



DEFENSE SECURITY COOPERATION AGENCY

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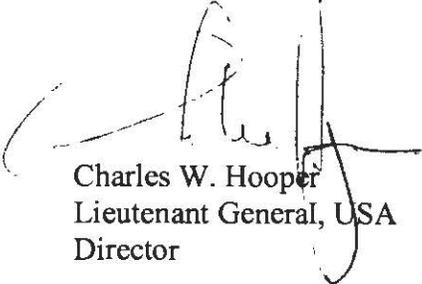
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MEMORANDUM FOR DEPUTY UNDER SECRETARY OF THE AIR FORCE FOR
INTERNATIONAL AFFAIRS
DEPUTY ASSISTANT SECRETARY OF THE ARMY FOR
DEFENSE EXPORTS AND COOPERATION
DEPUTY ASSISTANT SECRETARY OF THE NAVY FOR
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DIRECTOR, DEFENSE THREAT REDUCTION AGENCY
DIRECTOR, MISSILE DEFENSE AGENCY
DIRECTOR, NATIONAL GEOSPATIAL – INTELLIGENCE
AGENCY
DEPUTY DIRECTOR FOR INFORMATION ASSURANCE,
NATIONAL SECURITY AGENCY

SUBJECT: Clarifying Requirements for Offshore Procurement Waiver Determinations, DSCA
Policy 17-47 [SAMM E-Change 377]

Requirements for Offshore Procurement (OSP) Waiver Determinations for sales funded with non-repayable Foreign Military Financing (FMF) are frequently misinterpreted. The attached change to the Security Assistance Management Manual (SAMM) clarifies the guidance for when a proposed procurement would necessitate seeking an OSP waiver.

Effective immediately, Chapter 9 of the SAMM is updated as attached. This change will be included in the version of the SAMM found on the DSCA Web Page as SAMM E-Change 377. For questions relating to this policy or the Security Assistance Management Manual, please contact Mr. Mike Slack, Strategic Planning and Integration Division, at (703) 697-9058 or e-mail: micheal.d.slack.civ@mail.mil. Implementing Agencies should disseminate this policy to supporting activities.


Charles W. Hooper
Lieutenant General, USA
Director

Attachments:

As stated

cc:

USAFRICOM

USCENTCOM

USEUCOM

USNORTHCOM

USSOUTHCOM

USPACOM

USTRANSCOM

USSOCOM

STATE/PM-RSAT

USASAC

SATFA

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USCG International Affairs (G-CI) 1

SECURITY ASSISTANCE MANAGEMENT MANUAL (SAMM), E-CHANGE 377
 Clarifying the Requirements for Offshore Procurement Waiver Determinations

1) Replace C9.7.2.7.3. and Table C9.T8. with the following text and renumber subsequent paragraphs accordingly.

C9.7.2.7.3. Offshore Procurement (OSP). The AECA, section 42(c) (22 U.S.C. 2791(c)), prohibits using funds made available under this Act for procurement outside the United States unless the President determines that such procurement does not have an adverse effect on the economy of the United States or the industrial mobilization base. The President’s functions under AECA, section 42(c) (22 U.S.C. 2791(c)), have been delegated to the Secretary of Defense by E.O. 13637. The authority for issuance of OSP Waiver Determinations, following concurrence by the DoS and Department of Commerce, has been further delegated to the Director, DSCA.

C9.7.2.7.4. An OSP Waiver Determination is an exceptional procedure required if any one of the following three circumstances is applicable to the proposed procurement:

- 1) A foreign partner provides a sole source request for the United States to procure a defense article or defense service from a foreign company (See C6.3.4.1.1.), or
- 2) The vendor or prime contractor is not either a business incorporated in the United States, or an unincorporated business whose principal place of business is in the United States or its outlying areas, or,
- 3) The vendor or prime contractor is a business incorporated in the United States, or an unincorporated business whose principal place of business is in the United States or its outlying areas and one-half or less of the dollar value of the end item constitutes U.S. content.

If one of these conditions applies, a waiver to permit offshore procurement may be requested or recommended only when all of the conditions in Table C9.T8. can be demonstrated.

Table C9.T8. Offshore Procurement Waiver Determination Conditions

Condition Number	Offshore Procurement Determination Mandatory Requirements
1	The project otherwise qualifies for financing from funds made available by the USG.
2	The procurement supports mutual United States and country interests.
3	The defense article or service must be obtained from foreign sources in order to meet the requirement.
4	A U.S. source item or service cannot be modified to meet the requirement.
5	It is cost prohibitive to procure the item or service in the U.S. (e.g., a special production run).

Condition Number	Offshore Procurement Determination Mandatory Requirements
6	There is no negative impact on the U.S. industrial mobilization base (e.g., dissolution of a company doing U.S. defense business) or on an area of U.S. labor surplus (e.g., increased unemployment) if the proposed procurement were from foreign sources.
7	There is no negative impact on general U.S. trade patterns or trends if the proposed procurement were from foreign sources.
8	An OSP Determination in this particular instance would not establish a precedent that weakens the USG ability to be even-handed in future requests from the same or other countries.