



DEPARTMENT OF THE AIR FORCE
WASHINGTON DC 20330-1080

OFFICE OF THE UNDER SECRETARY

25 March 2003

MEMORANDUM FOR SEE DISTRIBUTION

FROM: SAF/IAPX
1080 Air Force Pentagon
Washington, DC 20330-1080

SUBJECT: FMS Customer Involvement in the DoD Contracting Process, (SAF/IAPX-03013)
(DSCA Policy memo, (DSCA 03-03), same subject)

This policy memorandum informs the Air Force Security Assistance community of changes to the Security Assistance Management Manual (SAMM) in regard to FMS customer involvement in the DoD contracting process.

On 22 November 2002, DoD issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) Part 225.7304 to add policy regarding the participation of foreign military sales (FMS) customers in the development of contracts that DoD awards on their behalf.

This final rule provides for greater involvement of FMS customers in the contract award process, while protecting against unauthorized disclosure of contractor proprietary data. This rule however only relates to individual FMS customer contracts and not US Government contracts supporting FMS community programs. Some examples of FMS community programs are PROs II, WWRS, and Flexible Acquisition and Sustainment Tool (FAST). Additionally, the rule prohibits FMS customer direct participation/involvement in the acquisition strategy, negotiation, and source selection processes.

Therefore, effective immediately paragraph 80102.D of the SAMM is deleted in its entirety and replaced with the following:

"D. **FMS Purchaser Involvement**. Discussions are held with the purchaser during the development of the LOA and prior to actual implementation to ensure requirements are clear and understood. Once the LOA is signed, the purchasing activities of defense components and prime contractors implement FMS requirements using normal procurement and contract management procedures in accordance with the FAR and other directives and contractual provisions. The Implementing Agency should ensure that sufficient details are included in the LOA to allow the U.S. contracting officer to negotiate and award a contract without requiring foreign country representation or direct involvement in the formal negotiation process. If the foreign purchaser wants to participate in the negotiation process, the following policies apply:

1. Source Selection. The DoD Components do not accept directions from the FMS purchaser as to source selection decisions or contract terms (other than the special contract provisions and warranties referred to in condition 6.1 of the LOA), nor is the FMS purchaser permitted to interfere with a prime contractor's placement of his subcontracts. However, to the extent permitted in paragraph 80102.B of the SAMM, DoD Components may honor an FMS purchaser's sole source request for the designation of particular prime or subcontract source for defense articles or defense services.

2. Negotiations. During the contracting process between the contractor and the Department of Defense, the contracting officer shall consult with the FMS purchaser about major contractual matters especially any matter that could be perceived as inconsistent with or significantly different from the LOA. As specified in the DFARS 225.7304(b), FMS purchasers should be encouraged to participate with USG acquisition personnel in discussions with industry to develop technical specifications, to establish delivery schedules, identify any special warranty provisions or other requirements unique to the FMS purchaser, and review prices of varying alternatives, quantities, and options needed to make price-performance tradeoffs. The degree of participation of the FMS purchaser during contract formation is left to the discretion of the contracting officer after consultation with the contractor. USG personnel shall not release any contractor proprietary data, except in those limited cases where the contractor authorizes release of specific data. Requests by the FMS purchaser for rejection of any bid or proposal shall not be honored unless such rejection is justified on the basis of reasons which would be sufficient in the case of a procurement made by the DoD to meet its own needs. Any questions or requests for exceptions to these provisions must be forwarded to the Director, DSCA.

3. Price Information. If a purchaser requests additional information concerning FMS contract prices, the contracting officer shall, after consultation with the contractor, provide sufficient information to demonstrate the reasonableness of the price and reasonable responses to relevant questions concerning contract price. This may include tailored responses, top level pricing summaries, historical prices, or an explanation of any significant differences between the actual contract prices and the estimated contract price included in the initial LOA price."

This policy is effective immediately and will be included in the automated version of the SAMM. SAF/IAPX POC is Ms. Sandy Harding, (703) 588-8974, DSN: 425-8974, email: sandy.harding@pentagon.af.mil

//signed 25 March 2003//
TERRY L. BATES
Chief, Security Assistance Policy Division
Deputy Under Sec, Int'l Affairs

Attachment:

a/s



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

FEB 04 2003

In reply refer to:
I-03/000028-P2

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: FMS Customer Involvement In The DoD Contracting Process (DSCA 03-03)

On 22 November 2002, the Defense Federal Acquisition Regulation Supplement (DFARS) was amended to provide Foreign Military Sales (FMS) customers more visibility into the contract pricing and award process. DFARS Part 225.7304 was revised to add new guidance for the participation of FMS customers in the development of contracts that the Department of Defense awards on their behalf. DFARS 225.7304 also includes language that protects against the unauthorized disclosure of contractor propriety data.

The purpose of this memorandum is to update the Security Assistance Management Manual (SAMM) to ensure our guidance is consistent with the DFARS. Paragraph 80102.D. of the SAMM is deleted in its entirety and is replaced as follows:

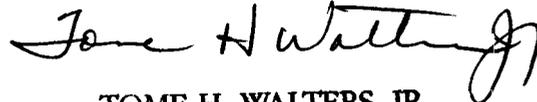
“D. **FMS Purchaser Involvement.** Discussions are held with the purchaser during the development of the LOA and prior to actual implementation to ensure requirements are clear and understood. Once the LOA is signed, the purchasing activities of defense components and prime contractors implement FMS requirements using normal procurement and contract management procedures in accordance with the FAR and other directives and contractual provisions. The Implementing Agency should ensure that sufficient details are included in the LOA to allow the U.S. contracting officer to negotiate and award a contract without requiring foreign country representation or direct involvement in the formal negotiation process. If the foreign purchaser wants to participate in the negotiation process, the following policies apply:

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2. **Negotiations.** During the contracting process between the contractor and the Department of Defense, the contracting officer shall consult with the FMS purchaser about major contractual matters especially any matter that could be perceived as inconsistent with or significantly different from the LOA. As specified in the DFARS 225.7304(b), FMS purchasers should be encouraged to participate with USG acquisition personnel in discussions with industry to develop technical specifications, to establish delivery schedules, identify any special warranty provisions or other requirements unique to the FMS purchaser, and review prices of varying alternatives, quantities, and options needed

to make price-performance tradeoffs. The degree of participation of the FMS purchaser during contract formation is left to the discretion of the contracting officer after consultation with the contractor. USG personnel shall not release any contractor proprietary data, except in those limited cases where the contractor authorizes release of specific data. Requests by the FMS purchaser for rejection of any bid or proposal shall not be honored unless such rejection is justified on the basis of reasons which would be sufficient in the case of a procurement made by the DoD to meet its own needs. Any questions or requests for exceptions to these provisions must be forwarded to the Director, DSCA.

- 3 Price Information. If a purchaser requests additional information concerning FMS contract prices, the contracting officer shall, after consultation with the contractor, provide sufficient information to demonstrate the reasonableness of the price and reasonable responses to relevant questions concerning contract price. This may include tailored responses, top level pricing summaries, historical prices, or an explanation of any significant differences between the actual contract prices and the estimated contract price included in the initial LOA price.”

This new policy is effective immediately and will be included in the automated version of the SAMM found on the DSCA Web Page as SAMM E-Change 42. If you have any questions concerning this change, please contact Mr. Steve Harris, (703) 604-6611/DSN 664-6611 or e-mail steve.harris@osd.pentagon.mil.



**TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR**

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