

DDP Comments on Summary of representations received from Indian industry and Foreign Vendors/Associations on Defence Offset Guidelines

<u>Para</u>	<u>Draft DPP 2020 Defence Offset Guidelines</u>	<u>Representations</u>	<u>DDP Comments</u>
1.1	Objectives of Defence Offsets	“Encouraging development of synergistic sectors like civil aerospace and internal security” as an objective.” be also restored as one of the objectives.	<ul style="list-style-type: none"> The key objectives of Defence Offsets have been formulated with thrust on having enabling provisions to attract investment and technology in the desired areas. This is expected to enhance capability in the domestic defence manufacturing sector and promote Make in India initiative.
2.	Quantum and Scope of Offsets	<ul style="list-style-type: none"> Threshold to be reduced to Rs 300/500 Crore and above. Threshold be increased to INR 3000 crores (approx. \$ 400M), since this threshold will now be valid till the next revision of DPP, i.e. till 2025. 	<ul style="list-style-type: none"> The issue pertains to Acquisition Wing.
2.2	30% of estimated cost of acquisition in Buy (Global) & 30% on FE contain in Buy & Make category.	<ul style="list-style-type: none"> In "Buy and Make" the prime contractors are already including all the WPs possible in the make in India part, therefore it is very challenging to identify new ones for the ones, without impacting the price in the final proposal. 	<ul style="list-style-type: none"> The issue pertains to Acquisition Wing.
2.3	Waiver of offsets	<ul style="list-style-type: none"> This also is taking the Offset Policy backwards and counters the Make-in-India objective. Hence, it is important to apply minimum 30% offset obligations in all cases without the approval of DAC. The approval of DAC should be considered when higher percentage is required. FMS, IGA and G to G cases as hitherto should be required to meet offset obligation. a) Full offset waiver clause in Ch I may be reconciled in Appendix D. The waiver may be granted to procurements being progressed from Russia under SCoC FMS route, along with IGAs. It may be included in both Ch I and Appendix D. b) This provisions will also not apply in Repeat orders or Option and SVC. 	<ul style="list-style-type: none"> The issue pertains to Acquisition Wing. Under active consideration. Status quo with DPP 2016 to continue.
3.1(a)	Direct purchase of defence products	<ul style="list-style-type: none"> Defence materials including raw material (basic, critical, strategic), assemblies, sub-assemblies and components should be made explicit in the list of eligible offset products. Minimum 30% mandatory offsets under avenue of 3.1(a) 	<ul style="list-style-type: none"> Defence materials are already permissible under offset guidelines and are included in Annexure VI, Para 7. The objective of defence offset guidelines is to

DDP Comments on Summary of representations received from Indian industry and Foreign Vendors/Associations on Defence Offset Guidelines

<u>Para</u>	<u>Draft DPP 2020 Defence Offset Guidelines</u>	<u>Representations</u>	<u>DDP Comments</u>
		<p>should direct purchase of defence raw materials.</p> <ul style="list-style-type: none"> • Direct offsets should constitute 80% of the offset obligation. This will aid the government goal of increasing manufacturing share in our economy from 16% to 25%. • Should allow offset credits even for delivery within India. 	<p>attract investment and technology for which higher multipliers have been provided. Moreover, selection of avenue rest with the vendors.</p> <ul style="list-style-type: none"> • There are no such restrictions
3.1(b)	Investment in Defence Manufacturing	<ul style="list-style-type: none"> • This could be through FDI or direct investment or joint ventures or through the non-equity route for co-production, co-development and production or licensed production of defence products or through investment in “kind” in Indian enterprises by provision of equipment through the non-equity route. Such investment would be subject to the guidelines/licensing requirements stipulated by the Department of Promotion of Industry and Internal Trade (DPIIT)/ Ministry of Home Affairs (MHA), Government of India. The list of ‘eligible products’ for discharge of offset obligations is at Annexure VI to Appendix-D.” • Investment even for expansion of existing manufacturing facilities should be considered. • OEMs make investment decisions after considering multiple factors over long period of time. Limiting the investment to only Defence Manufacturing narrows the aperture for attracting investment and would result in failure of India’s objectives to promote growth and investment. • Investment through transfer of equipment along with method of valuation may categorically be defined in the subject avenue. • What all can be invested through ‘non-equity’ should be elaborated/clarified. • Investments towards provisioning of eligible ‘services’ should be included • Clearly defined criteria be laid down for procedures and approved projects for the earning of offset credits. • A firm timeline be mentioned for the completion of the audit. 	<ul style="list-style-type: none"> • Para 3.1(d) of DPP 2016 “Investment in kind through non-equity route” has been subsumed in Para 3.1(b) of the proposed draft offset guidelines. • No restriction for investment in existing manufacturing facilities has been envisaged in the offset guidelines. • Para 3.1(b) has to be read in conjunction with FDI guidelines wherein non-equity investments have been explained in details. • Investment through non-equity is already clarified in the guidelines. • The proposed mechanism in the draft offset guidelines is considered adequate. • Submission of offset discharge claim is through online portal; therefore, disposal of claims is

DDP Comments on Summary of representations received from Indian industry and Foreign Vendors/Associations on Defence Offset Guidelines

<u>Para</u>	<u>Draft DPP 2020 Defence Offset Guidelines</u>	<u>Representations</u>	<u>DDP Comments</u>
			envisaged on real time basis.
3.1(c)	Investment in ToT	<ul style="list-style-type: none"> Private sector has capability to absorb and exploit the technology acquired through the offset route and build national capability and self-reliance. Avenue involving acquisition of technology therefore should not be reserved for DPSU and DRDO. It is not acceptable to require no limitation on use related to the transfer of ToT, especially regarding defence technologies that are specifically licensed to discrete end users. Remove the following: "The ToT should be provided without license fee and there should be no restriction on domestic production, sale or export." Technology and product development is a long, costly and risky proposition undertaken by OEMs and no restriction would limit OEMs ability to invest in ToT in India. Additionally, the meaning of related equipment exclusion needs to be clarified. Retaining of investment in kind for DPP 2020 would support Indian industry 	<ul style="list-style-type: none"> The suggestion is welcome and proposal if any will be considered on case to case basis. Moreover, selection of IOP is decided by the vendors. Status quo has been maintained. These stipulations were available in earlier DPPs and are intended to safeguard government interests. Investment in kind through non-equity route has been subsumed in Para 3.1(b) of the proposed draft offset guidelines.
3.1(d)	Acquisition of ToT through Govt Inst	<ul style="list-style-type: none"> The Govt. is focused on growth of the Private Sector in A&D to be able to supplement the Govt. organizations like DPSUs, Ordnance Factories etc. Hence TOT incentivization should be at par. The text of para 3.1(d) should be accordingly amended to include all Indian industries that can absorb such technologies. The domestic industry in India have built competence in the last few years and they should also be made eligible under TOT to design, development and manufacturing of such technologies. Provide clarification on how the process for this avenue will work and how this is different from "Investment in ToT" from Para 3.1(c). Provide a process flow diagram to better understand how this will work. 	<ul style="list-style-type: none"> The objective of defence offset guidelines is to attract investment and technology for which higher multipliers have been provided. Moreover, selection of IOPs rest with the vendors. Guidelines for ToT under Para 3.1(d) shall be issued separately.

DDP Comments on Summary of representations received from Indian industry and Foreign Vendors/Associations on Defence Offset Guidelines

<u>Para</u>	<u>Draft DPP 2020 Defence Offset Guidelines</u>	<u>Representations</u>	<u>DDP Comments</u>
		<ul style="list-style-type: none"> It should be possible for foreign OEMs/Vendors (including Tier 1 sub vendors and all such entities) to suggest additional technology related projects to be added to the suggested list at Annexures VII post evaluation for suitability for inclusion. Once mutually agreed with the MoD, list of such technology projects should be updated on a regular basis to accommodate essential capabilities required by the Armed Forces. 	<ul style="list-style-type: none"> The list of technologies has been finalized after extensive consultations and deliberations. As long as any proposal received is in conformity with the objectives of the defence offset guidelines, the same can be considered on case to case basis.
3.1(e)	Technology Acquisition by DRDO	<ul style="list-style-type: none"> Such technologies should be identified based on our need for specific Applications or Programmes for design and development in the country in areas where we do not have technology available. This should be done by a high level Task Force. The Task Force should be chaired by DG DRDO and members from DPSUs like Director- Tech/ R&D and some of the Private industries. All capable Indian industries should be included for Technology Acquisition under Annexure VIII. Amend the list with inputs from Industry to include technologies that are releasable. The technologies listed in Annexure VIII are strictly controlled for export and may not be released outside United States. Therefore, the type of technologies must be amended in the DPP to include what is releasable. As mentioned, it is not executable. 	<ul style="list-style-type: none"> The list of critical technology has been finalized by DRDO which is having domain expertise. The Directorate of Industry Interface and Technology Management has been entrusted with the role of Technology Acquisition in DRDO. Selection of IOP rests with the vendor, subject to approval of MoD. However, in event of technologies other than those mentioned in Annexure VI, the same can be considered on case to case basis. In order to bridge the critical gaps in military technology, the list of Critical Technologies has been finalized by DRDO. These technologies are normally not shared/transferred thus, the same is required to be leveraged under offsets.
4.	Indian Offset Partner	<ul style="list-style-type: none"> Define specifically what qualifies as “Indian enterprises and institutions and establishments.” Recommend clarifying aspects related to Ownership percentage and Registration. Suggest that IOP qualifications should be simplified, and that it should not be necessary to re-qualify an IOP previously approved by DOMW. Standard agreements between Vendor or Tier-1 and an IOP may be subject to alternate governing laws. This should be accommodated here. Suggest considering other laws like UK law, 	<ul style="list-style-type: none"> Status quo with earlier DPPs is maintained. Status quo has been maintained.

DDP Comments on Summary of representations received from Indian industry and Foreign Vendors/Associations on Defence Offset Guidelines

<u>Para</u>	<u>Draft DPP 2020 Defence Offset Guidelines</u>	<u>Representations</u>	<u>DDP Comments</u>
		which is robust when it comes to commercial topics and non-Indian parties would likely be more open to it.	
5.1	Vendors responsibility	<ul style="list-style-type: none"> • The Offset fulfillment should be permitted by any sub-tier or group company or subsidiary or associate of the Vendor. Other entities should be permitted for avenues (a) & (c) and not only for avenues (b), (d) & (e) • Do not limit contributions of Tier 1 suppliers to the extent of their work share by value. This may prevent the most meaningful projects from qualifying. Also, recommend allowing cooperation among Tier 1/ GFE suppliers on same program to enable sharing of credits. 	<ul style="list-style-type: none"> • The scope for offset discharge has been expanded in respect of Paras 3.1(b), 3.1(d) and 3.1(e) wherein offset discharge can be permitted by entities other than vendor/Tier-1 Sub-vendor on a case to case basis. • It is considered to be reasonable and just to limit discharge of offset in proportion of workshare. Moreover, status quo with DPP 2016 has been maintained.
5.1.1	Offset discharge under Para 3.1(b), 3.1(d) & 3.1(e)	<ul style="list-style-type: none"> • The text of para 5.1.1 may be amended accordingly to include paras 3.1 (a) and 3.1(c). It may be clarified that the words "Other than Vendor / Tier-I sub-vendor" do not exclude Group companies. • As per Para 5.1.1, 'entities other than main vendor/Tier-1 Sub-vendor' are being permitted to discharge offset obligations on behalf of the main vendor/Tier-1 sub-vendor, and therefore, banked offsets should be permitted to be transferred between the main vendor and 'such entities' apart from between the main vendor and his Tier-1 vendors within the same procurement contract. • Further clarity is required if the policy shall allow Vendors to utilize their group companies, subsidiaries, SPV etc. for the discharge of offset. It was not clearly addressed. It is requested that Group companies be clearly permitted in all avenues of offset discharge including sourcing as well. 	<ul style="list-style-type: none"> • It is amply clear in the offset guidelines that discharge under Para 3.1(b), 3.1(d) & 3.1(e) is permitted by entities other than vendor/Tier-1 Sub-vendor on a case to case basis. • As long as investments/ToT in the specified areas are available under Paras 3.1(b), (d) & (e) and are in conformity to the objectives of the defence offsets guidelines, the same shall be considered on case to case basis. • Discharge of offset under Para 3.1(b), 3.1(d) & 3.1(e) is permitted by entities other than vendor/Tier-1 Sub-vendor on a case to case basis.
5.2	Period for discharge	<ul style="list-style-type: none"> • Discharge period of offset should be extended by 5-7 years beyond the project completion. • PoP of main contract plus half of the main contract period ab-initio. 	<ul style="list-style-type: none"> • Status quo as per DPP 2016 has been maintained.

DDP Comments on Summary of representations received from Indian industry and Foreign Vendors/Associations on Defence Offset Guidelines

<u>Para</u>	<u>Draft DPP 2020 Defence Offset Guidelines</u>	<u>Representations</u>	<u>DDP Comments</u>
		<ul style="list-style-type: none"> Clarify that the period of the main contract includes the warranty period offered by the Seller, and related support efforts tied to the articles delivered under the main procurement contract. 	<ul style="list-style-type: none"> Under active consideration.
5.3	Performance Bond	<ul style="list-style-type: none"> Clarify that the additional bond shall be submitted “no later than” six months prior to expiry of the main bond. 	<ul style="list-style-type: none"> Time lines for submission of addition performance bond are already mentioned i.e. six months prior to expiry of the main Performance-cum-Warrant Bond
5.5	Offset credit for investment in Defence Manufacturing	<ul style="list-style-type: none"> In para 5.5, the following changes may be made: “5.5 Where the discharge of offset obligation is proposed in terms of Para 3.1(b) it must provide a Detailed Project Report (DPR) with cost break-up. Offset discharge shall be subject to physical completion of the project and verification of audited accounts of the company setting up the manufacturing unit <u>and in the event the manufacturing unit is not set up within the period of the offset contract, it will be deemed that the vendor has not discharged its offset obligations resulting in re-phasing and/or penalty.</u> The text may be amended to. “Where the discharge of offset obligation is proposed in terms of Para 3.1(b) it must provide a Detailed Project Report (DPR) with price break-up. Offset discharge shall be subject to physical completion of the project and verification of audited accounts of the company, <u>within 08 weeks of submission of the proposal</u>, setting up the manufacturing unit. Making investments and physical completion of projects, particularly in manufacturing, is a long and arduous process. Similar to how a procurement contract has stages of payment, it is reasonable to expect milestone- based offset credits discharge which could extend beyond one single offset contract. Adjusting the policy to include milestone-based offset discharge would enable India to capture these investments from industry OEMs 	<ul style="list-style-type: none"> Time lines for completion of project/offset obligations are already provided in the offset contract and therefore, incorporating the underlined recommendation in Para 5.5 may not be required. Any vendor not meeting the specified timelines as per contract is liable for penalty and thereafter re-phasing of outstanding obligation is processed as per Para 8.12. Submission of offset discharge claim is through online portal; thus, disposal of claims is envisaged on real time basis. Under the proposed offset guidelines, transactions are expected to be completed within the timeframe of the contract and credit is allowed only after physical verification and audited account. In case milestone based offset credit is permitted, there may be instances where vendor may abandon the project at later stage by putting blame on the IOP. Thus, milestone based offset credits shall be

DDP Comments on Summary of representations received from Indian industry and Foreign Vendors/Associations on Defence Offset Guidelines

<u>Para</u>	<u>Draft DPP 2020 Defence Offset Guidelines</u>	<u>Representations</u>	<u>DDP Comments</u>						
		<ul style="list-style-type: none"> Offset credits to be allowed upon transfer of fund/proof of payment. 	detrimental to the objective of the offset guidelines.						
5.6	Offset credit for ToT	<ul style="list-style-type: none"> Suggest defining the recognised valuation firms in an appendix. Cost will only be borne by Vendor should the vendor make the contractual arrangements. Clarify if the valuation applies for Para 3.1 (d) and 3.1 (e) as 5.6 covers only para 3.1 (c). Since the valuation is a significant cost to the OEMs the same should be permitted for offset discharge. ToT should be transferred directly to Vendor's IOP as the IOP would be best placed to access its usefulness and understand its utility. 	<ul style="list-style-type: none"> Third party valuation is only applicable for investments under Para 3.1(c). However, the suggestions are noted and in case ToT proposals are in large numbers, a pool of valuation firms can be considered for empanelment. 						
5.8	Value addition	<ul style="list-style-type: none"> Value Addition for direct purchase/export of eligible products should apply on all work and material provided by the IOP, including its supply chain sources irrespective of where the sources are located. Offset credits for manufactured products be permitted in a graded manner with the following multipliers: <table border="0"> <tr> <td>Value addition</td> <td>Multiplier in India</td> <td>Value add > 70%</td> </tr> <tr> <td>4 Value add > 50% < 70%</td> <td>3 Value Add up to 50%</td> <td>2</td> </tr> </table> Note: - The threshold of 50% for a multiplier of 2 is being suggested on par with threshold for Indian enterprises in 'Buy Indian (IDDM)' & 'Buy (Indian)' categorizations as proposed under DPP 2020. Recommend there should be no deduction for imported content if the specified material grade is not available from Indian suppliers. Direct and Indirect costs for all the services obtained from Non- Indian entity and Taxes & duties paid them must also be subtracted while calculating Value addition. 	Value addition	Multiplier in India	Value add > 70%	4 Value add > 50% < 70%	3 Value Add up to 50%	2	<ul style="list-style-type: none"> There is no such distinction and only imported components/content and any fee/royalty is not considered as value addition in India. Since verification of IC is based on the undertaking provided by the IOP and vendor, it would be more appropriate not to consider additional multiplier for higher IC. Moreover, offset are applicable only if IC is less than 30%. It is expected that vendor should develop its supply chain to manufacture specified grade material with the IOPs in India under offsets. These costs breakups are not reflected in the invoices moreover, costing of a product is done after amortization of all investments.
Value addition	Multiplier in India	Value add > 70%							
4 Value add > 50% < 70%	3 Value Add up to 50%	2							
5.10	Multipliers	<ul style="list-style-type: none"> The draft guideline offers OEMs discharging offset obligation a highest multiplier of 4 in case it is with DPSUs and 3 if it is DRDO and only 2 if it is with Private sector. This will adversely impact 	<ul style="list-style-type: none"> Suggestions regarding multipliers are appreciated. However, progressive multipliers have been considered for investment and 						

DDP Comments on Summary of representations received from Indian industry and Foreign Vendors/Associations on Defence Offset Guidelines

<u>Para</u>	<u>Draft DPP 2020 Defence Offset Guidelines</u>	<u>Representations</u>	<u>DDP Comments</u>
		<p>the offset business for the Indian private sector. This needs to be addressed and brought at par with the DPSUs and DRDO. Suggest that Products/Systems multiplier should be at least 2.0 to incentivize OEMs to place higher value sub-systems in India.</p> <ul style="list-style-type: none"> • It is recommended that, the multiplier s should be 1.75 for 3.1(c) Para 5.12 and 2.5 for 3.1(d) Para 5.13. • It is recommended that multiplier for MSMEs may be enhanced from 1.5, may be upto 2.5. • Dis-incentivizing sourcing of components is counterproductive and unnecessary. " Status quo (as existing DPP 2016) in terms of multipliers for direct purchase of component be retained. <p>• OEMs are unlikely to be able to avail themselves of the multipliers under Section 3.1(d) and 3.1(e) due to the advanced level of technology sought by the MOD and the multipliers being still quite low to incentivize technology transfer.</p> <ul style="list-style-type: none"> • The MOD should consider inviting ToT proposals from OEMs and increase multipliers of 7 to 10. Multipliers appear biased towards public sector which will act counter to Make in India if the desire is to promote private industries and MSMEs. • Clubbing of multipliers should be allowed, even if the proposed multipliers are retained. 	<p>technology.</p> <ul style="list-style-type: none"> • There is no change in multipliers for MSME and status quo with DPP 2016 has been maintained. • The objective of defence offsets policy is to have enabling provisions to attract technology and investments in the desired areas and encourage domestic manufacturing to enhance indigenous defence capabilities and promote Make in India initiative. Hence TOT and investments have been suitably incentivized through appropriate multipliers. • In India, only 30% offsets is applicable on the cost of capital acquisitions whereas globally the percentage is much higher (i.e. 100% or beyond). Considering this, a multiplier upto 4 is already on higher side compared with global standards. Therefore, clubbing of multipliers shall tantamount to further lowering of offset obligation of the vendor and providing double benefit.
5.15	Valuation of Offsets	<ul style="list-style-type: none"> • A provision should be included for investments made prior to the signing of the contract be allowable should they not have been claimed/banked previously, and they were necessary for the Seller to be able to perform the procurement contract and due to schedule/opportunity, could not wait for contract signature. 	<ul style="list-style-type: none"> • No change has been contemplated and status quo has been maintained with DPP 2016. For previous banked offset credits, separate order shall be issued.
8.2	Technical Offset Proposal	<ul style="list-style-type: none"> • Allow for details to be submitted "one year or more prior" to seeking credits and for details to include credits to be earned across multiple years. Permit combining of 8.2, 8.2 a) and 8.2 	<ul style="list-style-type: none"> • Status quo with DPP 2016 has been maintained which inter alia permits vendors to provide details of IOP/products at later stage after

DDP Comments on Summary of representations received from Indian industry and Foreign Vendors/Associations on Defence Offset Guidelines

<u>Para</u>	<u>Draft DPP 2020 Defence Offset Guidelines</u>	<u>Representations</u>	<u>DDP Comments</u>
		<p>b) to reduce risk and processing. If a partial plan is identified at the time of the original offset proposal, allow the options of a) and b) for the balance.</p> <ul style="list-style-type: none"> In case transaction is non-compliant it will not be accepted. OEM runs the risk of paying penalty if such rejection leads to shortfall in the yearly obligation. 	<p>signing of offset contract i.e. one year prior to discharge of offset obligation or even at the time of seeking offset credit. Clubbing of Paras 8.2(a) and 8.2(b) cannot be permitted since both options have different procedural implications.</p>
8.5	Commercial Evaluation	<ul style="list-style-type: none"> Offset along with other aspects of source selection should be determined as part of a best value selection criteria. The quality of the offset program should be a factor along with price and technical in the selection of the seller. 	<ul style="list-style-type: none"> The offset guidelines provide higher multipliers in the desired areas
8.7	Model offset contract	<ul style="list-style-type: none"> The Para should be modified to include a provision that DOMW and the audit agencies will respect such deviations as stated in the Offset Contract when making determinations. Suggest allowing neutral governing law like UK law, which is robust when it comes to commercial topics and non-Indian parties would likely be more open to it. The DPP clearly acknowledges that its model offset contract can be modified. However, lack of observance and adherence to contractually agreed offset terms and conditions creates uncertainty discouraging additional investment. 	<ul style="list-style-type: none"> The issue pertains to Acquisition Wing.
8.9	Discharge of offset claims	<ul style="list-style-type: none"> A specific period should be introduced for DOMW to convey discharge of offset claims. Ambiguity in this area as resulted in "verified credits" that are never being discharged by DOMW. Clarity in the language is required to include 'Assigned Offset Credits' to be conveyed to the vendor/OEM. 	<ul style="list-style-type: none"> Submission of offset discharge claim is through online portal thus, assignment of offset credit is envisaged on real time basis.
8.11	Penalty	<ul style="list-style-type: none"> If reasonable timeframes are instituted and adhered to by DOMW, then a reasonable show-cause notice process should be instituted prior to issuing penalties. This should be consistent with the Guidelines of the Ministry of Defence for Penalties in Business Dealings with Entities (MOD ID No. 31013/1/2016-D (v9g) Vol.II dated 30.12.2016. Also recommend bolstering the ability of DOMW to waive penalties for circumstances such as change in economic 	<ul style="list-style-type: none"> MoD has no intent to penalize vendors, thus offset guidelines permit amendment of offset contracts and the vendors are frequently requesting for amending the offset contract to avoid imposition of penalty. Moreover, time is essence of the contract and therefore, provision for levy of penalty is made to ensure that the contracted obligations are liquidated within the

DDP Comments on Summary of representations received from Indian industry and Foreign Vendors/Associations on Defence Offset Guidelines

<u>Para</u>	<u>Draft DPP 2020 Defence Offset Guidelines</u>	<u>Representations</u>	<u>DDP Comments</u>
		<p>conditions, government approvals, technical difficulties in executing complex projects etc. Many factors impact successful offset execution and all not in OEM's control; DOMW should be more flexible w/re-phasing, working with OEM if parties are both working in good faith.</p> <ul style="list-style-type: none"> • If penalties are kept, they should be defined as liquidated damages which retire the impacted portion of the obligation and should be implemented within a reasonable time limit of the triggering event. • Penalties should be last resort and made consistent with the "Standard Contract Document" because Defence Offset Guidelines should apply in harmony with the main contract. further, it is recommended to cap the penalty in the period beyond the main procurement contract (extended 2-year period) and making it liquidating for a value not higher than 5% of the unfulfilled obligation after the extended period of performance to be in line with the Standard Main Contract. In any case, where the period of discharge of offset obligations exceeds the period of main procurement contract, the vendor will be furnishing an additional Performance Bond covering the full 2 year period which the MoD can encash should the obligor default on performance of the contract during the extended period. 	<p>performance period to safeguarded government interests.</p> <ul style="list-style-type: none"> • Penalty and LD have different connotations and are included appropriately in the contracts. Further, the contracts are bound to be executed in line with the stipulations therein and not on good faith. • As regard capping of penalty is concern it has been already capped to 20% in DPP 2016 and status quo has been maintained.
8.12	Re-phasing of offset obligation	<ul style="list-style-type: none"> • If the parties agree to a re-phase then there should be no penalty. If the parties cannot agree then the penalties under 8.11 would already naturally apply. • MOD should consider moving away from punitive language and remove annual milestones. Required re-phasing should be permitted to achieve the completion of the projects as long as the OEMs show intent in fulfilling the obligations. i.e. Status quo (as existing in DPP 2016) be maintained for Clause on Rephasing of Offset obligation as long as the Vendor is able to discharge the offset obligations within the period of performance (including the extended 2 year period). 	<ul style="list-style-type: none"> • It is observed that most of the vendors use re-phasing as a tool to do away with non-performance of the contractual milestone and payment of penalty as well. To plug the loopholes, DPP 2016 was suitably amended to ensure that offsets are discharged as per milestones agreed in the contract and to avoid frequent re-phasing of offset obligation. Status quo with DPP 2016 has been maintained.

DDP Comments on Summary of representations received from Indian industry and Foreign Vendors/Associations on Defence Offset Guidelines

<u>Para</u>	<u>Draft DPP 2020 Defence Offset Guidelines</u>	<u>Representations</u>	<u>DDP Comments</u>
		<ul style="list-style-type: none"> • Additionally, section 8.12 references penalty language found in Section 8.13. However, no penalty language is found in section 8.13. 	<ul style="list-style-type: none"> • Typo error will be rectified through requisite modifications.
8.13	Change in IOP or Component	<ul style="list-style-type: none"> • If Vendor agrees to DOMW's "recommended" change then the affected obligation should be re-phased without penalty. If Vendor disagrees, then no change should be required. • IOP and Project Approvals should be accelerated. Suggest that vendor should not be held accountable if changes are required but reasonable timelines are not met by DOMW. • Clarify whether the online portal has this capability. 	<ul style="list-style-type: none"> • As per offset guidelines, vendors are free to select IOP/avenue for offset discharge, subject to approval of MOD. Regarding time lines, 03 months has been provided in the guidelines. • Yes
8.14	Amendment to the offset contract (Supplementary Offset Contract)	<ul style="list-style-type: none"> • Specify that the supplementary contract requires consent by both parties, DOMW and Vendor. The current language implies DOMW can make unilateral changes to the contract, but the Vendor should also have ability to add/change IOP in order to enhance offset performance capabilities. • Para 8.10 and 8.11 should be updated to Para 8.12 and 8.13. 	<ul style="list-style-type: none"> • Supplementary offset contract is signed by both the parties after mutual agreement. The offset guidelines at Para 8.13 permit vendor for change of IOP. • Typo error will be rectified through appropriate modifications.
8.15	Debarment	<ul style="list-style-type: none"> • Incorrect reference "Para 93" be changed to Para 161 • A notice and cure period should be incorporated prior to any punitive action is taken against Vendor in accordance with defined standards, such as the Guidelines of the MoD for Penalties in Business Dealings with Entities. 	<ul style="list-style-type: none"> • Necessary changes are being processed. • Vendors are indeed given notice for shortfall in performance of offset contract prior to punitive action, if any.
8.17	Clarifications	<ul style="list-style-type: none"> • Suggest an initial escalation that starts with internal discussion, then to the Independent Monitors, then the Acquisition Wing of the DOMW. Specify a period for discussions prior to referral to the IMs. Allow Vendors to provide data and approach the IMs directly to ensure the full facts of the case are presented. • The final decision should come from an outside independent authority. We suggest arbitration before the London Court of International Arbitration. • Develop a defined path for dispute resolution and escalation within the DPP which reaches resolution in a neutral forum. The 	<ul style="list-style-type: none"> • Vendors are free to approach IMs as per prevailing order and present their facts. • Arbitration is provided in the main contract and is ipso facto applicable to the offset contract also.

DDP Comments on Summary of representations received from Indian industry and Foreign Vendors/Associations on Defence Offset Guidelines

<u>Para</u>	<u>Draft DPP 2020 Defence Offset Guidelines</u>	<u>Representations</u>	<u>DDP Comments</u>
		<p>recent empowerment of the IM to review offset matters is a potentially positive step but it is unclear if the OEM has an opportunity to directly address the IEM members and ensure they have been presented with the full facts of the case. At present, files are submitted by DOMW without the opportunity for OEM input.</p>	
Annexure VI	List of eligible products	<ul style="list-style-type: none"> • Removal of Civil Aerospace Products will undo the effort in introducing these in DPP 2011. Instead the list could state “Services related to design, engineering, software development, manufacturing engineering, testing, Mil grade qualification & airworthiness certification and manufacture of parts, components systems of aircraft & helicopters. • Include following in Annexure VI: (1). Arms Small arms, mortars, cannons, guns, howitzers, anti-tank weapons and their systems & sub-systems. (2). Ammunition and Explosives (a) Bombs, torpedoes, rockets, missiles and their systems & sub-systems. (b) Energetic materials, explosives, propellants and pyrotechnics and their systems & sub-systems. (3). Armoured Vehicles Tracked and wheeled armoured vehicles, vehicles with ballistic protection designed for military applications, mine protected vehicles and their systems & sub-systems. (4). Defence materials including raw material (basic, critical, strategic), assemblies, sub-assemblies and components should be made explicit in the list of eligible offset products. With min 30% mandatory to be sourced under Para 3.1(a). • Inclusion of SPACE as an eligible sector for discharge of offset obligations and the following be retained in the list of eligible products in the offset policy: (a) Specially designed environmental test facilities and equipment for the certification, qualification, testing and production (b) Miscellaneous equipment and materials designed for military applications, Education, skill teaching and university partnerships. 	<ul style="list-style-type: none"> • The key objectives of Defence Offsets have been formulated with thrust on having enabling provisions to attract investment and technology in the desired areas. This is expected to enhance capability in the domestic defence manufacturing sector and promote Make in India initiative. • The products recommended are already covered in Para 1, 2, 3 & 7. • Discharge of offsets is aligned with the objectives of the proposed offset guidelines. Moreover, as per allocation of business rule SPACE is not in the domain of DDP.

DDP Comments on Summary of representations received from Indian industry and Foreign Vendors/Associations on Defence Offset Guidelines

<u>Para</u>	<u>Draft DPP 2020 Defence Offset Guidelines</u>	<u>Representations</u>	<u>DDP Comments</u>
Annexure VII	List of ToT to Government institutions and establishments	<ul style="list-style-type: none"> Private sector has the capability to absorb & exploit the technology acquired through offset route & build national capability. They may be allowed to discharge offset through eligible technologies as per Annexure VII. 	<ul style="list-style-type: none"> Selection of IOP rest with the vendors. However, in event of ToT other than mentioned in Annexure VI the same can be considered on case to case basis.
NEW SUGGESTIONS			
	Targeted Offsets	<ul style="list-style-type: none"> Allow 'skill development' as one of the avenues to discharge the offset obligations. Do not limit credits in this discharge method to the establishment of training centers. Amplifications in respect of Offset obligations in Buy (Global-manufacture in India) and Buy (Global)- Indian. Consider aspects of Covid-19 bonds under offsets and or include avenues for investment in specified SEBI regulated funds for defence, aerospace and internal security and investment in specified defence related infrastructure projects as was discussed in 2018. Clarify that changes to PoP of Procurement Contract will result in equitable adjustment to Offset Contract. Any such required adjustment should not be considered a "re-phasing" under Offset Guideline penalty provisions The offset contract should contain all applicable terms and all terms should be subject to negotiation in good faith. Therefore, recommend removal of this ambiguous clause. OEMs should be allowed opt for utilizing suitable provisions of DPP 2020 in their earlier signed contracts if they so desire after due contract amendment. 	<ul style="list-style-type: none"> Offset guidelines have been aligned with its objective. Further, investment/ToT shall inter alia provide the requisite skilling of personnel abinito to build manufacturing capability thus the concern is already addressed. Acquisition Wing to clarify on Buy (Global-manufacture in India and Buy (Global)-Indian. Covid-19 bond or any other Fund is out of context and shall be detrimental to the objective of offset guidelines for attracting investments/ToT in the desired areas. Normally it is expected that offset obligations are liquidated within the schedule provided in the contract. However, in event the PoP of main contract is amended without LD, the offset contract will also be amended without penalty. Offset contract is outcome of main acquisition contract Thus, all mutually agreed terms and conditions of the main acquisition contract are ipso facto applicable to offset contract and therefore, repeating the same clauses in the offset contract shall not have any merit.

DDP Comments on Summary of representations received from Indian industry and Foreign Vendors/Associations on Defence Offset Guidelines

<u>Para</u>	<u>Draft DPP 2020 Defence Offset Guidelines</u>	<u>Representations</u>	<u>DDP Comments</u>
		<ul style="list-style-type: none"> What constitutes 'Know-how' and 'Know-why' should be elaborated. 	<ul style="list-style-type: none"> Shall be clarified separately.
DPP 2016 5.8	Banking of offset credit	<ul style="list-style-type: none"> The provision of Offset Banking has been removed from the draft DPP 2020. But we recommend that offset banking should be allowed as it also favors the Indian companies and help them to integrate themselves with the global supply chain. 	<ul style="list-style-type: none"> The guidelines have been aligned with objectives of offset policy i.e. to attract investment and Technology in the desired area of defence sector. Offset banking comes in the way of attracting new investments and thus defeats the prime objectives of the offset policy.