Department of Defense

DIRECTIVE

NUMBER 2010.9
April 28, 2003

USD(AT&L)

SUBJECT: Acquisition and Cross-Servicing Agreements

References: (a) DoD Directive 2010.9, "Mutual Logistic Support Between the United States and Governments of Other NATO Countries and NATO Subsidiary Bodies," September 30, 1988 (hereby canceled)
(b) Subchapter I, Chapter 138, Sections 2341-2350 of title 10, United States Code
(c) Section 2306(c) of title 10, United States Code, "Multiyear Contracts: Acquisitions of Services"
(d) DoD Directive 5530.3, "International Agreements," June 11, 1987
(e) through (n), see enclosure 1

1. REISSUANCE AND PURPOSE

This Directive reissues reference (a) and implements reference (b) by updating policy for the acquisition from and transfer to authorized foreign governments of logistics support, supplies, and services.

2. APPLICABILITY AND SCOPE

This Directive applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as "the DoD Components").

3. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

4. POLICY

4.1. It is DoD policy under reference (b), also referred to as Acquisition and Cross-Servicing Agreement (ACSA) Authorities, that the DoD Components are authorized to acquire, and in some cases to provide, logistic support, supplies, and services directly from/to eligible countries and international organizations. ACSA provides two distinct legal authorities as follows:

4.1.1. Acquisition-only authority.

4.1.2. Cross-servicing Agreement authority (which includes both an acquisition and transfer authority).

4.2. Under acquisition-only authority:

4.2.1. Eligible countries and international organizations are:

4.2.1.1. Governments of other North Atlantic Treaty Organization (NATO) countries and NATO subsidiary bodies.

4.2.1.2. The United Nations Organization or any regional international organization of which the United States is a member.

4.2.1.3. Any government not a member of NATO, if that country meets one or more of the following eligibility criteria:

4.2.1.3.1. Has a defense alliance with the United States.

4.2.1.3.2. Permits the stationing of members of the U.S. Armed Forces or the homeporting of U.S. naval vessels in such country.

4.2.1.3.3. Has agreed to preposition U.S. materiel in such country.

4.2.1.3.4. Serves as the host country for U.S. Armed Forces during exercises or permits other U.S. military operations in such country.

4.2.2. Acquisition agreements use the authority of Section 2341 of reference (b). They may also be entered into using the authority of Section 2341 in conjunction

with chapter 137 of title 10, United States Code. Chapter 137 provides additional authorities that, in appropriate circumstances, may be useful, e.g., multi-year contracting authority (10 U.S.C. 2306c (reference (c))). A warranted contracting officer must execute acquisition agreements (i.e., contracts) that use chapter 137 authority.

4.2.3. Use of acquisition-only authority does not require the existence of a cross-servicing agreement or an implementing arrangement as a prerequisite.

4.3. Under cross-servicing agreement authority:

4.3.1. The Secretary of Defense is authorized to enter into cross-servicing agreements with the governments of NATO countries, NATO subsidiary bodies, the United Nations Organization or any other regional international organization of which the United States is a member, and governments of designated non-NATO countries for the reciprocal provision of logistics support, supplies, and services with the military forces of that country or international organization.

4.3.2. After consultation with the Secretary of State, the Secretary of Defense may designate non-NATO countries as authorized for cross-servicing agreements after providing 30 days' advance notification to the Committees on Armed Services and Foreign Relations of the U.S. Senate and the Committees on Armed Services and International Relations of the House of Representatives.

4.3.2.1. Such consultation, designation, and congressional notifications are not required for NATO countries, NATO subsidiary bodies, the United Nations Organization, or any regional international organization of which the United States is a member.

4.3.2.2. Designation of a non-NATO country for cross-servicing agreement eligibility shall be in the interest of the national security of the United States.

4.3.3. The negotiation and conclusion of multiple cross-servicing agreements with a given country or international organization is discouraged. Accordingly, the DoD Components shall use, whenever practical, a single cross-servicing agreement when acquiring or transferring logistics support, supplies, and services under section 2342 of reference (b).

4.3.4. Cross-servicing agreements and implementing arrangements that are not themselves acquisition agreements or contracts shall be negotiated and concluded in accordance with DoD Directive 5530.3 (reference (d)).

4.3.5. Except as payment for logistics support, supplies, and services acquired by the United States under an acquisition-only agreement, logistics support, supplies, and services may only be provided to a foreign government as a transfer under a cross-servicing agreement. ACSA authority should be used during wartime, combined exercises, training, deployments, contingency operations, humanitarian or foreign disaster relief operations, peace operations conducted under Chapter VI or VII of the United Nations Charter (reference (e)), or for unforeseen or exigent circumstances. Cross-servicing agreements shall, to the maximum extent possible, include applicable provisions to ensure that transfers may occur in these circumstances.

4.3.6. The acquisition and transfer of logistics support, supplies, or services under cross-servicing agreements shall be accomplished by implementing arrangements and applicable order and receipt forms as are required by the terms of individual cross-servicing agreements, and shall not be in exchange for relief of taxes, duties, or similar charges.

4.3.7. Officials delegated authority under section 5, below, to negotiate and conclude cross-servicing agreements may delegate authority to applicable personnel to issue and receive support requests required by the terms of these agreements and arrangements.

4.3.7.1. The authority to issue and receive support requests may include the authority to negotiate and conclude terms and conditions of acquisition, transfer, replacement-in-kind, or exchanges of equal value made under such support requests. Such terms and conditions shall be consistent with reference (b), this Directive, applicable cross-servicing agreements, and applicable implementing arrangements.

4.3.7.2. The authority to issue and receive support requests should be delegated to the lowest practical and prudent level.

4.3.8. All transactions conducted under cross-servicing authority shall meet the documentation requirements identified in reference (f).

4.3.9. Cross-servicing agreements do not bind either party to any particular number or monetary value of transactions. Except in exceptional circumstances, cross-servicing agreements may extend for an indefinite period of time if they do not require the obligation of funds.

4.4. The DoD Components cannot, under section 2341 or 2342 of reference (b), acquire goods or services reasonably available from U.S. commercial sources. Consistent with this statutory limitation, the DoD Components may use the ACSA

authorities to facilitate routine mutual logistics support during training, exercises, and military operations, or to permit better use of host-nation resources for recurring logistics support requirements of deployed U.S. Armed Forces during operations.

4.5. ACSA authorities may only be used to acquire and transfer logistics support, supplies, and services as that term is defined in section 2350 of reference (b). ACSA authorities may not be used for payment of taxes, duties, and similar charges.

4.5.1. Items that may not be acquired or transferred under ACSA authority include weapons systems; the initial quantities of replacement and spare parts for major end items of equipment covered by tables of organization and equipment, tables of allowances and distribution, or equivalent documents; and major end items of equipment. General purpose vehicles and other items of non-lethal military equipment not designated as Significant Military Equipment on the United States Munitions List promulgated pursuant to 22 U.S.C. 2778 (reference (g)), may be leased or loaned for temporary use.

4.5.2. Additional items that may not be acquired or transferred under ACSA authority are guided missiles; naval mines and torpedoes; nuclear ammunition and included items such as warheads, warhead sections, projectiles, demolition munitions, and training ammunition; cartridge and propellant-actuated devices; chaff and chaff dispensers; guidance kits for bombs or other ammunition; and chemical ammunition (other than riot control agents).

4.6. As provided in Section 2348 of reference (b), inventory levels of the DoD Components may not be increased in anticipation of support requests to be made by other countries or international organizations under ACSA agreements.

4.7. Military airlift, sealift, and other forms of transportation services may be acquired and transferred under the ACSA authorities. Those ACSA transfers that specifically commit airlift, sealift, or other transportation assets or services from the U.S. Transportation Command (USTRANSCOM) shall be concluded only after the coordination with and approval of USTRANSCOM.

4.8. In acquiring or transferring logistics support, supplies, or services by exchange of supplies or services, the DoD Components may not agree to or carry out the following:

4.8.1. Transfers in exchange for property that the Department of Defense is prohibited by law from acquiring.

4.8.2. Transfers of source, byproduct, or special nuclear materials or any other material, article, data or thing of value the transfer of which is subject to reference (h).

4.8.3. Transfers of chemical munitions.

4.8.4. Retransfers by the recipient of logistical support, supplies, or services to any entity required without the prior written consent of the U.S. Government, obtained through applicable DoD channels.

4.9. Acquisition agreements, cross-servicing agreements, implementing arrangements, orders, support requests, or other documents that obligate U.S. funds shall be used only to the extent that funds are available. Restrictions in annual DoD authorization and appropriation acts and other laws apply to acquisitions under this Directive.

4.10. In accordance with Section 2343 of reference (b), the following provisions of U.S. law do not apply to acquisitions whether conducted under the authority of Section 2341 or 2342 of reference (b): sections 2207; 2304(a); 2306(a); 2306(b); 2306(e); 2306a; and 2313 of 10 U.S.C., and section 3741 of 41 U.S.C. (reference (i)).

4.11. Acquisitions, whether under the acquisition-only or the cross-servicing agreement authority, shall comply with applicable laws, this Directive, and financial management and acquisition regulations and sound business practices.

4.12. Personnel assigned responsibility by the DoD Components for administering acquisition and cross-servicing agreements shall be designated specifically and shall have the requisite knowledge and experience to carry out authorized transactions in accordance with applicable laws, this Directive, and requisite financial management and acquisition considerations. Complex acquisitions and acquisitions in excess of the simplified acquisition threshold shall be effected by, or at a minimum in consultation with, warranted contracting officers.

4.13. As authorized by Section 2344 of reference (b), acquisition and cross-servicing agreements may provide for payment of obligations by cash, replacement-in-kind, or exchange of logistics support, supplies, and services of equal value.

4.14. The DoD Components shall establish oversight procedures to ensure that all agreements, implementing arrangements, and contracts concluded under ACSA authorities are free from self-dealing, bribery, and conflicts of interest (section 2342(d) of reference (b)).

5. RESPONSIBILITIES

5.1. The Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) shall:

5.1.1. Monitor compliance with this Directive.

5.1.2. Upon appropriately coordinating with the Under Secretary of Defense (Policy), and the General Counsel of the Department of Defense, consulting with the Department of State, and notifying the appropriate Congressional committees (subparagraph 4.3.2., above), designate countries as eligible for cross-servicing agreements.

5.1.3. Upon appropriately coordinating with the General Counsel of the Department of Defense, the Under Secretary of Defense (Comptroller), the Under Secretary of Defense (Policy), and consulting with the Department of State, authorize the Chairman of the Joint Chiefs of Staff or other appropriate designees to conclude ACSA agreements.

5.1.4. Issue implementing ACSA policy as required, including allocation of ACSA ceilings to Defense Agencies and program management guidance to Defense Agencies and Military Departments. The allocation of ACSA ceilings and program management guidance may be delegated to the Joint Staff.

5.2. The Under Secretary of Defense (Comptroller) (USD(C)) shall maintain accounting, pricing, internal control, and reporting policies for inclusion in reference (f) to implement this Directive and the ACSA authorities.

5.3. The Chairman of the Joint Chiefs of Staff shall:

5.3.1. In accordance with applicable laws and regulations, including this Directive, negotiate and conclude acquisition agreements or cross-servicing agreements or delegate this authority to lead agents. All proposed new or revised cross-servicing agreements shall be referred to the Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)) for review and provision of authority to conclude such agreements.

5.3.2. Determine the countries not members of NATO from which the Department of Defense may acquire using acquisition-only authority (see subparagraph 4.2.1.3., above). This authority may be delegated to the Combatant Commanders.

5.3.3. Nominate non-NATO countries for designation of eligibility for a cross-servicing agreement.

5.3.4. Allocate ACSA ceilings to the Combatant Commands.

5.3.5. Provide program management guidance to the Combatant Commands on matters relating to ACSA eligibility, concluding ACSA agreements, and execution as well as other ACSA issues, as required.

5.3.6. Maintain copies of all signed ACSAs and appropriate Implementing Agreements.

5.3.7. Provide implementation guidance through Chairman of the Joint Chiefs of Staff Instructions (CJCSIs), as required.

5.3.8. In accordance with reference (d), provide two certified copies to the General Counsel of the Department of Defense and one to the Assistant Legal Advisor for Treaty Affairs, Department of State, of each ACSA Agreement and, if appropriate, Implementing Arrangement, not later than 20 days after such agreement enters into force.

5.4. The General Counsel of the Department of Defense shall:

5.4.1. In accordance with references (d) and (j), act as lead counsel for the Department in all ACSA-related negotiations conducted by the OSD Components and coordinate on all such proposed agreements prior to their tender and prior to final conclusion; and oversee legal reviews performed by the DoD Components with respect to the negotiation and conclusion of ACSA Agreements and Implementing Arrangements.

5.4.2. In accordance with reference (d), maintain ACSA Agreements and, if appropriate, Implementing Arrangements in the Department's central repository for all international agreements that are negotiated and concluded by DoD personnel.

5.5. The Secretaries of the Military Departments, or designees, and the Directors of Defense Agencies, or designees, shall:

5.5.1. Acquire logistics support, supplies, or services under the ACSA acquisition-only authority (Section 2341 of reference (b)), after coordination with the applicable Combatant Commander(s).

5.5.2. Acquire and transfer logistics support, supplies, or services under cross-servicing authority (Section 2342 of reference (b)), after coordination with the applicable Combatant Commander(s).

5.5.3. Upon coordination with the applicable Combatant Commander, negotiate and conclude implementing arrangements as a lead agent. Following conclusion of such implementing arrangements, provide appropriate financial transaction data to the applicable Combatant Commanders.

5.5.4. In accordance with reference (d), provide two certified copies to the General Counsel of the Department of Defense and one to the Assistant Legal Advisor for Treaty Affairs, Department of State, of each ACSA Agreement and, if appropriate, Implementing Arrangement, not later than 20 days after such agreement enters into force.

5.5.5. Determine whether acquisitions and transfers under the authority of sections 2341 and 2342 of reference (b) are best satisfied through liquidation of obligations by cash payment, replacement-in-kind, or by exchange of logistics support, supplies or services of equal value.

5.5.6. Determine the value of logistics support, supplies, and services that are acquired or transferred under a cross-servicing agreement and any implementing arrangements thereunder.

5.5.7. Establish applicable controls to prevent exceeding the limitations of credits (DoD-earned reimbursements) and liabilities (DoD obligations) as provided in section 2347 of reference (b) and reference (f) and any applicable ACSA implementation guidance.

5.5.8. Establish appropriate oversight procedures in accordance with applicable laws and this Directive (see paragraph 4.14., above), as well as keep and maintain financial and program records of all ACSA transactions.

5.5.9. Ensure that those transactions that affect ceiling limitations are coordinated properly with the appropriate Combatant Commanders before approving ACSA orders.

5.6. The Commanders of the Combatant Commands shall:

5.6.1. Acquire logistics support, supplies, and services under the acquisition-only authority (section 2341 of reference (b)) in appropriate cases.

5.6.2. Negotiate and conclude cross-servicing agreements as a lead agent when authorized by the Chairman of the Joint Chiefs of Staff. This authority may be delegated to a Combatant Command sub-element.

5.6.3. On request, negotiate implementing arrangements for those DoD Components not subordinate to the Combatant Command concerned. This authority may be delegated to a Combatant Command sub-element.

5.6.4. Coordinate the negotiation, conclusion, and execution of implementing arrangements with affected Combatant Commanders when involved in combined operations or exercises that involve more than one Combatant Commander's area of operations.

5.6.5. Allocate among the Combatant Commander components the limitations of the credits and liabilities ceiling as provided in section 2347 of reference (b) and reference (f). This authority may be delegated to a Combatant Command sub-element.

5.6.6. Coordinate new or revised ACSA agreements and transactions under such agreements with other Combatant Commanders, as required, to ensure compliance with credit and liability ceilings provided in section 2347 of reference (b), reference (f), all applicable ACSA implementation guidance, and other existing ACSA agreements.

5.6.7. When authorized by the Chairman of the Joint Chiefs of Staff, determine the eligibility of countries not members of NATO for acquisitions under acquisition-only authority (see suparagraph 4.2.1.3., above), and nominate non-NATO countries for designation of eligibility for a cross-servicing agreement.

5.6.8. Provide the Chairman of the Joint Chiefs of Staff a quarterly summary report of ACSA transactions and relevant program information, as directed.

5.6.9. In accordance with reference (d), provide two certified copies to the General Counsel of the Department of Defense and one to the Assistant Legal Advisor for Treaty Affairs, Department of State, of each ACSA Agreement and, if appropriate, Implementing Arrangement, not later than 20 days after such agreement enters into force.

6. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. The Secretaries of the Military Departments and the Commanders of the Combatant Commands shall forward one copy of all acquisition and cross-servicing implementing documents to the Under Secretary of Defense (Acquisition, Technology, and Logistics) within 120 days.

Paul Wolfowitz
Deputy Secretary of Defense

Enclosures - 2
E1. References, continued
E2. Definitions

E1. ENCLOSURE 1

REFERENCES, continued

(e) "Charter of the United Nations with the Statute of the International Court of Justice annexed thereto," June 26, 1945 (59 Statutes at Large 1031, TS 993)
(f) Volume 11A, Chapter 8 of DoD 7000.14-R, "International Acquisition and Cross Servicing Agreements"
(g) Arms Export Control Act (AECA), Public Law 90-629 (Section 2751 et seq. of title 22, United States Code)
(h) Atomic Energy Act of 1954, Public Law 83-703 (42 U.S.C. 2011 et seq.)
(i) Sections 2207, 2304 (a), 2306 (a), 2306 (b), 2306 (e), 2306a, and 2313 of title 10, United States Code, and Section 3741 of title 41, United States Code
(j) DoD Directive 5145.1, "General Counsel of the Department of Defense," May 2, 2001
(k) Section 101(a)(13) of title 10, United States Code
(l) Section 2778(a)(1) of title 22, United States Code
(m) "Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff," September 20, 1951 (Treaties and International Agreements Series (TIAS) 2992, 5 United States Treaties and Other International Agreements (UST) 1087)
(n) "Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty," signed at Paris on August 28, 1952 (TIAS 2978, 5 UST 870)

E2. ENCLOSURE 2

DEFINITIONS

E2.1.1. Acquisition. For purposes of this Directive, obtaining logistics support, supplies, or services under an acquisition agreement (Section 2341 of reference (b)) or under a cross-servicing agreement (Section 2342 of reference (b)). This includes purchasing (whether for payment in currency, replacement-in-kind, or by exchange for equal value), renting, leasing, or any method of temporarily obtaining logistics support, supplies, or services.

E2.1.2. Acquisition Agreement. A legal instrument entered into under the authority of section 2341 of reference (b) to acquire logistical support, supplies, or services.

E2.1.3. ACSA Authorities. For purposes of this Directive, the authorities conferred under reference (b).

E2.1.4. Contingency Operation. For purposes of this Directive, a military operation that either:

E2.1.4.1. Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force.

E2.1.4.2. Results in the call to, or retention of, active duty members of the Uniformed Services under sections 688, 12301(a), 12302, 12304, 12305, or 12406 of title 10, U.S.C.; chapter 15 of title 10, U.S.C.; or any other provision of law during a war or during a national emergency declared by the President or Congress (10 U.S.C. 101(a)(13)) (reference (k)).

E2.1.5. Cross-Servicing Agreement. A legal instrument entered into under the authority of section 2342 of reference (b) that authorizes the reciprocal provision of logistics support, supplies, or services. Also referred to as a Mutual Support Agreement.

E2.1.6. Exchange of Equal Value. In a transaction conducted under ACSA authorities, payment by the receiving nation of logistics support, supplies, or services by exchanging logistics support, supplies or services of an equal value to those received.

E2.1.7. Governments of Foreign Countries. The military or civilian governmental organizations, departments, and ministries, or any subdivisions thereof, of a foreign country.

E2.1.8. Implementing Arrangement. A supplementary arrangement for logistics support, supplies, or services that prescribes details, terms, and conditions to implement cross-servicing agreements effectively. While implementing arrangements may normally be more detailed in terms of defined levels of activities than cross-servicing agreements themselves, they must be completely consistent with associated cross-servicing agreements and this Directive. Depending on the nature of the transaction, an implementing arrangement may involve the obligation of funds. For example, an acquisition agreement or a contract may be used as an implementing arrangement. Implementing arrangements that do not involve the obligation of funds may extend for an indefinite period of time.

E2.1.9. International Organization. For purposes of this Directive, the term includes NATO, NATO subsidiary bodies, the United Nations Organization, and any regional international organization of which the United States is a member.

E2.1.10. Logistics Support, Supplies, and Services. Food, water, billeting, transportation (including airlift), petroleum, oils, lubricants, clothing, communications services, medical services, ammunition, base operations support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, and air and sea port services. The term includes temporary use (lease or loan) of general purpose vehicles and other items of non-lethal military equipment not designated as part of the United States Munitions List under 22 U.S.C. 2778(a)(1) (reference (l)).

E.2.1.11. Major End Item. Final combinations of items that are ready (assembled) for intended use; e.g., vehicles, self-propelled artillery pieces, missile launchers, and major weapon systems. Major end items are further divided into subclasses of air, ground, support materiel, administrative vehicles, electronics, tactical vehicles, missiles, weapons, special weapons, industrial material, and aircraft engines.

E2.1.12. Military Forces of a Country. Agencies or organizations of a government providing armed forces that operate according to the methods, laws, and customs of war, established by act of the government, in which persons are appointed, enlisted, or inducted for military service, and that operate and are administered within a military or executive department.

E2.1.13. NATO Subsidiary Body

E2.1.13.1. Any organization within the meaning of the term "subsidiary bodies" in Article I of the multilateral "Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff," signed at Ottawa on September 20, 1951 (TIAS 2992; 5 UST 1087) (reference (m)).

E2.1.13.2. Any international military headquarters or organization to which the "Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty," signed at Paris on August 28, 1952 (TIAS 2978; 5 UST 870) (reference (n)) applies.

E2.1.14. Replacement-In-Kind. Payment where the receiving party replaces logistics support, supplies, and services that it receives with logistics support, supplies, and services of an identical, or substantially identical, nature.

E2.1.15. Support Request. Implementing arrangements, orders, or other mechanisms used to document a request for logistics support, supplies, and/or services.

E2.1.16. Transfers. Providing logistics support, supplies or services under a cross-servicing agreement (Section 2342 of reference (b)). The term includes selling (whether for payment in currency, replacement-in-kind, or exchange of supplies or services of equal value), leasing, loaning, or otherwise temporarily providing logistics support, supplies, or services.