



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 JAN 2001

In reply refer to:
I-01/000182-PMD

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF THE ARMY
(INTERNATIONAL AFFAIRS)
ATTN: SAUS-IA-DSZ
DEPARTMENT OF THE ARMY

DIRECTOR, NAVY INTERNATIONAL PROGRAMS OFFICE
DEPARTMENT OF THE NAVY

DEPUTY UNDER SECRETARY OF THE AIR FORCE
(INTERNATIONAL AFFAIRS)
DEPARTMENT OF THE AIR FORCE

SUBJECT: Guidance Regarding Direct Commercial Sales (DCS) Preference (DSCA 01-01)

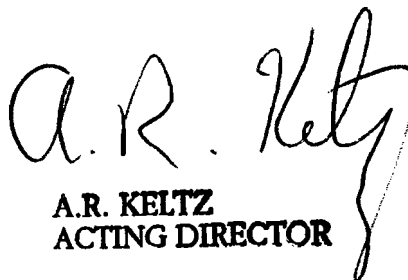
As stated in the Security Assistance Management Manual (SAMM), the Department of Defense is generally neutral as to whether a country satisfies requirements for US origin defense articles or services through Foreign Military Sales (FMS) or on a commercial basis. Section 601 of the SAMM supports these policies and shows actions to interface FMS and commercial activities. This section of the SAMM was rewritten on 04 December 1998 to provide the Security Assistance community with clearer guidance regarding FMS – Commercial Interface. Recently, we have received numerous questions from the Military Departments regarding DCS preference requests. The following existing guidance is provided for your use and information.

In accordance with the SAMM, contractors may submit requests for DCS preference when they are engaged in formal negotiations with one or more foreign countries. The DCS preference request must include a copy of the request for a price quotation from the country. Upon receipt of such a request, DSCA will ask the implementing agencies to review the request for the following:

- 1) Does the implementing agency have an FMS request for the item on file from the country or countries referenced in the DCS preference request?
- 2) Does one of the specific exclusions listed in Section 60103 of the SAMM apply?
- 3) Is the item designated "FMS Only" in accordance with the criteria listed in Section 60102 of the SAMM?

If any of the criteria outlined above apply to the item being reviewed for DCS preference then the request may be disapproved. However, if none of the criteria above apply then the DCS preference will be effective for one year.

Attached is a copy of the guidance in the SAMM that has been effective since 04 December 1998. If you have any questions regarding this matter, please feel free to contact Mr. Steve Harris at steve.harris@osd.pentagon.mil or at (703) 604-6611/DSN 664-6611.


A.R. KELTZ
ACTING DIRECTOR

Attachment
As Stated

cc: AMSAC-OL-MP
AFSAC
NAVICP
DISAM

Section 601 -- FMS -- Commercial Interface

60101 -- General

DoD prefers that countries friendly to the US fill defense requirements with US origin items. DoD is generally neutral as to whether a country satisfies requirements for US origin defense articles or services through FMS or on a commercial basis. This section supports these policies and shows actions to interface FMS and commercial activities.

60102 -- FMS Only Designation

The following criteria will form the basis for DoD components to recommend that an item be sold only through FMS channels: A legislative or Presidential restriction; DoD policy (e.g., NDP-1); international agreement; or a US force interoperability or safety requirement. These criteria will be administered within DoD by DTSA through the export licensing process. Recommendations based on these criteria must be fully supported. Disagreements may be reconciled by DTSA or referred to the appropriate DoD element for resolution in accordance with NDP-1, DoDD 2040.2, or DoDD 5120.49.

60103 -- Direct Commercial Sales (DCS) Preference

If a request is received by the IA or DSCA which identifies formal negotiations with one or more foreign countries, consideration will be given to DCS for the transaction. A copy of the request for a price quotation from the country must be included. When approved, these preferences will be honored for one year. Approved DCS preferences should be held within SA organizations and at the item manager level to allow proper screening of LORs. The process outlined in this section is a best efforts commitment by DoD. Failure on the part of a DoD component to comply with these procedures will not invalidate any resultant FMS transaction. Before approving DCS preference for a specific transaction, the following will be considered:

A. Article or Service Exclusions. Automated procedures for supply under CLSSA, BO, CSP, or other dollar lines do not lend themselves to the manual process through which commercial preference operates. Also, system packages which may include dollar and defined lines, are routinely sold. Therefore, items provided on FMS LOA dollar lines and those required in conjunction with a system sale do not normally qualify for DCS preference.

B. Specific Sale Exclusions. For certain countries and when the sale is to be financed with MAP or FMS funds (see Chap 9), articles or services which may otherwise qualify for DCS preference must be sold through FMS procedures. FMS for a specific sale may also be mandated by the Director, DSCA.

C. P&A or LOA Requests. Within three weeks of receipt of the LOR, notify the Purchaser of any DCS preference, using the following text:

"[Company] has advised us that it is actively negotiating with you a program under which [article or service] is to be provided commercially.

"Although we have no preference as to whether this item is procured through FMS or on a commercial basis, we do not normally provide price and availability information that could conflict with information formally requested from commercial firms. If a commercial transaction is undertaken, the US Government will not be a party to the contract; therefore, all aspects of contract performance must be between your Government and the company.

"If you do not desire to pursue a commercial purchase, please advise us as to the basis for this decision."

Based on the rationale provided, the IA must determine that commercial activity has ceased, determine if guidance in 60104 below applies, or seek further guidance from DSCA.

60104 -- Concurrent FMS and Commercial Negotiations

IAs will not normally engage in foreign government requested FMS-commercial comparison studies.

A. **Seeking Comparison Data.** In certain instances, national policy or specific circumstances may dictate that both FMS and commercial data must be obtained. The FMS customer is not precluded from first obtaining FMS data and later determining it should request a commercial price quote. In such instances, the customer should avoid concurrent FMS and commercial requests. If it is determined commercial acquisition is desired after FMS data has been requested, but before receipt of the data, the customer should cancel the LOR prior to requesting commercial data. When a contractor has been granted commercial preference per 60103 above, commercial data should be obtained and evaluated before FMS data are requested. If, after evaluating the commercial data, the decision is made to purchase via FMS, the customer should provide information showing commercial acquisition efforts have ceased and request any commercial preference be waived in order to meet the requirement.

B. **Withdrawal of LOAs.** Instances may arise where an SA customer received an LOA and subsequently solicited formal bids from private industry for the same item. Such action does not automatically require DoD withdrawal of the LOA. Upon receipt of a copy of the bid request and statement from the contractor that FMS data could jeopardize any commercial program, the IA should notify the country as to its intentions and express a predilection for withdrawing the LOA in light of the commercial bid request.

(@@ Rewritten 4 Dec 1998)