

Non-Program of Record

U.S. Industry Handbook



July 2020

DISTRIBUTION STATEMENT A. Approved for public release

Overview

Programs of Record (POR) for years have been the mainstay of Department of Defense (DoD) acquisition and order of battle. Gradually, and with increasing momentum, Non-Program of Record (NPOR) procurements have become a wartime adjustment to the ever-evolving security environment facing the United States (U.S.) and its partners. NPORs align with U.S. national security interests by furthering the U.S. industrial base, providing coalition forces expedited and flexible capabilities while increasing interoperability with U.S. forces, and delivering capabilities that were not, or could not have been, foreseen even months earlier.

United States Government (USG) consideration of NPORs has been impeded by inherent inefficiencies of the POR-centric acquisition and transfer mechanisms. These include the ability to absorb numerous industry proposals; administrative and contracting staffing issues; resourcing shortfalls and limitations; consideration of incorporation of technology safeguards (or “exportability”); and, satisfaction of specific technology security and foreign disclosure (TSFD) requirements (or “releasability”). Despite years of extensive industry-USG NPOR-related engagement, no formal processes have been established to mitigate impediments and facilitate FMS or DCS acquisition. Internal to DoD, major Implementing Agencies (i.e., the Military Departments or “MilDeps”) have recognized and are making adjustments to their infrastructure to better accommodate the growing importance of NPORs to the maintenance of military superiority and support to our allies and partners. Examples of MilDep adjustments include standing up NPOR-related offices to consider and acquire NPORs; reviewing and revising manning requirements to better consider and process NPORs; and embracing a Community of Interest (COI) construct.

The Community of Interest (COI) is comprised of USG entities, primarily within DoD, that have roles and responsibilities related to the export consideration, acquisition, and transfer of NPORs. To more fully realize the NPOR opportunity DoD and industry must partner more effectively. Without active industry engagement and participation, regardless of internal DoD improvements, the United States will never realize the full potential and benefits of NPORs. Industry participation is especially important in the early planning for exports (i.e., exportability and releasability).

This Handbook is intended to facilitate NPOR coordination.

Disclaimer: As DoD initiates and evolves the NPOR consideration process, the number of NPORs submitted by industry and/or the percentage of NPORs that are “Supported” cannot be determined at this time (see §3.4, Phase 5: Review Completion for support considerations). It is important to appreciate that as the USG evolves from a POR-centric system to a more holistic POR-NPOR system, there are limits to the existing infrastructure as well as other factors, examples include a lack of DoD Subject Matter Experts (SMEs) or a recipient country’s willingness and ability to protect sensitive capabilities that affect the consideration process.

Chapter 1: Points of Contact & Resources

1.1 Points of Contact

Non-Program of Record Lead

Jorge Aguilera, DSCA/IOPS, jorge.a.aguilera5.civ@mail.mil

Non-Program of Record Co-Lead

Eric Fleming, A&S(IC), eric.b.fleming.civ@mail.mil

Non-Program of Record Workflow

Inbox managed by DSCA, dscnrcr.dsa.mbx.nPOR-COI@mail.mil

Army

To be provided.

Navy

To be provided.

Air Force

To be provided.

1.2 Information on the Web

Defense Security Cooperation Agency: <https://www.dsca.mil/>

1.3 NPOR Related Policies and Authorities

- National Security Presidential Memoranda 10, Conventional Arms Transfer Policy, April 19, 2018
- Conventional Arms Transfer Policy, Implementation Plan July 2018

Chapter 2: NPOR Overview

2.1 Non-Program of Record Definitions

Unlike a Program of Record (POR), which is identified as a line item in the Department of Defense (DoD) annual budget, and as distinguished from an Unsolicited Proposal for USG use, as described in the Federal Acquisition Regulations §15.6, there has not been a formal definition for Non-Program of Record (NPOR) or a formal process to identify who within DoD assesses and/or executes them when necessary via FMS or in responding to DCS requests. The default practice has been to refer to a capability or system as an NPOR if it is not otherwise identified as a POR. The challenge of accurately and succinctly defining NPOR notwithstanding, DoD and industry NPOR working groups have identified the following criteria to clarify what constitutes an NPOR.

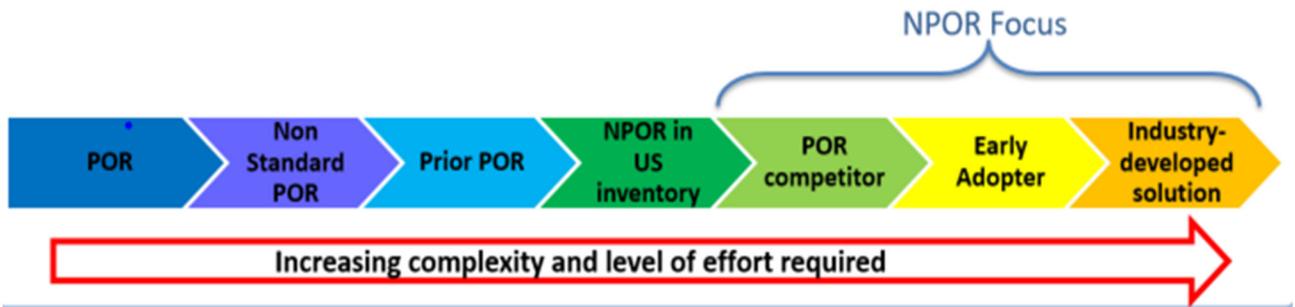


Figure 1: Non-Program of Record Spectrum

Figure 1 illustrates a complex NPOR spectrum that requires tailored solutions to ensure the technology security and foreign disclosure (TSFD), and unplanned or unresourced support, such as contracting, interoperability, cyber, training, sustainment, airworthiness, etc., are addressed by Implementing Agencies (IA) (which include Military Departments and DoD Agencies) prior to export. POR activities require fewer, if any, tailored solutions to export the system or capability to foreign partners. In contrast, NPOR activities (including NPOR, prior POR, NPOR in U.S. Inventory, POR competitor, Early Adopter, and Industry-developed solution(s)) are capabilities and systems that usually require tailored development, testing, and/or USG acquisition to ensure the TSFD, interoperability, cyber security, training, sustainment, airworthiness, and any unplanned or unresourced support is addressed by the DoD Implementing Agency (IA). As a result, the complexity and level of effort associated with capabilities and systems increases as they trend to the right on the NPOR spectrum (Figure 1).

Non-Program of Record Defined

Type 1	Type 2	Type 3	Type 4	Type 5	Type 6
					
<p>International or civil variant of a Program of Record with non-standard configuration(s)</p> <ul style="list-style-type: none"> Sometimes marketed as civil variants of military platform(s) / system(s) (e.g., S-70) E.g. F-15SA for KSA, F-16 for UAE, F/A-18 E/F for Australia 	<p>Prior Program of Record</p> <ul style="list-style-type: none"> Sundowned U.S. Program of Record that is no longer supported Excludes antique military equipment subject to the Export Administration Regulations E.g., USN A-4 	<p>Program consisting of commercially developed munitions items</p> <ul style="list-style-type: none"> Items are subject to TSFD review NVDs limited to items that are specially designed for a military end-user E.g., strike enabled UAV, and Counter-UAS system 	<p>Program consisting of commercially developed dual-use items</p> <ul style="list-style-type: none"> Items are subject to TSFD review E.g., Night Vision Devices (NVD), UAS, remote sensing satellites 	<p>Program consisting of commercially developed dual-use items combined with POR elements</p> <ul style="list-style-type: none"> Only pertains to U.S. POR elements that are subject to the TSFD review process Common example is incorporation of U.S. software and/or encryption with commercially available dual-use hardware May include GFE used in commercially developed system 	<p>Program consisting of commercially developed dual-use item(s) with military end-use</p> <ul style="list-style-type: none"> Items do not have TSFD elements, are otherwise export controlled Any modifications for military applications are solely limited to form & fit May use defense services in the form of military training E.g., military flight school w/civil aircraft & computer or communications network using commercially

Non-Program of Record Definition Rolls Up Various Types of Programs Encountered by TSFD Processes

Figure 2: Types of Non-Program of Record

Figure 2 details the six types of NPOR systems and capabilities introduced in Figure 1.

NPOR programs are referred to as different “types” of NPOR with “Type 1” being most similar to a DoD Program of Record. The opposite end of the spectrum is a “Type 6” NPOR program, which is a system developed by U.S. industry to satisfy emerging and/or specific foreign partner defense requirements.

Below are definitions and examples of the categories along the Program of Record to NPOR spectrum, as noted in figure 2 above:

- **POR:** Programs and systems developed and/or are in the acquisition process that were funded via an NDAA.
- **NPOR Type 1:** Previously referred to as “non-standard POR.” For example, F-15 Korea (K).
- **NPOR Type 2:** Prior POR. Programs that are no longer funded in the NDAA, but were previously defined as a DoD POR. For example, an A-4 aircraft.
- **NPOR Type 3:** NPOR in U.S. inventory or Commercially Developed Munitions items. For example, strike enabled UAVs.
- **NPOR Type 4:** POR competitor or Commercially Developed Dual Use Items Combined with POR elements. For example, Japan’s AEGIS Ashore radar.
- **NPOR Type 5:** Early Adopter or Commercially Developed Dual Use Items. For example, Counter-Unmanned Aerial System (C-UAS).
- **NPOR Type 6:** Industry-developed solutions with Military End Use. For example, directed energy.

Chapter 3: COI Organization and Functions

3.1 Definition and Mission

The COI is the lead DoD interlocutor for NPORs. The COI consists of members from the Office of the Under Secretary of Defense for Policy (OUSDP), represented by the Defense Security Cooperation Agency (DSCA) and Defense Technology Security Agency (DTSA), Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSDA&S), the IAs (includes the Military Departments (MILDEPS) and DoD Agencies), and representatives of the broader interagency as required.

The COI will maximize existing resources and minimize unplanned resourcing by utilizing, to the maximum extent possible, existing DoD Program of Record infrastructure. The COI considers NPOR transfers implemented through DCS, FMS, or “Hybrid” cases (both DCS and FMS). The COI serves as the primary mechanism for industry and military departments to explore NPOR pre-coordination processes and related support. Industry representatives may engage the COI through individual members (e.g. directly with a MILDEP) or through the COI as a collective body depending on industry’s preference and existing relationships.

3.2 NPOR COI Information Technology System

Ultimately, DSCA intends to incorporate NPOR requirements into existing and newly developed FMS development and execution systems. In the interim, the NPOR Community of Interest (COI) website functions as the primary interface for DoD’s NPOR data management and data analytics as well

as a DoD document repository. The current information technology system is hosted on the Defense Security Cooperation Agency's SharePoint site to provide the community a means to share information, coordinate on team activities and NPOR submissions. The site is "USG use-only."

3.3 COI Functions

The functions and results of the COI are described below:

1. **Document:** Transparency within enterprise, metrics on quantity, processing time, acceptance rate, and returns with comments.
2. **Monitor:** Transparency within enterprise, ability to prioritize, metrics on review timelines.
3. **Assess:** Correlate resource allocation with case output, time to process, success of outcome; opportunity to optimize future resource allocations; ability to forecast resource needs.
4. **Share:** Ensure active stakeholder engagement; increase opportunity to harmonize between Services; decrease likelihood of case close-out.
5. **Pre-Coordinate:** Document pre-coordination activity and results; increase transparency within enterprise; increase opportunity to harmonize within DoD; provide metrics on pre-coordination requirements.
6. **Recommendation(s)/Lessons Learned:** move cases forward; document cases deemed "no further action required"; assess resource need and strategic impact; reduce cases on hold with no action; visibility of areas not approved for export.

3.4 The COI Process

Process

- Industry DCS or Hybrid submissions to DSCA or to the IAs will be input into the COI database within 10 working days of receipt. Incomplete or insufficiently defined requests will be Returned with comments, citing the deficiency, to the applicant also within 10 working days of receipt. Complete and actionable submissions will be acknowledged within 10 working days of receipt.
- DSCA will provide feedback to the applicant on all submissions within 30 calendar days upon satisfactory entry of a complete request into the COI database.
- Industry partner will receive voting results within 5 working days of vote which will include the next steps for the submission

Future COI efforts

- The COI intends to assess larger FMS, DCS, or Hybrid NPOR issues such as training, airworthiness, contracting, and resources.
- The COI database may move to the overarching FMS IT platform in development with DSCA and become fully automated.

NPOR COI Process

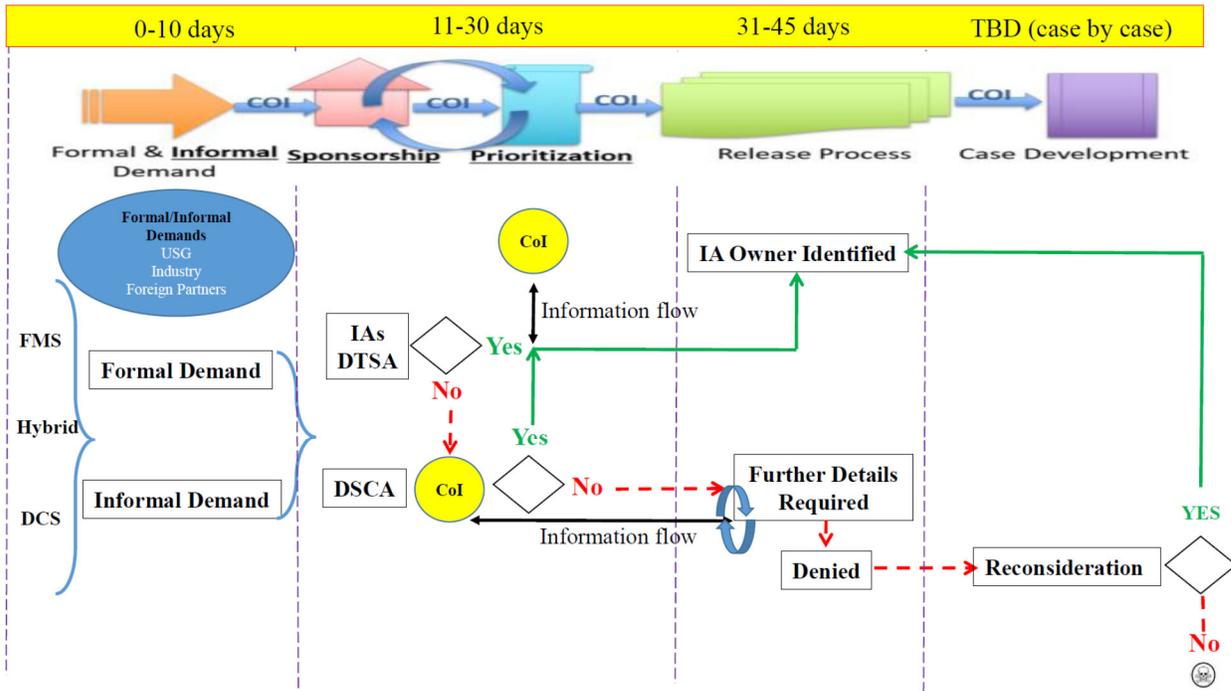


Figure 3: NPOR COI Process

3.5 COI Evaluation Process

Phase 1: Demand signal (FMS, DCS or Hybrid)

A demand signal may be either formal or informal. Formal demand signals include Letters of Request initiated by foreign partners, or DCS application by a U.S. contractor. Informal demand signal includes COI request initiated by industry for pre-coordination to support potential future export of a system or capability to a foreign partner, either DCS or FMS. When received by the USG the request is logged into the NPOR COI database by the recipient.

“Pre-coordination” is intended to familiarize DoD entities with U.S. industry proposals prior to their submitting a formal request (e.g., license application). This allows both industry and DoD experts to review and discuss potential proposals to better ensure exportability, releasability, and sponsorship have been discussed. Moreover, pre-coordination will help conserve industry and USG resources.

To support pre-coordination requests by U.S. industry, Appendix I provides a template for industry to utilize when making NPOR submissions. The template is intended to level the playing field by standardizing submissions and thereby facilitating DoD processing; they are not intended to replace or impede U.S. industry’s pathway to interact directly with DoD entities through existing relationships. One example of this is for NPOR Type 1 systems, wherein a U.S. DoD Program Office already exists and professional relationships with industry have been established.

Phase 2: Sponsorship

The primary goal of this phase of the process is to assign an IA to evaluate the submission, sponsor the NPOR technology release and disclosure processes, and ensure exportability and releasability

considerations have been taken into account by the submitter. In addition, in the case of FMS or Hybrid the IA is responsible for working with the vendors to develop the FMS case(s) and execute the program through the FMS processes.

Sponsorship of an NPOR is key to full USG consideration and advocacy, if appropriate. Once an NPOR request is input into the COI database, it will be available for review by COI members. If not selected by an IA after initial review, the COI executive secretary (DSCA) will engage the COI seeking a volunteer with an emphasis on IA(s) who may have like and/or similar capabilities already (i.e., possibly with institutional knowledge of the capability). In parallel, the COI will also gauge the strategic priority this capability may have in Step 3 (Prioritization) based on existing internal strategic prioritization processes. If deemed a viable candidate and if not selected by an IA, the executive secretary will engage the COI and, if necessary, assign one.

Sponsorship does not necessarily yield or guarantee eventual export of a system, nor does it necessitate that the full technology release processes will be conducted. This part of the NPOR COI process serves to provide an initial assessment of whether the system or capability has been properly assigned for processing.

Phase 3: Prioritization

In parallel to identifying an IA to sponsor an NPOR, the COI executive secretariat (DSCA) will review the request to assess whether there may be a strategic priority of the requested NPOR. Prioritization of NPOR processing is primarily to ensure USG resources are appropriately focused on U.S. strategic priorities, which will change over time. For informal demands, additional information may be requested from U.S. industry applicants to support this assessment.

Phase 4: Release Process / Evaluation

The DCS or Hybrid NPOR submission will be assessed in phase 4 to determine the viability of the NPOR. Viability factors include, but are not limited to:

1. Potential contribution to end-user(s);
2. Whether and to what degree it supports U.S. national security interests, including the Combatant Commander's objectives for the end-user(s);
3. Intended end-user's ability to participate in and/or sustain the capability (e.g., maintenance, airworthiness, etc.);
4. Exportability and releasability considerations (e.g., COMSEC, LO/CLO, etc.);
5. The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the proposed results;
6. The realism of the proposed cost(s);
7. Whether the capability can be realized with an existing, or prior, POR or NPOR in USG inventory
8. Close resemblance to a current or pending competitive acquisition requirement

Key activities that take place during this phase of the review process include a Critical Program Information (CPI) assessment; determination of whether MILDEP policy, or related policy is in place or is needed; determination of whether technology security and foreign disclosure policy is in place or is needed; and determination of whether a Security Classification Guide has been promulgated or is needed. This effort will require in-depth support from the industry partner.

A favorable COI evaluation does not, in itself, indicate export approval as the COI does not adjudicate export requests. A favorable evaluation indicates support within DoD for further consideration.

Phase 5: Review Completion

The final phase is validation and notification of process completion to the COI Executive Secretariat. The COI Executive Secretariat will advise the requestor of one of the following determinations:

1. Returned (include reason e.g., insufficient information)
2. Not supported (include reason, e.g., not a priority or releasable at this time)
3. Supported:
 - a. FMS LOR: Recommended for case development; or,
 - b. DCS License Application: Based on the information provided the COI to date, DoD recommends support for processing a DCS export license application (such support may ultimately be conditional, i.e., with recommended provisos when responding to the *license* application – not the NPOR submission).

Criteria for DoD Support

The COI will assess whether the submission:

1. Is of continued interest to the USG for foreign partner use, sufficient resourcing is available, and releasable
2. Deemed not feasible for partner nation to sustain
3. Requirement(s) can be realized with an existing or prior POR
4. Closely resembles a current or pending competitive acquisition requirement
5. Is not deemed a meritorious submission.

3.6 COI Reconsideration Process

Once an FMS, DCS, or Hybrid NPOR submission has completed Phase 5, if the review determines that the submission has not met the evaluation criteria for further consideration the submission becomes eligible for reconsideration by the COI. Appendix II provides a template for industry to use for a reconsideration. When submitted, it is sent to the COI Executive Secretariat (DSCA) to process.

The COI Executive Secretariat will then develop Courses of Action for the COI Executive Board (COI voting members) to consider. Due to senior level DoD involvement, industry reconsideration requests must be signed by a submitter's responsible export-related official who is familiar with both the initial submission and why it was "Not Supported" by the COI.

Chapter 4: COI Interaction with Industry

To be successful, USG-industry collaboration must be thorough, yet concise to minimize resource expenditures for both. The next sections illustrate how COI-industry interaction is planned. It is important to note that if necessary, the COI Executive Secretariat will have the ability to correspond

via classified channels. U.S. Industry is responsible for appropriately marking any submissions or correspondence as proprietary as necessary, and the Executive Secretariat is responsible for suitably protecting any proprietary information submitted in accordance with the rules for such information in the Federal Acquisition Regulation and supplements.

4.1 NPOR COI Electronic/Written Communications

Written correspondence should be submitted to the NPOR workflow at dsca.ncr.dsa.mbx.npor-coi@mail.mil. Industry Associations have been briefed by the COI and will have access to the NPOR Industry Handbook posted on the DSCA website for utilization. The NPOR Industry Handbook explains the COI role, contract information, and procedures and rules for industry DCS or Hybrid submission to the COI for action. Should the postal service be preferred, industry may correspond with the COI Executive Secretariat by mailing the representative within DSCA Weapons to:

Attn: DSCA Weapons “NPOR Executive Secretariat”
2800 Defense Pentagon
Washington, DC 20301-2800

4.2 Classified Correspondence

Industry may correspond with the COI Executive Secretariat by emailing the representative within DSCA Weapons via appropriate secure means, hand delivering or mailing paper documentation to:

Attn: DSCA Weapons “NPOR Executive Secretariat”
2800 Defense Pentagon
Washington, DC 20301-2800

Appendices

Appendix I: Industry Submission Template

Appendix II: Reconsideration Template

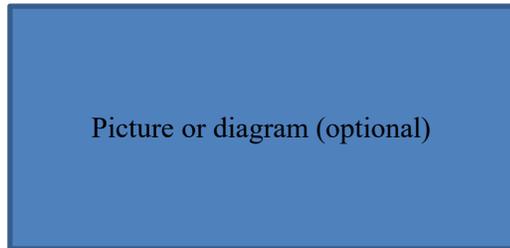
Appendix I: Industry Detailed Submission

--SAMPLE TEMPLATE FOR INDUSTRY SUBMISSION--

INDUSTRY REQUEST FOR CONSIDERATION FOR COMMUNITY OF INTEREST: [TOPIC]

From: [Principal's Name, Title, Organization, & Telephone Number]

[Initial & Date Here]



1. **System:** [Title of System]
2. **End-User(s):**
3. **Foreign country defense requirement:**
Provide evidence that the NPOR submission supports a U.S. national defense requirement or that of a foreign country.
4. **DCS or Hybrid:**
5. **If Hybrid, describe the FMS/DCS split**
6. **Capability:** [Up to one paragraph brief description of system]
7. **DCS or Hybrid NPOR Type:** [1-6 assessment, more than one type may be selected]
8. **Background:** [Provide a brief description on the contemplated export, how it will be executed by the parties to include scope (if known, e.g., U.S./foreign workshare), role or parties to include the end users (if known), review of defense articles or items subject to the Export Administration Regulations (EAR) and services to be transferred, and description of any known precedent export. [Detailed description of the contemplated export to include hardware description, relevant software, technology, and defense services. Include diagram, system architecture, or other relevant pictorials, if available. If beyond 1 page, move additional detail to attachment.]
9. **Relationship to U.S. Program of Record:** [Describe whether this relates to a U.S. Program of Record and cite the relevant military service(s) and program(s) to which this system relates or has heritage, or state "Not Applicable."]
10. **Key or Initial Milestones:** *(What are the country's milestones, i.e. anticipated sole source contract award, or dates for expected RFI, RFP, downselect, selection, budget timelines, etc.)*
11. **Applicant Need Dates/Decision points:** *(What are anticipated USG decision dates needed to*

support Applicant activities tied to Milestone dates above?)

12. Is this program/system competing with international competitors? *(Yes or No selection).*

If known, list competitor companies and systems:

13. Is this program/system competing with U.S.-origin capabilities? *(Yes or No selection)*

If known, list companies and systems:

14. Precedent Export(s) Authorit(ies): [Describe whether this system has been exported, and cite export authority (license or FMS case)? Or state “Not applicable.”]

15. Business Case: [One to four bullets or clear statements of major business case issues or points to support this request.]

16. U.S. Government Engagement: [One to four bullets or clear statements of export control or releasability engagements relative to this specific request; include POCs, organization, type of engagement (e.g., meeting, phone, etc.), and dates.]

a. Detailed description of the contemplated export to include hardware description, relevant software, technology, and defense services. Include diagram, system architecture, or other relevant pictorials, if available.

b. Points of Contact with contact information

17. Is this program/system(s) subject to Technology Security and Foreign Disclosure requirements?

(Yes or No, if yes, list the ones that are applicable)

Cite applicable decisions and release processes that are completed either in principle or in specific to the subject case – to include precedent cases if you are aware of them.

18. Is this program/system(s) required to go FMS?

(Yes or No selection)

Cite the USG authority that is making that FMS-only determination to include POC contact information.

19. What is the Technology Readiness Level (TRL) of the system?

(Drop-down for TRL options) What Non-Recurring Expense (NRE) is required to make this system “production ready”?

20. Is this a dual use request?

Has a jurisdiction classification assessment been completed for this system? If yes, provide results.

21. Is this part of an offset requirement?

Attachments:

1. Marketing Brochure or equivalent
2. Points

Appendix II: Reconsideration Process Template

CLASSIFICATION

As of [Date & Time]

RECONSIDERATION FOR COMMUNITY OF INTEREST: [TOPIC]

From: [Principal's Name, Title, Organization, &
Telephone Number]

_____ [Initial & Date Here]

Case number:

Key points: One to four bullets. Short but clear statements of major issues or points that support raising this to the Dir., DSCA level. Essentially, why is reconsideration in the strategic interest of the DoD / USG?

//s// [Responsible Official]

Attachments:

1. Case documents
2. Points of Contact