part 31; or where the advance understanding places a limit on the amounts of cost that will be recognized as allowable in defense contract pricing, and the agreement contemplated that it will apply only to DoD contracts for the U.S. Government's own requirement (as distinguished from contracts for FMS).

(b) Costs not allowable under FAR part 31 are not allowable in pricing FMS contracts, except as noted in paragraph (c) of this subsection.

(c) The cost limitations for major contractors on independent research and development and bid and proposal (IR&D/B&P) costs for projects that are of potential interest to DoD, in 231.205–18(c)(iii), do not apply to FMS contracts, except as provided in 225.7303–5. Therefore, the cost limitations on independent research and development and bid and proposal (IR&D/B&P) costs in