



DEPUTY SECRETARY OF DEFENSE
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23 MAR 1999

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
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DIRECTOR, OPERATIONAL TEST AND EVALUATION
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES
DIRECTOR, DEFENSE PROCUREMENT

SUBJECT: Department of Defense Policy on Customer Participation in Foreign Military Sales (FMS) Contract Preparation and Negotiations

To further the Department's commitment to improving the Security Cooperation process, I forwarded to industry representatives a Process Transparency White Paper on January 26, 1999. Process transparency in security cooperation is intended to provide Foreign Military Sales (FMS) customers and U.S. industry greater visibility into internal U.S. Government activities. As part of the process transparency initiative, I am issuing guidance for FMS customer participation in the preparation and negotiation of their contracts.

Department of Defense (DoD) acquisition officials should be responsive to the special needs of FMS customers. FMS customers should be encouraged to participate in discussions between DoD and the potential contractor including Letters of Offer and Acceptance development, definition of technical specifications, delivery schedules, special warranty provisions, and other requirements unique to the FMS customer.

When FMS customers ask for assurances of price reasonableness, contracting officers should provide an appropriate explanation. This may include tailored reports such as top level pricing summaries, historical pricing trends, or an explanation of any price differential between the DoD and FMS contracts.

If an FMS customer asks to observe price negotiations, the contracting officer should accommodate this request as long as the offeror consents and the contracting officer obtains agreement from the FMS customer that there will be no negotiations other than by the contracting officer. The consent from the offeror shall be in writing and shall specify any restrictions on the disclosure of proprietary data by the FMS customer. The FMS customer should provide any written assurance of non-disclosure that the potential contractor requires.

The Director of Defense Procurement shall amend DFARS 225.7304 to establish procedures authorizing representatives of FMS customers to observe price negotiations.

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John J. Hamre