

Customer reference continued: 12958 Subject: Request for Technical Assistance to Cormagdalena; USAID Determination Memo dated 6 Oct 2006, subject: 607 and 627-630 Determination U.S. Army Corps of Engineers; and, request from CORMAGDALENA, dated 13 December 2005, ref: OGE 000434; to the US Ambassador to Colombia Dr. William Wood

Case description continued: navigational aid systems, channel improvements and flood control measures in the Magdalena River valley.

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 Q2E 2 08	061500CONSTOT OTHER CONSTRUCTION Water Resource management studies and investigations for Cormagdalena	(S)(N)(R) (XXI) xx	\$35,000	X(1-12) TA4	A	0
002 R6C 2	SMALLCASESUPT SMALL CASE SUPPORT EXPENSES	(N)(N)(R) (-) xx	\$13,670	S(1) TA3	-	-

Estimated Cost Summary:

(8) Net Estimated Cost	\$48,670
(9) Packing, Crating, and Handling	0
(10) Administrative Charge	1,330
(11) Transportation	0
(12) Other	0
(13) Total Estimated Cost	\$50,000

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	\$50,000	\$50,000

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 - Denver, ATTN: DFAS-JY/DE, 6760 E. Irvington Place, Denver, CO 80279-2000 . 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-JY/DE Agency, showing "Payment from FAA, 607 Sales -Pay In Advance for S6-B-HAA"; or a check for the initial deposit, made payable to the US Treasury, mailed to DFAS-JDT/DE, P.O.Box 173659, Denver, CO 80217-3659, showing "Payment from FAA, 607 Sales -Pay In Advance for S6-B-HAA". Wire transfer is preferred.
2. One signed copy should be returned to Department of the Army, U.S Army Corps of Engineers, 441 G Street, N.W., ATTN: CEMP-MD, Washington, DC 20314-1000.

Note 1. LINE ITEM 001 - Water Resource Management Technical Services.

Line item 001 provides the services of the US Army Corps of Engineers (USACE) in providing Water Resource management studies, assessments and investigations towards implementation of navigational aid systems, channel improvements and flood control measures in the Magdalena River valley for Cormagdalena.

Note 2. AUTHORITY FOR SALE - FAA, SECTION 607.

This sale is made under the authority of the U.S. Foreign Assistance Act (FAA) of 1961 and the Determination hereunder, a copy of which is attached to this Offer and Acceptance. Any reference in this Letter of Offer and Acceptance to the United States Arms Export Control Act, to defense articles, and to defense services shall be construed instead to be a reference to FAA, section 607 and the Determination hereunder. All other terms, conditions, and procedures under this Offer and Acceptance apply to this transaction. (A8L)

Note 3. OFFSET COSTS.

The Department of Defense is not a party to any offset agreements/arrangements that may be required by the Purchaser in relation to the sales made in this LOA and assumes no obligation to administer or satisfy any offset requirements or bear any of the associated costs. To the extent that the Purchaser requires offsets in conjunction with this sale, offset costs may be included in the price of contracts negotiated under this LOA. If the Purchaser desires visibility into these costs, the Purchaser should raise this with the contractor during negotiation of offset arrangements. (04)

Note 4. UNAUTHORIZED USE OF DEFENSE ARTICLES.

Defense articles furnished under this LOA may be used only for those authorized purposes set forth in section 2.2 of the Standard Terms and Conditions, unless the written consent of the USG has been obtained for a different use. The USG retains

the right to verify reports that such defense articles have been used for purposes not authorized or for uses not consented to by the USG. (U1)

Note 5. END USE MONITORING (EUM).

Pursuant to the Foreign Assistance Act (FAA), section 505; and the Arms Export Control Act (AECA), section 40A, the USG will be permitted, upon request, to conduct a scheduled inspection and physical inventory of all articles and services transferred under this LOA. Upon request, the inventory and accountability records maintained by the purchaser will be made available to the U.S. personnel conducting this inspection. (E3A)

Note 6. PROHIBITION ON TAXATION OF U.S. ASSISTANCE.

Any articles, equipment, materials, supplies, goods, or other commodities purchased with U.S. Assistance Funds appropriated and allocated pursuant to the Foreign Operations, Export Financing, and Related Programs Appropriations Act in support of this Letter of Offer and Acceptance (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. (P8A)

Note 7. TRANSLATION.

Publications/documents supplied on this LOA are in the English language. The responsibility for the translation of any document rests with the purchaser. However, when information is translated, the English text is still the officially binding document. (T13.B)

Note 8. END USE - FAA, SECTION 607.

The purchaser and/or benefiting country shall, except as may otherwise be mutually agreed in writing by the USG, use the items sold under this Offer and Acceptance or direct their use by personnel and organizations under its auspices only for purposes authorized. (E2A)

Note 9. ACCESS.

Cost and delivery schedules herein anticipate that U.S. personnel in Colombia 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 Colombia as required to accomplish this effort.

Note 10. EXPORT OF DATA..

U.S. personnel shall not be required or expected to deliver to the Government of Colombia (GOC), nor to any person or entity not a citizen of the United States of America, any technical data produced or utilized under this LOA until the GOC has furnished 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.

Note 11. SECURITY..

USG price and delivery estimates anticipate that the GOC will provide adequate security to protect personnel and property associated with this LOA. If USG incurs any costs because of a failure of the GOC to provide adequate security, costs thereby incurred by the USG will be reimbursed out of funds to be provided under this LOA.

Note 12. PRIVILEGES AND IMMUNITIES..

U.S. Government (USG) military and civilian personnel present in Colombia for the purposes of implementing work under this Letter of Offer and Acceptance shall be granted the privileges and immunities as provided for in the U.S./Colombia Treaty for Economic, Technical and Related Assistance, dated July 23, 1962, Article III.

Note 13. ADMINISTRATIVE SURCHARGE.

An administrative surcharge of 3.8% has been applied to line item number 001. An administrative surcharge has not been applied to line 002.

Note 14. ESTIMATED CASE CLOSURE DATE.

The programmed case closure date is 36 months after projected final delivery or completion of the underlying contract(s), as applicable, whichever occurs later. (E4B)

Note 15. PASSPORTS, VISAS, LICENSES and PERMITS..

- a. USG and contractor (the term "contractor" as used in these supplemental terms and conditions includes the USG prime contractor and its subcontractors) cost and delivery estimates herein anticipate the GOC will, within the framework of the laws of Colombia, 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. In case of an emergency, medical or otherwise, an exit permit shall be issued without delay.
- b. The U.S. contractor shall be responsible for timely and complete submittal of the necessary information and forms directly to the appropriate GOC agency for the required passports, visas, licenses, or permits. The contractor shall be responsible for the sponsorship of its employees and their dependents and shall process said permits directly with the appropriate GOC agency.
- c. The Purchaser will receive, without regard to race, religion, sex, or ethnic or national origin, persons of other than Colombian nationality imported into Colombia, under proper authority, to work exclusively on efforts covered by the provisions of this contract, who have USG issued passports, provided they are technically qualified for the work and meet the security requirements of the Purchaser, and will impose on such person no fee or charges for an entry, exit, or quarantine, nor will they require work or residence permits for personnel working

under this contract.

d. Work forces of contractors and subcontractors may be of nationalities other than U.S. or Colombia and subject to individual security approval by the host government.

e. If, notwithstanding the above agreements, the Contractor(s) incurs costs arising out of any of the conditions described above, the price of the contract implementing this LOA shall be increased accordingly and the costs reimbursed to the Contractor(s) out of funds which will be provided by the Purchaser under this LOA, and the contract delivery schedule shall be appropriately adjusted. Reimbursement shall be limited to those costs incurred, including applicable overhead and General and Administrative (G and A) costs.

Note 16. PUBLICATIONS.

All publications, technical data, and operation and maintenance manuals will be furnished in the English language only.

Note 17. RESPONSIBILITY FOR COSTS.

No modifications or amendments to this Pseudo LOA are authorized without written direction by Defense Security Cooperation Agency (DSCA).

a. The United States Army Corps of Engineers (USACE) has no appropriations that may be legally made available for the services performed by USACE under this LOA. All costs associated with the USACE provision of goods and services pursuant to this LOA shall be paid from funds provided under this LOA.

b. If liability of any kind is imposed on the United States relating to the USACE's provision of goods or services under this LOA, the USACE will accept accountability for its actions, but the purchaser (DOD) shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs. This obligation extends to all funds legally available to discharge this liability, including funds that may be made legally available through transfer, reprogramming or other means. Should the purchaser (DOD) have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, they remain responsible for seeking additional funds from Congress for such purpose, although nothing in this LOA shall be construed to imply that Congress will appropriate funds sufficient to meet the liability. Notwithstanding the above, this LOA does not confer any liability upon the purchaser (DOD) for claims payable by USACE under the Federal Torts Claims Act. Provided further that nothing in this Agreement is intended or will be construed to create any rights or remedies for any third party and no third party is intended to be a beneficiary of this Agreement.

Note 18. SHORT OFFER EXPIRATION DATE (OED).

To satisfy this requirement this LOA must be signed and appropriate financial arrangements concluded by the purchaser by the OED shown on page 1 in order to complete the requirements of this request within the resources and timeframes available.. (S26A)

Note 19. MISSILE TECHNOLOGY CONTROL REGIME (MTCR).

Paragraph 2.3 of the Standard Terms and Conditions of this LOA discusses use and transfer restrictions on articles and services provided under this LOA and emphasizes that the Purchaser "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 customer agrees not to divert articles and services received under this LOA for purposes or uses other than those for which furnished to include, 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 AECA (22 U.S.C. 2797c). The items will be used only for the purpose 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 also reserves 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 MTCR equipment or technology that contributes to the acquisition, design, development or production of missiles in a country that is not an MTCR adherent." (M13)

Note 20. NONRECURRING COSTS - DO NOT APPLY.

No Nonrecurring Costs (NC) apply to this FMS case. (N3)

Note 21. CONTRACT ADMINISTRATION SERVICES.

A contract administrative surcharge (CAS) is included in the value of line item 001. The CAS is a U.S. Government cost charged at 0.4% (0.2% for contract audit + 0.2% for overseas) of the value of contracts issued under this LOA.

Note 22. SMALL CASE MANAGEMENT LINE (SCML).

Any case accepted on or after 1 Aug 06 that will not collect at least \$15,000 in administrative surcharge using the established percentage must include an SCML to charge the difference in value between the calculated administrative surcharge amount and \$15,000. Line item 002 has been added to this case for that purpose. If this case is ever modified or amended and the calculated administrative surcharge amount changes, the value of the SCML will be adjusted to ensure the minimum \$15,000 combined administrative surcharge/SCML value is reached. If this case is ever modified or amended to increase the case value such that the administrative surcharge collection will exceed \$15,000, line item 002 will be reduced to \$0. The FMS administrative surcharge does not apply to the SCML.

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 US 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 US DOD is solely responsible for negotiating the terms and conditions of contracts necessary to fulfill the requirements in this LOA.

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

1.4 Under unusual and compelling circumstances, when the national interest of the US 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.

1.5 US 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 US personnel in combat activities outside the US, in connection with the performance of these defense services.

1.6 The assignment or employment of US personnel for the performance of this LOA by the USG will not take into account race, religion, national origin, or sex.

1.7 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 agrees, except as may otherwise be mutually agreed in writing, to use the defense articles sold hereunder only:

2.2.1 For purposes specified in any Mutual Defense Assistance Agreement between the USG and the Purchaser;

2.2.2 For purposes specified in any bilateral or regional defense treaty to which the USG and the Purchaser are both parties, if section 2.2.1 is inapplicable; or,

2.2.3 For internal security, individual self-defense, or civic action, if sections 2.2.1 and 2.2.2 are inapplicable.

2.3 The Purchaser will not transfer title to, or possession of, the defense articles, components and associated support material, 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), 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 US Congress is required to be notified of any substantial evidence that the defense articles sold in this LOA have been used in a manner which is inconsistent with this provision.

2.4. 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 US classified material or information furnished pursuant to this LOA. The Purchaser further certifies that if a US classified item is to be furnished to its contractor pursuant to this LOA: (a) items will be exchanged through official government channels, (b) the specified contractor has been granted a facility security clearance by the Purchaser at a level at

least equal to the classification level of the US information involved, (c) all contractor personnel requiring access to such items have been cleared to the appropriate level by the Purchaser, and (d) the Purchaser will assume responsibility for administering security measures while 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.

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 Purchaser or third parties, or

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

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 US 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 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.

4.4.7 That requests for funds or billings 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.

4.4.8 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.

4.4.9 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.

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 US 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 US 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 US 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 US 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 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 and will be submitted promptly by the Purchaser. DOD will not accept claims related to items of \$200 or less for overages, shortages, damages, non-shipment, or non-performance. Any claim, including a claim for shortage (but excluding a claim for nonshipment/nonreceipt of an entire lot), received after one year from passage of title to the article or from scheduled performance of the service will be disallowed by the USG unless the USG determines that unusual and compelling circumstances involving latent defects justify consideration of the claim. Claims, received after one year from date of passage of title or initial billing, whichever is later, for nonshipment/nonreceipt of an entire lot will be disallowed by the USG. The Purchaser agrees to return discrepant articles to USG custody within 180 days from the date of USG approval of such return.

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 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 US 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 material 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 US Federal 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 US and Purchaser use. Additional information may be obtained from the Security Assistance Management Manual, DOD 5105.38-M, the in-country Security Assistance Office, the DSCA Country Director, or from the implementing agency.

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, are shown in DOD 5105.38-M.

b. Description/Condition. The item description consists of coding for use in US management of the LOA (starting with Generic/MASL and MDE "(Y)" or non-MDE "(N)" data such as that in DOD 5105.38-M, Appendix D) plus a short description of what is to be provided. When items are serviceable, Code "A" (new, repaired, or reconditioned material which meets US Armed Forces standards of serviceability) may be used; otherwise, Code "B" (unserviceable or mixed condition without repair, restoration, or rehabilitation which may be required) may be used. 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" (each, or one; for example, 40 EA) or blank (unit of issue not applicable; for example, services or several less significant items consolidated under one LOA Item Number). When blank, a quantity or Unit Cost is not shown.

d. The Source 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 leadtime cited is the number of months (MOS) estimated for complete delivery of defense articles or performance of defense services. The leadtime starts with Acceptance 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 are as follows:

- 3 - Source Code S, R, or E; based on Arms Export Control Act (AECA) Section 21(b).
- 4 - Source Code X; AECA Sections 21(b), 22(a), 29, or source undetermined.
- 5 - Source Code P; 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).
- M - MAP Merger; Foreign Assistance Act (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 US equipment; NC - This offer does not constitute a commitment to provide US training; SC - US training concurrently being addressed in separate LOA; NR - No US 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)

- 3 - At the CONUS POE alongside the vessel or aircraft
- 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
- 6 - At the overseas POD on board the vessel or aircraft
- 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 customer 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. The Purchaser Procuring Agency should show the code for the Purchaser's Army, Navy, Air Force, or other agency which 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 which is to receive the items. This includes return of items repaired under an LOA.

(1) This address will be added by the US 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 US 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 US 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.

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-ADY/DE 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 US 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-ADY/DE 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-ADY/DE forwards these forms to the Purchaser within 45 days before payments are due and Purchasers must forward payments in US 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 Service, ATTN: DFAS-ADY/DE, 6760 E. Irvington Place, Denver, CO 80279-2000.

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-US banks must go through a US correspondent FRS member bank. The following information is applicable to cash payments:

Wire transfer--
 United States Treasury
 New York, New York
 ABA#021030004
 DFAS-ADY/DE
 Agency Code 00003801
 Beneficiary:DFAS-ADY/DE 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--
DFAS-ATDT/DE
PO Box 173659
Denver, CO 80217-3659

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 Service, ATTN: DFAS-ADY/DE, 6760 E. Irvington Place, Denver, CO 80279-2000. Purchasers should consult applicable FMF agreements for explicit instructions. Questions pertaining to the status of FMF financing and balances should be directed to DSCA/COMPT-FM.

f. Payments not received by DFAS-ADY/DE 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-ADY/DE 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 Comptroller, DSCA.

h. The Purchaser may cancel this LOA upon request to the implementing agency. An administrative charge that equals one-half of the applicable administrative charge rate times the ordered LOA value, which is earned on LOA acceptance, or the applicable administrative charge rate times the actual LOA value at closure, whichever is higher, may be assessed if this LOA is canceled after implementation.

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 which 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 US distribution as the basic LOA.

d. Requests for changes required prior to acceptance by the Purchaser should be submitted to the implementing agency for consideration. See DOD 5105.38-M.

6. CORRESPONDENCE. Questions or comments regarding this LOA should identify the Purchaser request reference and the identification assigned by the implementing agency within DOD.

The following attachments are also included with this LOA:

1. Determination from U.S. Embassy Bogota S4-B-HAA #1

1. Determination from U.S. Embassy Bogota S4-B-HAA #1 (Case S6-B-HAA)

> UNCLASSIFIED//
> PAAUZYUW RUEHBOA5048 1572124-UUUU--RHMFIUU.
> ZNR UUUUU
> P R 062124Z JUN 06
> FM USMILGP BOGOTA CO
> TO RUEHC/SECSTATE WASHDC
> RUEKJCS/SECDEF WASHDC
> INFO RUMIAAA/USCINCSO MIAMI FL//SCEN// RUEADWD/HQDA WASHDC//ASA(CW)//
> RHMFIUU/CDRUSAEDSA ATLANTA GA RUEANEA/CDRUSACE WASHDC//CECS-//
> RHMFIUU/CDRUSAED MOBILE AL BT UNCLAS BOGOTA CO 005048
>
> E.O. 12958: N/A
> SUBJECT: REQUEST FOR TECHNICAL ASSISTANCE TO CORMAGDALENA
>
> REF: LETTER OF REQUEST FROM CORMAGDALENA
>
> 1. THIS IS AN ACTION REQUEST. PLEASE SEE PARAGRAPH 6.
>
> 2. CORMAGDALENA WAS CREATED WITH THE MISSIONS OF IMPROVING NAVIGATION
> AND PORT USE, LAND RECLAMATION AND CONSERVATION, GENERATION AND
> DISTRIBUTION OF ELECTRICITY AS WELL AS SUSTAINABLE DEVELOPMENT IN THE
> PRESERVATION OF THE ENVIRONMENTAL, ICHTHYOLOGIC AND OTHER RENEWABLE
> RESOURCES ALONG THE MAGDALENA RIVER. CORMAGDALENA IS REQUESTING USACE
> ASSISTANCE GIVEN ITS VAST EXPERIENCE IN IMPLEMENTING SIMILAR PROJECTS
> ALONG THE MISSISSIPPI RIVER.
>
> 3. AMBASSADOR WOOD RECEIVED A LETTER DATED 13 DECEMBER 2005 FROM
> CORMAGDALENA REQUESTING USACE ASSISTANCE. EXCERPTS
> FOLLOW:
> [and] WE HAVE THE PLEASURE OF WRITING TO YOU FOR THE PURPOSE OF REQUESTING
> ASSISTANCE FROM THE US ARMY CORPS OF ENGINEERS
> (USACE) TO THE REGIONAL AUTONOMOUS CORPORATION OF THE GRAND RIVER OF
> THE MAGDALENA (CORMAGDALENA) IN THE STUDIES AND INVESTIGATIONS OF
> NAVIGATIONAL AIDS, CHANNEL IMPROVEMENTS AND FLOOD CONTROL MEASURES ON
> THE MAGDALENA RIVER IN ACCORDANCE WITH SECTION 607 OF THE FOREIGN
> ASSISTANCE ACT.8
>
> 4. WE UNDERSTAND THAT USACE WILL SEEK APPROVAL FROM DOD TO PROCEED
> WITH THIS EFFORT. ONLY IF THESE ARE RECEIVED WILL USACE THEN SIGN A
> GENERAL LETTER OF AGREEMENT WITH CORMAGDALENA TO PROVIDE TECHNICAL
> ASSISTANCE IN THE STUDIES AND INVESTIGATIONS OF RIVER NAVIGATION,
> CHANNEL IMPROVEMENT AND FLOOD CONTROL PROJECTS. THE GOC HAS AGREED
> THAT CORMAGDALENA WILL ASSUME COMPLETE COSTS AND TOTAL FINANCIAL
> RESPONSIBILITY OF ANY USACE ASSISTANCE.
>
> 5. THIS IS NOT RELATED TO ANY OTHER ONGOING DOD INVOLVEMENT IN
> COLOMBIA.
>
> 6. WE REQUEST STATE DEPARTMENT CONCURRENCE AND ASSISTANCE IN
> REQUESTING THE US ARMY CORPS OF ENGINEERS PARTICIPATION IN THIS
> INITIATIVE. THE AMBASSADOR SUPPORTS CORMAGDALENA'S REQUEST THAT THE
> PROJECT START AS SOON AS POSSIBLE.
>
> 7. EMBASSY BOGOTA CONCURS AND CLEARS.
> BT
> #5048