Foreign Military Sales (FMS)
National Defense Industrial Association
11th National Small Business Conference

Micheal Slack
Security Assistance Policy Analyst

September 9, 2014

This Presentation is Unclassified and has been Cleared for Public Release
The Defense Security Cooperation Agency (DSCA)

The Foreign Military Sales (FMS) Program

The FMS Process

FMS/DCS Compared - Increasingly Working in Concert

Resources for Exporters – Selling to DoD for FMS

Working with the Security Cooperation Organization (SCO) and Foreign Commercial Service (FCS) Overseas
DSCA synchronizes global Security Cooperation programs, funding and efforts across the U.S. Government.

Within DoD, DSCA is responsible for the effective policy, processes, training, and financial management necessary to execute those programs.

- Develop policy and business processes for the sale, lease, and grant transfer of defense articles, services, and military education and training in support of U.S. foreign policy objectives
- Manage funding streams and business processes for U.S. and non-U.S. funds and programs
- Engage with international customers and advocate on their behalf within the U.S. Government
- Provide information technology infrastructure for the Security Cooperation community
- Educate and train U.S. government, industry and international partners in security cooperation
Security Cooperation programs accomplish four key goals:

• Support U.S. and Partner regional and global security initiatives through transfer of:
  – Defense Equipment
  – Defense Services
  – Defense Education and Training

• Enhance interoperability

• Build military-to-military cooperation

• Create lasting relationships between the U.S. and the partner country
Global Influence

Security Cooperation Officers (SCOs)
780 SCOs in
148 Countries

Foreign Military Sales
12,881 cases
valued at $394B
with 227 Countries
and International Organizations

International Training
over 64,100 Students
from over 160 Countries

Humanitarian Assistance
345 projects
in 73 countries

Regional Centers for
Security Studies
7,090 Participants
from over 188 Countries

10,200 Security Cooperation Professionals Worldwide
What is FMS?

A form of security assistance authorized by the *Arms Export Control Act* (AECA) and a fundamental tool of U.S. foreign policy in support of our national security and defense strategies.

- **Section 3** of the AECA, provides that the USG may sell defense articles and services to foreign countries and international organizations when the President formally finds that to do so will strengthen the security of the United States and promote world peace.

- **Department of State**
  - Supervises and determines which sales, leases and transfers will be made
  - Issues export licenses for commercial sales

- **Defense Department**
  - Determines what is available for sale or lease
  - Implements the FMS Program

- **FMS** is conducted through contract-like agreements called Letters of Offer and Acceptance (LOA) between the USG and an eligible foreign government purchaser.
  - LOAs are legal instruments subject to U.S. law, not international agreements.
The AECA requires that the FMS program must be conducted at no cost to the U.S. Government and may not be supported by appropriated funds.

- The FMS program and personnel supporting it are funded from a 3.5% Admin Surcharge applied to every LOA to recover the full estimated costs of administering it.
- USG will use its best efforts to meet the price and availability quoted, but they are estimates.
- USG and its employees will be held harmless of any loss or liability resulting from performance on the case.

Purchaser must agree that it:

- Will not transfer title or possession or change end-use without prior USG consent.
- Will provide substantially the same degree of security that the USG would provide.
- Will permit monitoring/verification of end-use.

In FY-2012, the USG sold over $60B worth of defense articles and services to foreign partners.
The FMS Total Package Approach

Goal: To anticipate all of the requirements for the initial sale (system) and follow-on support. Includes:

- Identification of requirements (item, quantity, delivery time)
- Initial support requirements (test equipment, power units)
- Operational concept (mission, number of bases, hours)
- Training (English, maintenance, operations, supply)
- Configuration management
- Services (site survey, quality assurance, transportation)
- Follow-on support (spares, repair, pubs, ammo)
Definition of Requirements

Definition (Indefinite)

- Internet, news media
- Trade publications
- Air/trade shows
- Visits, exercises, and observer missions
- Attendance at U.S. military schools
- Customer obtains specific systems information
- Customer and U.S. exchange technical information
- Customer determines requirements

➢ Pre-LOR Definition is the Key Phase for Customer Involvement

- U.S. site surveys and other assessments
- Military-to-military/Security Cooperation Officer
- U.S. Contractors
- Department of Defense
Request (Indefinite)

- Customer prepares and submits a Letter of Request (LOR) for price and availability (P&A) data
- Customer prepares and submits LOR for an LOA

PROCEED

Prepare Letter of Offer and Acceptance (LOA)
Case Development

Development of Offer
(Policy for the response to LOR by LOA is 30 days for most cases; 90 days for a limited set of cases that are complex or require extraordinary staffing or development efforts)

- Implementing agency (IA) receives the LOR
- IA develops LOA data (LOAD)
- DSCA-CWD writes LOA
- DoS/DSCA/Congress review
- DSCA countersigns LOA
- IA issues LOA to customer

Implementing Agency
LOA Data (LOAD)

DoS/DSCA/Congress review

Countersignature
IA Offers

DoD system used for LOA development and LOA implementation

DSCA Case Writing Division (CWD) Drafts LOA
Acceptance and Implementation

<table>
<thead>
<tr>
<th>Acceptance of the LOA</th>
<th>Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Customer signs LOA (Policy is 60 days to accept a LOA)</td>
<td>• DFAS-IN issues obligational authority (OA) (15 days average)</td>
</tr>
<tr>
<td>• Customer sends signed copy of LOA and initial deposit to Defense Finance Accounting Service-Indianapolis Center (DFAS-IN)</td>
<td>• IA issues implementing authority</td>
</tr>
<tr>
<td></td>
<td>• IA activates FMS computer systems</td>
</tr>
</tbody>
</table>

- **ACCEPTED LOA**
- **Implementing Agency**
- **Obligation Authority**
- **Implementing Authority**
- **Case Manager**
- **Initial Deposit**
- **Quarterly Payments**
- **Defense Finance and Accounting Service (DFAS)**
Execution

- Case and line managers order articles/services/training (Depends on delivery schedule)
- Articles and services shipped and training conducted
- IA reports performance to customer and DFAS-IN

At this point, procurement for FMS may be consolidated with DoD procurement of the same item.
• Acquisition for FMS purchasers is in accordance with U.S. and/or DoD regulations and procedures. Federal Acquisition Regulation provisions applicable to DoD also apply to FMS.

• FMS requirements may be consolidated with USG requirements or placed on separate contract – whichever is more expedient and cost-effective.

• Competitive procurement process is used to the maximum extent possible when procuring articles or services.

• Sole source procurement can be considered when the FMS purchaser requests it in writing.
Does FMS compete with DCS?

• DoD is generally neutral whether a foreign country purchases through FMS or DCS
  – DSCA/State Department can require “FMS-Only”
    Evaluation Criteria
      o Relationship with purchaser
      o Interoperability with U.S.
      o Complex system or technologies
      o Sensitive data access
  – Companies may request DCS preference
    Approved requests valid for 1 year
      o “Best effort” to comply
      o Implementing agency will decline LORs

Exclusions:
  o Blanket order LOAs
  o Support items for system sale
FMS vs DCS

- Military services will not normally cooperate with FMS/DCS comparison studies.
  - If the purchaser obtains FMS data and wants a commercial price quote, the purchaser should cancel the LOR prior to requesting commercial data.
  - If an LOA has been offered and the purchaser then solicits formal bids from industry, the Implementing Agency should ask the country what it intends and indicate that the LOA may be withdrawn.
  - If the purchaser requests FMS data after soliciting bids from industry, the purchaser must demonstrate to the Implementing Agency that commercial acquisition efforts have ceased before any FMS data is provided.
# DCS-FMS Comparison

<table>
<thead>
<tr>
<th>Key DCS Benefits</th>
<th>Key FMS Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country negotiates directly with U.S. company providing item.</td>
<td>U.S. Military assistance to identify and develop requirements.</td>
</tr>
<tr>
<td>May allow firm-fixed pricing.</td>
<td>Total Package Approach.</td>
</tr>
<tr>
<td>May be better for non-standard items.</td>
<td>Standardization and increased operability.</td>
</tr>
</tbody>
</table>
| Not subject to FMS Admin Surcharge. | Uses DoD acquisition process.  
  - Same program office that buys for DoD  
  - U.S. ethics and transparency |
| May be faster. | Economy of scale purchasing. |
| Allows countries to set standards for competitions. | Product improvement notifications. |
| Commercial banking procedures possible. | U.S. logistics information/products. |
| Country resolves disputes with company. | U.S. resolves disputes with company. |
Increasing Range of Involvement

- Traditional FMS
- Sole Source FMS
- FMS with Offsets
- Negotiated Price
- Combination FMS / DCS
- DCS with FMF
- DCS with USG contract admin
- DCS with Offsets
- Traditional DCS
FMS Buyer/Seller Relationship

FMS is the interface between the foreign purchaser and the DoD procurement system.

DSCA Implementing Agencies

Foreign Government

LOA Terms Payment

System Manager

Contracting Officer

Contractor

Much of the work of the Security Cooperation community (DSCA and the MilDep) goes into FMS case development, execution, and closure.
How Do Companies Learn about Selling to DoD?

- For sales to DoD, including FMS, refer to DoD’s Office of Small Business Programs:

How Do Companies Learn about Selling to DoD?

USG and industry personnel can also learn more about FMS and other international programs and their requirements by taking an on-line or residential course at the Defense Institute for Security Assistance Management (DISAM):

How do I learn about other sales opportunities?

• If you wish to try direct sales, links to defense procurement organizations for the United Kingdom, Australia, and Canada provide starting points:

www.gov.uk/government/organisations/ministry-of-defence/about/procurement


How do I learn more about DCS licensing?

• Start by reviewing guidance for sales of defense articles at the Directorate of Defense Trade Controls’ website. Learn more about licensing by registering for one of their In-house Seminars:

http://www.pmddtc.state.gov

• The Society for International Affairs, an industry association, is also a resource for export licensing training materials and seminars. The site also links to a directory of export licensing consultants:

http://www.siaed.org

• For other exports, including dual use items, learn more at the Department of Commerce’s Bureau of Industrial Security (BIS) On-line Training Room:

http://www.bis.doc.gov/seminarsandtraining семинар-тренинг.htm
How do I promote my product?

The USG provides a wide range of services and training to help all U.S. exporters market their products abroad.

http://export.gov/

With specific reference to the Aerospace and Defense Sector:

http://export.gov/industry/aerospace/
Advocacy Assistance for Exporters

- Assists for companies that want the USG to communicate with foreign governments on their behalf in competitive bid contests.

- Counsels companies on how to work with Multilateral Development Banks* and works to ensure fair and equal treatment when U.S. companies compete for Bank tenders.

*World Bank, Inter-American Development Bank, European Bank for Reconstruction and Development, Africa Development Bank and Asia Development Bank

Mission Statement
-- to coordinate U.S. Government resources and authority in order to level the playing field on behalf of U.S. business interests as they compete against foreign firms for specific international contracts or other U.S. export opportunities.

http://export.gov/advocacy/index.asp
The Advocacy Process

- Company submits the Advocacy Questionnaire and signs an Anti-Bribery Agreement
- Advocacy Center performs a due diligence review
- National Interest Determination is made in accordance with Interagency Advocacy Guidelines
- Advocacy Center creates an appropriate advocacy strategy and coordinates the message and medium
- Follow-up
There are limits on the ways the Security Cooperation Office (SCO) can support industry.

- SCOs can respond to country requests for information but in most cases cannot actively advocate on behalf of an individual company

Supporting industry is the mission of the Foreign Commercial Service (FCS)

Division of labor

- Where it makes sense to involve FCS
  - Cold calls
  - Sales to non-MOD entities of defense articles with civilian application
  - Police equipment that can’t be sold FMS even to the MOD
  - Nonstandard/non-inventory items

- Where it makes sense to keep the SCO in the loop
  - Information on sales efforts to MoD
  - Technology release – Sensitive technology needs a Military Department champion

- Where it takes both
  - High level advocacy – Big sales need a whole Embassy approach
# Resources for Exporters

## Domestic and FMS Sales to DoD

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>DoD Acquisition Training</td>
<td>Defense Acquisition University (DAU) <a href="http://www.dau.mil/training/Pages/apply.aspx">http://www.dau.mil/training/Pages/apply.aspx</a></td>
<td>Residential and on-line training on DoD acquisition policy and practice</td>
</tr>
<tr>
<td>Item-Specific</td>
<td>Program Office</td>
<td></td>
</tr>
</tbody>
</table>

## Selling Abroad

### Department of Commerce

<table>
<thead>
<tr>
<th>Sales to DoD</th>
<th>Export Assistance Centers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Bureau of Industrial Security (BIS) <a href="http://www.bis.doc.gov/">http://www.bis.doc.gov/</a></td>
</tr>
</tbody>
</table>

### Department of State

<table>
<thead>
<tr>
<th>Sales to DoD</th>
<th>Directorate of Defense Trade Controls (DDTC) <a href="http://www.pmddtc.state.gov/index.html">http://www.pmddtc.state.gov/index.html</a></th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of State</td>
<td>Direct Line Program <a href="http://www.state.gov/e/eb/directline">http://www.state.gov/e/eb/directline</a></td>
</tr>
</tbody>
</table>

### Embassy POCs

<table>
<thead>
<tr>
<th>Sales to DoD</th>
<th>Foreign Commercial Service (FCS)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Security Cooperation Organization (SCO)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sales to DoD</th>
<th>Responds to country requests; Should be made aware of marketing efforts to Ministries of Defense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of State</td>
<td>Market research, sales leads, assistance, and advocacy</td>
</tr>
<tr>
<td>Embassy POCs</td>
<td>Ambassadors and staff host Direct Line webinars or conference calls on emerging sectors and developments</td>
</tr>
<tr>
<td>Department of Commerce</td>
<td>Staff and approve advocacy requests</td>
</tr>
<tr>
<td>Department of Commerce</td>
<td>Export Licensing for Commerce Control List (CCL)</td>
</tr>
<tr>
<td>Department of State</td>
<td>Licenses for Marketing and for Export of Defense Articles and Services (USML)</td>
</tr>
<tr>
<td>Department of State</td>
<td>Market research, sales leads, and export assistance</td>
</tr>
</tbody>
</table>
FMS Policy Resources

• DoD 5132.03

• DSCA 5105.38-M
  – Security Assistance Management Manual (E-SAMM)

  • Updated version hosted at http://www.samm.dsca.mil/
    – Updated search engine
    – Policy Memo archive