



ACQUISITION AND
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

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DP/CPF

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN(RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF AIR FORCE
(CONTRACTING)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT)
EXECUTIVE DIRECTOR FOR PROCUREMENT MANAGEMENT
(DLSC/DLA)

Subject: Pricing Issues in Foreign Military Sales Contracts

I want to clarify the requirements for pricing foreign military sales (FMS) contracts, including the treatment of offset costs.

In today's global marketplace, there is significant competition for sales of military equipment, with U.S. systems competing against foreign systems and other U.S. systems (for example, F-15 vs. F-16) to meet foreign governments' requirements. In these situations, competitions run by foreign governments should determine the price to be paid. This is true even if the sale to the foreign government is then processed as a foreign military sale and even if DoD is buying the same item sole source. The contracting officer should consult with the foreign government through security assistance personnel to determine whether adequate price competition occurred. If so, this meets the requirement of FAR 15.403-1(b)(1), which states that the submission of certified cost or pricing data shall not be required when the contract price is based on adequate price competition. No further data to support the price should be requested.

In pricing noncompetitive FMS contracts where cost or pricing data is obtained, DFARS 225.7303-2(a) instructs contracting officers to recognize the reasonable and allocable costs of doing business with a foreign government, including offset implementation costs, except when the purchase is financed with funds made available on a nonrepayable basis. In 1995, the language at DFARS 225.7303-2(a)(3) was changed to allow all costs of implementing an offset agreement. There appear to be differences in how this



language is being interpreted and implemented. Contracting officers should treat all offset costs as allowable FMS contract costs. To disallow such costs means that U.S. companies must absorb offset costs that are required by the foreign government as a condition of making the sale. It is only reasonable that foreign governments that require offsets should bear the costs of those offsets.

A handwritten signature in cursive script that reads "Eleanor Spector". The signature is written in black ink and is positioned to the right of the typed name.

Eleanor R. Spector
Director, Defense Procurement