

Other Export Considerations

National Disclosure Policy (NDP) NDP generally applies to the release of classified technical data, intelligence or classified material, also referred to as Classified Military Information (CMI). CMI is information that originates by or for the U.S. Department of Defense, its departments or agencies, or departments or agencies under their jurisdiction or control that require protection in the interests of national security. This type of policy statement identifies specific countries that have been pre-approved to purchase or receive CMI on a particular system, such as the F-35 Joint Strike Fighter (JSF). Companies need to be aware of the differences when dealing with classified or unclassified data, however the transfer of any defense article; regardless if classified or unclassified, requires an export license prior to its transfer to a foreign entity.

If NDP applies, a determination MUST precede any activity in order to be able to determine if a country or international organization is even eligible to receive the CMI to be conveyed via a license or FMS case. The responsibility for control of the disclosure of CMI is assigned jointly to the Secretaries of State and Defense.

The NDP process involves numerous decision criteria and is a necessary process to guard against unauthorized disclosure of classified military information to foreign countries and international organizations. It is a process that is critical for companies to understand if applicable to their business. Companies should maintain close liaison with key officials in DOD, State, and/or various military departments (MILDEPs), who either support or play an active role in the NDP process. To learn more about NDP, visit the DTSA website. Within [DTSA, the International Security Directorate](#) carries out a number of responsibilities relating to NDP and U.S. national policy.

Offsets

Offsets are requirements from foreign governments to add back to their economies (e.g. make an

investment, form a joint venture, commit to local content sourcing) as a condition for a sale. Over 80 countries have offset requirements. Such requirements have become an increasingly important yet costly part of international armaments competitions. The U.S. Government, as a policy, does not encourage or assist companies to commit to or enter into offset agreements.

Offset arrangements are matters for the contractor and the companies involved to decide whether to engage in or not. Offsets have become increasingly challenging as a greater number of countries require them, and they can cause significant price increases, which reduces the overall competitiveness of the offer.

Foreign Corrupt Practices Act (FCPA)

The Foreign Corrupt Practices Act of 1977 (as amended), prohibits any payments to foreign officials to assist in obtaining or retaining business. It also requires publicly traded U.S. companies to maintain accurate records and internal controls sufficient to provide assurance that transactions are executed and assets are appropriately accounted for. The FCPA is far reaching and can apply to prohibited conduct anywhere in the world. The SEC and the Department of Justice are jointly responsible for enforcing FCPA.

U.S. exporters must be familiar with this statute and compliant with its provisions, as the sanctions for FCPA violations can include large fines and/or imprisonment. [Click here for more information on FCPA](#). Exporters are also advised to consult with an attorney who specializes in securities law.

SAM Codes, Registration and More on Contracts

A company needs to be sure it has a current and active SAM code. A SAM code, (The System for Award Management) is required by the IRS and the DLA (Defense Logistics Agency) and is needed to manage all areas of federal procurement. As the government does not produce anything itself, it must purchase every part, supply and service that it needs to operate. To gain access to this sector, a

company must properly complete the SAM Registration for proper industry and size classification of its organization. Once approved, it has access to view, bid on and be awarded Federal Contracts, Grants and other Government Contracts and Opportunities.¹

It is also important to have an excellent past performance record with DOD. A company needs to be registered at [this U.S. Federal Contractor Registration link](#).

Conclusion

Companies should consider using all of the government resources available and provided in this report and as outlined in the ITA (and various DOD, DOS and other DOC) websites. The Department of Commerce is available to answer any questions you may have regarding the content of this report, or can direct you to the appropriate agency or point of contact who can further assist you. Due to the complexities of international defense sales, a defense company new to international markets is advised to consult an international attorney and understand the legal system and payment framework of both the DCS and FMS programs, as well as understand export control requirements.

¹ To learn how to register/renew SAM codes, go to <https://www.unitedstatesbusinessregistration.us/?gclid=CM7vmtSX88wCFdFZhgod8k8FMQ>