

C6.3.8. Warranties. The Department of Defense obtains the same warranties for FMS as it does for itself. These warranties are exercised within the Supply Discrepancy Report (SDR) process and do not require special actions by the purchaser. The purchaser may request performance warranties, which are provided and paid for on the LOA as a defense service. Any warranty in addition to the LOA Standard Terms and Conditions, Section 6, is described in a note on the LOA. See Chapter 5, Table C5.T5. The Implementing Agency must inform the purchaser, either in the LOA note or by documentation such as a technical bulletin accompanying the item when shipped, of any steps necessary to maintain or exercise rights under these additional warranties.

C6.3.9. Offsets. DFARS 225.7303-2(a)(3) (reference (al)) allows U.S. contractors to recover, under FMS contracts based on LOAs financed wholly by purchaser cash or repayable FMF credits, costs of any offsets that are associated with those contracts. USG agencies MAY NOT enter into or commit U.S. 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 U.S. 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.

C6.3.9.1. Offset Costs. 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.

C6.3.9.2. Competitive Procurements. For procurements where adequate price competition exists or is anticipated, whether conducted by the purchaser or by the USG, the USG does not normally 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 are not allowed. Notes concerning offset costs are NOT included in the LOA.

C6.3.9.3. 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 require an LOA Modification or Amendment. An offset note is included on the LOA (see Chapter 5, Table C5.T5. for exact note wording).

C6.3.9.4. Disclosure of Offset Information. 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 may be confirmed should the purchaser inquire. The purchaser should be directed to the U.S. 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 (Policy, Plans, and Programs Directorate).