PGI 225.73 -ACQUISITIONS FOR FOREIGN MILITARY SALES

Parent topic: PGI Part 225 - INTERNATIONAL ACQUISITION

PGI 225.7300 Scope of subpart.

(a) The Foreign Military Sales (FMS) acquisition infrastructure is also used to execute cases funded with U.S. appropriated funds under special authority to build international partner capacity. These Building Partner Capacity (BPC) cases are implemented using Pseudo Letter of Offer and Acceptance (LOA) documents.

PGI 225.7301 General.

(c)(i) Separately identify known FMS requirements and the FMS customer in solicitations.

(ii) For economies of scale and efficiency, combine U.S. and FMS requirements under the same contract whenever possible. It is not in the taxpayer's interest to concurrently use mixed contract types for the same or similar items.

(iii) Clearly identify contracts for known FMS requirements by the case identifier code in section B of the Schedule.

(iv) Ensure that the FMS LOA terms and conditions are incorporated into the signed contract.

(v) Ensure that the shipping terms for any contract for FMS materiel are stated as free on board (f.o.b.) origin.

(vi) For Pseudo LOAs, ensure that the period of performance in the contract is consistent with the period of availability of appropriated funds, as provided by the financial resource manager.

(vii) Consistent with the Defense Transportation Regulations (DTR) 4500.9-R-Part II, Cargo Movement, http://www.transcom.mil/dtr/part-ii/, Appendix E, contracting officers shall ensure that contracts involving the acquisition and delivery of FMS materiel comply with the policies, procedures, packaging, labeling, and documentation requirements specified by the DTR.

(viii) The Government representative responsible for acceptance shall ensure that the contractor prepares material inspection and receiving reports in compliance with—

(A) Appendix F, F-301(b)(15)(iv)(K) for a Wide Area WorkFlow (WAWF) Receiving Report; or

(B) F-401(b)(16)(iv)(L) for a paper DD Form 250, Material Inspection and Receiving Report, if an exception to the use of WAWF at 232.7003 applies.

(ix) Prior to contract award, contracting officers shall ensure that—

(A) If a contracting officer's representative is assigned, detailed point of contact information (email, phone number with international dialing protocols, and physical and mailing address) shall be

clearly visible;

(B) Unique country requirements are specified in the contract (i.e., additional documentation requirements for use in country customs clearance (Levy Exemption waiver));

(C) Commodity-unique requirements are specified in the contract (i.e., responsibility for obtaining/paying for/affixing active Radio Frequency Identification tags and Transportation Control Number construction/usage); and

(D) The FMS Transportation Accounting Code is stated in the contract.

PGI 225.7302 Preparation of Letter of Offer and Acceptance.

(2) The contracting officer shall—

(i) Assist the DoD implementing agency, as necessary, in preparation of the Letter of Offer and Acceptance;

(ii) Identify and explain all unusual contractual requirements or requests for deviations; and

(iii) Assist in preparing the price and availability data.

PGI 225.7303 Pricing acquisitions for FMS.

PGI 225.7303-2 Cost of doing business with a foreign government or an international organization.

(a)(3) *Offsets*.

(A) Offsets are the entire range of industrial and commercial benefits provided to foreign governments as an inducement or condition to purchase military supplies or services, including benefits such as coproduction, licensed production, subcontracting, technology transfer, in-county procurement, marketing and financial assistance, and joint ventures (Defense Offsets Disclosure Act of 1999, Pub. L. 106-113, section 1243(3)). There are two types of offsets: direct offsets and indirect offsets.

(i) A direct offset involves benefits, including supplies or services that are directly related to the item being purchased. For example, as a condition of a U.S. sale, the contractor may require or agree to permit the purchaser to produce in its country certain components or subsystems of the item being sold. Generally, direct offsets must be performed within a specified period because they are integral to the deliverable of the FMS contract.

(ii) An indirect offset involves benefits, including supplies or services that are unrelated to the item being purchased. For example, as a condition of a sale the contractor may agree to purchase certain of the customer's manufactured products, agricultural commodities, raw materials, or services. Indirect offsets may be accomplished without a clearly defined period of performance.

(B) Offset costs are the costs to the contractor of providing any direct or indirect offsets required

(explicitly or implicitly) as a condition of purchase in a government-to-government sale of defense articles and/or defense services as defined by the Arms Export Control Act and the International Traffic in Arms Regulations.

(C) An offset agreement is the contractual arrangement between the FMS customer and the U.S. defense contractor that identifies the offset obligation imposed by the FMS customer that has been accepted by the U.S. defense contractor as a condition of the FMS customer's purchase. These agreements are distinct and independent of the LOA and the FMS contract. Further information about offsets and LOAs may be found in the Defense Security Cooperation Agency (DSCA) Security Assistance Management Manual (DSCA 5105.38-M), chapter 6, paragraph 6.3.9. (http://samm.dsca.mil/chapter/chapter-6).