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# SECURITY ASSISTANCE LEGISLATION AND POLICY

## Foreign Military Financing Of Direct Commercial Contracts

[The following is a reprint of an Action Memorandum (No. I-04026/94) from LTG Thomas G. Rhame, Director, Defense Security Assistance Agency, dated 8 July 1994, subject as above.]

Reference: Defense Security Assistance Agency's letter dated 30 June 1994

Referenced letter notified you that the current policy for the use of foreign military financing (FMF) for direct commercial contracts (DCCs) remained in effect until completion of staffing and notification of the new FMF/DCC policy.

We have completed both the staffing and consultations with eligible countries, U.S. industry, and the Congress on the new policy. There was widespread Congressional interest in the concerns expressed by industry and the other eligible countries. At the same time, the need for better oversight control over how FMF is being used was repeatedly stressed. As a result of the consultations, the Deputy Secretary of Defense has approved the continued use of FMF for DCCs on an exception basis. This new policy is effective as of July 1, 1994, and will be phased in over the next six months with full implementation effective January 1, 1995.

Implementation of the new policy will require new Guidelines and Contractor's Certification. We are working to develop these and anticipate they will be published by the end of September 1994. The following are the major changes to be included:

- DCCs will not be permitted for standard DoD items. Exceptions may be granted on a case-by-case basis if DoD determines that the Foreign Military Sales (FMS) system cannot satisfy the requirement. The purchasing country must request exceptions for procurement of standard DoD items through DSAA and provide written justification explaining why the requirement should be obtained through a DCC.

- A minimum contract value of \$100,000 will be required on all DCCs that are approved for FMF. The minimum contract value for Israel will be set at \$20,000 initially and raised to \$100,000 incrementally over the next five to ten years. In addition, to accommodate Israel's unique readiness requirements, we will permit use of FMF for emergency type procurements below the \$20,000 floor if DoD cannot be responsive.

- Proof of competition, to include offer prices, will be required on all competitive buys. If the lowest offeror is not selected, the country will be required to justify its choice.

- Cost analyses/price evaluations will be conducted on all sole-source contracts of \$500,000 or more. The country will be required to pay for this service from the Defense Logistics Agency (DLA) through an FMS Letter of Offer and Acceptance (LOA).

- Contract administrative services [CAS] will be performed by DLA on contracts over \$500,000 or more. The country will be required to pay for this service under an LOA.

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The Defense Contract Audit Agency will continue to conduct audits of selected contracts.

- Commissions and agent's fees will not be permitted unless paid for from country national funds. Down payments and progress or milestone payments to the contractor will be limited to actual costs incurred.
- Under the new policy, all eligible countries will be allowed to use FMF to fund DCCs, subject to review and approval by DoD, for procurement of the following:
  - Major country-unique systems and items that are not standard to DoD. The purchasing country will consult with DSAA on major unique systems requiring exceptions and provide written justification explaining why the requirement should be obtained through a DCC.
  - Transportation services, i.e., contracts with U.S. firms for air, land, and sea shipment of defense related articles.
  - Freight forwarding services (limited to those countries that currently procure such services with FMF-funded DCCs).
  - U.S. vendor-operated in-country warehouses (limited to those countries that currently have such arrangements under FMF-funded DCCs).

We will continue to consider financing contracts or amendments signed by December 31, 1994, and submitted to the Defense Security Assistance Agency (DSAA) by March 30, 1995, under existing guidelines. All contracts or amendments, regardless of signature date received after this cut-off date, will be processed under the new policy procedures.

Although this changes includes a six-month transition period, countries are required to begin implementing the new policy procedures immediately. Full implementation will be achieved not later than January 1, 1995. During the six-month transition period, all countries are required to establish FMS blanket order LOAs with DLA for cost analyses, price evaluations, and other contract administrative support.

Based on our consultations, we believe our new policy will be responsive to concerns. If you have any questions concerning this matter, please contact Ms Del Woods or Major Kim Leach at (703) 604-6635.

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Lieutenant General, USA  
Director