



DEFENSE SECURITY COOPERATION AGENCY

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15 JAN 2025

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF THE AIR FORCE
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 INFORMATION SYSTEMS AGENCY
DIRECTOR, DEFENSE LOGISTICS AGENCY
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DIRECTOR, NATIONAL GEOSPATIAL-INTELLIGENCE
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DIRECTOR, SECURITY COOPERATION ACCOUNTING
DIRECTORATE, DEFENSE FINANCE AND ACCOUNTING
SERVICE, INDIANAPOLIS OPERATIONS
DIRECTOR OF CYBERSECURITY DIRECTORATE AND DEPUTY
NATIONAL MANAGER FOR NATIONAL SECURITY
SYSTEMS, NATIONAL SECURITY AGENCY

SUBJECT: Defense Security Cooperation Agency Policy Memorandum 24-56, Foreign Military Sales Design and Construction on a Department of Defense U.S. Military Installation in the United States (SAMM E-Change 703)

Reference(s): (a) Section 21 of the Arms Export Control Act (AECA) ([22 U.S.C. 2761](#)), as amended
(b) Section 29 (AECA) ([22 U.S.C.2769](#)) Foreign Military Construction Sales
(c) Section 61 of the AECA, as amended ([22 U.S.C. 2796](#))
(d) [10 U.S.C. 2801\(a\)](#) Department of Defense Military Construction
(e) [10 U.S.C. 2802](#) Military Construction Projects
(f) [10 U.S.C. 2608](#) Acceptance of Contributions for defense programs, projects, and activities; Defense Cooperation Account
(g) [10 U.S.C. 9013](#) Secretary of the Air Force
(h) [10 U.S.C. 3013](#), Secretary of the Army
(I) [10 U.S.C. 5013](#), Secretary of the Navy
(J) [DoD Directive \(DoDD\) 4270.5 Military Construction](#)

This memorandum provides policy guidance for the Implementing Agencies (IAs) to provide Foreign Military Sales (FMS) design and construction services to foreign partners on U.S. military installations via Letters of Offer and Acceptance (LOA) in accordance with References (a)-(j).

Foreign partners may require services to construct dedicated facilities under an LOA at a U.S. military installation in the United States. Under Reference (e), the United States Government may not carry out construction projects on U.S. military installations without specific statutory authority. Therefore, to execute construction projects on U.S. military installations under an FMS case, these projects must be outside the scope of activities considered military construction (MILCON) under U.S. law. Authority provided by law to carry out a military construction project includes authority for:

- 1) Surveys and site preparation.
- 2) Acquisition, conversion, rehabilitation, and installation of facilities.
- 3) Acquisition and installation of equipment and appurtenances integral to the project.
- 4) Acquisition and installation of supporting facilities (including utilities) and appurtenances incident to the project; and
- 5) Planning, supervision, administration, and overhead incident to the project.

For FMS design and construction services to be considered for a given LOA, Pre-Letter of Request (LOR) and LOR requirements must be met.

Pre-Letter of Request Requirements. IAs must consider design and construction needs as part of a total package approach when conducting pre-LOR engagements with Partner Nations for training that would occur in CONUS. Once the need for facilities, including infrastructure, are identified, the IA should notify the Defense Security Cooperation Agency Office of International Operations (DSCA/IOPS) and the selected DoD Construction Agent as a pre-LOR action. See SAMM [Table C9.T2a.](#), for Pre-LOR case related activities.

Letter of Request Requirements. Partner Nations should identify 1) the desired DoD construction agent in its LOR for FMS design and construction services in accordance with [DoD Directive \(DoDD\) 4270.5 “Military Construction”](#); 2) the proposed method of financing; and 3) whether Price and Availability (P&A) data, a LOA, an LOA Amendment, or LOA Modification is desired. See SAMM [Figure C5.F14.](#) for design and construction services-related requirements.

Letter of Offer and Acceptance. Ref. (a) authorizes design and construction services to eligible Partner Nations and international organizations so long as such Partner Nations and organizations pay the full cost for those services to the United States. Design and Construction services are offered under FMS procedures using an LOA. IAs may provide FMS design and construction services on DoD-owned property via a discrete line(s) on an LOA for design and or construction services to construct, renovate, or repair facilities on a U.S. military installation. Any changes to existing case lines to accomplish these activities will require an LOA Amendment.

Exceptions to Policy. Exceptions related to FMS design and construction services will be considered on a case-by-case basis in accordance with SAMM [Section C6.7.5.](#)

Letter of Offer and Acceptance Notes. LOA notes must include FMS design and construction services being provided on the LOA. The note must also include the name or

organization acting as the construction agent and convey the associated line note for design and construction activity is contingent upon conclusion of a Lease, Contribution Agreement, or Technical Arrangement that conveys primary operational use and access of DoD-owned U.S. military installation facilities pursuant to the applicable Title 10 Secretarial authority ref (e), for construction of required facilities by the IA. See [SAMM Appendix 6](#) for LOA note language. Only Partner Nation funds may be used for FMS design and construction services on DoD U.S. military installations. See [Table C9.T2a.](#), for allowable LOA case funded activities for design and construction.

DoD Construction Agent Case Execution, Reporting and Closure. DoD Construction Agents within the IAs are responsible for reporting status of case execution and closure in alignment with existing processes and procedures for traditional FMS programs. Design and Construction case closure is performed in accordance with normal case closure procedures in SAMM [Appendix 7](#).

Design Services and Construction Mechanisms. There are three legal mechanisms by which DoD may provide FMS design and construction services on U.S. military installations pursuant to references (c), (f), and (j), respectively:

- 1) A lease agreement
- 2) A technical arrangement or
- 3) A contribution (gift)

Obligational Authority under an LOA will not pass to the IA without a signed arrangement with the Partner Nation documenting the use of one of these legal mechanisms, the required initial deposit, and a signed and implemented LOA with the Partner Nation.

Lease Agreements. The IA may carry out FMS design and construction services on U.S. military installations by leasing DoD-owned property to the foreign partner under the authority of reference (c). Lease agreements for DoD-owned property shall be for a specified period which may not exceed five years, and a specified period required to complete major refurbishment work. Such a lease shall provide the Partner Nation with sufficient access to, and use of the leased DoD-owned property that effectively removes any subsequent design or construction services from the purview of the Military Construction authorities. Under the lease, no U.S. entity may occupy or take title of the leased DoD-owned property unless the lease has expired or been terminated. The IAs are responsible for preparing leases using the Defense Security Assistance Management System (DSAMS). For lease format guidance, see SAMM [Appendix 8, Leases of Defense Articles](#). Any defense articles or services that are necessary to support the lease will require a separate FMS case.

Technical Arrangements. In cases where a lease is not executable or desirable, the IA may enter into a non-legally binding Technical Arrangement (TA) to grant the foreign partner primary operational access and use of specific areas and/or facilities on a U.S. military installation, pursuant to reference (g). The TA clarifies the procedures the United States and Partner Nation must follow to fulfill responsibilities under the FMS design and construction services case. The TA must:

- 1) Be consistent with the terms and conditions of any other applicable agreements or arrangements between the U.S. military installation and the Partner Nation that address provisional services and/or access and use, as well as the applicable LOA;

- 2) Delineate the authorization duration of the Partner Nation's presence on the DoD U.S. military installation;
- 3) Identify the specific facilities and locations to which the provision of primary operation access and use apply.
- 4) Describe permissible activities at those facilities and locations after construction including improvements and maintenance, as well as the necessary degree of primary access and use of the facilities; and
- 5) Set forth the Partner Nation's fiscal and other responsibilities in accordance with the applicable LOA.

Technical Arrangement Termination. If the TA is terminated prior to the completion of the specified facilities listed in the TA, the DoD reserves the right to either (1) assume ownership of any improvements or any new facilities or (2) request removal of any improvements, demolition of any new facilities and reconstitution of the area at a cost to the IA prior to program closure. No residual value will be paid to the Partner Nation for any facilities fully or partially constructed pursuant to the TA or the LOA. If the U.S. elects, all improvements, any new facilities shall revert or transfer to the U.S. automatically and the IA will execute any documentation reasonably requested by the U.S. to confirm transfer or reversion and be free and clear of liability. Upon TA termination, the corresponding LOA must be amended to remove the provision of any future design and construction services to the Partner Nation.

Contributions. Acceptance of contributions (gifts) under ref. (f) requires the Partner Nation and the IA to sign a Memorandum of Understanding (MOU) to document their intent to contribute and accept DoD-owned property pursuant to the authority in ref. (f) after agreeing to provide FMS design and construction services per ref (a) via an LOA. Facility ownership transfers to the U.S. after services completion. Regarding the MOU it must:

- 1) Be legally non-binding and non-obligating for both parties,
- 2) Describe the intentions, roles, and responsibilities of both parties,
- 3) Delineate the effective date, authorized duration, governance, funding, and reporting and,
- 4) Be signed by both parties.

Any contribution of DoD-owned property received under ref (f) may be:

- 1) Retained and used by the DoD in the form in which it was donated,
- 2) Sold or otherwise disposed of upon such terms and conditions and in accordance with such procedures as the Secretary of Defense determines appropriate; or
- 3) Converted into a form usable by the DoD.

Contribution (gift) Reporting Requirement. Contributions accepted by the Secretary of Defense must be reported to Congress during the preceding two fiscal quarters for DoD-owned property valued at more than \$1M per Title [10 U.S.C. 2608\(e\)](#).

Oversight. FMS construction, repair, or renovation of facilities on U.S. military installations is subject to oversight of the Office of the Secretary of Defense. The Office of the Deputy Assistant Secretary of Defense (DASD) for Plans and Posture (P&P) and DoD Office of General Counsel (OGC) for International Affairs (IA) will review and coordinate on proposed

TAs that contemplate construction based upon grant of primary access and use of areas and facilities to a foreign nation on U.S. military installations in the United States. The IAs should coordinate proposed TAs with DSCA OGC as the initial reviewer. DSCA OGC will coordinate with DASD (P&P) before negotiations with the partner and after completion of negotiations. Any changes to the intent of the TA after the initial approval, will need DASD (P&P) approval.

Construction Notification to Congress. The IA should follow established thresholds for 36(b) Congressional Notification for Construction and Design Services in SAMM [Table C5.T13](#).

This policy is effective immediately after signature. If you have questions concerning this guidance, please contact the DSCA Office of Strategy, Plans, and Policy, Execution Policy, and Analysis Division (SPP/EPA) dsca.ncr.spp.mbx.epa@mail.mil.

A handwritten signature in black ink, appearing to read 'D. Ferrari', with a stylized flourish at the end.

David Ferrari
Assistant Director Strategy, Policy, and Plans
Defense Security Cooperation Agency

Attachment: SAMM E-Change 703

Security Assistance Management Manual (SAMM) E-Change 703

1) Add Design and Construction Services (DC) to Appendix 8

See [Appendix 8 – Design and Construction Services \(DC\)](#) for Content.

2) Revise SAMM Section C4.4.7.1. to read:

C4.4.7.1. Design and construction services are offered under normal FMS procedures. Management and oversight of design and construction services is performed by construction agents designated by [DoD Directive \(DoDD\) 4270.5](#). When part of a larger program, construction services may be provided in two ways:

1. via the total package LOA under the cognizance of the managing IA (with a separate construction agent line included in the LOA), or
2. by the construction agent under the terms of a separate LOA. See SAMM [Appendix 8](#) for more guidance on FMS design and construction services.

3) Update Figure C5.F14., Generic Letter of Request Checklist Section 12 - Construction and Design-related requirements to read as follows:

| Line | Revised Text |
|------------|--|
| 3 | What is being requested through this LOR (e.g., Price and Availability, basic Letter of Offer and Acceptance (LOA) or amendment, grant , Design and or Construction mechanisms, (i.e., Lease, Technical Arrangement, or Contribution))? |
| 11.a.12.g. | Do you have established Military Assistance Program Address Codes for your shipments (Yes/No) (See Appendix 2) |
| 12.d. | Is the land required for construction identified? (if not, identify areas that are needed for long-term purposes such as building structures, and other areas needed for short-term construction efforts, such as laydown areas, access points, construction trailers, refueling locations, equipment maintenance etc.) Have alternative locations been identified? If not, by what date will it be identified? |
| 12.g. | Has the land required for construction been cleared of any environmental or unwanted obstructions such as vegetation, trees, HAZMAT, cultural resource concerns or any endangered species? |
| 12.h. | Has the land required for construction been surveyed for cultural resources or HAZMAT? |
| 12.i. | Are the facilities and/or infrastructure requested by this LOR expected to be attached to, interoperable with, or otherwise associated with existing facilities or infrastructure? Is utility infrastructure present? |

4) Add line 12.r. to Figure C5.F14., Generic Letter of Request Checklist

| Line | Text |
|-------|---|
| 12.r. | Is preliminary Digital mapping or other mission planning products considered? |

5) Revise the following Note in SAMM Appendix 6 to add additional verbiage:

6) **Foreign Military Sales Design and or Construction Services**

| Note Usage |
|--|
| FMS: Yes BPC: No Mandatory for FMS LOAs that include design and or construction services. Mandatory for Amendments and Modifications that add design and or construction services. |
| References |
| See Section C4.4.7. and Appendix 8 – Design and Construction Services (DC) |
| Note Input Responsibility |
| IA |
| Date Range of Use |
| All |
| Note Text |
| "This LOA includes design and or construction services offered under the authority of AECA, section 29. The construction agent for this portion of the program is [insert name/organization acting as the DoD construction agent]." [If construction is on a U.S. military installation, add the below text] Except for funds necessary to carry out partner design and planning services this line is contingent upon conclusion of a Lease, Contribution agreement or a Technical Arrangement that conveys primary operational use and access of DoD-owned U.S. military installation facilities pursuant to the [insert applicable Title 10 Secretarial authority] for construction of required facilities by the Implementing Agency. If the TA is terminated prior to the completion of the specified facilities listed in the TA, the DoD reserves the right to either (1) assume ownership of any improvements or any new facilities or (2) request removal of any improvements, demolition of any new facilities and reconstitution of the area at a cost to the IA prior to program closure. No residual value will be paid to the Partner Nation for any facilities fully or partially constructed pursuant to the TA or the LOA. If the U.S. elects, all improvements, and any new facilities shall revert or transfer to the U.S. automatically and the IA will execute any documentation reasonably requested by the U.S. to confirm transfer or reversion and be free and clear of liability. Upon TA termination, the corresponding LOA must be amended to remove the provision of any future design and construction services to the Partner Nation. |