



DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-2800

04 AUG 2009

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Responses to Industry Requests for Foreign Military Sales (FMS) Support
Relating to Direct Commercial Sales (DCS), DSCA Policy 09-32
[SAMM E-Change 137]

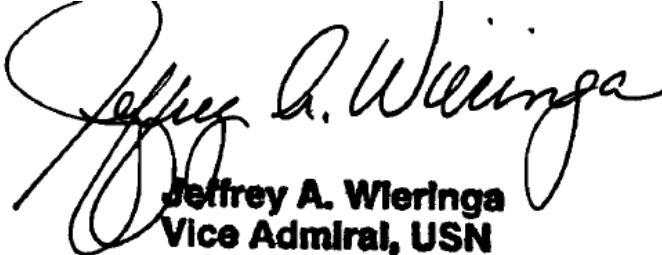
The United States Government (USG) has an interest in working with industry to develop and deliver military capabilities to foreign countries that support our common defense, whether through FMS or DCS. Advance planning and coordination are essential in situations involving responses that combine both FMS and DCS elements, particularly when those situations originate through DCS channels.

Over the last several years, there have been instances when industry has asked the USG to provide FMS support in the form of equipment, training, or services in order to be able to fulfill the terms of a DCS contract that had already been signed. Industry is not authorized to make commitments on behalf of the USG, and the USG cannot be held liable for inability to provide support in conjunction with DCS even if requested by the FMS purchaser. This applies whether or not the DCS contract has been signed. Examples of such support include, but are not limited to, airworthiness certification, training in U.S. military schools, aircraft ferrying, refueling services, and the provision of equipment or components available only through FMS channels.

To ensure that such situations do not occur, it is in industry's interest to advise the foreign purchaser that FMS articles or services will be required for the foreign purchaser to effectively utilize and sustain equipment being purchased through DCS and the foreign purchaser must submit a Letter of Request to obtain this support. Industry should inform DSCA and the relevant Implementing Agency of the possibility of a requirement for FMS articles or services. Security Cooperation Officers providing support to U.S. companies in-country should be alert to the need for the foreign country to submit a Letter of Request and remind the foreign counterparts and company representatives of this requirement.

Chapters 4 and 5 of the Security Assistance Management Manual (SAMM) have been updated to provide additional guidance on the importance of advance coordination in circumstances involving FMS support in conjunction with DCS.

If you have any questions concerning this policy or the SAMM, please contact Ms. Kathy Robinson, DSCA-STR/POL, at (703) 601-4368 or e-mail: kathy.robinson@dca.mil.



Jeffrey A. Wieringa
Vice Admiral, USN
Director

Attachment:
As stated

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Responses to Industry Requests for Foreign Military Sales (FMS) Support Relating to Direct Commercial Sales (DCS)

SAMM E-Change 137

In Chapter 4, add the last sentence to the end of C4.5.17.:

C4.5.17. Department of Defense (DoD) Support to Direct Commercial Sales (DCS). U.S. industry may request defense articles and services from the DoD to support a DCS to a foreign country or international organization. Defense articles and/or services provided to U.S. industry must be accomplished pursuant to applicable statutory authority including Section 30 of the AECA (reference (c)). Section 30 of the AECA (reference (c)) authorizes the sale of defense articles or defense services to U.S. companies at not less than their estimated replacement cost (or actual cost in the case of services) for incorporation into end items to be sold by such company on a direct commercial basis to a friendly foreign country or international organization pursuant to Section 38, AECA (reference (c)). SAMM Chapter 11, section C11.8., further clarifies authorized DoD support (articles or services) under this section. In addition, it is important that defense industry representatives identify early in the DCS planning process if support from the DoD will be required. If DoD support is deemed necessary, then meetings with DoD representatives should be arranged to discuss the level of support required and the method for funding the associated costs. See Chapter 5, paragraph C5.2.2., for additional information.

In Chapter 5, replace paragraph C5.2.2., with the version below:

C5.2.2. Types of LOR Responses. USG responses to LORs include Price and Availability (P&A) data, Letters of Offer and Acceptance (LOAs), and other appropriate actions that respond to Purchasers' requests for defense articles and/or services through the FMS process. The USG can tailor responses to meet Purchasers' requests. These can be in the form of a hybrid, negotiated, or not-to-exceed (NTE) tailored response as noted below. Advance planning and coordination are essential in situations involving responses that combine both FMS and Direct Commercial Sales (DCS) elements, particularly when those situations originate through DCS channels. The USG is not bound to honor commitments made by industry, nor can it be held liable for inability to provide FMS support in conjunction with a DCS even if requested by the FMS purchaser. Examples of such support include, but are not limited to, airworthiness certification, training in U.S. military schools, aircraft ferrying, refueling services, and the provision of equipment or components available only through FMS channels. To ensure that such situations do not occur, it is in industry's interest to advise the foreign purchaser that FMS articles or services will be required for the foreign purchaser to effectively utilize and sustain equipment being purchased through DCS and the foreign purchaser must submit a Letter

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