

DEFENSE SECURITY COOPERATION AGENCY



**GUIDELINES FOR FOREIGN MILITARY FINANCING
OF DIRECT COMMERCIAL CONTRACTS**

AUGUST 2009



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

AUG 31 2009

MEMORANDUM FOR RECORD

SUBJECT: Revision to the Defense Security Cooperation Agency's Guidelines for Foreign Military Financing of Direct Commercial Contracts

The Defense Security Cooperation Agency (DSCA) revised its *Guidelines for Foreign Military Financing of Direct Commercial Contracts and Contractor's Certification and Agreement with DSCA*, both dated January 2005. The current editions of both documents are dated August 2009.

Full implementation of the August 2009 editions of both the *Guidelines for Foreign Military Financing of Direct Commercial Contracts and Contractor's Certification and Agreement with DSCA* is now in effect. Countries participating in the Foreign Military Financing of Direct Commercial Contracts program should complete their transition to the August 2009 editions not later than October 1, 2009.

We appreciate your continued interest and support of this important aspect of the Security Assistance Program, and look forward to working with you in the future.

A handwritten signature in black ink, reading "Jeffrey A. Wieringa". The signature is written in a cursive style with a large, stylized initial "J".

Jeffrey A. Wieringa
Vice Admiral, USN
Director

**Direct Commercial Contracts Guidelines and Contractor's
Certification Revisions**

Summary of Changes

Note: **Summary of changes not all inclusive. (Paragraphs and page numbers have change).**

1. On page 2 of the Guidelines, paragraph 4, added the following: DSCA will forward the request to the appropriate MilDep which has the right of first refusal. If the MilDep agrees to process a sale as a FMS case, a request for a DCC will not be approved.
2. On page 4 of the Guidelines, added new paragraph 7C which reads: The non-U.S. content of spare parts that are acquired separately by the Purchaser in a stand-alone DCC, not as part of an end item or as part of a “system” procurement, will not be approved for FMF funding. Non-U.S. content of a spare part cannot be funded under the COTS items exception unless the same spare part meets the requirements for being considered a COTS item under paragraph 6C above.
3. On page 4 of the Guidelines, added new paragraph 8 which reads: Any license fee and/or royalty to be paid by the prime contractor or any of its second- or third-tier subcontractors to a non-U.S. entity (defined as any manufacturer or supplier not incorporated or licensed to do business in the United States or any non-U.S. governmental agency), must be identified as non-U.S. content. This non-U.S. content may be approved for funding if it falls within one of the exceptions in paragraph 6 above.
4. On page 4 of the Guidelines, added new paragraph 11 which reads: Warranty work, such as maintenance arrangements, to be performed in the host nation (defined as the Purchaser country eligible under U.S. law to establish a DCC funded with FMF and that has entered into the DCC with the prime contractor) or outside of the U.S., and by non-U.S. personnel (defined as neither U.S. citizens nor resident aliens in the U.S.) must be declared as non-U.S. content and will not be approved for FMF funding.
5. On page 5 of the Guidelines, added new paragraph 12 which reads: All host-nation content (defined as the value of any defense articles manufactured, assembled, or supplied by host nation manufacturers or suppliers or any services performed in the host nation by citizens or residents of the host nation) must be identified as non-U.S. content and will not be approved for FMF funding regardless of whether this non-U.S. content meets an exception under paragraph 6 above.
6. On page 8 of the Guidelines, under **Offset Provisions**, further clarifies offsets as follows: A.) Offsets are compensation practices required as a condition of purchase; B.) Direct offsets are contractual arrangements that involve articles and services being financed under the DCC. C.) An indirect offset is any other offset arrangement.

7. On page 10 of the Guidelines, under **Refunds, Penalties, Liquidated Damages, Performance Bonds, Remittances**, added new paragraph 26A, which reads as follows: This notification will include rationale for the draw down and acknowledgement that the prime contractor has been notified of the intended action. DSCA will provide written acknowledgment to Purchaser confirming receipt of Purchaser's letter of intent to draw down on the ILC. Purchaser will not draw upon any ILC until it has received DSCA acknowledgement in writing. At that time, DSCA will notify DFAS of Purchaser's intended action.

8. On page 12 of the Guidelines, added new paragraph 29 which reads as follows: DSCA will not approve a Defined Basic Ordering Agreement (DBOA) purchase order totaling \$750,000 or more without a pricing review being conducted by DCMA. DCMA, with assistance as required from the Defense Contract Audit Agency (DCAA), will provide field-pricing support, at the Purchaser's expense, as a condition of FMF funding of the DBOA. The Purchaser must provide a copy of the offer to DCMA for its use in providing this support.

9. On page 17 of the Guidelines, **Enclosure 2 – Pricing Reviews**, provided clarification under paragraph 3 concerning "Field Support".

1. On page 1 of the **Contractor Certification and Agreement**, the paragraphs were renumbered to add a new paragraph 1 which reads as follows: Agrees the Contractor will comply in all respects with the "DSCA Guidelines for Foreign Military Financing of Direct Commercial Contracts" that **were** in effect when the contract **was** signed. Further, should a newer version of the Guidelines be published subsequent to contract award, the Contractor agrees to comply in all respects with the "DSCA Guidelines for Foreign Military Financing of Direct Commercial Contracts" that is in effect when any amendment or modification to such a contract is signed.

Overview

In 1984 the U.S. Department of Defense (DoD) established guidelines for the processing and review of commercial contracts for direct purchase of U.S. defense articles and services from U.S. firms to be financed with funds appropriated by the Congress. Since that time the program has been downscoped. Purchasers (defined as the foreign countries eligible by U.S. law to establish Direct Commercial Contracts (DCCs) funded with Foreign Military Financing (FMF)) are encouraged to use the Foreign Military Sales (FMS) system for their acquisition needs. These revised guidelines supersede the guidelines dated January 2005.

Direct commercial contracts are contracts to which the U.S. Government (USG) is not a party. Purchasers enter into DCCs directly with U.S. companies. FMF may be used to fund DCCs, when approved on a case-by-case basis by the Defense Security Cooperation Agency (DSCA), for the purchase of defense articles, defense services, and design and construction services. However, as indicated in the financing agreement to which the USG and the Purchaser foreign governments are parties, the USG is under no obligation to approve any specific DCC for FMF funding.

The financing of DCCs comes under the review and scrutiny of the General Accounting Office (GAO), the DoD Inspector General (DoD/IG), the Department of Justice (DOJ), and the Congress. Revisions of these guidelines, over time, reflect DoD's effort to minimize vulnerability to waste, fraud, and abuse, and where possible, maximize application of acquisition streamlining and reform principles.

The Security Assistance Management Manual (SAMM), DoD 5105.38-M, and the following guidelines explain DoD's policies and procedures for the use of FMF of DCCs between U.S. industry and Purchasers:

Contractor Eligibility

1. The prime contractor must be a U.S. supplier or manufacturer, incorporated or licensed to do business in the United States.
2. Purchase agreements should be made directly with the manufacturer of the defense article or service, if possible. The prime contractor is expected to add value to the product being sold.
 - A. Purchases of materiel should be made, to the maximum extent feasible, from the prime manufacturer, or assembler, or from a U.S.-based distributor of a manufacturer or assembler pursuant to a long-standing contractual or licensed relationship.
 - B. The prime contractor must demonstrate to the DSCA (through completion of a DoD preaward survey or other means) its capability -- including, e.g., expertise, experience,

plant, and financial soundness -- to perform by itself a substantial portion of the work. Prior successful completion of recent DCCs financed with FMF funds or DoD contracts for the same or essentially similar items shall normally satisfy this requirement

C. When applicable, Purchasers should ensure that the items purchased demonstrate interoperability to enhance U.S. and allied nation compatibility and standardization.

D. Funding with FMF will not be considered for a procurement agent, broker, import-export firm or other intermediary unless justified by factors relating to specific country needs and the country's abilities to conduct commercial contracting. A request for exception will be considered if sufficient justification is provided by the Purchaser as to why the purchase is sought from a firm other than the prime manufacturer.

E. Prime contractors are required to ensure that all first and second tier suppliers and subcontractors are not excluded from federal programs (see paragraph 34). Prime contractors will maintain a list showing the names and addresses and materials/services procured of all first and second tier suppliers and subcontractors applicable to the DCC. The prime contractor must provide this list to DSCA on request.

Standard/Nonstandard Items

3. DCCs are intended for procurement of non-standard items, e.g., items that do not have a national stock number (NSN) and are not regularly procured through the U.S. supply system. Modified NSN items (items that have been altered from their normal/original NSN configuration) may not be procured under DCCs. Purchasers must demonstrate items are non-standard by providing catalog data or information received from the U.S. military department (MilDeps) or DoD components that the item cannot be procured through the U.S. supply system.

4. DCCs normally will not be permitted for items that are standard to DoD, e.g., items that have NSNs. However, the Purchaser may request exceptions from DSCA for the commercial procurement of standard DoD items. When doing so, the Purchaser must provide written justification to DSCA supporting its request. The justification should include the item description, required delivery date, and any other information that may be pertinent to the exception decision. In those instances where additional information regarding availability, performance, characteristics, releasability, etc. is required, DSCA will consult with the appropriate MilDep or DoD component. DSCA will forward the request to the appropriate MilDep which has the right of first refusal. If the MilDep agrees to process a sale as a FMS case, a request for a DCC will not be approved.

A. Purchaser representatives should allow approximately 45 days for DSCA to process an exception request and provide a written decision.

B. If DSCA has approved use of the DCC channel to meet the requirement, the Purchaser may then submit a contract to DSCA for consideration of FMF. When the

contract is submitted for review, the Purchaser must attach the exception letter (see Enclosure 1).

5. The use of FMF for DCCs is permissible for the development and/or procurement of articles and services in support of major country-unique programs. The Purchaser should consult with DSCA and receive approval prior to proceeding with contract negotiations on major unique systems. Written justification supporting the Purchaser's request to use FMF for a DCC should be provided to DSCA as far in advance as possible, but not less than 45 days before solicitation of offers or initiation of contract negotiations. This will allow sufficient time to evaluate the proposed acquisition and, if necessary, consult with the appropriate MilDep or DoD component. If justification is not provided to the DSCA prior to submission of a contract, processing of the request for funding approval may be delayed or the DCC may be returned without review.

U.S. and Non-U.S. Content

6. In order for a DCC to be approved for FMF funding, the defense articles purchased must be manufactured and assembled in the United States, or the defense services purchased must be performed by U.S. manufacturers and suppliers, purchased from U.S. manufacturers or suppliers, and composed of U.S.-origin materiel, components, goods, and services (hereafter "U.S. content"). Prime contractors must maintain and provide, if requested, supporting documentation for the value of both U.S. and non-U.S. origin content. In the event the purchase of a U.S. end item consists of both U.S. and non-U.S. origin content, only the value of the U.S. origin content will normally be financed.

A. An exception for FMF may be considered for items originally manufactured in the U.S. and purchased by a U.S. contractor from non-U.S. (foreign) sources.

B. An exception for FMF may be considered for non-U.S. content that is an integral part of end items manufactured and assembled in the United States when the USG has procured or is procuring the same end item from the same source. To allow this exception DSCA requires, as a minimum, identification of the non-U.S. content item, its value, and the corresponding USG contract number.

C. An exception for FMF may be considered for non-U.S. content that is an integral part of commercially available off-the-shelf (COTS) items. A COTS item is a commercial item sold in substantial quantities in the commercial marketplace and offered to the U.S. Government without modification and in the same form in which it is sold in the commercial marketplace (see 41 USC 431). COTS does not include bulk cargo such as agricultural products and petroleum products. A COTS item may be eligible for FMF if it is manufactured and assembled in the United States by a U.S. manufacturer or supplier and is composed of at least 51% U.S. origin content. To allow this exception DSCA requires, as a minimum, a detailed description of the COTS items and information about sales in the commercial marketplace. DSCA may require additional information to ensure that an item is COTS.

7. Direct Commercial Contracts must specify all non-U.S. origin content. If not identified in the contract, non-U.S. content must be identified to DSCA by the Purchaser in supporting documents. To facilitate this:

A. The prime contractor is required to identify to the Purchaser any non-U.S. content, the corresponding value contained in the contract, and where applicable, supporting documentation to demonstrate that the USG has procured or is procuring the same non-U.S. content or non-U.S. origin items, components, or services from the same non-U.S. source for the same end item the USG has procured or is procuring. Supporting documentation should include the USG contract number(s) under which the non-U.S. content/item(s) was purchased, if appropriate, and any other pertinent information.

B. If raw materials, components, or items used in the manufacturing process are procured from both U.S. and non-U.S. sources, and are not segregated as to origin, and are incorporated on an interchangeable basis into the prime contractor's articles or services, the actual dollar value need not be identified. Instead, a non-U.S. content estimating methodology or system (for example, an annual survey) may be used by the prime contractor. The use of such a methodology must be approved by DSCA prior to DSCA processing the DCC.

C. The non-U.S. content of spare parts that are acquired separately by the Purchaser in a stand-alone DCC, not as part of an end item or as part of a "system" procurement, will not be approved for FMF funding. The non-U.S. content of a spare part cannot be funded under the COTS items exception unless the same spare part meets the requirement for being considered a COTS item under paragraph 6C above.

8. Any license fee and/or royalty to be paid by the prime contractor or any of its second- or third-tier subcontractors to a non-U.S. entity (defined as any manufacturer or supplier not incorporated or licensed to do business in the United States or any non-U.S. governmental agency), must be identified as non-U.S. content. This non-U.S. content may be approved for funding if it falls within one of the exceptions in paragraph 6 above.

9. Expenses incurred by non-U.S. (foreign) subsidiaries of U.S. prime contractors or their non-U.S. second- or third-tier subcontractors are considered to be non-U.S. content and must be declared. Reasonable expenses for support of U.S. contractor personnel (defined as U.S. citizen employees or U.S. resident alien employees of U.S. prime contractors) performing services temporarily in the host nation (purchaser country) are considered U.S. content and may be funded with FMF.

10. Profits to be earned and G&A expenses to be incurred, if any, by U.S. prime contractors and subcontractors are considered to be U.S. content and elements of the Purchase Agreement Price.

11. Warranty work, such as maintenance arrangements, to be performed in the host nation (defined as the Purchaser country eligible under U.S. law to establish a DCC

funded with FMF and that has entered into the DCC with the prime contractor) or outside of the U.S., and by non-U.S. personnel (defined as neither U.S. citizens nor resident aliens in the U.S.) must be declared as non-U.S. content and will not be approved for FMF funding.

12. All host-nation content (defined as the value of any defense articles manufactured, assembled, or supplied by host nation manufacturers or suppliers or any services performed in the host nation by citizens or residents of the host nation) must be identified as non-U.S. content and will not be approved for FMF funding regardless of whether this non-U.S. content meets an exception under paragraph 6 above.

Contract Dollar Threshold

13. Direct Commercial Contracts for less than \$100,000 will not normally be approved for FMF.¹ All amendments and modifications to DCCs funded with FMF, including no cost amendments that do not change contract scope, must be submitted to DSCA for review and approval. Changes/amendments should be submitted in chronological order and numbered accordingly.

A. Any changes that add, delete, or substitute previously contracted articles or services must be accomplished through an amendment to the DCC. If the prime contractor has previously received payment for the articles or services deleted and not replaced, the prime contractor will be required to refund the amount of these payments. In any event, the DCC price will be reduced accordingly.

B. Changes to DCCs requiring additional FMF will not be approved for FMF funding later than five years from the date DSCA approved financing of the basic DCC. Requests for exception may be approved if the Purchaser provides sufficient justification to DSCA. Normally, the Purchaser will be required to enter into a new DCC if the Purchaser desires to continue purchasing the defense articles or services.

Competition Requirements

14. It is highly recommended that the Purchaser contact several U.S. companies or firms for solicitation of offers to meet its specific needs. All DCCs awarded on a competitive basis will require the Purchaser to identify, in writing, the various contractors solicited and the prices submitted. If the lowest offeror was not selected, the Purchaser must provide a written explanation of the basis for the contract award. If this information is not provided, the DCC will be returned to the Purchaser for inclusion of such data.

15. Sole source procurements shall be accompanied by sufficient justification; such as, but not limited to, urgent need, procurement history, standardization with Purchaser inventory, and Purchasers' own source selection process.

¹ Direct Commercial Contracts for the Government of Israel less than \$30,000 will not normally be approved for FMF.

Contract Processing

16. Prime contractors and Purchaser representatives should plan for the time required by DoD to perform the processing necessary to determine the extent of FMF funding authorization. The processing time for DCCs that are in full compliance with these guidelines is approximately 20 calendar days. The Purchaser is responsible for providing copies of the DSCA Guidelines and the Contractor's Certification to the prime contractor. If the DCC is submitted without the required certification, the DCC will be returned to the Purchaser for inclusion of such data. When the prospective purchase is from a prime contractor that does not regularly sell to the U.S. Government, the Purchaser should set a commencement date for the DCC that allows at least an additional 30 days for the U.S. Government to conduct a preaward survey.

Contract Financing

17. The DCCs must clearly identify the amount of any financing payments and be in accordance with the following limitations:

A. The Purchaser is responsible for demonstrating the reasonableness and security of contract financing arrangements.

B. Advance payments for FMF-funded DCCs made before performance of work under the DCC shall not exceed 15 percent (15%) of the contract price. The Purchaser shall obtain adequate security for such payments in accordance with paragraph F below.

C. Financing arrangements for DCCs may provide for payments to be made on the basis of accomplishment of specific milestones detailed in the DCC, or other basis such as installments. Installments shall be payable no more frequently than quarterly.

D. Cumulative DCC financing shall not exceed 85 percent (85%) of the DCC price of undelivered items. See paragraph F below for security requirements.

E. Full payment for a DCC shall not be made until after complete performance of the DCC.

F. All unliquidated advance and interim financing payments made by the U.S. Government shall be secured by guarantee documents, such as Irrevocable Letters of Guarantee (ILOG), Irrevocable Letters of Credit (ILOC), or Irrevocable Performance Bonds (IPB). See paragraph 25). The security shall be at least equal to the amount of the unliquidated contract financing. Direct Commercial Contracts lacking adequate provisions to ensure prompt payment directly to the U.S. Government will not be accepted.

G. Purchasers may not assess charges to U.S. prime contractors for processing DCCs or invoices for payment. FMF will be withdrawn if such charges are determined to have been assessed or if the Purchaser representatives have solicited U.S. prime contractors to

provide free materiel, services, advertising, or other similar forms of benefits as a condition of award of a DCC or processing of invoices.

H. After validation of invoices, the Purchaser should submit them within 30 calendar days of receipt from the prime contractor to the Defense Finance and Accounting Service (DFAS) Indianapolis for payment.

Essential Elements of Contract

18. The Purchaser must submit complete copies of all DCCs and contract provisions to DSCA for FMF funding review. The Purchaser must also submit all subsequent modifications, amendments, side letters, or supplementary agreements that affect the contractual relationship between the Purchaser and the prime contractor.

A. Contracts should include, as a minimum, all essential contract elements outlined below:

- (1) Purchaser Country.
- (2) Complete identification of U.S. Prime Contractor to include name, address, and telephone number.
- (3) Contract number.
- (4) Complete nomenclature of defense articles and description of services to be provided.
- (5) Complete description of quantities and prices.
- (6) Complete description of financial arrangements:
 - Unit prices
 - Advance payment
 - Payment schedule (to include method of liquidating advance payment based on deliveries)
- (7) Contract clauses for contract audit.
- (8) Identification of shipment terms.
- (9) Guarantee Documents (See paragraph 25). Identification of any guarantee documents or clauses that could result in a refund to the Purchaser, such as, but not limited to,:
 - Advance payment guarantee documents
 - Interim payment guarantee documents
 - Liquidated damages
- (10) Acceptance (signature) by both parties.

B. In addition to the DCC, the following supporting documentation must be provided to DSCA for FMF funding approval:

- (1) Identification of all non-U.S. origin content.
- (2) Identification of offsets.
- (3) Prime Contractor's Certification and Agreement with DSCA with original signatures.
- (4) List of offerors and prices submitted on competitive procurements.
- (5) Justification for selection of other than the lowest offeror on competitive contracts.
- (6) Copy of Purchaser request for exception to use a DCC (if applicable e.g. to purchase an NSN item).

C. Undefined Basic Ordering Agreements (BOAs) are discouraged and will not be approved for FMF funding.

Contractor Disclosures & Certifications and Export Documentation

19. DSCA requires prime contractors to make disclosures and execute the Contractor's Certification and Agreement with DSCA, in the proposal and the contracting process. Full and accurate disclosures and certifications are prerequisites for DSCA approval of FMF funding. Export licenses documentation must be provided to DSCA and DFAS Indianapolis before FMF payments can be made.

A. For DCCs valued at \$100,000 or more, the Contractor's Certification and Agreement must be signed by the prime contractor and be submitted by the Purchaser to DSCA when the DCC is provided for funding review. The date of the current Certification is August 2009. The Certification submitted to DSCA must have original signatures of two company officials other than those who signed the DCC.

B. Prime contractors who execute many DCCs for identical defense articles, services, or categories of such articles or services with the same Purchaser may request DSCA approve an annual Contractor's Certification and Agreement. To do so, prime contractors must demonstrate that their particular business operations promote the use of an annual Certification and that they have a sound estimating methodology to provide the information required by the Certification.

C. Prime contractors must provide copies of any or all export licenses related to the DCC (or alternatively, written documentation that confirms that an export license is not required) to "DFAS Indianapolis" and "DSCA OPS-ME/DCC".

Offset Provisions

20. Requesting FMF funding for DCCs containing offset provisions as a condition for securing the purchase is not encouraged. Grant FMF (nonrepayable FMF funds) will not be used to pay for any offsets, to include direct and indirect offsets, or the related costs of offset implementation. If the DCC is wholly financed with repayable FMF credit or a mix of repayable FMF credit and Purchaser funds, offset costs may be included in the DCC funding. However, if any nonrepayable FMF funds are used to fund a DCC, offset costs may only be paid if they are paid in full by repayable FMF credit or Purchaser's national funds. The amount of offset costs included in such DCCs must be disclosed to the USG.

A. Offsets are compensation practices required as a condition of purchase.

B. Direct offsets are contractual arrangements that involve articles and services being financed under the DCC

C. An indirect offset is any other offset arrangement.

Commissions or Contingent Fees

21. Commissions or contingent fees related to the DCC must be disclosed by the prime contractor during DCC negotiations and to DSCA at the time the DCC is presented for funding approval. The prime contractor shall maintain documents and records to demonstrate that commissions or contingent fees are not funded by the USG.

22. Commissions or contingent fees for the purpose of securing the DCC will not be included in the price of an FMF funded DCC, unless such payments have been identified and approved in writing by the Purchaser prior to contract award for payment in full with repayable FMF credit or Purchaser's national funds.²

Personnel Travel

23. FMF will not be approved for payments for travel, per diem, accommodations, lodging, car rental, personal expenses, entertainment, or other similar expenses incurred by or for Purchaser country personnel that relate directly or indirectly in any way with a DCC. The reasonable cost of business meals for prime contractor or subcontractor personnel is an allowable cost that may be incurred by the prime contractor.

Contracts with Transportation Requirements

24. The use of FMF will only be approved for the financing of transportation performed by U.S. carriers. Any waivers (general, security, or non-availability) will be in accordance with the Purchaser's agreement with DSCA. The waivers are described in the agreements and may apply to either specific shipments or for a specific period of financing. Prime contractors will include these requirements in all subcontracts for DCCs.

A. For ocean transportation of FMF shipments, the prime contractor and the Purchaser will use, or cause to be used, privately-owned U.S.-flag commercial vessels. For prime contractor-originated ocean shipments, the prime contractor will, within 20 days of loading, submit one legible copy of the rated on-board ocean bill of lading for each shipment to: US Maritime Administration, Office of Cargo Preference and Domestic Trade, Civilian Agencies Division, Mail Stop W23-453, 1200 New Jersey Avenue SE, Washington DC 20590. The bill of lading will identify: contract (DCC) number; name of vessel; flag of registry; date and port of loading; port of final discharge; description, weight, and value of cargo; and total ocean freight revenue.

B. No payments will be made to freight forwarders with FMF unless, prior to July 1, 1994, DSCA had authorized the Purchaser to use FMF-funded DCCs to procure freight forwarding services. Rated, on-board bills of lading or rated airway bills may be approved for direct payments to U.S. ocean or air carriers upon request.

² Neither Egypt nor Israel receive repayable FMF funds and the U.S. Congress has not currently appropriated repayable FMF funds to any other country.

Letters of Credit/Guarantee

25. FMF will not be approved for financing of commercial letters of credit or other guarantees which ensure payment to the prime contractor or subcontractor. FMF funding may be approved if the DCC requires irrevocable letters of credit, performance bonds, or other forms of performance guarantees from the prime contractor. They must be issued by a bank or financial institution licensed in and doing business in the United States. In addition, irrevocable letters of credit, performance bonds, or other forms of performance guarantees must be identified as a separate line item or clause within the DCC that states: "All irrevocable letters of credit, performance bonds, or other guarantees required by the Purchaser must provide for payment directly to the U.S. Government". (See paragraph 26).

A. Only federally-insured financial institutions licensed in and doing business in the United States, rated investment grade or higher shall issue or confirm an irrevocable letter of credit (ILC). Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year and otherwise meets all of the requirements for issuing an ILC.

B. DFAS-IN will not disperse payments to prime contractors until it receives copies of all irrevocable letters of credit, bonding or guarantee documents applicable to the DCC. Copies must also be sent to DSCA/OPS-ME/DCC.

Refunds, Penalties, Liquidated Damages, Performance Bonds, Remittances

26. Any DCC that provides for a refund, penalty, liquidated damages, bonding provisions, or any other form of financial reimbursement to the Purchaser must be structured to ensure that such payment is made by the prime contractor or designated agent (including the prime contractor's commercial bank) directly and without undue delay, from the payor to the U.S. Government.

A. Should the Purchaser determine a draw on an irrevocable letter of credit is required, it must first notify DSCA/OPS-ME/DCC and the prime contractor in writing stating the exact reasons necessitating the draw down and the amount at least 15 calendar days prior to the draw down. This notification will include rationale for the draw down and acknowledgement that the prime contractor has been notified of the intended action. DSCA will provide written acknowledgment to Purchaser confirming receipt of Purchaser's letter of intent to draw down on the ILC. Purchaser will not draw upon any ILC until it has received DSCA acknowledgement in writing. At that time, DSCA will notify DFAS of Purchaser's intended action. It is the Purchaser's responsibility to ensure funds are transferred directly from the payor to the U.S. Government.

B. Bonding and guarantee documents, such as Performance Bonds, Irrevocable Letters of Guarantee, Irrevocable Letters of Credit, and any other such instruments that are established by the prime contractor or its agent pursuant to the DCC, must be sent to the

DFAS Indianapolis and DSCA/OPS-ME/DCC and made part of the DCC file. This is a prerequisite to disbursement of FMF funds to the prime contractor. Bonding and guarantee documents lacking adequate provisions to ensure prompt payment to the U.S. Government will not be accepted, and payments for the DCC will not be made until this requirement is satisfied.

C. Reimbursement payments must be remitted to the addresses noted below. These payments, when received by the DFAS Indianapolis, will be credited to the Purchaser's FMS trust fund account. Any reimbursement equal to or less than the FMF funds paid by the DSCA on the DCC may be applied to any FMS or commercial case approved for FMF. If a reimbursement exceeds the amount of FMF funds paid by the DSCA, the excess amount of may be applied as "cash" to any FMS case.

D. Remittances should be processed as follows:

(1) Payments by check must be accompanied by a letter, which identifies the Purchaser and the DSCA case identifier. The check must be made payable to the "United States Treasury" and mailed to:

Defense Finance and Accounting Service-Indianapolis Center
DFAS-IN/JAXBA (Credit Sales)
8899 E. 56th Street
Indianapolis, IN 46249-6300

(2) Payments by wire transfer should be transferred as follows:

United States Treasury
New York, New York
021-030-004
DFAS-IN/JAXBA
Agency Code 3801

Refund from: (Name of Prime Contractor)

For purchase made by the: Government of (Purchaser Country)
DSCA case (Identifier)_____

Preaward Surveys

27. To verify the prime contractors' statements and determine its capability to perform under the DCC terms, a DoD preaward survey or verification of the prime contractor's Certification such as ISO 9000, may be required as a condition of FMF approval. Preaward surveys are not normally required for U.S. manufacturers or suppliers that are selling or have recently sold the same defense articles or services to DoD. Whether DSCA requires it or a Purchaser requests a preaward survey, the Purchaser will pay for this service under an FMS Letter of Offer and Acceptance (LOA) negotiated with Defense Contract Management Agency (DCMA).

Pricing Reviews

28. A pricing review is required prior to DCC award for all sole-source procurements of \$750,000 or more. DCMA, with assistance as required from the Defense Contract Audit Agency (DCAA), will provide field-pricing support, at the Purchaser's expense, as a condition for FMF funding of the DCC. The Purchaser must provide a copy of the offer to DCMA for its use in providing this support.

A. DCMA, with DCAA assistance as required, will perform price reviews, and cost analyses and technical evaluations to determine price reasonableness of offers. The Purchaser should allow at least 45 calendar days for the U.S. Government representative to perform these functions and provide the subject reports to the Purchaser.

B. The Purchaser must include a copy of the pricing review as part of its justification submitted to DSCA in support of its request to use FMF to fund a DCC.

C. The Purchaser will be required to pay for this service under an FMS Letter of Offer and Acceptance (LOA) negotiated with DCMA.

D. On all amendments of \$750,000 or more for DCCs previously approved for FMF funding the Purchaser will consult with DSCA to determine if a price review or cost analysis will be required.

E. The Purchaser is required to incorporate contract clauses consistent with the requirements detailed in Enclosure 2 into its requests for proposal on FMF-funded DCCs.

F. For sole source purchases of \$750,000 or more of commercially available off-the-shelf (COTS) items that are sold pursuant to published catalog prices, DSCA will consider, on a case-by-case basis, the Purchaser's request for waiver of the DCMA field pricing analysis. All such requests must be accompanied by supporting documentation that demonstrates the reasonableness of the proposed price.

29. DSCA will not approve a Defined Basic Ordering Agreement (DBOA) purchase order totaling \$750,000 or more without a pricing review being conducted by DCMA. DCMA, with assistance as required from the Defense Contract Audit Agency (DCAA), will provide field-pricing support, at the Purchaser's expense, as a condition of FMF funding of the DBOA. The Purchaser must provide a copy of the offer to DCMA for its use in providing this support.

Contract Administration/Audit Services

30. On all DCCs valued at \$750,000 or more (sole source, DBOAs, or competitive awards) the Purchaser is required to contract with DCMA for contract audit services (CAS) using a DCMA FMS case. At a minimum, DCMA will arrange with DCAA to monitor the prime contractor's performance to ensure compliance with the DSCA Contractor's Certification throughout the life of the DCC. The Purchaser is required to

incorporate the following contract clause into its FMF-funded DCCs of \$750,000 or more:

As a condition of FMF funding of the DCC, the prime contractor agrees that Defense Contract Audit Agency (DCAA) contract audit services will be performed to ensure that the prime contractor is in compliance with the Defense Security Cooperation Agency (DSCA) Contractor's Certification and Agreement. DCAA will perform contract audit services in accordance with the prime contractor's certification. To ensure prime contractor compliance DCAA contract audit services will be provided over the life of the DCC and will be coordinated with the Defense Contract Management Agency.

31. The Defense Contract Management Agency (DCMA) can perform quality assurance services if required by the DCC, if requested by the Purchaser, or if directed by DSCA.

A. The cost of DCMA quality assurance services may be provided in the DCC and paid to DFAS Indianapolis by the prime contractor on behalf of the Purchaser. However, the Purchaser is required to arrange for these services through an FMS agreement with the DCMA.

B. For some DCCs, DSCA may require DCMA quality assurance verification before delivery to ensure that the quality of the defense articles or services is in accordance with DCC contract terms. If DSCA determines such quality assurance verification is required as a condition for FMF funding, DSCA will notify the Purchaser. The Purchaser is obligated to notify the prime contractor. Generally, DoD quality assurance services are arranged by the Defense Contract Management Agency, International and Federal Business Team:

Defense Contract Management Agency
ATTN: DCMA-FBFR
6350 Walker Lane Suite 300
(703) 428-1327
(703) 428-1505 (Fax)
Alexandria, VA 22310-3266

U.S. Government Audits

32. All FMF-funded DCCs are subject to audit by the Defense Contract Audit Agency (DCAA). DCAA will perform audits, at the U.S. Government's expense, to ensure the prime contractor's compliance with these Guidelines and the requirements in the prime contractor's Certification. DCAA may initiate audits at any time up to three years following receipt of the final payment on the DCC by the prime contractor. The Purchaser is required to incorporate contract clauses consistent with the requirements detailed in Enclosure 3 into its requests for proposal on FMF-funded DCCs.

Accounting Principles

33. Prime contractors must comply with generally accepted accounting principles and, if a prime contractor otherwise contracts with DoD, the prime contractor must comply with the applicable cost accounting standards. FMF may be disallowed for DCCs, which result in additional costs being transferred to the DoD. The DCAA has expressed concerns about the formation (by U.S. prime contractors) of separate corporate segments to conduct foreign sales. In some cases, when significant intracompany contracting is involved, the resulting allocations of costs are inconsistent with cost accounting standards and result unjustifiably in the allocation of additional costs to DoD contracts. If DoD prime contractors establish separate companies or other corporate segments for the purpose of conducting foreign sales and request FMF for sales by such segments, DSCA will request DCAA review of the transaction. FMF will be approved only upon confirmation by the DCAA that the arrangement is consistent with cost accounting standards and that there would be no unjustifiable additional cost on DoD contracts with the prime contractor.

Parties Excluded from FMF Funding

34. The Defense Contract Management Agency (DCMA) is the executive agency for debarment and suspension proceedings.

A. FMF funding will not be approved for DCCs with U.S. manufacturers, suppliers, or persons included on the U.S. General Services Administration List of Parties Excluded From Federal Procurement or Nonprocurement Programs; the U.S. Commerce List of Denial Orders Currently Affecting Export Privileges; or similar determinations in which the U.S. Department of State has made certain contractors ineligible to export material under the International Traffic in Arms Regulations (ITAR).

B. The applicable web site for the General Service Administration list is <https://epls.gov>; the Commerce Lists are found at <http://www.bis.doc.gov/complianceandenforcement/liststocheck.htm>; and the State Department list is <http://www.pmddtc.state.gov/licensing/debar.html>.

C. Before such DCCs can be considered for FMF funding, the U.S. prime contractor involved must take appropriate administrative or legal steps to remove the relevant organization or individual from the debarment/suspension list. Such action should be taken directly with the agency that has debarment responsibility. Proof of removal from such debarment or suspension lists must be provided to DSCA/OPS-ME/DCC.

Insurance Requirements

35. Use of a U.S. insurance firm is required if FMF funding is used to pay this cost.

Contract Dispute /Arbitration

36. Contract dispute resolution and/or arbitration, if the DCC includes an arbitration clause, must take place in either the United States or a mutually agreed third country, but not in the Purchaser's country. The arbitration clause shall provide that the arbitrator(s) shall determine the matters in dispute in accordance with the commercial law of the United States or of any state of the United States, as agreed by the parties and set forth in the DCC, notwithstanding that the rules of private international law (choice-of-law rules) might otherwise lead to the application of some other law.

DSCA Points of Contact

37. DCCs and supporting documentation should be submitted by the Purchaser to the following address:

Defense Security Cooperation Agency
ATTN: Director, OPS-ME/DCC
201 12th Street South, Suite 203
Arlington, VA 22202-5408

38. Inquiries concerning these policies and procedures or the DCC review process should be directed to the above address or by phone to (703) 601-3714 or (703) 604-6580.

39. A copy of these Guidelines and/or the Contractor's Certification and Agreement with DSCA, dated August, 2009 may be downloaded from the following internet address:
<http://www.dscamil>.

Enclosures: As stated

ENCLOSURE 1

REQUESTS FOR EXCEPTIONS

Requests for exceptions for standard DoD items and/or justification for major-unique items to be funded with U.S. FMF funds must, at a minimum, include the following:

- A. Purchaser Country:

- B. Identification of Requirements:
 - (1) U.S. Defense Items or Services (item description and NSN).
 - (2) Quantity.
 - (3) Estimated Purchase Agreement Value in U.S. Dollars.
 - (4) Projected date of submission of contract to DSCA for funding approval.
 - (5) Required delivery date.

- C. Basis for requesting exception to allow FMF funding of a Direct Commercial Contract, including, but not limited to the following:
 - (1) Statement as to why a DCC should be used instead of FMS.
 - (2) Anticipated source of goods or services.
 - (3) Documentation from MilDep or DoD component supporting FMF-DCC request.

ENCLOSURE 2

PRICING REVIEWS

1. As a condition of FMF funding of sole source contracts of \$750,000 or more, or in other circumstances where such a pricing review is required by DSCA, the prime contractor must agree to the requirement for field pricing review. The Defense Contract Management Agency (DCMA) and the Defense Contract Audit Agency (DCAA) will conduct this review. It may include a technical and cost analysis of the contractor's proposal.
2. The Purchaser shall request field-pricing support through the DCMA International and Federal Business Team by emailing their request to mailbox, dodccp@dcma.mil. Field pricing support may include a review by the cognizant contract audit activity before concluding negotiation of the DCC or any modification. The prime contractor may be required to submit cost or pricing data in connection with pricing of the DCC or any modification to the DCC that affects the price of the DCC.
3. The U.S. Government field support is intended to give the Purchaser a detailed analysis of the proposal for use in contract negotiations to determine a fair and reasonable price prior to contract award. It normally would be a Defense Contract Audit Agency audit or procedure, appropriate to evaluate the contractor's proposal. It may also include a technical analysis by Defense Contract Management Agency, if required by the cognizant auditor. The field support may include any of the following:
 - A. A Cost audit of the individual cost elements:
 - (1) Evaluation that that proposed costs are current, accurate, and complete, based on an adequate contractor proposal;
 - (2) Comparison of costs proposed by the offeror to actual historical costs previously incurred by the same offeror;
 - (3) Evaluation of forecasts or planned expenditures;
 - (4) Verification of cost or pricing data and evaluation of the cost elements;
 - (5) Analysis of the results of any make-or-buy program reviews in evaluating proposed subcontracts;
 - (6) Independent evaluation of technical aspects of the contractor's estimates by appropriate Government technical specialists.
 - B. A Price review:
 - (1) Establishment that the contractor's proposed supplies or services are eligible for commercial pricing status. Commercial items include any item of a type customarily used by the general public, or by nongovernmental entities, for purposes other than Government purposes that has been sold, leased, or licensed to the general public;
 - (2) Comparison of the proposed prices to previously awarded Government and commercial contract prices for the same or similar items, if both the validity of the comparison and the reasonableness of the previous prices is established;

- (3) Use of parametric estimating methods or other Cost Estimating Relationships (CERs);
- (4) Comparison of the proposed prices to competitive published price lists, supplier's catalog, published market prices of commodities, similar indexes, and discount or rebate arrangements;
- (5) Comparison of the proposed prices with prices obtained through market research;
- (6) Analyzing any other pricing information provided by the offeror.

C. Verification that the offeror's cost/price submissions are in accordance with U.S. Federal Acquisition Regulations (FAR), Defense Federal Acquisition Regulations Supplement (DFARS), other contract cost principles and procedures, generally accepted accounting principles, and the requirements and procedures of the Cost Accounting Standards (CAS), as applicable.

D. A review to determine that all cost or pricing data necessary to make the contractor's proposal accurate, complete, and current has been either submitted or identified in writing by the contractor.

E. An analysis of the results of any make-or-buy program reviews, in evaluating subcontractor costs.

4. The technical analysis should include a review and assessment of: the quantities and kinds of material proposed; the need for the number and kinds of labor hours and the labor mix; any special tooling and facilities proposed; reasonableness of proposed scrap and spoilage factors; and any other data that may be pertinent to the cost or price analysis.

5. Non-competitively awarded subcontracts meeting the \$750,000 or more threshold are subject to the same field pricing requirements as the prime contract.

ENCLOSURE 3

U.S. GOVERNMENT AUDITS

USG representatives shall have the right to examine and audit all the prime contractor's books, records, documents, and other data, related to proposing, negotiating, pricing, or performing the DCC, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. The prime contractor shall make available at its office, at all reasonable times, the materials described above for examination, audit, or reproduction, until three (3) years after final payment under the DCC. General access to the prime contractor's books and financial records shall be limited to USG representatives. The USG representatives shall verbally notify the Purchaser immediately of data provided that is so deficient as to preclude review, or where the prime contractor has denied access to records or to cost or pricing data considered essential to the performance of a satisfactory review. This verbal notification shall be promptly confirmed in writing to the Purchaser describing the deficiency or the denial of access to data or records. A prime contractor's failure to provide adequate cost and pricing data may disqualify the DCC from consideration for FMF approval.