



DEFENSE SECURITY COOPERATION AGENCY

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25 APR 2012

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF THE AIR FORCE FOR
INTERNATIONAL AFFAIRS
DEPUTY ASSISTANT SECRETARY OF THE ARMY FOR
DEFENSE EXPORTS AND COOPERATION
DEPUTY ASSISTANT SECRETARY OF THE NAVY FOR
INTERNATIONAL PROGRAMS
DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY
DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE
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DIRECTOR, DEFENSE LOGISTICS AGENCY
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DIRECTOR, DEFENSE LOGISTICS AGENCY DISPOSITION
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DEPUTY DIRECTOR FOR INFORMATION ASSURANCE,
NATIONAL SECURITY AGENCY
DIRECTOR, DEFENSE REUTILIZATION AND MARKETING
SERVICE
DIRECTOR, DEFENSE THREAT REDUCTION AGENCY

SUBJECT: Policy Update Regarding Foreign Military Sales (FMS) Transactions with Non-Ministry of Defense (MOD) Units – DSCA Policy 12-19 [SAMM E-Change 201]

Reference: United States Department of State Cable 21 STATE 29188, “Cash and FMF-Funded Foreign Military Sales for Non-MOD Units”, March 26, 2012

The Defense Security Cooperation Agency (DSCA) has been working with the Department of State (DOS) Bureau of Political-Military Affairs (PM) in reviewing Foreign Military Financing (FMF) policy and disseminating guidance to Security Cooperation Organizations (SCOs) and the security cooperation community. DOS has issued new guidance on pursuing FMF or cash transactions for non-MOD units. This guidance is intended to support FMS program implementers as they work to meet both U.S. and host-nation needs by informing them that some transactions are possible but must first be approved by DOS on a case-by-case basis. Therefore, if there is a dialogue with host nation officials about the possible provision of defense articles and services to a non-MOD unit, the SCO needs to talk to the DSCA Country Program Director and DOS (PM) Officer responsible for the country. This guidance applies to FMS cases funded with FMF funds or host-nation funds authorized under the Arms Export Control Act (AECA). This guidance does not apply to transactions authorized under other provisions of law, as a different legal framework governs funding for such programs (e.g. Afghanistan Security Forces Fund (ASFF), Peacekeeping Operations (PKO), or Pakistan Counterinsurgency Capability Fund (PCCF) authorities).

DOS can legally approve the sale of defense articles and services via FMS (including cases funded with FMF) for non-MOD units on a case-by-case basis. Approval of such transactions requires a legal analysis of whether the assistance would be consistent with section 4 of the AECA, which states that defense articles and defense services may be sold or leased by the United States Government under the Act only for certain purposes, including legitimate self-defense and internal security. In this context "internal security" does not include law enforcement functions, but rather refers to threats against the state, such as armed insurrection or criminal activity of such an unusual nature that it requires a response by security forces with a military mission. To consider FMS transactions with non-MOD units, DOS (PM), in consultation with the DOS Office of the Legal Advisor, will examine the mission of the entity for which the articles are requested, and the relationship between that entity and other security forces with police functions, to ensure that the provision of assistance would be consistent with the purpose of the AECA and U.S. foreign policy. Considerations include:

- The full scope of the recipient unit's mission and that of the agency to which it reports, with particular attention to whether such mission is related to legitimate self-defense or also includes civilian law enforcement tasks, such as functions related to the investigation of common crimes or crowd control (Note: Countering narcotics trafficking is generally considered a law enforcement task unless the trafficking takes place on such a scale as to present a threat to internal security such as where criminal networks control territory in the country);
- Whether there is a high risk that the defense articles may be transferred to another unit or agency with law enforcement functions or a mission that does not align with U.S. foreign policy objectives;
- Whether the unit might be employed in a manner inconsistent with U.S. principles, such as to stage a coup or repress the population;
- Whether the initiative might be more appropriately executed through another program or, in the case of a proposal seeking to use FMF, using another funding source; and
- Whether, in the case of FMF, the funds would be better spent on a MOD unit.

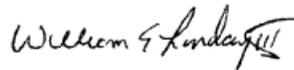
To date, the majority of non-MOD security forces that have been approved to receive FMS and FMF assistance are forces with responsibilities for border security and coastal and maritime defense and counter-terrorism forces (see referenced cable for additional details and listing of non-MOD units for which FMS transactions have been approved previously). The fact that an FMS transaction with a given security force or unit has been approved does not mean that future transactions may be undertaken without separate review, as the permissibility of a given transaction may turn in part on the nature of the defense articles or services. DOS will consider FMS transactions, including those funded by FMF, for non-MOD units where there is a policy justification for doing so and the provision of such assistance complies with section 4 of the AECA. To request an FMS transaction for a non-MOD unit, SCOs should provide the following information to DOS (PM) through DSCA (Operations Directorate):

- The unit's name, command, and organizational structure;
- The unit's full range of functions;
- The nature of the sale or assistance sought;
- To the extent that the sale or assistance is provided to support internal security, an explanation of the threat to the country's internal security and reason why it cannot be addressed by regular law enforcement forces using other assistance; and

- An assessment of the risk that the defense articles or services will be transferred outside the recipient unit or security force.

Failure to engage on this issue early in the process may result in transactions being delayed or denied in the final stages of the approval process.

The Security Assistance Management Manual (SAMM) E-Change clarifying this policy is attached. For any questions concerning this memorandum, please contact Mr. Chris Danielewski, DSCA-STR/POL, christopher.danielewski@dscamil, (703) 601-4368.



William E. Landay III
Vice Admiral, USN
Director

Attachment:
As stated

cc:
STATE/PM-RSAT
USAFRICOM
USCENTCOM
USEUCOM
USNORTHCOM
USPACOM
USSOCOM
USSOUTHCOM
USTRANSCOM
AFSAC
AFSAT
USACE
USASAC
SATFA
TRADOC
NAVICP
NAVSUP WSS
NETSAFA
MARCOR IP
SCETC
DISAM
USCG International Affairs (G-CI)

ATTACHMENT

Security Assistance Management Manual (SAMM), E-Change 201

The following is added to the SAMM as Section C5.1.5.3.:

C5.1.5.3. LORs for FMS to non-MOD Units. Under limited circumstances, the DOS can legally approve the sale of defense articles and services via FMS (including cases funded with FMF) for non-MOD units on a case-by-case basis. Approval of such transactions requires a fact intensive legal analysis of whether the assistance would be consistent with section 4 of the AECA, which requires that defense articles and services be sold by the USG under the Act only for certain purposes, including legitimate self-defense and internal security. In this context "internal security" does not include law enforcement functions, but rather refers to threats against the state, such as armed insurrection or criminal activity of such an unusual nature that it requires a response by security forces with a military mission. When considering FMS transactions with non-MOD units, DOS (PM), in consultation with the DOS Office of the Legal Advisor, will examine the mission of the entity for which the articles are requested and the relationship between that entity and other security forces with police functions to ensure that the provision of assistance would be consistent with the AECA and U.S. foreign policy. To request an FMS transaction for a non-MOD unit, SCOs should provide the information below to DOS (PM) through DSCA (Operations Directorate). Failure to engage on this issue early in the process may result in transactions being delayed or denied in the final stages of the approval process.

- The unit's name, command, and organizational structure.
- The unit's full range of functions.
- The nature of the sale or assistance sought.
- To the extent that the sale or assistance is provided to support internal security, an explanation of the threat to the country's internal security and reason why it cannot be addressed by regular law enforcement forces using other assistance.
- An assessment of the risk that the defense articles or services will be transferred outside the recipient unit or security force.