

# **Procurement Guidelines for Foreign Military Sales Loan Financing of Direct Commercial Contracts**

**By**

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As a result of a recent Department of Defense Inspector General (DODIG) study, the Defense Security Assistance Agency (DSAA) has disseminated additional guidance for direct commercial sales contracts using U.S. Foreign Military Sales (FMS) funding.[1] This guidance represents an effort to improve the quality of the program while minimizing its vulnerability to fraud and abuse.

FMS credit financing may be used when approved by DSAA on a case-by-case basis for the purchase of defense articles and services and for direct commercial contracts with U.S. contractors. Generally, if a government-to-government transaction under FMS would be approved for FMS credit financing, a similar direct commercial contract would be approved. In order to insure that FMS credit funds are properly utilized, a careful review of credit financed Direct Commercial Contracts is necessary. The purchasing country must make a formal request to DSAA, accompanied by a copy of the proposed contract. Upon approval of FMS credit financing, DSAA will notify both the purchaser and the supplier of its approval action.

To obtain DSAA's approval to use FMS funding for direct commercial sales, foreign purchasers must use only United States firms. Customary DOD industrial firms (those with past dealings with DOD) are preferred over those that are not. Firms new to DOD may require a full preaward survey to insure their responsibilities. A preaward survey could withhold approval for about 90 days while the Defense Contract Administration Service inspects the firm. The foreign purchaser is also prohibited from selecting a contractor that is on DOD's "Debarred, Suspended, and Ineligible List;" nor can he select a freight forwarder on the "Ineligible List for Exporters." In selecting freight forwarders, FMS credit funds should only be used to pay U.S. flag carriers. If this last requirement is waived, no cost greater than a U.S. flag carrier will be authorized.

FMS credit funding for direct commercial sales cannot be used to meet offset arrangements, nor will agent fees over \$50,000 be allowed. In fact, purchasing directly from the original manufacture is preferred over using agents or brokers.

Each contract must be over \$100,000, and prices will be checked to insure they are competitive and reasonable. DSAA recognizes that expedited deliveries may justify higher prices. Any refund, penalty, liquidated damages, bonding provisions, or other financial reimbursement to the purchaser must be made to the U.S. Government and mailed to DSAA for credit to the purchasing country's FMS trust fund account. To assist in the further control of FMS funding, no letters of credit will be allowed using FMS funds.

Certain contracts will require the use of government quality assurance programs and inspections by the Defense Logistics Agency's Defense Contract Administration Services. This requirement must be coordinated through the DOD central control point--DCASR-NY, 201 Varick Street, New York NY 10014.

Of significant importance is that FMS credit funds will be used only on U.S. manufactured end items, components, and services. This requires the foreign purchaser to submit an advance procurement plan 60 days before purchase and to break out with assistance from the contractor any

non-U.S. items and components from U.S. components. Those items not of U.S. origin or manufacture must be paid by other customer resources, unless U.S. international trade agreements, MOUs, or Federal Acquisition Regulations allow the U.S. Government to purchase these non-U.S. items and services. Likewise, all costs for TDY-type expenses will be expressly identified and cannot be paid with FMS credit funds.

Spare parts that are standard in the DOD supply system must be bought through Cooperative Logistics Supply Support Arrangements (CLSSAs); however, Basic Ordering Agreements (BOAs) can be used when CLSSAs cannot satisfy delivery requirements or if the item is non-standard. CLSSA arrangements require the country to make a dollar investment in the DOD logistics system to establish an equity representative of its anticipated support requirements. This investment permits the U.S. service to augment its stocks in anticipation of the country's actual demands.

Finally, DSAA directs that certain essential elements of information be included in the commercial contract, and that the contractor make and sign certifications carrying out the requirements listed in the above paragraphs. Foreign purchasers must use a special format for notifying DSAA of "requirements for direct acquisition to be funded with U.S. FMS credit funds."

Further information and details can be found in Chapter 9 of the *Security Assistance Management Manual (SAMM)* [DOD manual 5105.38-M].

#### **NOTE**

1. DSAA/OPS-E message P282135Z Oct 85, Subject: "Guidelines for FMS Loan Financing of Direct Commercial Contracts."

#### **ABOUT THE AUTHOR**

Major Cunningham has been a DISAM faculty member since July 1984. He received a Bachelor of Arts Degree from Marquette University in 1972; and a Master of Arts Degree in Business from Central Michigan University in 1979. His major area of expertise is government contracting.