



ACQUISITION AND  
TECHNOLOGY  
DP/CPF

OFFICE OF THE UNDER SECRETARY OF DEFENSE

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WASHINGTON DC 20301-3000

July 13, 1999

MEMORANDUM FOR DIRECTOR, DEFENSE ACQUISITION REGULATIONS COUNCIL

SUBJECT: DFARS 225.73, Acquisitions for Foreign Military Sales

Attached are recommended changes to DFARS Subpart 225.73, Acquisitions for Foreign Military Sales.

DFARS 225.7303 requires that FMS contracts be priced the same as other defense contracts. However, DFARS does not specifically address instances where the foreign government conducts a competition that results in adequate price competition. The recommended change to DFARS 225.7303 states that certified cost or pricing data shall not be obtained if the foreign government has conducted a competition resulting in adequate price competition.

In 1995, the language at DFARS 225.7303-2(a)(3) and 225.7303-5(c) was changed to allow costs of implementing an offset agreement, instead of allowing only those costs associated with administering that agreement. This change was intended to allow all offset costs. However, there appear to be differences in how this language is being interpreted and implemented. To make it clear that all offset costs are allowable, we recommend making a clarification to replace the term "offset implementation costs" with the term "offset costs." DSCA has agreed to make a conforming change to its Security Assistance Manual.

Also attached for your information is a memo I issued to the Military Departments and Defense Agencies on these matters. If you have any questions, please contact David J. Capitano at (703)695-9764.

Eleanor R. Spector  
Director, Defense Procurement

Attachments:  
As stated



**225.7303 Pricing acquisitions for FMS**

(a) Price FMS contracts using the same principles as are used in pricing other defense contracts. Application of the pricing principles in FAR Parts 15 and 31 to an FMS contract, ~~however,~~ may result in prices that differ from other defense contract prices for the same item due to the considerations of this section.

(b) If the foreign government has conducted a competition resulting in adequate price competition (FAR 15.403-1(b)(1)), the contracting officer shall not require the submission of certified cost or pricing data. The contracting officer should consult with the foreign government through security assistance personnel to determine if adequate price competition has occurred.

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

(a) (3) ~~Implementation~~ costs

- (i) A U.S. defense contractor may recover all costs incurred ~~for to implement its~~ offset agreements with a foreign government or international organization if the LOA is financed wholly with customer cash or repayable foreign military finance credits.
- (ii) The U.S. Government assumes no obligation to satisfy or administer the offset requirement or to bear any of the associated costs.

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**225.7303-5 Acquisitions wholly paid for from nonrepayable funds.**

(c) A U.S. defense contractor may not recover costs incurred for ~~to implement its offset~~ agreements with a foreign government or international organization if the LOA is financed with funds made available on a nonrepayable basis.