



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

04 DEC 1998

In reply refer to
I-71926/98

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Approved Changes to DoD 5105.38-M, Security Assistance Management Manual (SAMM)

The approved SAMM changes attached are provided for implementation. DISAM will add the changes to the automated SAMM file for internet and Defense Acquisition Deskbook (DAD) CD ROM access. The changes are designed to simplify FMS procedures by:

- Reducing the need for waivers when purchasing defense transportation services (attachment 1) and
- Eliminating the general direct commercial sales (DCS) preference procedure (attachment 2).

A final updated list of approved DCS items is at attachment 3. The list includes currently approved general and individual proposal DCS preferences. It should be retained until all listed DCS preferences have expired. New general DCS preferences will no longer be processed. Those approved will continue to completion of the normal three year preference period. The procedure for individual proposal DCS preference will continue. Since these latter preferences normally remain in effect only one year, the need for an annual list of DCS approvals is not anticipated at this time. Those responsible for price and availability (P&A) or Letter of Offer and Acceptance (LOA) development should remain aware that processing of P&A or LOAs for DCS preference items includes steps shown in SAMM Section 601.

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MICHAEL S. DAVISON, JR.
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DIRECTOR

Attachments
As stated

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MEMORANDUM FOR DISAM

SUBJECT: SAMM Changes

The following changes, which are effective immediately, are to be incorporated into DoD 5105.38-M:

- Table 600-1, page 600-7. Delete "DTS (defense transportation service). T - authorized to use DTS for all FMS shipments. Not all countries authorized DTS have active FMS programs. No international organization has DTS authority." Also delete the column headed "DTS" on page 600-7 and "T" each time it appears under this column heading on pages 600-7 through 600-12.

- 80206.A., page 802-6. Change to read "A. General DoD will arrange delivery, on a reimbursable basis, to a point determined by the DTC assigned in the applicable LOA. Purchasers will use their own resources, including their freight forwarders, for further movement from the point of delivery."

- 80206.G.1., page 802-9. Delete the last words "DTS is normally utilized for:" and substitute "Paragraph 60001.D generally applies for these services; however, DTS must normally be utilized for:"

- 80206.G.1.c.(2), page 802-10. Delete the subparagraph, reading "(2) The IA may approve the transportation of up to 1,000 net weight pounds of explosives to the PoD when the Purchaser is having difficulty arranging the transportation and formally requests the DTS movement."

- 80206.G.1.c.(3). Change subparagraph "(3)" to read "(2) The Government of Canada may have shipments of all categories of sensitive items moved directly to locations within Canada. These movements may be either on CCBLs as DTC 4 shipments or on GBLs as DTC 5. These movements must follow DoD 5100.76-M procedures and use MTMC-approved carriers."

Section 601 FMS - Commercial Interface

60101 GENERAL DoD prefers that countries friendly to the US fill defense requirements with US origin items. DoD is generally neutral as to whether a country satisfies requirements for US origin defense articles or services through FMS or on a commercial basis. This section supports these policies and shows actions to interface FMS and commercial activities.

60102 FMS ONLY DESIGNATION The following criteria will form the basis for DoD components to recommend that an item be sold only through FMS channels: A legislative or Presidential restriction; DoD policy (e.g., NDP-1); international agreement; or a US force interoperability or safety requirement. These criteria will be administered within DoD by DTSA through the export licensing process. Recommendations based on these criteria must be fully supported. Disagreements may be reconciled by DTSA or referred to the appropriate DoD element for resolution in accordance with NDP-1, DoDD 2040.2, or DoDD 5120.49.

60103 DIRECT COMMERCIAL SALES (DCS) PREFERENCE If a request is received by the IA or DSCA which identifies formal negotiations with one or more foreign countries, consideration will be given to DCS for the transaction. A copy of the request for a price quotation from the country must be included. When approved, these preferences will be honored for one year. Approved DCS preferences should be held within SA organizations and at the item manager level to allow proper screening of LORs. The process outlined in this section is a best efforts commitment by DoD. Failure on the part of a DoD component to comply with these procedures will not invalidate any resultant FMS transaction. Before approving DCS preference for a specific transaction, the following will be considered:

A. Article or Service Exclusions Automated procedures for supply under CLSSA, BO, CSP, or other dollar lines do not lend themselves to the manual process through which commercial preference operates. Also, complete system packages are routinely sold. Therefore, items provided on FMS LOA dollar lines and those required in conjunction with a system sale do not normally qualify for DCS preference.

B. Specific Sale Exclusions For certain countries and when the sale is to be financed with MAP or FMF funds (see Chap 9), articles or services which may otherwise qualify for DCS preference must be sold through FMS procedures. FMS for a specific sale may also be mandated by the Director, DSCA.

C. P&A or LOA Requests Within three weeks of receipt of the LOR, notify the Purchaser of any DCS preference, using the following text:

"[Company] has advised us that it is actively negotiating with you a program under which [article or service] is to be provided commercially.

"Although we have no preference as to whether this item is procured through FMS or on a commercial basis, we do not normally provide price and availability information that could conflict with information formally requested from commercial firms. If a commercial transaction is

undertaken, the US Government will not be a party to the contract; therefore, all aspects of contract performance must be between your Government and the company.

"If you do not desire to pursue a commercial purchase, please advise us as to the basis for this decision."

Based on the rationale provided, the IA must determine that commercial activity has ceased, determine if guidance in 60104 below applies, or seek further guidance from DSCA.

60104 CONCURRENT FMS AND COMMERCIAL NEGOTIATIONS IAs will not normally engage in foreign government requested FMS-commercial comparison studies.

A. Seeking Comparison Data In certain instances, national policy or specific circumstances may dictate that both FMS and commercial data must be obtained. The FMS customer is not precluded from first obtaining FMS data and later determining it should request a commercial source price quote. In such instances, the customer should avoid concurrent FMS and commercial requests. If it is determined commercial acquisition is desired after FMS data has been requested, but before receipt of the data, the customer should cancel the LOR prior to requesting commercial data. When a contractor has been granted commercial preference per 60103 above, commercial data should be obtained and evaluated before FMS data are requested. If, after evaluating the commercial data, the decision is made to purchase via FMS, the customer should provide information showing commercial acquisition efforts have ceased and request any commercial preference be waived in order to meet the requirement.

B. Withdrawal of LOAs Instances may arise where an SA customer received an LOA and subsequently solicited formal bids from private industry for the same item. Such action does not automatically require DoD withdrawal of the LOA. Upon receipt of a copy of the bid request and statement from the contractor that FMS data could jeopardize any commercial program, the IA should query the country as to its intentions and express a predilection for withdrawing the LOA in light of the commercial bid request.

PART I

CONTRACTOR DIRECT COMMERCIAL SALES PREFERENCE ITEMS

<u>Item</u>	<u>Company</u>	<u>DSAA Letter</u>	<u>Remarks</u>
Munition			
*Fuzes, Electronic Bomb, FMU-139 A/B	Alliant Techsystems, Inc 600 Second Street, NE Hopkins, MN 55343-8384	12 Aug 98 I-98/70932ct	NSNs 1325-01-349-G119 and 1325-01-255-6337-F810
Nuclear			
Set, Radiac AN/UDN-13	Nuclear Research Corp Richboynton Road Building #3 Dover, NJ 07801	1 Oct 96 I-03987/96	
Training			
*Marine Air-Ground Task Force Tactical Warfare Simulation System (MTWS)	Visicom Laboratories, Inc 10052 Mesa Ridge Court San Diego, CA 92121	8 Jun 98 I-98/67773	
Vehicle			
Engine, Armored Vehicle, 6V-53TIA	Detroit Diesel Corp. 13400 Outer Drive West Detroit, MI 48239-4001	11 Oct 96 I-05210/96	Non-standard, non-SME
*Trucks, M977, M978, M983, M984A1, M985	Oshkosh Truck Corporation 2307 Oregon Street Oshkosh, WI 54903-2566	30 Mar 98 I-98/62342ct	NSNs 2320-01-097-0260, 2320-01-099-6426, 2320-01-097-0249, 2320-01-100-7672, 2320-01- 097-0247, 2320-01-195-7641, 2320-01-097-0261, 2320-01-100-7673

*Items added in this summary.

PART II

INDIVIDUAL PROPOSAL COMMERCIAL NEGOTIATION NOTIFICATION

<u>Item</u>	<u>Company</u>	<u>Country</u>	<u>DSAA Memo</u>	<u>Remarks</u>
*Howitzer, Self-propelled, M109A5	United Defense LP World Headquarters 1525 Wilson Blvd, Suite 700 Arlington, VA 22209	Taiwan	2 Nov 98 I-98/76407	

* Item added in this summary