



# Priorities of the Foreign Procurement Group & Future of Foreign Military Sales

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# Topics

- Partnership between the US and the international community in FMS reform and improvements
- The FPG's top 10 priorities
- Past successes and future challenges



# Partnership in FMS Improvements

- A decade of cooperation on FMS reform
- DSCA's active invitation to participate in FMS reengineering (1999) and transformation (2003) initiatives
- DSCA Policy Memo on Enhancing Partnership through Team International (July 2001)
- Policy guidance by Deputy Secretary of Defense on customer involvement in LOA process (January 2002); DFARS rule change (November 2002)



## Partnership in FMS Improvements (cont'd)

- Security Cooperation Business Forum (SCBF)
- FPG proposals for improvements to DSCA metrics (March 2003) and SCBF response
- Issues of importance to the FMS Customer (December 2004) and DSCA/Services' response
- DISAM Curriculum Reviews
- FPG guest lecturers at selected DISAM courses



## Partnership in FMS Improvements (cont'd)

- International Customer Symposium (Oct. 2004)
- Annual FMS Case Closure and Reconciliation Conferences (2002-06)
- FPG's Top 10 priorities (2006, updated annually)
- Stakeholder/sounding board in the changes to the Administrative Surcharge and related initiatives



# FPG Top 10 Priorities

PRIORITY		STAKEHOLDERS
<b>1</b>	<b>Blanket Export Authorizations</b>	<b>State Dept</b>
<b>2</b>	<b>Contract Enforcement/Insight</b>	<b>AT&amp;L/DPAP</b>
<b>3</b>	<b>Processing Times</b>	<b>DSCA/MilDeps/ FPG Metrics WG</b>
<b>4</b>	<b>Third Party Transfers</b>	<b>State Dept</b>
<b>5</b>	<b>Standard Level of Service</b>	<b>DSCA/MilDeps</b>



# FPG Top 10 Priorities

PRIORITY		STAKEHOLDERS
<b>6</b>	<b>Enhanced customer access and input to development of security cooperation systems</b>	<b>DSCA/ DoD CIO</b>
<b>7</b>	<b>Country specific cost and schedule performance measures</b>	<b>DSCA/ MilDeps/FPG Metrics WG</b>
<b>8</b>	<b>Transportation</b>	<b>DSCA/ DoT/ Customs/State</b>
<b>9</b>	<b>Termination Liability</b>	<b>DSCA</b>
<b>10</b>	<b>FMS as a commercial alternative/Define and quantify value add of FMS</b>	<b>Foreign Commercial Proc. WG</b>



# 1. Blanket Export Authorizations

- Defined as: pre-clearing of nations, or communities of US military system users, for certain categories of requirements, or securing "blanket" export authorization for lower risk defense articles.
- Would streamline the procurement process and speed up approvals, particularly for urgent operational requirements.





# 1. Blanket Authorizations (cont'd)

- Examples
  - Broadened existing blanket end-use and retransfer assurances to provide for transfers among user communities of US military systems – suggested by Belgium.
    - Coming soon to the C-17 community
  - A waiver for certain routine, in service munitions - suggested by New Zealand.



# 1. Blanket Authorizations (cont'd)

- “If the Departments of State and Defense have approved the export of a major defense article to one of our closest allies, why are we requiring licenses for nuts, bolts and brackets to keep these items working?”
  - Representative Don Manzullo (R-IL), Chairman of the Congressional Export Controls Working Group, in the press release for HR 4246: “Defense Trade Controls Performance Improvement Act of 2007”



# 1. Blanket Authorizations (cont'd)

- Provisions in a number of House bills since 2007, if passed, would have allowed U.S. manufacturers to export spare and replacement parts without a license to the governments of NATO allies, Australia, New Zealand and Japan.
- On March 15, 2011, State posted in the Federal Register a proposed ITAR amendment providing for exempting parts and components of systems approved in a previous export authorization (Section 123.28) and setting out conditions under which a license would not be required for the export or re-export of a defense article incorporated into an end-item subject to the EAR (Section 126.19).



## 2. Contract Enforcement/Insight

- It is recognized that the USG is prevented by law from spending taxpayers money on FMS and hence unable to “guarantee” FMS purchases.
- However, this should not preclude DoD contracting officers from including appropriate performance obligations in contracts for FMS customer requirements and then enforcing these obligations as they would for any other DoD contracts.
- So that FMS customers can exercise their own due diligence, there needs to be some insight into these performance obligations, particularly in areas such as warranty provisions, transportation clauses and price sensitivities in support contracts.



### 3. Processing Times

- Important to have a reliable estimate of time from LOR to LOA to manage expectations of our capitals.
- Past metric of 120 days, 80% of the time was often not being met.
- Security Cooperation Business Forum endorsed a new metric involving “Anticipated Offer Dates” (AOD).
- DSCA Policy 10-18, 26 March 2010, directed that AODs be established for each FMS case at the time the LOR is considered complete.



## 3. Processing Times (cont'd)

- There are system-assigned AODs for all case documents in four groups:
  - Group A (blanket order/training): 75 days
  - Group B (defined order): 120 days
  - Group C (customer unique/complicated cases): 121 days
  - Group D (pseudo cases): 75 days
- Metrics Working Group is monitoring the performance of groups A through C and developing recommendations, including steps that the customer can take to reduce delays.



## 4. Third Party Transfers

- Reality of outsourcing needs to be better addressed in FMS agreements.
- Existing FMS case terms provide rights to transfer and use intellectual property and materiel to customer government and/or its agents.
- Agents are freight forwarders only. Contractors are not considered as agents.
- Given increased reliance on outsourcing – government employees working with a contingent workforce of contractors – the FPG has been advocating since 2004 to change the FMS definition of agent to include licensed, in-country contractors.



## 4. Third Party Transfers (cont'd)

- Since 2009, the redefinition of agent has fallen off the radar screen.
- Concern that in the current wave of export control reform, FMS and commercial sales export authorization universes are moving further apart.
- DCS licensing times are down to 2 weeks, FMS retransfers average 12 weeks and some may take months or even years.





## 5. Standard Level of Service

- Consistent application by all Military Departments.
- Continued transparency and customer access to reports and information.
- Adequate provision for Program Management Reviews for larger, more complex cases and an annual financial or case reconciliation review of a country's total active cases.
- Small Case Management Line fee should be waived when USG says "no" to a country's proposed consolidation.



## 6. Enhanced Customer Access and Input to Security Cooperation Systems

- The FPG would like to ensure that, as customers, we are fully involved in enhancements to the security cooperation systems - to the Security Cooperation Enterprise System (SCES) as appropriate, but particularly to the Security Cooperation Information Portal (SCIP), so that it continues to fulfil its role as a single window into the information that we need to manage our FMS programs and exercise due diligence.
- SCIP is the principal route for obtaining reports and information on case execution and management needed to track and reconcile FMS purchases and deliveries.



## 6. Enhanced Customer Access/Input to SC Systems (cont'd)

- Certain websites were blocked in the wake of the DoD CIO's December 2009 on Public Key Infrastructure (PKI) implementation, that required DoD-approved, certificate-based authentication for access to sensitive DoD websites.
- Taken to its logical conclusion, this directive would preclude the use of SCIP, which was developed in close cooperation with the customer community, with the expectation that the USG would provide uninterrupted access.
- This priority also includes improvements to delivery listings so that they relate the invoiced amount to delivered items and services, which is currently not the case.



## 7. Country Specific Cost and Schedule Performance

- At the Security Cooperation Business Forum, members are briefed on cost and schedule performance at an aggregate level.
- Need to have this data at a country specific level – at least for major FMS cases – to be able to report on tracking the budget, schedule and slippage.



## 8. Transportation

- DSCA are working with DOT to develop guidance clarifying the policy and process for obtaining Competent Authority approval and EX Numbers for the movement of hazardous (explosive) materiel into or within the USA.
- Incorrect documentation and packaging for hazardous stores is occurring for FMS shipments. DoD needs to ensure those awarded contracts are aware of requirements and that they provide packaging and documentation for final destination, not just point of entry.



## 9. Calculation of Termination Liability

- Problems are experienced as a case moves from capital acquisitions to sustainment, where TL is assessed on a program's total value.
- There are some country-specific 'work-arounds' whereby TL is either calculated annually using dispersments and obligations or TL is worked out country-wide rather than case-wide.
- However a standardized policy which recognises that risk is considerably reduced after delivery of equipment would be more sensible. More transparency around the formula would be appreciated, without removing the scope for country specific solutions/negotiations.



# 10. FMS as a Commercial Alternative

- Defined as leveling the playing field so that an FMS proposal can compete with a direct commercial sales proposal.
- Terms and conditions for many countries' competitive procurement regimes require firm delivery dates, fixed prices, performance guarantees, including liquidated damages.
- The FMS legal framework prohibits DoD from providing such guarantees.



# Many Successes

- Increased transparency and customer participation
- Resolution of case closure problems
- Progress on FMS as a commercial alternative
- Redefinition of what constitutes an agent in FMS third party transfers (well, almost...)
- Proposed new regulation for treatment of dual nationals (ITAR 126.18), posted for comment 11 August 2010





# Many Successes (cont'd)

- Other new regulations being drafted:
  - ITAR 123.28, exemption for the export of components and spare parts in support of previously exported US origin items, and
  - ITAR 120.9, narrowed definition of defense service
- Administration's Export Control Reforms
  - In particular, rebuilding the Control Lists (USML and CCL) and moving to a single form and licensing interface



# Future Challenges

- “Top 10” priority list with DSCA and the Services
- Ensuring customer access to critical security cooperation tools and information
- FMS reform study mandated by the Secretary of Defense
  - Need to link to overall export control reform or gap between DCS and FMS may widen
- Ensuring continued and effective international customer input on FMS and Export Control reform initiatives