

Preface

Global national security trends confirm: 1) growing demand focused on defense modernization and 2) increased opportunities for U.S. aerospace and defense exporters. Notably, several countries throughout the Pacific region, and select countries in the Middle East and Europe, have announced defense budget increases, as discussed in the [2016 ITA Defense Market Report](#). Close partners and allies represent some of the best opportunities.

To take advantage of these opportunities, companies must devise export strategies that clearly address foreign defense requirements, demand, training needs and capabilities, as well as export control laws, procurement processes, and program options in both the United States and abroad. Exporters also need to understand the processes the United States uses to transfer defense articles and services to friendly foreign governments or to international organizations.

Guidance in this report only covers items that are unclassified. Nevertheless, the transfer of unclassified defense articles and services must comply with U.S. export licensing procedures. While classified defense articles are also subject to export licensing procedures, classified items must also comply with [U.S. National Disclosure Policy](#).

Overview of International Defense Sales Programs

The United States is the only major arms supplier that has two distinct systems for the export of weapons: the government-to-government Foreign Military Sales (FMS) program, and the licensed commercial export system, known as Direct Commercial Sale (DCS), in which foreign governments purchase items directly from the private sector.

1) The Foreign Military Sales (FMS) Program:

FMS is a form of security assistance authorized by the Arms Export Control Act (AECA) and is a

fundamental tool of U.S. foreign policy in support of U.S. national security and defense objectives. The [Defense Security Cooperation Agency \(DSCA\)](#) administers the FMS program for the United States' Department of Defense (DOD). Exporters should review the official [DSCA Customer Guide](#) for a more detailed summary of the FMS process.

FMS sales are concluded when the President formally determines that the sale will strengthen U.S. national security and promote world peace. In FMS sales, the foreign government purchaser does not deal directly with the manufacturer. Instead, the foreign purchaser contracts with DOD, who then handles procurement, logistics, delivery, and often provides product support, training, and other infrastructure or technical support. DOD provides a “total package” approach to ensure that foreign purchases include the full range of support and training required to operate and sustain the new capability. Sales are implemented through contract-like agreements called Letters of Offer and Acceptance (LOAs) between the U.S. Government and an eligible foreign government purchaser.

The AECA requires that FMS be administered by the DOD on a no-profit and no-loss basis, and at no cost to the U.S. Government. Therefore, the FMS program and supporting personnel are not supported by appropriated funds, but from a 3.5% administrative surcharge applied to every LOA.

Snapshot of the FMS Process

When a foreign government identifies a need for defense articles, services, or capabilities, it submits a Letter of Request (LOR) to the U.S. Government. The initial LORs generally come in one of two forms: either 1) a request for “information-only” Price & Availability (P&A) data, which is commonly used for future planning; or 2) a request for an LOA, which is the official sign of interest from a country and triggers the beginning of the process. LORs must include detailed and specific information in order for the U.S. Government to respond with a complete LOA. Each LOR will vary based on the complexity of the FMS purchase.

A strong LOR provides sufficient information to communicate the partner nation's requirements of a purchase to the U.S. Government, as well as information for U.S. manufacturers so that they can determine their ability to meet the purchaser's needs. LOR data elements range from general to very specific information, as follows¹:

- **Identification of requirements** (item, quantity, delivery time)
- **Initial support** (test equipment, power units)
- **Acquisition** (such as pre-negotiations, and other factors)
- **Financial** (funding source and availability, payment schedule, financial waivers)
- **Services** (site survey, quality assurance, transportation)
- **Training** (including both the type, level, logistics and contractor information)
- **Follow-on support** (such as operations, maintenance, supply, equipment, facilities, warranties, etc.)
- **Delivery** (freight forwarder, etc.)

FMS builds partnerships because it allows for interoperability between the United States and partner forces by providing equipment already in use by the United States. The DOD's involvement in the foreign purchaser's program leads to strong communication throughout the life of the LOA, as many day-to-day program issues are identified, evaluated, and resolved.

As a matter of policy, DOD is generally neutral on whether a foreign country purchases through FMS or DCS; however DSCA and the State Department can require an "FMS-Only" purchase in cases when technology is highly sensitive or complex, or a partner nation lacks the capability to independently sustain or maintain a platform without ongoing DOD

¹ Suggested checklist, Chapter 5, p. 5-4, part of the new ISCS website, *guide book* to the FMS process, which can be found in the "[The Management of Security Cooperation](#)" (or more

involvement. The AECA gives the President the authority to control the export of defense articles and services and guides the decisions over FMS-only sales. The President has delegated that authority to the Department of State and the resulting program is executed by DOD.

http://www.iscs.dsca.mil/documents/greenbook/15_Chapter.pdf

Under FMS, DOD contracts with U.S. suppliers on behalf of foreign customers using the same acquisition practices it uses for its own purchases. FMS sales also require coordination with and approval from the State Department.

Important Update: Effective 1 July, 2016, the DSCA's Defense Institute of Security Cooperation Studies (DISCS) replaces what formerly was called the Defense Institute of Security Assistance Management (DISAM). Exporters are encouraged to explore training courses offered by DISCS. DSCA's new vision and mandate for training has expanded from just Security Assistance to a broader spectrum of Security Cooperation topics.

<http://www.iscs.dsca.mil/>

DISCS' basic textbook, commonly referred to as the '[Green Book](#)', summarizes the key steps of the FMS process, including the common flow of the LOR to an LOA. A table highlighting this process can be found in Addendum 3 of this handbook. In addition to the DISCS and DSCA websites, private companies offer training services and educational resources on the specifics of participating in FMS and DCS export programs.

2) Direct Commercial Sales (DCS)/U.S. Commercial Arms Exports:

[commonly known as the "Green Book"](#), March 2016 (and updated annually).

When selling defense equipment via DCS, **a foreign customer negotiates directly with the U.S. Company providing the item.** Foreign customers often benefit from purchasing via DCS since contract prices can be lower without the additional 3.5 percent FMS program cost. DCS is typically used for less complex systems, and enables the purchaser and U.S. supplier to have increased direct interface during contract negotiation. DCS also allows the purchaser to acquire non-standard defense articles, which are items that demand tailoring for special requirements or needs that are no longer (or never were) in the DOD inventory.

DCS Preference

U.S. firms may prefer to export via DCS rather than FMS, when the technology is less sensitive, the schedule requires a quick response, or the purchasing government is well-qualified to make the purchase without DOD involvement. In such cases, when a company receives a request for proposal from a foreign government and would prefer a direct commercial sale, the company may request that DSCA issue a “DCS preference” for that particular sale. This means that in most cases, if the DCS preference request is granted, DOD would not accept LORs for the item for one year in order to allow the sale to occur on a commercial basis. For more information, refer to section C4.3.6 of the SAMM (Security Assistance Management manual).²

Things to understand and confirm prior to submitting a DCS bid to a foreign government:

- Confirm the type of export control license needed, based on jurisdiction: [Export Administration Regulations \(EAR\)](#), which are regulated by the Department of Commerce, or [International Traffic in Arms Regulations \(ITAR\)](#), which are regulated by DOS.
- Whether any sanctions would preclude a sale ([section 126.1 of the ITAR](#)).

- Identification of penalties that could be imposed if regulations are not upheld.³
- Know that with DCS, if the foreign entity withholds payment, a company has no direct recourse to payment collection from the U.S. government.

ITA primarily assists exporters implementing DCS projects; however the ITAs Advocacy Center provides advocacy for both DCS and FMS cases through the Advocacy Center⁴. A company can contact a [Commercial Services U.S. Export Assistance Centers \(USEACs\) in their local area for support also.](#)

Country Snapshot: DCS to the Republic of Korea (ROK). When exporting via DCS to the ROK, along with receiving potential assistance from the Department of Commerce, U.S. suppliers would deal directly with the ROK military through the Korean Defense Acquisition Program Administration (DAPA). This organization is the sole government agency responsible for conducting and executing the procurement of defense equipment in the ROK. Between 2009 and 2013, 44% of DAPA procurements were DCS.

Ultimately, the U.S. Government authorizes both FMS and DCS sales—but in different ways. For FMS, DSCA and the Department of State (DOS) review and initiate new FMS cases, based on national security and foreign policy priorities. The U.S. Government is exporting on behalf of the U.S. vendor under the authority of the LOA, so the items do not require an export license. **Under DCS**, USML and dual-use items require an export license. The contractor must apply to either the Department of State or the Department of Commerce, depending on jurisdiction, to obtain an export license. In either method (FMS or DCS), the U.S. Government makes a final decision to authorize a defense export.

² <https://www.samm.dsca.mil/chapter/chapter-4>

³ See the enforcement link on the BIS website: <https://www.bis.doc.gov/index.php/enforcement> and the

penalties link at the DOS website:

<https://www.pmddtc.state.gov/compliance/poa.html>

⁴ <http://www.export.gov/advocacy/>

Note that there is no single list of all FMS-only items. Instead, an exporter can work with the military departments and original manufacturer to identify whether an item must be sold via FMS in a particular case. If an exporter is not the original U.S. manufacturer and is unsure, the Defense Technology Security Administration (DTSA) website and/or staff should be consulted. A list of DTSA contacts is included on the right side of the [DTSA home page](#).

3) Hybrid Sales

Foreign governments are increasingly using a mix of FMS and DCS to purchase defense goods and services that constitute large, or multi-component defense systems such as aircraft or missile systems.⁵ A common example is the purchase of an airframe via DCS, with the related weapons, avionics, training or other sensitive technologies purchased via FMS. A U.S. exporter may initiate a DCS purchase with a company, but should contact the appropriate MILDEP or DSCA contact as early as possible if complicated add-ons or training will need to be included and sold via FMS. The delivery of the resulting hybrid solution likely will be dependent upon the integration of the FMS components.

DCS vs. FMS

In comparison, DCS is often more suitable for less complex systems or systems in which a country is proficient in all training phases and has a sophisticated procurement staff with experience in defense systems. It may likely be faster as well. *Unlike FMS, DCS allows the customer to know the final price at the time of contract signature.*

Even when the State Department or DSCA do not require FMS, due to the political or military relationship with the foreign purchaser, or the security risks related to sensitive technologies, U.S. companies may benefit from implementing a sale through FMS. If a country desires a total package

approach and prefers a consolidation of requirements, then FMS may be a better solution. Foreign customers often choose to purchase via FMS because of the benefits and certainty from using DOD's own procurement processes and regulations.⁶

Additional Reading to Fully Understand FMS

Due to the complexities of the FMS process, the SAMM and current DSCA policy and procedures are essential reading. [The Security Assistance Management Manual \(SAMM\)](#), or its electronic, ESAMM, version is the authoritative document on security cooperation policy and procedures. It provides extensive detail on all support agencies that assist in managing security assistance programs, the FMS process and procedures, and provides the latest updates and policy memoranda, which allows companies to access the most current policy guidance.

Who can I contact for additional help?

Key support agencies involved during the FMS process include the following:

Security Cooperation Office (SCO)

The Foreign Assistance Act (FAA) authorizes the President to station U.S. military personnel overseas to manage security assistance programs administered by the DOD. SCOs respond primarily to host government requests, and assist with development of LORs, but are available to provide some types of assistance to U.S. companies while remaining strictly neutral between U.S. competitors. Located in U.S. embassies overseas, they work cooperatively with U.S. Department of Commerce Foreign Commercial Service (FCS) representatives in country to assist U.S. suppliers.⁷ To identify the SCO located in a particular country of interest, contact the [U.S. Embassy](#).

⁵ "Foreign Customer Guide," published by DSCA

⁶ http://www.iscs.dsca.mil/documents/greenbook/09_Chapter.pdf, 'FMS Procurement Rationale,' p 9-2.

⁷ <http://www.samm.dsca.mil/chapter/chapter-2>; section C2.1 – Security Cooperation Organizations.

Military Departments (MILDEPS) and Other Implementing Agencies (IAs), take action on the LORs, respond by formulating contracts (LOAs), and complete the necessary paperwork to launch and sustain an FMS case. Many different IAs do this work, and various 'MILDEPS' have their own unique guidelines that supplement the SAMM; however they all function similarly to support the FMS process. A list of IAs, can be found here: <http://www.samm.dsca.mil/table/table-c5t2>.

Questions about FMS may also be directed using the [DSCA contact information on the website](#) or industry can call the DSCA Weapons division directly at 703-697-9096 (or 9098).