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

02 SEPT 2020

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, SECURITY COOPERATION ACCOUNTING
DIRECTOR, DEFENSE LOGISTICS AGENCY
DIRECTOR, DEFENSE LOGISTICS INFORMATION SERVICE
DIRECTOR, DEFENSE THREAT REDUCTION AGENCY
DIRECTOR, MISSILE DEFENSE AGENCY
DIRECTOR, NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY
DEPUTY DIRECTOR FOR INFORMATION ASSURANCE, NATIONAL SECURITY AGENCY

SUBJECT: Dependable Undertaking Update and Clarification, Defense Security Cooperation Agency Policy Memo 20-14, E-SAMM 375

Reference: (a) Security Assistance Management Manual, C9.8.3, Dependable Undertaking Status
(b) DSCA Policy Memo 09-07, Dependable Undertaking Policy
(c) DSCA Policy Memo 16-72, Dependable Undertaking Policy Update

The purpose of this memorandum is to clarify and standardize how Dependable Undertaking (DU) eligibility status is established, managed, and terminated. DU is authorized by the Arms Export Control Act (AECA) Sections 22(a) and 29 and requires that FMS Partners authorized to use DU are able and willing to pay at such times and in such amounts as required by the USG for procurement purchases. DU is a narrow exception to the Anti-Deficiency Act as it does not require full funding and allows for a payment schedule. However, if the partner fails to pay, there are no appropriations available in the event of default. DU status allows eligible FMS partners to pay in advance of the expected vendor bills in accordance with a USG-issued official billing statement.

SAMM Chapter 9 (reference a) is updated to provide clarified and streamlined processes for ensuring that eligible FMS Partners with demonstrated payment histories remain DU-eligible even if the partner's Interagency Country Risk Assessment System (ICRAS) rating or credit rating decreases. The SAMM update (Attachment A) includes comprehensive policy guidance on the establishment, management, and termination of DU. New sections added to the SAMM include:

- Stakeholders and their responsibilities
- Three Tier Evaluation Process
- Grandfathering Process
- DU Policy Exceptions and Required Documentation
- DU Termination Process

In an effort to clarify the DU process, the DSCA Chief Financial Officer may approve DU eligibility for FMS Partners that have an average or better likelihood of payment, or may deny it when the FMS Partner is otherwise eligible for DU but DU may not be the most appropriate Term of Sale. Pursuant to Executive Order 13637 and DoDD 5105.65, the DSCA Director retains authority to determine whether any FMS Partner that presents a below average likelihood of repayment is eligible for DU.

References b and c are hereby rescinded and replaced by the SAMM update in Attachment A.

If you have questions or would like additional information, please contact Ms. Danielle Ayers, DBO/FPA, mary.d.ayers2.civ@mail.mil, (703) 697-9407.

Heidi H. Grant
Director

Attachment: As stated

Attachment 1
Security Assistance Management Manual (SAMM), E-Change 375
Updates to C9.8.3. Dependable Undertaking Status.

1) Replace C9.8.3. Dependable Undertaking and subsections with the following:

C9.8.3. Dependable Undertaking Status.

C9.8.3.1. In accordance with AECA sections 22(a) (22 U.S.C. 2762(a)) and 29 (22 U.S.C. 2769), Dependable Undertaking (DU) may be used as a term of sale for Procurement purchases. DU represents a firm commitment by the purchaser to pay the full amount of the contract, which assures the USG against any loss on the contract. The purchaser agrees to make funds available, in advance of financial requirements, as required by the official USG billing statement, to meet payments to contractors as well as any damages and costs that may accrue from cancellation.

C9.8.3.1.1. Authority. The DSCA Director is delegated authority for AECA Sec 22(a) from the President of the United States through the Secretary of Defense by means of an Executive Order and DoD Directive. DSCA Chief Financial Officer (CFO) will determine DU eligibility on a case-by-case basis for any FMS eligible country or organization that clearly demonstrates an ability and willingness to pay resulting in an assessed likelihood of timely payments.

C9.8.3.2. Eligibility. DSCA (Directorate of Business Operations (DBO) Financial Policy & Analysis Division (FPA)) will evaluate Partner eligibility using a Three Tier Evaluation process and provide decision recommendations to the DSCA CFO or DSCA Director as appropriate. FPA will use the following primary factors to determine eligibility: the FMS Purchaser's Interagency Country Risk Assessment System (ICRAS) rating, FMS program and payment history, the value of the planned procurement, debt relief history, and any other pertinent factors. For countries and international organizations without an acceptable ICRAS rating, DSCA will determine eligibility using (1) a credit rating service (e.g. Moody's), (2) the DSCA DU Assessment Tool, (3) the country's FMS payment history, and/or (4) some combination of the preceding variables. A country with an acceptable ICRAS rating at the time of receipt of the Letter of Request (LOR) is presumed to be eligible to use the DU Term of Sale unless other factors override that eligibility determination. ICRAS ratings themselves are sensitive and are not releasable.

C9.8.3.3. Eligibility Review Process. Countries and International Organizations must be listed as AECA FMS eligible on Table C4.T2A. to be considered for DU. A Three Tier Assessment Process is used to determine DU eligibility. The primary factor used to determine eligibility is the partner's ICRAS rating, which must provide an average or better likelihood of timely payments as required by the USG. An ICRAS rating below the acceptable threshold represents an increased likelihood of non-payment by the FMS partner which creates financial risk to the USG as non-payment could result in the requirement for a U.S. Taxpayer funded appropriation.

Table C9.T12. Eligibility Review Three Tier Assessment Process

Tiered Review	ICRAS Rating	Description
Tier 1	Average or better likelihood of timely payments	• Yes/No based on ICRAS • Marks the point of reasonable assurance that the country will be able to resolve payment problems without resorting to a U.S. Taxpayer funded appropriation
Tier 2	Below Average likelihood of timely payments	• Failed to meet Tier 1 threshold • Considers additional weighted factors including International Monetary Fund reports, Foreign Military Sales program and payment experience, debt relief history, and Country Team Assessments • Generates a score from 1-9, with 9 being the highest • A score of 5 or higher is eligible for a positive recommendation • May allow for approval of DU for individual FMS cases only
Tier 3	Below Average likelihood of timely payments	• Failed to meet Tiers 1 and 2 thresholds • Evaluates past FMS program payment history (i.e. national funds; not grants) • Determines the average amount of annual sales paid from country's national funds • May allow for a small amount of DU to be approved for individual FMS cases only

C9.8.3.3.1. DU is not a blanket authority. A country or international organization may not be offered the Dependable Undertaking Term of Sale, even if it is presumed to be eligible, if other factors and circumstances indicate that another term of sale is advisable for a particular case. Information that may affect a country's or international organization's eligibility for the Dependable Undertaking Term of Sale should be communicated to the DSCA CFO as soon as possible so that the eligibility determination may be reviewed.

C9.8.3.3.2. Grandfathered Dependable Undertaking. Allows Partners with ICRAS ratings that have fallen below the eligibility threshold to maintain DU eligibility so long as they are making payments as required and maintaining an active FMS program that demonstrates an ability to pay. Should a grandfathered Partner's program fall into a period of inactivity, then

DU will be ceased. For this purpose, a period of inactivity means no record of national fund payments for 7 consecutive years.

C9.8.3.3.2.1. Monitoring Grandfathered Status. DSCA FPA, in coordination with DSCA (Directorate of Business Operations (DBO) Country Financial Management Division (CFM)), will review and evaluate grandfathered countries and organizations every 7 years to ensure the appropriateness of continuing the grandfathered DU status. FPA will review the ICRAS rating changes over the course of the 7 year period and CFM will advise of any issues with timely payments. DSCA FPA will consult with State Department on its recommendations for any DU status changes. The final recommendations will be sent to the CFO for a decision on whether it is appropriate to continue the grandfathered country or organization's DU status. The monitoring period ends December 31 every 7th year.

C9.8.3.3.3. Policy Exception. The FMS Partner, SCO, DSCA (Integrated Regional Teams (IRT)) or IA may request an exception, in writing, to offer a particular case (or Amendment) with the DU Term of Sale to a country or international organization not otherwise eligible for DU. DSCA Director approval of an exception will be based on the results of a second-tier and third-tier structured analysis conducted by DSCA FPA. Factors such as previous FMS experience, background in Country Information Paper, Country Team Assessments, COCOM (CCMD) endorsements for DU, and supporting documentation provided by the requesting organization will be consolidated by the DSCA IRT and then evaluated by DSCA FPA after all required documents are received. The DSCA Director will make the decision upon the review of the assessment. Exceptions granted apply only to the specific case or Amendment scope being evaluated and do not give the country or international organization blanket eligibility for DU status. This written policy exception request must include coordination with DoS PM RSAT, and PM/SA if the potential exception involves the use of any US grant assistance.

Table C9.T13. Documents Required For Final Exception Evaluation

#	Document Name	Remarks	OPR
1	Letter of Request (LOR) or other reliable statement of requirement	Identifies the item(s) being procured, quantity and budget requirements	FMS Purchaser
2	FMS Program History Form	Comprehensive Overview of FMS Program Financial History	CFM
3	Quarterly National Fund Payment History for last 5-7 years	Record of payments made from the FMS partner. Does not include FMF or any other source of funds	CFM and DFAS
4	Country Team Assessment	Should address SCO's understanding of FMS Partner's ability to pay and budget for requirement	SCO

#	Document Name	Remarks	OPR
5	CCMD endorsement for DU	Should address CCMD’s understanding of FMS Partner’s ability to pay and budget for requirement	CCMD
6	Dependable Undertaking Assessment Form	Weighted Assessment of Various Factors	FPA

C9.8.3.3.4. Notification. DSCA FPA will notify the Department of State of any changes being contemplated to a country's DU status.

C9.8.3.4. Roles and Responsibilities.

Table C9.T14. Dependable Undertaking Roles and Responsibilities

Who	Roles and Responsibilities
DSCA Director	• Approves Dependable Undertaking for Partners with ICRAS ratings that indicate an increased risk of non-payment.
DSCA Chief Financial Officer (CFO)	• Approves Dependable Undertaking for Partners with ICRAS ratings that indicate a positive likelihood of timely payments • Maintains list of DU eligible partners
DSCA Financial Policy and Analysis (FPA)	• Prepares 2nd and 3rd Tier evaluations for FMS Partners that are considered to have an increased likelihood of non-payment • Updates list of DU eligible partners on a quarterly basis, or as needed. • Responds to general Dependable Undertaking inquiries.
DSCA Country Financial Management (CFM)	• Supports Dependable Undertaking evaluations by providing supporting financial data. • Determines whether Dependable Undertaking is an appropriate term of sale for each Letter of Offer and Acceptance. • Responds to country specific Dependable Undertaking inquiries.

C9.8.3.5. Oversight and Management. DSCA FPA serves as the DoD representative to the ICRAS working group and will coordinate on DoD equities as related to FMS. DSCA CFM will advise DSCA FPA when a FMS partner has recurring payment problems. FPA, in coordination with CFM, will maintain the working list of DU eligible FMS partners. CFM and FPA will review and update the list quarterly and the final quarterly list will be provided to the DSCA CFO for approval by CFM. When ICRAS rating changes impact a FMS partner's DU eligibility, such as an ICRAS increase, FPA will advise CFM of the rating change for CFM's awareness and recommendation. If the ICRAS rating change impacts the FMS partner's eligibility for DU, then FPA will inform the DSCA CFO prior to engaging State Department.

C9.8.3.6. Termination. In the event of incomplete and/or untimely payments resulting in abnormal account balances or an Anti-Deficiency like situation, the DSCA Director may revoke the DU status and request Cash with Acceptance on current and/or future LOA documents. If the FMS Partner is not able to support the financial requirements of the FMS case, DSCA CFM will execute follow up actions as described in DoD FMR Vol 16, Chapter 6, Section 060302E2. Should follow up actions not result in collection, CFM will inform the CFO of the payment issue and provide Courses of Action (CoAs) in accordance with the DoD FMR guidance above. CFO will inform the Director of the situation and engage State Department leadership. CFM's efforts may include, but are not limited to, working with the appropriate offices (IRT, SCO, Department of State) to determine whether a program de-scope or shutdown are appropriate CoAs for recommendation to DSCA CFO, and the necessary steps to rectify the situation (e.g. diplomatic channels, referral to Department of Justice, etc.) In the event that there is no workable resolution to the payment problems, there may be a requirement to pursue a U.S. Taxpayer funded appropriation from Congress.

2) Re-number Dependable Undertaking and subsections as necessary.