



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office Of The Under Secretary

30 MAY 2000

MEMORANDUM FOR AFMC/IA

FROM: SAF/IA
1080 Air Force
Washington DC, 20330-1080

SUBJECT: Multi-National Fighter Program Manpower Issue (IAX 0011) (ASC/YP Memo dated 17 Dec 1999, Implementation of F-16 Multinational Fighter Program)

The concerns raised in the ASC/YP memo of 17 Dec 99 are steeped in our "historical" relationships with the Multi-National Fighter Program (MNFP) members. However, the MNFP, throughout its long tenure, must maintain consistency with laws and policies.

Neither we nor the European Participating Governments (EPG) members should expect the terms of an acquisition agreement negotiated during the 70's, and for a very specific program (procurement and production of the original 998 F-16 aircraft), to continue to apply indefinitely to all future endeavors without any change whatsoever. The individual MNFP F-16 programs have matured and are now in sustainment and the original FMS cases have been closed. It is clear the relationship has progressed from its original purpose and requires a course correction.

The EPG members must appreciate USAF requirements to comply with legislation and policy. Consequently, the services previously provided through FMS administrative surcharge fees are no longer authorized and must be supported by the individual customer. However, it will be possible for the MNFP members, including the new member Portugal, to share the cost of such support.

The attached paper highlights these issues and provides specific policy guidance. I believe current regulations and policies are well documented that adequately address each issue raised by ASC. Note several issues require ASC action prior to the start of the next fiscal year (1 October 2000).

Request you take appropriate action to apprise ASC/YP of this letter and monitor action to implement the directed actions. Please keep me advised as to when the required corrective actions have been taken through my Policy Division Chief, Ms Terry Bates, DSN 425-8970, email terry.bates@pentagon.af.mil.

SCOTT P. VAN CLEEF, Brig Gen, USAF
Asst Dep Under Sec of the Air Force
International Affairs

Attachments:

1. ASC/YP Memo dated 17 Dec 1999 w/o attachments
2. Multi-National Fighter Program (MNFP) Issues

cc:

SAF/IAE
SAF/GCI
SAF/AQPB
SAF/FMBIS



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS AERONAUTICAL SYSTEMS CENTER (AFMC)
WRIGHT-PATTERSON AIR FORCE BASE, OHIO

MEMORANDUM FOR SAF/LAE
1060 AIR FORCE PENTAGON
WASHINGTON DC 20330-1060

17 DEC 1999

FROM: ASC/YP, Monahan Hall
Building 12
1981 Monahan Way
Wright-Patterson AFB OH 45433-7205

SUBJECT: Implementation of F-16 Multinational Fighter Program (MNFP)

1. Reference SAF/GCI memorandum dated, 9 Nov 98, same subject (Atch 1).
2. On 18 Nov 99 we received a copy of the subject memorandum, directly from SAF/GCI, which to our knowledge had never been formally distributed, and would like to provide our comments regarding the GCI opinions relating to the F-16 MNFP implementation. We want to state up front that we have in the past and continue to implement the F-16 MNFP program under the policy guidance of SAF/IA/AQ and FMB. We have received this policy guidance through written correspondence, Steering Committee participation by the US Team (SAF/IA/AQ/FMB and the SPO as documented in the meeting minutes) and International Program Directives (IPDs) with corresponding LOAs that were staffed with SAF/GCI review over the past twenty-four years. We believe we have implemented and executed all EPG LOAs under strict compliance with this policy guidance.
3. The first SAF/GCI opinion addresses program management lines in the European Participating Governments (EPGs) F-16 MNFP Letters of Offer and Acceptance (LOAs). As you know there are no program management lines for direct case management in these LOAs. The decision not to include these was not the F-16 SPOs to make. The salaries of those individuals providing direct management support to these LOAs since 1977 have been charged to the FMS Surcharge Budget based on guidance and approval by SAF/IA and FMB. This was a policy decision made by the US stemming from the F-16 MNFP Steering Committee #10 (October 1976) in which the Steering Committee principals (including the US) agreed that all CONUS program management support and administrative support would be covered by a 2 percent fixed rate in lieu of tracking and billing actual expense (See Atch 2). Other correspondence and actions from the Air Staff over the years has reaffirmed this policy (See Atch 3 and 4). If this implementation is incorrect please provide the applicable references that should be followed and policy clarification so we can officially notify our partners of the change.
4. In regards to the GCI opinion on EPG Foreign Liaison Officers (FLOs), we assume this pertains to the EPG Senior National Representatives (SNRs) and their staff housed at Wright-Patterson AFB. The fact is we have never charged these representatives office space and support is based on the F-16 MNFP MOU agreements which states that they are part of the SPD

ATTACHMENT 1

staff and in fact that they are part of the SPD Staff. If this interpretation has been incorrect for the past twenty-four years, as indicated by GCI, request policy guidance from SAF/IA on what should be charged and what vehicle to use for funding.

5. Regarding the GCI opinion on "Recoupment of Nonrecurring Costs (NRCs)", we have submitted a total of 26 separate F-16 MNFP Engineering Change Proposals recoupments which were all approved by SAF/FMB during the 1980's. None of these were at the DoDD 5530.3 threshold of \$50 million but were approved in accordance with the threshold of \$1 million established in the MOU agreements (See Atch 5). We have not submitted any additional requests to establish EPG Nonrecurring Cost Recoupments since that date. The recent Technical Agreement (TA) #18 aligned the F-16 MNFP recoupment threshold with the current threshold of \$50 million.

6. As to the GCI opinion regarding AFI 51-701 "negotiating, concluding, reporting, and maintaining International Agreements", we again led the development of a draft Technical Agreement #18 under the direction of SAF/AQP as the US representative to the F-16 MNFP Contractual and Financial subcommittee. Our program manager was chosen by SAF/AQP to chair the TA#18 working group. It was our understanding that the purpose of this working group was to develop, not negotiate, a draft TA #18 agreement. The draft TA #18 agreement was presented to SAF/GCI during the negotiation period as has been done with each of the 18 TAs and 47 SCAs negotiated over the past 24 years. However, the 9 Nov 98 SAF/GCI memorandum does raise the question that cost sharing and development are procurement strategies decided in the F-16 MNFP Acquisition Strategy Board that may also require GCI review prior to submittal to the Steering Committee for approval. To my knowledge Steering Committee Decisions (SCDs) have not been coordinated with SAF/GCI prior to implementation. Please provide guidance if we need to change our procedures in these areas.

7. In conclusion we believe we are carrying out the implementation and execution of the F-16 MNFP program under SAF/IA/AQ/FMB concurrence and policy guidance. We will continue to operate under the existing SAF/IA/AQ/FMB guidance established over the past 24 years. However, based on the questions that have been raised and others that may exist, I would welcome an independent audit team to ensure we are conducting business as we should. We will gladly modify our procedures if warranted by the findings of the independent audit team, and documented in the form of written direction we receive from SAF/IA.

Attachments:

1. SAF/GCI Ltr, 9 Nov 98
2. F-16 MNFP SC #10 Minutes
3. Case BE-D-NMP IPD
4. SAF Ltr, 6 Nov 86
5. SAF/FMB Ltr, 30 Oct 91



JEFFREY R. RIEMER
Colonel, USAF
F-16 System Program Director

cc:

SAF/GCI
SAF/AQPB
SAF/LAE

Multi-National Fighter Program (MNFP) Issues

Reference: ASC/YP Memo 17 Dec 1999, Subject: Implementation of F-16 Multi-National Fighter Program (MNFP)

Program Management Lines: The issue is whether the foreign customer or the FMS administrative surcharge account should fund program management support for customer programs. The Arms Export Control Act (AECA) requires that the USG recover its full cost of furnishing defense services to foreign countries. An FMS admin fee is collected in accordance with the AECA to fund the general administration of the FMS program. Where costs are incurred by the USG in providing services to a certain country or countries, and are required to be reimbursed by the country or countries to which the services are provided, the FMS admin account is not available to subsidize the defense programs of those countries. SAMM Section 70201 addresses program management lines.

In accordance with the 1975 MNFP MOU, and consistent with US law and regulations at the time, USG administrative support was funded through the FMS admin account. The original EPG LOAs have all been closed. The MOU contained no commitment by the USG to use the FMS admin account to fund support for activities beyond the scope of the MOU (the production and procurement of the 998 aircraft program), namely in the post-production phase. We have progressed into new work outside the framework of the original MOU and must comply with current law and policies.

During negotiations of the recently concluded TA-18 Agreement (the agreement setting forth principles for cooperation extending to post-production support) a concerted effort was taken on our part to educate both the EPG and F-16 SPO on the need for MNFP activities to comply with current law, regulations, and policies. It was explained that NO MNFP agreements or documents (however they may be interpreted) can in and of themselves provide authority for US individuals to act contrary to US law (i.e. provide no cost manning to the MNFP program). These arrangements are executive level agreements that DO NOT create substantive legal authority. They must be implemented in accordance with relevant law. We have worked hard through the accomplishment of TA-18 to get the program "on track" in post-production.

The final version of TA 18, agreed between the USG and the EPG and approved by OSD, is consistent with US law and FMS regulations. It recognizes that the USG and EPG must approve manpower-funding requirements. The DoD will not approve manpower-funding requirements that are contrary to the AECA. Where US law and regulations require the manpower at issue to be funded by an FMS customer or customers, and do not authorize the use of the general FMS admin account funds, the manpower MUST be funded by the FMS customers with direct case funding.

As stated in our cover memorandum, ASC is to initiate immediate manpower actions to convert the positions currently funded through the administrative surcharge to case funded positions NLT 1 October 2000.

EPG Personnel Assigned to USAF Facilities: DoD Directive 5230.20 provides Department of Defense policy governing visits and assignments of foreign nationals to DoD Components and certain contractor facilities. The Directive defines foreign liaison officers (FLOs), including Security Assistance FLOS such as the EPG Senior National Representatives. The EPG FLO are an example of a viable FLO program, however the EPG FLO's have enjoyed a degree of support without cost for a considerable period. The provision of "non-reimbursed" support to EPG personnel is NOT required by the 1975 MOU as will be explained below. The MOU, like DoDD 5230.20, paragraph 4.4, requires support to such FLOS to be reimbursed under FMS LOAs. Similar to the manpower issue discussed above, we must bring the EPG F-16 FLO program into compliance with law and policies. Please note the 1975 MOU clearly states:

*"3. The EPG will:
a. Pay for all material and services necessary for their program.
...
all in accordance with the terms and conditions of the applicable Letter(s) of Offer and Acceptance. "*

The MNFP MOU further provides additional guidance as follows:

"2.c. Personnel of the EPG will be assigned to the United States Air Force System Program Office(hereinafter referred to as SPO) and will be authorized access to applicable program data within the F-16 program. "

10. Personnel selected by the EPG will be assigned to the USAF System Program Office (SPO) with the concurrence of the USAF SPD. Each EPG shall be responsible for the personnel costs of their staff assigned to the SPO.

19. d. To reduce such costs, maximum use of EPG nationals will be secured. EPG governmental representatives and personnel appointed or assigned to F-16 management activities will be paid by their respective governments."

Therefore, at no point in the MNFP program was there an implied agreement that EPG nationals would receive support at no cost..

It is the USAF's policy to establish FLOs by an FMS Letter of Offer and Acceptance (LOA). The LOA is the USG agreement to accept the assignment of FLOs to USAF facilities and to provide support and services according to the terms and conditions of the LOA. The LOA also includes other provisions regarding security, safeguarding of information, use of services, and foreign government assurances concerning non-transfer of received defense articles, issues which have been raised by the F-16 SPO as problematic because of the historical unconstrained relationship between the SPO and EPG.

The continuation of the EPG F-16 FLO program is a decision of the MNFP countries. A decision to continue the FLO program will require the establishment of a FLO LOA and identification of the services and defense articles to be provided in support of the function. Normally the customer requires support in the following categories:

- Office Space
- Office Equipment/Supplies/Maintenance (i.e. computers, copy equipment, etc.)
- Communications Support (i.e. Telephone service, cell phone, Internet connections, etc.)
- Administrative Support (i.e. Secretary etc.)

You should also be advised that it is inappropriate for EPG representatives located at the F-16 SPO and assigned in furtherance of the MOU for the purposes of the MNFP to also be serving as, and performing the duties and responsibilities of, a security assistance FLO for non-MNFP matters for their country. ASC should take immediate action to notify the EPG members that effective 1 October 2000 their EPG FLO function must be in compliance with established FLO policy. To achieve compliance, each EPG nation desiring to retain a FLO at the F-16 SPO should request a FLO LOA. As an option, FLO support could be added to an existing LOA or a FLO LOA if the country has one.

Recoupment of Non-Recurring Costs and Negotiating Agreements. We are satisfied that TA 18 aligns the MNFP with current regulations relating to thresholds for recoupment of non-recurring costs. Regarding MNFP arrangements and documents containing USAF commitments and obligations, SAF/IA and SAF/GCI must be involved in development of USAF positions prior to their tendering to foreign governments. It also appears to have been the practice that Steering Committee Decisions have been used as the vehicle to secure USAF commitments that should have been set out by an agreement signed by an

authorized USAF representative, after having notified the appropriate OSD offices in accordance with USD(P) memo I-45295/92 (copy attached).

USG Travel in Support of MNFP: The MNFP MOU provides guidance concerning national responsibilities to fund Steering Committee activities. The following is quoted for your information:

"19. Administrative Support Costs

a. The parties hereto will individually bear the support and other costs of maintaining its member on the Steering Committee and its personnel on the Steering Committee Staff, including communications and travel costs. "

The intent is clear. National funding was to be utilized to support Steering Committee member and staff activities which includes the US share of the costs of the Permanent Secretariat. The use of administrative surcharge or case funds was not anticipated nor endorsed for these individuals who participate in MNFP activities in furtherance of USAF, not EPG, requirements. In this case, costs of these personnel and their related travel, communications, etc., should be borne by USAF appropriations. With respect to other USG personnel costs and travel in support of the EPG, they should be borne by direct case funding or FMS admin funds in accordance with standard FMS regulations and procedures.

The following is a simple guideline for selecting the source of funding USAF travel in support of the MNFP follows:

- 1) Case Funds: Travel in support of specific country or countries requirements. Travel of this nature is country specific and will be charged to the appropriate case. Activities include PMR, FMR case related meetings/conferences.
- 2) Administrative Surcharge Funds: Travel in support of general broad based USAF security assistance issues not connected to a specific case or country.
- 3) USAF Appropriations: US Steering Committee members traveling as US representatives or support staff to Steering Committee activities. USAF members traveling for USAF or shared MNFP requirements. USAF members should take appropriate action to budget funds to adequately support their anticipated participation. The use of administrative surcharge funds to support US representation to the Steering Committee is inappropriate

AECA Section 27: SAF/IA coordinated through the Air Staff and the F-16 SPO a request to OSD for authority to negotiate an agreement to allow cooperative R&D projects under the MNFP to be implemented pursuant to Section 27 of the AECA. Rationale for the request was to enable the MNFP to utilize the most appropriate authority for the contemplated activity. OSD approved this request. Hence, the DoD position and preference is that cooperative R&D projects should be pursued under cooperative R&D authority. However, the conduct of a cooperative R&D project requires an **agreement** between the parties setting forth the scope of the effort, costs shares, etc., which necessarily means that the parties must agree on the means of implementation. (Note that a Steering Committee Decision, not signed on behalf of all the MNFP governments by their authorized representatives as a commitment by their governments, does not suffice.)

If, for example, the EPG preference were to implement a cooperative R&D project under FMS, the USAF must agree that it is more beneficial to the EPG and USAF to pursue the cooperative R&D project through FMS authority rather than Section 27. Utilization of FMS also would require an agreement be developed, staffed and approved before the project could be implemented through an FMS case.

JUL 17 1992

In reply refer to:
I-45295/92

POLICY

MEMORANDUM FOR ASSISTANT SECRETARY OF THE AIR FORCE (ACQUISITION)

SUBJECT: U.S. Delegation to the F-16 Multinational Fighter
Program Steering Committee (MNFPSC)

You are hereby appointed as Chief of the U.S. Delegation to the F-16 MNFP vice John J. Welch, Jr.

You are to ensure that a fully coordinated Department of Defense position relative to the multinational aspects of the F-16 weapon system program is brought before the MNFP, so that MNFP issues do not prejudice other USG initiatives without proper review.

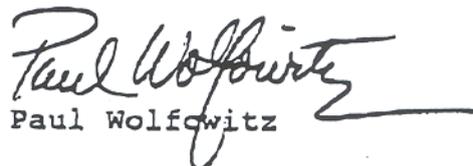
You will serve as the principal focal point with the four European Participating Governments on F-16 matters. You are authorized to select membership to the delegation from appropriate Air Force agencies. You are to coordinate with the Director, DSAA, and the Assistant Secretary, OASD/ISP, on delegation membership from OSD.

You are authorized to conclude those implementing arrangements (including routine technical or side letter agreements and amendments thereto) which have no significant policy, cost or legal consequences.

The procedures for negotiating and concluding all F-16 commitments, other than the routine class of arrangements just described, will remain unchanged and will comply with the requirements of DoD Directive 5530.3, International Agreements.

You are to provide information copies of each new technical agreement to appropriate OSD offices at least five working days before you sign each agreement for the U.S. Should any policy issue arise concerning particular technical agreements, we will inform you.

You are authorized to act in the name of and commit the Secretary of Defense on matters before the Steering Committee. In this regard, I reserve the right to review significant program issues with you and selected members of the U.S. delegation.


Paul Wolfowitz

Atch
Charter, Chief, U.S.
Delegation, MNFPSC

Prepared by: Diane Halvorsen
DSAA Ops/71056.

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CMD
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