



DEFENSE SECURITY COOPERATION AGENCY

201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 05 2018

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 FOR SECURITY ASSISTANCE, DEFENSE FINANCE AND
ACCOUNTING SERVICE-INDIANAPOLIS OPERATIONS
DIRECTOR, DEFENSE INFORMATION SYSTEMS AGENCY
DIRECTOR, DEFENSE LOGISTICS AGENCY
DIRECTOR, DEFENSE LOGISTICS INFORMATION SERVICE
DIRECTOR, DEFENSE LOGISTICS AGENCY DISPOSITION
SERVICES
DIRECTOR, DEFENSE THREAT REDUCTION AGENCY
DIRECTOR, MISSILE DEFENSE AGENCY
DIRECTOR, NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY
DEPUTY DIRECTOR FOR INFORMATION ASSURANCE, NATIONAL
SECURITY AGENCY
DIRECTOR, DEFENSE TECHNOLOGY SECURITY
ADMINISTRATION

SUBJECT: Agent Sales – New Multinational Foreign Military Sales (FMS) Initiative, DSCA
Policy 18-08

REFERENCE: a) Lead-Nation Procurement Letters of Offer and Acceptance (LOA), DSCA
Policy 14-24, January 30, 2015
b) Extension of the Lead-Nation Procurement Initiative Test Period, DSCA
Policy 17-11, March 22, 2017

DSCA is implementing a new FMS Initiative to permit Agent sales. Agent sales enable international organizations officially designated as Agents to act on behalf of one or multiple FMS-eligible countries or international organizations to procure defense articles and services. The Agent Sales initiative and the complementary Lead-Nation Procurement initiative reaffirm the United States' commitment to supporting partners' ability to procure U.S. defense articles and services through innovative procurement processes. Agent sales are designed to facilitate multinational procurement and lifecycle support of services and high value systems to a greater degree than is possible through Lead-Nation Procurement. Agent sales will allow organizations permitted to act as Agents access to, or temporary custody of, FMS-origin equipment to provide support through an FMS case without additional prior U.S. retransfer consent. Preliminary



guidance for implementing Agent Sales is provided in Attachment A. DSCA will provide final guidance after a trial period of implementing Agent Sales.

Agent Determinations

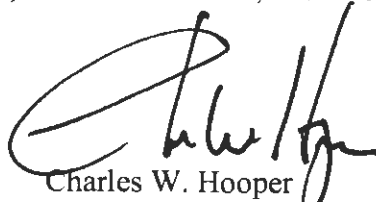
The Department of State has determined that two International Organizations -- the NATO Support and Procurement Agency (NSPA) and the Organisation Conjointe de Coopération en matière d'Armement (OCCAR) -- may act as Agents under section 3(a) [22 U.S.C. §2753(a)] of the Arms Export Control Act (AECA) to purchase defense articles and services through FMS on behalf of FMS-eligible NATO and European countries when certain conditions are met. Non-European countries may be considered on an exceptional basis at the recommendation of NSPA or OCCAR.

The United States Government may provide defense articles or services directly to the Principal(s), or to the Principal(s) through the Agent assigned for that sale. Transfers of defense articles and services between Principals on an Agent Sale LOA are considered re-transfers and may not take place without the prior consent of the Department of State.

By contrast, in a Lead-Nation Procurement, a Lead Nation or International Organization purchases defense articles, takes title to them on its own behalf, and retransfers them to other eligible participants. The United States Government may deliver defense articles and services purchased via a Lead-Nation Procurement only to the Lead-Nation or International Organization for the case. They cannot be delivered by the United States directly to the other participating parties. After taking delivery, participating parties enter into a blanket retransfer arrangement that permits them to retransfer the defense articles sold among one another, in most cases with only after-the-fact reporting.

Although Agent Sales do not support subsequent blanket retransfers among the participants as is possible through Lead-Nation, they will allow the Agent access to, or temporary custody of, FMS-origin equipment to provide support through an FMS case without additional prior U.S. retransfer consent.

DSCA will work with NSPA and OCCAR to establish the particular requirements of this new initiative. For general questions concerning this policy, please contact Mr. Mike Slack, DSCA/SPP/SPI, at 703-697-9058 or by e-mail: micheal.d.slack.civ@mail.mil or, for questions related to financial policy, Ms. Rita Chico, DSCA/DBO/FPA, at 703-697-8852 or by email at rita.chico.civ@mail.mil.



Charles W. Hooper
Lieutenant General, USA
Director

Attachment:
As stated

cc:

USAFRICOM

USCENTCOM

USEUCOM

USNORTHCOM

USSOUTHCOM

USPACOM

USTRANSCOM

USSOCOM

STATE/PM-RSAT

USASAC TRADOC

SATFA

NAVSUPWSS

NETSAFA

AFSAC

AFSAT

DISCS

MARCORIP

SCETC

USCG International Affairs (G-CI)

Preliminary Guidance for Implementation of Agent Sales

Agent sales are those sales in which an international organization officially designated as an Agent is acting on behalf of one or multiple FMS-eligible countries or international organizations to procure defense articles and services. The countries or international organizations represented by an Agent in a particular sale are known as Principals.

ASSIGNMENT OF AN AGENT

Each Principal in an Agent Sale must provide a formal letter, signed by a government official with the authority to sign a Letter of Offer and Acceptance (LOA), indicating that either NSPA or OCCAR will act as its agent.

The letter must include:

- 1) A description of the defense articles and services which the Agent is authorized to procure on each Principal's behalf;
- 2) Acknowledgment of the Principal's agreement to adhere to terms and conditions entered into by the Agent on behalf of the Principal in a Letter of Offer and Acceptance, and;
- 3) Acknowledgement and agreement of ultimate financial responsibility for any financial obligations incurred by the Agent on behalf of a Principal in a resultant LOA.

DSCA will provide a template letter to NSPA and to OCCAR.

Letter of Request (LOR): An LOR submitted by the Agent must include the letter of assignment for each Principal represented in that LOR before it can be accepted. The process for accepting a LOR in an Agent Sale will mirror the process in a typical country sale. Once an Agent Sale LOR is accepted, the DSCA Country Program Director will provide the LOR to the SCO of each Principal (i.e. an FMS eligible NATO or European country).

Country Team Assessment (CTA): SCOs will provide a CTA, as required, in accordance with SAMM Section C5.1.4.

CONGRESSIONAL NOTIFICATION

NATO thresholds and notification periods apply only if all Principals are NATO members. The most restrictive thresholds and notification periods required for any Principal will be applied to an Agent Sale consisting of non-NATO members.

The notification to Congress will list the Principal(s) as the purchaser(s) and identify the Agent. If there are multiple co-Principals, separate sections will list for each Principal the defense articles and services requested and their respective values. Separate policy justifications will also be provided relevant to each Principal.

Defense articles listed in the Sensitivity of Technology section should be listed by item and need not be broken out by country unless there is a difference in the capability or sensitivity of technology regarding the same item being provided to two different principals.

LETTER OF OFFER AND ACCEPTANCE (LOA) DEVELOPMENT

Security Cooperation Customer Code (SCCC): All sales in which NSPA is acting as an Agent will use SCCC W7 regardless of the Principal(s) involved. Sales in which OCCAR is acting as an Agent will use SCCC 7B.

Letter of Offer and Acceptance (LOA): Principals are identified in the same manner as benefitting countries are identified in BPC cases. Terms and Conditions pertaining to the Agent will be included in the case notes. Case lines will be organized as follows with a Principal identified for each line:

1. Defense Articles
 - a. Principal A
 - b. Principal B, etc.
2. Defense Services
 - a. Principal A
 - b. Principal B, etc.
3. Training
 - a. Principal A
 - b. Principal B, etc.

Transportation and Delivery: Separate transportation plans and delivery instructions will be included, as necessary. Delivery Term Codes (DTCs) should be the same as in a standard country Foreign Military Sales (FMS) case. Transportation costs will apply below-the-line. Depending on the specific circumstances, DTC 4 or 5 would be used for freight forwarder moves, DTC 7 or 9 for movement by the Defense Transportation System, or DTC 8 for a “pilot pick-up” from a DoD-controlled facility.

FINANCIAL TERMS AND CONDITIONS

Source of Funds: National funds only. Foreign Military Financing or any other U.S. grant funds or appropriated funds may not be used for Agent cases.

Single Principal: The financial terms typically available to the Principal in a standard country case will be applied to Agent Sale cases with a single Principal.

Multiple Principals:

Contract Administrative Services (CAS): CAS is an above-the-line cost but is applied at the case level in DSAMS. CAS waivers will apply only if all Principals are eligible for the same level of waiver. If there are differences, the most restrictive CAS waiver attribute for any Principal on the LOA will be applied. An Individual Pricing Component (IPC) remark must be included in DSAMS and note the common portions that can be waived.

Financial Responsibility: Each Principal bears full financial responsibility for defense articles and services purchased on its behalf by an Agent. Each line will be for a single Principal. Each Principal will be responsible for the below the line costs for the defense articles and services the Agent is purchasing on its behalf.

Terms of Sale: Dependable Undertaking (DU) status can be provided only if all Principals included in the LOA are eligible for DU. Otherwise, the terms of sale will be cash with acceptance.

Termination and Liability (TL) Charges for Sales from Procurement: TL will be included for Agent sales with a DU term of sale. TL will be collected via the method available to all Principals on the LOA, either cash or a Standby Letter of Credit (SBLC) entered into by the Principal.

Termination: Each Principal pays its own termination liability costs. An amendment or modification will be made to the Principal's lines on the case and the change reported to the Agent. Resultant price increases to the remaining Principals are billed to each Principal's respective case lines just as a price increase would be billed on a standard country case. Any compensation of the other Principals by the withdrawing Principal arising as a result of its decision to withdraw would be addressed by agreement among the co-Principals and not through the LOA.

Non-Recurring Cost (NRC Waivers): NRC Waivers must be requested in the LOR and are applicable at the line level for each Principal.

Case-funded Manpower: Each Principal may elect to fund additional manpower via one or more of its lines on a case. The Agent will assign costs across each Principal on an LOA in the case where additional manpower is required to be applied broadly across the case.

Supply Discrepancy Reports (SDRs): SDRs may be submitted directly by the Principal or indirectly through the Agent (preferably the latter).

Payments: Either the Principal or the Agent on a Principal's behalf may make payment to the Defense Finance and Accounting Service. The Principal must inform the USG of which method it will use. Payments by Agents on behalf of a Principal must be annotated to ensure proper crediting of the Principal's account.

TRANSPORTATION AND DELIVERY

Freight Forwarding and Export: Export authorization is required for each Principal purchasing on an LOA, though the Agent may act on a Principal's behalf. Principals may use their own freight forwarders for their individual shipments. A Principal may not export defense articles identified on the case as being sold to another Principal on the LOA even with the other Principal's consent. The Agent may use its freight forwarder to receive and export shipments on behalf of any Principal named on the LOA. The mere fact of being designated an Agent for purposes of LOA signature and performance does not signify that the Principal has designated the Agent as its freight forwarder.

Transportation Plans: DoD 5220.22-M, the National Industrial Security Program Operating Manual, DoD 5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives (AA&E), and National Security Agency (NSA)/Central Security Service Manual 3-16, Control of Communications Security Material, require the development and maintenance of

Transportation Plans for each LOA containing AA&E, classified materiel, and communication security (COMSEC) materiel. The Implementing Agency and each Principal on an LOA, either directly or through the authorized Agent, will maintain an individual Transportation Plan.

AMENDMENTS AND MODIFICATIONS

Amendments: Each Principal purchasing on an LOA, working through the Agent, may amend the lines relevant to it. The Agent will attempt to consolidate amendments by individual Principals to the maximum extent possible. It will generally not be possible to add co-Principals through amendment.

Modifications: Agents will inform Principals of modifications to the LOA.

OTHER STANDARD TERMS AND CONDITIONS

All other LOA standard terms and conditions will apply to each Principal on the LOA as if each had entered into a LOA directly with the United States.