

FAQS PERTAINING TO OFFSET CONTRACTS

(1) What are the supporting documents which need to be submitted along with the offset claims of the vendor?

Ans. The claims of offset discharge by the vendors need to be submitted along with supporting documents. An illustrative list of supporting documents is :-

(a) For Direct Purchase of Product/Services excluding Engineering, Design & Testing and Software development.

1. Copy of agreement/signed contract with IOP.*
2. Commercial/Export Invoice by IOP.*
3. Packing list by IOP (for export of products only).
4. **Bill of Lading/Airway Bill by IOP (for export of products only). ***
5. Certificate of Origin duly stamped by IOP's Chamber of Commerce (for products only).
6. Certificate of manufacturing and value addition in India duly signed by CFO's of OEM and IOP (for products only).*
7. Insurance and freight documents (for products only).
8. Landing certificate issued by port authority (in case of CIF) (for export of products only).
9. **Proof of payment received by the IOP, like eBRC/FIRC and bank transaction documents of IOPs bank account etc.* However, submission of eBRC is preferred over other modes of payment proof.**
10. Any other relevant documents/certificates as required during audit/verification may be asked.

(b) For Direct Purchase of services i.e. Engineering, Design & Testing and Software development.

1. Copy of agreement/signed contract with IOP.*
2. SOFTEX form issued by SEZ/STPI as per RBI guidelines.*
3. Proof of payment received by the IOP like e BRC/FIRC and bank transaction documents of IOPs bank account etc.* **However, submission of eBRC is preferred over other modes of payment proof.**
4. Certificate of end-use duly signed by OEM and IOP.
5. Any other relevant documents/certificates as required during audit/verification may be asked.

Note:(i) Of the documents referred at 1(a) and 1(b), the submission of those marked with *that is serial no 1,2,4,6,9 of 1(a) and serial no 1,2,3 of 1(b) is mandatory. The submission of other referred documents would be asked if discharge claim could not be established with the help of mandatory documents.

(ii) Random physical audit may also be conducted for verification (if necessary).

(c) For Direct Foreign Investment

1. Copy of agreement/MoU with IOP for investment.
2. Memorandum of Association and Article of Association in case of JV.
3. Certificate of Incorporation of JV.
4. Share holding pattern of JV– pre & post investment.
5. Govt. /RBI clearance/approval.
6. Proof of DFI and its transfer details to Indian Industry.
7. Any other relevant documents/certificates as required during audit/verification may be asked.

(d) Supporting Documents for Investment in 'kind' in terms of ToT to Indian enterprises.

1. Copy of contract between foreign vendor and IOP (including Business plan)
2. Certificate for Completion of Transaction
3. Certificate for ToT endorsed by IOP.{Recipient in case of 3.1(e)}
4. Evidence of 'BUY BACK' (i.e. all documents pertaining to direct purchase) along with certificate of value addition.
5. Certificate with signatures of OEM and IOP for the effect that:-
 - (a) Certified that the ToT has been received in full and absorbed suitably.
 - (b) ToT covers all documentation, training and consultancy.
 - (c) Excludes Civil infrastructure and equipment
 - (d) No licence fee is charged
 - (e) No restrictions have been levied on domestic production, sale or export of the products.
 - (f) The ToT has resulted into generation of Intended Commercial outputs.
6. Any other relevant documents/certificates as required during audit/verification may be asked.

(e) Supporting Documents for Investment in 'kind' in Indian enterprises in terms of provision of equipment.

1. Certificate of receipt of equipment endorsed by IOP. {Recipient in case of 3.1(e)}
2. Documentary support for BUY BACK ((i.e All documents pertaining to direct purchase) demonstrating minimum 40% within the performance period.
3. Certificate with signatures of OEM and IOP for the effect that:-
 - (a) Certified that the equipment provided is a first-hand and has been successfully installed and commissioned .
 - (b) Covers all documentation and training.
 - (c) Excludes civil infrastructure and technology transfers.
 - (d) No licence fee requirement
 - (e) No restrictions have been levied on domestic production, sale or export of the products.
 - (f) Commenced production.
 - (g) Third part valuation (to be certified by Cost Accountant/Firms of Cost Accountants.)
4. Customs clearance certificate in case of import of equipment by the IOP.
5. Any other relevant documents/certificates as required during audit/verification may be asked.

(f) Supporting Documents for providing equipment or ToT to Government establishment/DRDO to manufacture or maintenance of eligible product(s)/rendering eligible service (s).

1. Certification from Govt. establishments/DRDO w.r.t. completion of the offset obligation.
2. Any other relevant documents/certificates as required during audit/verification may be asked.

(g) Supporting Documents for Technology Acquisition by the DRDO in areas of high technology listed in Annexure-VIII to Appendix-D.

1. The supporting documentary enclosures to be prescribed specifically by DRDO during evaluation.
2. Assignment of Offset credits by DOMW after completion of necessary Technology Acquisition as certified by DRDO.
3. Merits, Timeframe for Absorption with phasing of Technology.
4. Value of credits to be assigned for the proposal.
5. Certification from DRDO w.r.t. completion of the offset obligation.
6. Any other relevant documents/certificates as required during audit/verification may also be asked.

(2). What is the duration of the period of discharge of offset obligations?

Ans. Refer **clause 5.2** of offset guidelines. It is clarified that the period of performance includes the period of warranty of the equipment procured (excluding AMC, partial warranty).

(3). Can the period of performance under the offset contract be extended?

Ans. Yes. However, extension is not automatic and vendor needs to apply for extension 6 months prior to expiry of offset contract. **Clause 5.3** to be adhered to.

(4). Can Sister/parent/subsidiaries/group Companies of the main vendor carry out offset discharge on its behalf?

Ans. Refer **clause 5.1** of offset guidelines. Discharge of offset obligations by group companies or its divisions is not admissible as per guidelines.

(5). Is industrial license mandatory for qualifying as an IOP?

Ans: Industrial license is not a prerequisite to become an IOP as per revised offset guidelines. However, it is contingent upon the IOP to comply with **clause 4** of the guidelines.

(6) How much offset obligation can be discharged by Tier-1 vendor?

Ans: As specified at **clause 5.1** of offset guidelines, Tier-1 sub vendors may be allowed to discharge offset obligations to the extent of their individual work share.

(7) Will offset credits be granted automatically post submission of claims to DOMW?

Ans: All claims of the vendor submitted under an offset contract will undergo annual audit. Based on the audit report & post approval of Competent Authority, offset credits will be granted.

(8) What will happen to excess offset obligations carried out by the vendor under a particular offset contract?

Ans: If a vendor carries out excess offset obligation in a particular year during the period of offset obligation, the same would be carried forward to the subsequent year. If the offset obligations are surplus than required to be fulfilled under an offset contract, the same may be banked by the vendor at the end of offset contract.

(9) Can an Indian Enterprise involved in providing services qualify as an IOP?

Ans. Yes.

(10) Please clarify on the applicability of the Amendment to DPP -2013 notified vide MoD ID No. 1(6)/D(Acq)/13- Vol.ii dated 05th Aug 2015 .

The amendment of DPP 2013 notified vide the **MoD ID No. 1(6)/D(Acq)/13- Vol.ii dated 05th Aug 2015** affects two clauses of the Defence Offset Guidelines namely Clause 8.2 (conduct of TOEC) and clause 8.11(specifying the competent authorities for effecting changes in contract). These clauses define separate set of activities performed at different points of time. The applicability of the amendment thence has to be in accordance with the stages at which the said activities are performed.

1. Amendment to Para 8.2 of Appendix D shall be applicable to all On-going procurement cases where the TOEC is in process irrespective of the governing DPP. This is obvious from the clause that has been amended. Since the amended clause is for activities during the evaluation of technical proposal by TOEC the amendment shall be applicable wherever TOEC's are under process. This therefore is not applicable in cases where TOEC has been concluded or cases under CNC or where Offset contracts have already been signed.

2. Amendment to Para 8.11 of Appendix D, is essentially for delegation of authority for change of IOP & Offset component to Secretary DP Accordingly, this clause will fall under contract amendment cases of DPP 2013.

(11) Please clarify as to how can an OEM/Vendor exercise one of the option in case the TOEC is under progress, as per Para 8.2 of Appendix D to Chapter 1 in the Amendment to DPP -2013 vide MoD ID No. 1(6)/D(Acq)/13- Vol.ii dated 05 Aug 2015 .

1. The vendor is required to exercise the suitable option and state the same with an undertaking unambiguously and provide details thereof. It is important to note that combination of the options in formulating the Technical offset offer is not permissible.

2. The option once exercised will not be changed subsequently. And all previous Technical Offset proposals (if any submitted) stand cancelled consequent to the date of exercising any one of the option.

(12) Please clarify the format for submission of the Technical offset offer to be given by the OEM in case of exercising option either to submit the documents at the time of seeking offset credits or to submit the required documents one year prior to discharge of offset obligations, as per Para 8.2 of Appendix D to Chapter 1 in the Amendment to DPP -2013 vide MoD ID No. 1(6)/D(Acq)/13- Vol.ii dated 05 Aug 2015 .

1. In case the vendor chooses to exercise either of the above mentioned options, then a Technical offset offer as per Annexure-ii to Appendix D to DPP (Refer to Para 7.2 of Appendix-D) may be submitted with the details of relevant columns as given below:-

- (a) Avenue for discharge (quote sub Para of 3.1)
- (b) Percentage of Total Offsets
- (c) Time Frame for discharge of Offsets
- (d) Remarks { Mentioning the option exercised}

2. The relevant points vide the foot note to the annexures as applicable are also to be complied with.

(13) Please clarify the process with illustrative examples in case the proposal submitted one year prior to discharge after exercising the option in Amendment to DPP -2013 vide MoD ID No. 1(6)/D(Acq)/13- Vol.ii dated 05 Aug 2015 is found ineligible leading to re-phasing with consequent enhancement of 5% in obligations.

1. DOMW will assess the proposal on submission by the vendor , when it is complete in all respects and shall respond to the same within three months of receipt about the admissibility/inadmissibility of the proposal along with observations. The vendor is expected to resubmit the proposal with necessary corrections in order to make the proposal compliant to the extant offset guidelines.

2. In regards to the risk of re-phasing due to ineligibility of the offset proposal, the value of the portion of annual commitments being re-phased shall be enhanced by 5% .As an example, a Technical offset offer of a vendor is depicted below to draw a hypothetical situation to clarify the issues further:-

S. No	Eligible offset products/ Service being offered	Avenue for discharge (Quote subpara of 3.1)	Multiplier applicable (quote applicable Para)	Percentage of Total Offsets	IOP/ Agency for discharge	TimeFrame for discharge of Offsets	Whether related to Main equipment being supplied (yes/No)	Remarks
1.	ABC	3.1(a)	1.5	Rs100 (20%)	Klm India	01 Jan 2016 to 31 Dec	Yes	Complete proposal along with document

				)	ltd	2016		s will be submitted to DOMW by 01 Jan 2015
2.	EFG	3.1(a)	-	Rs200 (40%)	XYZ comp any	01 Jan 2017 to 31 Dec 2017	Yes	Complete proposal along with documents will be submitted to DOMW by 01 Jan 2016
3.	HIJ	3.1(a)	1.5	Rs200 (40%)	GKG India Pvt Ltd	01 Jan 2018 to 31 Dec 2018	No	Complete proposal along with documents will be submitted to DOMW 01 Jan 2017

(a) A vendor has an annual offset obligations of Rs 100 in the first assessment year to be discharged from 01 Jan 2016 upto 31 Dec 2016. The Offset proposal was submitted by vendor with supporting documents on 01 Jan 2015.

(b) **Instance 1:-** The proposal was found ineligible and vendor has failed to resolve the observations raised by DOMW before 31 Dec 2015 forcing the total annual commitment of first assessment year to change. In this case, the offset obligations of Rs 100 of first year will be re-phased as Rs 105 (due to 5% enhancement in the obligations).

(c) **Instance 2:-** A portion (say Rs 80) of the proposal was found eligible and vendor has failed to resolve the observations raised by DOMW for the ineligible portion (Rs 20) before 31 Dec 2015, forcing a portion (Rs 20) of the annual commitment of first assessment year to change. In this case, the Offset Obligations of Rs 80 of first year will be discharged by the vendor between 01 Jan 2016 to 31 Dec 2016. In this case, the remaining offset obligations of Rs 20 of first year will be re-phased as Rs 21 (due to 5% enhancement in the obligations).

(14) Please clarify the list of supporting documents required to be produced while claiming discharge against offset obligations undertaken by avenues in 3.1(c), 3.1 (d) and 3.1(f) ?

Supporting Documents required to be submitted in case of 3.1 (c),(d) & (f)

3.1(c) :- Investment in 'kind' in terms of transfer of technology (TOT) to Indian enterprises for the manufacture and/or maintenance of eligible products and provision of eligible services. This could be through joint ventures or through the non-equity route for co-production, co-development and production or licensed production of eligible products and eligible services. The investment in kind in terms of TOT must cover all documentation, training and consultancy required for full TOT (civil infrastructure and equipment is excluded). The TOT should be provided without licence fee and there should be no restriction on domestic production, sale or export.

1. Certificate for Completion of Transaction
2. Certificate for receipt of ToT by IOP.{Recipient in case of 3.1(e)}
3. Evidence of 'BUY BACK' (i.e All documents pertaining to direct purchase) along with certificate of value addition.
4. Certificate with signatures of OEM and IOP for the effect that:-
 - (a) Certified that the ToT has been received in full and absorbed suitably.
 - (b) ToT covers all documentation, training and consultancy.
 - (c) Excludes Civil infrastructure and equipment
 - (d) No licence fee is charged
 - (e) No restrictions have been levied on domestic production, sale or export of the products.
 - (f) The ToT has resulted into generation of Intended Commercial outputs.
5. Any other relevant documents/ certificates may be asked as required in Audit / verification.

3.1(d) :- Investment in 'kind' in Indian enterprises in terms of provision of equipment through the non-equity route for the manufacture and/or maintenance of eligible products and provision of eligible services (excluding TOT, civil infrastructure and second hand equipment).

1. The equipment proposed in above must be for the manufacture of eligible products or provision of eligible services as per **Annexure VI to Appendix D of DPP** or maintenance of eligible products and eligible services (the value must not include TOT, civil infrastructure; second hand equipment are prohibited).
2. Following needs to be strictly adhered to for discharging obligations through 3.1(d):-
 - a) Certificate of receipt of equipment by IOP.
 - b) Evidence with respect to the valuation of the equipment preferably by an independent assessor of country of origin.
 - c) Documentary support for BUY BACK ((i.e All documents pertaining to direct purchase) demonstrating minimum 40% within the performance period duly certified by IOP.
 - d) All transactional documents including embarkation/customs.

- e) Certificate with signatures of OEM and IOP for the effect that:-
 - o Certified that the equipment provided is a first-hand and has been successfully installed and commissioned
 - o Covers all documentation and training.
 - o Excludes Civil infrastructure and technology transfers.
 - o No licence fee requirement
 - o No restrictions have been levied on domestic production, sale or export of the products
 - o Commenced production.
 - f) Any other relevant documents/ certificates may be asked as required in Audit / verification.
3. The claim for discharge of offset obligations through this clause is admissible only if the vendor must buy back minimum of 40% of eligible products or services (by value) generated from the equipment within the permissible period of discharge of obligations.

3.1(f) :- Technology Acquisition by the DRDO in areas of high technology listed in Annexure-VIII to Appendix-D.

1. The supporting documentary enclosures to be prescribed specifically by DRDO during evaluation.
2. Assignment of Offset credits by DOMW on submission of duly certified letter from DRDO.

(15) Please clarify the significance of provision contained in Clause 3.1(a) of Defence Offset guidelines 2016 stating "Direct purchase of, or executing export orders for,"

The Defence Offset Guidelines inter alia require, an Indian, firm or joint venture with its foreign partner, bidding for the proposal, to fulfil the offset obligations, when the indigenous content in the product is less than 30%. Accordingly, the provision of executing export orders under Clause 3.1(a) has been provided to enable such bidders to discharge their offset obligations. This clause is applicable to only Indian vendors including a joint venture between Indian company and its foreign partner for discharging their offset obligations under Buy (Global) acquisition.

FAQs PERTAINING TO OFFSET BANKING

(1) Once details of business plan is finalised between a vendor & the IOP, can the vendor apply for banking?

Ans: The vendor shall be required to apply for banking offset credits within one year of completion of the transaction.

(2) Are there any supporting documents required to be provided along with details of banking proposal?

Ans: A vendor is required to submit the banking proposals as per Annexure III to Appendix D. In addition, requirement of case specific supporting documents shall be separately intimated.

(3) Is it possible to split the credits under a given PIN number between two (or more) vendors/OEMs?

Ans: It is possible in case a vendor is Tier-1 in separate contracts. However, banked offset credits will not be transferable except between the main vendor and his Tier-1 sub-vendors within the same procurement contract. The main vendor will be required to submit a list of such Tier-1 sub-vendors along with their respective work share in the contract.

(4) Can a consortium/group/conglomerate apply for offset banking credits and have a single account for all such transactions to be utilized by individual member companies?

Ans: The applicant for offset banking credits will be considered as a single legal entity and offset credits will be granted only against the applicant. If the applicant happens to be a consortium/group/conglomerate, same will be eligible.

(5) What is the validity of banked offset credits?

Ans: Refer Para 6 of Annexure VII to Appendix D of DPP 2016. Banked offset credits can be utilised by the vendor for RFPs where the last date of submission of bids is within seven years from date of acceptance by DOMW.

(6) What is the procedure for submitting offset Banking proposals?

1. A vendor intending to submit a offset Banking proposal must take an appointment for its submission at 'Facilitation Cell' of MoD/DOMW located at SCOPE complex, floor 6, Core 6, Lodhi Road, New Delhi.
2. During submission at the 'Facilitation Cell', DOMW representative will receive the banking proposal after preliminary checking for completeness in respect of documents as per the checklist below.
3. If the Banking proposal is found complete in all respects with reference to supporting documents, a receipt/acknowledgement for the same would be provided against formal receipt of the banking proposal.
4. However, the Banking proposal would not be accepted if the same is found incomplete in any aspect of the supporting documents.

5. Checklist for para 2 above is as given below:-

CHECKLIST FOR EXAMINATION OF OFFSET BANKING PROPOSALS
(Investments)

Sl No	Check points	Details As per application	Documents enclosed
1	Name and address of the company		
2.	Name of IOP/s		
3.	Compliance to clause 2.2 and 4.2 (rev) a) Business Structure of IOP? b) Incorporation Certificate? c) FDI compliance to Sectoral Caps? d) Whether IL reqd?	a) b) c) d)	
4.	Value of investment		
5.	Whether FIPB clearance obtained?		
6.	Type of investment a/wrelevant clause of guideline	a)Equity b) Non-equity-i) TOT ii) Equipment	
7.	Date of contract	Whether in time	
8.	Whether the transaction is direct by the vendor or third party?		
9.	Date of receipt of proposal		
10.	Whether transaction supporting documents attached?		

11.	Whether in proper format(annex-III)		
12	Whether all clauses including the requirements as per the note of the Annexure III of the revised guidelines complied with?		
13.	Whether the investment is in eligible products or services?		

CHECKLIST FOR OFFSET BANKING PROPOSALS (Direct Purchase)

Sl No.	Check points	Details As per application	Documents enclosed
1	Name and address of the company		
2.	Name of IOP/s		
3.	Compliance to clause 2.2 and 4.2 (rev) a) Business Structure of IOP? b) Incorporation Certificate? c) FDI compliance to Sectoral Caps? d) Whether IL reqd?	a) b) c) d)	
4.	Name of Product or Service		
5.	Whether eligible for offsets as per guidelines?		
6.	Whether the applicable guidelines have been mentioned?		
7.	Date of transaction	Whether eligible	

8.	Date of contract	Whether in time	
9.	Date of receipt of proposal		
10.	Whether all the transaction is direct by the vendor or third party?		
11.	Whether transaction supporting documents attached?		
12.	Whether in proper format?(annex-III)		
13.	Whether all clauses including the requirements as per the note of the format as per Annexure III of the revised guidelines complied with?		