



DEFENSE SECURITY COOPERATION AGENCY

2000 - D029 - 2

WASHINGTON, DC 20301-2800

13 MAY 2002

In reply refer to:
I-02/007226-GC

MEMORANDUM FOR DIRECTOR, DEFENSE ACQUISITION REGULATIONS
COUNCIL

SUBJECT: DFARS Case 2000-D029 [Restriction on Contingent Fees for Foreign
Military Sales (FMS) – Commercial Items]

The Defense Security Cooperation Agency (DSCA) objects to the removal of the Foreign Military Sales (FMS) clause on “contingent fees” (DFARS 252.225-7027) from the DFARS clause 252.212-7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

DSCA is tasked with implementing the FMS program. Through FMS, eligible foreign governments purchase U.S. defense articles and services using their national funds or Foreign Military Financing Program funds appropriated by the U.S. Congress. Defense articles and services may include commercial items. As globalization matures, our foreign customers’ purchases of commercial items are increasing.

The fifteen countries listed at DFARS 225.7303-4(b)(1) will not reimburse the United States for commissions and other contingent fees unless we have identified the payments and they have approved them, in writing, before contract award. Many are prevented by their national law from paying such fees.

The basis for DFARS 252.225-7027 is found in statute. Section 2779(c) of title 22, United States Code (Public Law 94-329 (90 Stat. 767); 30 June 1976) sets out requirements for inclusion of commission and contingent fees. It applies to all sales of defense articles and services. An implementing provision for FMS sales has been included in DoD regulations, for example in DoD 5105.38-M, since 15 December 1978.

The DAR Council should not take the proposed action to remove the FMS clause from contracts for the sale of commercial items. There has been no change in the law and no dialogue with the listed countries regarding the proposal. I am willing to support and open a dialogue regarding the statute and these requirements.

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR