

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 MAY 2002
In reply refer to:
I-02/006590-P3

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF THE ARMY
(INTERNATIONAL AFFAIRS)
ATTN: SAUS-IA-DSZ
DEPARTMENT OF THE ARMY

DIRECTOR, NAVY INTERNATIONAL PROGRAMS OFFICE
DEPARTMENT OF THE NAVY

DEPUTY UNDER SECRETARY OF THE AIR FORCE
(INTERNATIONAL AFFAIRS)
DEPARTMENT OF THE AIR FORCE

DIRECTOR, DEFENSE LOGISTICS AGENCY

DIRECTOR, NATIONAL IMAGERY AND MAPPING AGENCY

DIRECTOR, DEFENSE THREAT REDUCTION AGENCY

DIRECTOR, DEFENSE REUTILIZATION AND MARKETING
SERVICE

DIRECTOR, DEFENSE INFORMATION SYSTEMS AGENCY

DIRECTOR, DEFENSE LOGISTICS INFORMATION SERVICE

DEPUTY DIRECTOR FOR SECURITY ASSISTANCE,
DEFENSE FINANCE AND ACCOUNTING SERVICE -
DENVER CENTER

SUBJECT: Inclusion of Offset Costs and Related Statements in Letters of Offer and Acceptance
(LOAs) (DSCA 02-16)

REFERENCE: DSCA Memorandum I-012655/99, 19 Jan 00

The referenced DSCA memorandum revised the Security Assistance Management Manual (SAMM) guidance pertaining to the inclusion of offset costs in LOA documents. The purpose of the change was to ensure our guidance was consistent with the Defense Federal Acquisition Regulation Supplement (DFARS) and legal requirements regarding offset costs.

Since the implementation of the SAMM change, we have received inquiries from foreign purchasers requesting (1) more flexibility in how offset information is discussed on LOA

documents, and (2) more information regarding contracting officers' responsibilities for determining the reasonableness of these costs. The following SAMM change is effective immediately and addresses these concerns. The guidance provided in Jan 00 also required that offset information be provided with 36(b) notification submissions, in accordance with requirements in P.L. 106-113. The SAMM change below provides more detailed guidance in this area to help ensure we are providing information required for these notifications.

a. Paragraph 80106 is deleted in its entirety and is replaced as follows:

“80106 OFFSET COSTS DFARS 225.7303-2(a)(3) allows US contractors to recover, under FMS contracts based on LOAs financed wholly by Purchaser cash or repayable FMF credits, costs of any offsets which are associated with those contracts. USG agencies may not enter into or commit US firms to any offset agreement. Any Purchaser requesting offset arrangements in conjunction with FMS should be informed that the responsibility for negotiating offset arrangements and satisfying all related commitments resides with the US firm involved. It is the responsibility of the implementing agency to specify to DSCA, in the transmittal of any Congressional Notification, LOA and any subsequent LOA modification or amendment, that offset costs have been included, if known. Information regarding offset costs and their recoupment through FMS follows:

A. Offset costs, provided by industry, should be included as part of the line item(s) unit cost in P&A data and in estimated prices quoted in the LOAs.

B. Competitive Procurements. For procurements where adequate price competition exists or it is anticipated, whether conducted by the Purchaser or by the USG, the USG will normally not have visibility as to whether offset costs are included in the price or the amount of such costs. Requests to include these costs after LOA acceptance will not be allowed. No notes will be included in the LOA concerning offset costs.

C. Noncompetitive Procurements. When the USG anticipates a noncompetitive procurement, it is the contractor's responsibility to inform the implementing agency when estimated offset costs have been included in the FMS pricing information provided. The USG contracting officer is responsible for determining if costs included are reasonable and allocable---the same as any other element of cost in the contract. The costs should be included as early as possible but before submittal of the LOA. Requests to include these costs after LOA acceptance will require an LOA modification or amendment. A note will be included on the LOA (see paragraph 70105.L.4)

D. It is inappropriate for USG personnel to discuss with the Purchaser the nature or details of an offset arrangement. However, if known, the fact that offset costs have been included in the P&A or LOA price estimate will be

confirmed should the Purchaser inquire. The Purchaser should be directed to the US contractor for answers to all questions regarding its offset arrangement, including questions regarding what might be included in these costs. Implementing agency involvement in any discussion of offset costs (beyond confirmation of the inclusion of these costs in price estimates) with the Purchaser requires case-by-case review and approval by DSCA.

b. Paragraph 70105.L.4. requires the inclusion of an offset note on all LOAs. This paragraph/note is revised to read as follows:

“4. Offset Costs. (See paragraph 80106) All LOAs involving non-competitive procurements will contain the following note:

“The DoD is not a party to any offset agreements/arrangements which may be required by the Purchaser in relation to the sales made in this LOA and assumes no obligation to administer or satisfy any offset requirements or bear any of the associated costs. To the extent that the Purchaser requires offsets in conjunction with this sale, offset costs may be included in the price of contracts negotiated under this LOA. If the Purchaser desires visibility into these costs, this should be discussed with the contractor at the time the offset agreement is signed. The contracting officer will ensure that the offset costs priced into the FMS contract are reasonable and consistent with the offset agreement.”

The note above must be included on any new LOAs for non-competitive procurements written after the date of this memorandum. There is no requirement to add this revised note retroactively to any existing cases.

c. Table 703-3, “Advance Notification Data” must be updated to better define the requirement to include offset information as part of the advance notification. Paragraph p. is revised as follows:

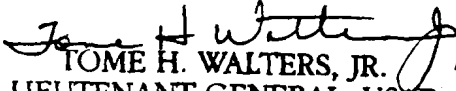
“p. A description of any offset agreement with respect to this sale is included in the enclosed confidential attachment (if applicable). [NOTE: See Table 703-3B for the proper format. This description should indicate whether or not a known offset requirement exists, whether the country has a standard offset requirement, and whether offsets provided will be direct or indirect and the estimated percentage of each. If there is no offset agreement at the time of the notification, that should be so stated.]”

d. Table 703-5, “Statutory Notification Data,” must be updated to better define the requirement to include offset information as part of the statutory notification. Paragraph o. is revised as follows: “o. A description of any offset agreement with respect to this sale is included in the enclosed confidential attachment (if applicable). [NOTE: See Table 703-5B for the proper format. This description should indicate whether or not a known offset requirement exists, whether the country has a standard offset requirement, and whether offsets provided will

be direct or indirect and the estimated percentage of each. If there is no offset agreement at the time of the notification, that should be so stated.]”

e. Tables 703-3B and 703-5B are revised as shown in attachments 1 and 2 of this memorandum.

This new policy is effective immediately and will be included in the automated version of the SAMM found in the Defense Acquisition Deskbook as E-Change #31. If you have any questions concerning this change, please contact Beth Baker, DSCA/P3-P2, (703) 604-6612, DSN 664-6612 or e-mail: beth.baker@osd.pentagon.mil.


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

Attachments

1. Revised Table 703-3B
2. Revised Table 703-5B

Prepared by: Beth M. Baker/PSD-PMD/604-6612

Distribution: Front Office
PSD
Subject File
Baker File

COMPT-RM
COMPT-FM
ERASA
MEAN
RT
GC
DSAMS PMO
DISAM

TABLE 703-3B
OFFSET INFORMATION – ADVANCE NOTIFICATION

(CLASSIFICATION)

Reporting of offset agreements in accordance with Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA (as amended) provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described below:

-- General description of the performance required for the offset agreement. This description should indicate whether or not a known offset requirement exists, whether the country has a standard offset requirement, and whether offsets provided will be direct or indirect and the estimated percentage of each. If there is no offset agreement at the time of the notification, that should be so stated.

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| Section 36(g) of the Arms Export Control Act (22 U.S.C. 2776) requires this information to be treated as “CONFIDENTIAL INFORMATION” in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). This information is exempt from disclosure under section 552 of title 5, United States Code, and shall not be published or disclosed without a determination that withholding is contrary to the national interest. |
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DERIVED FROM: SEC 12(C) OF THE EAA OF 1979 (50 U.S.C. APP. 2411(C))
DECLASSIFY ON: OADR

(CLASSIFICATION)

TABLE 703-5B
OFFSET INFORMATION – STATUTORY NOTIFICATION

(CLASSIFICATION)

Reporting of offset agreements in accordance with Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA (as amended) provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described below:

-- General description of the performance required for the offset agreement. This description should indicate whether or not a known offset requirement exists, whether the country has a standard offset requirement, and whether offsets provided will be direct or indirect and the estimated percentage of each. If there is no offset agreement at the time of the notification, that should be so stated.

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(CLASSIFICATION)