PRESENTATION AT GICC 2018
PARIS, FRANCE

INDIAN DEFENCE OFFSET GUIDELINES
SCOPE

- Objective, Quantum and Scope of Defence Offsets
- Evolution of a Comprehensive Offset Policy Guidelines – Core Areas
- Other important features of latest policy guidelines
- Offset Implementation – Activities at Pre Contractual Stage
- Offset Implementation – Activities at Post Contractual Stage
- Audit Mechanism – Methodology adopted
- Facilitation to implement offset obligations effectively – Beyond Offset guidelines
OBJECTIVE OF DEFENCE OFFSETS

- To leverage the capital acquisitions to develop Indian defence industry by:
  
  - Fostering development of internationally competitive enterprises
  
  - Augmenting capacity of Research, Design and Development related to defence products and services
  
  - Encouraging development of synergistic sectors like civil aerospace and internal security
QUANTUM AND SCOPE OF OFFSETS

- Estimated cost of the acquisition proposal is Rs. 2000 Crore or more as on the date of accord of AoN

- Categorisation

  - ‘Buy (Global)’ – Outright Purchase from foreign/Indian vendors including a Joint Venture between an Indian firm and its foreign partner

  - ‘Buy and Make’ – Purchase from foreign vendor followed by Licensed Production
QUANTUM AND SCOPE OF OFFSETS

- The required value of the offset obligations is as follows:

- 30% of the estimated cost of the acquisition in ‘Buy (Global)’ category acquisitions and 30% of the foreign exchange component in ‘Buy and Make’ categories of procurements

- In case of Shipbuilding cases on competitive basis, the offset obligation is calculated on the total cost which includes basic cost of the vessel, cost of Base and Depot (B&D) spares and the modification cost
Offset obligations may be discharged through eligible products and eligible services. List of such products and services is included in the guidelines.

The offset condition forms the part of RFP and subsequently of the main contract. However, a separate offset contract is signed along with the main contract.

Offset is not applicable to procurements under FTP and ‘Option Clause’ where an offset obligation was not stipulated in the original contract.
EVOLUTION OF A COMPREHENSIVE POLICY – CORE AREAS

- Enhancement of Threshold for offsets and Expansion of avenues of offset discharge
- Expansion of list of eligible products and services
- Reporting in offset implementation schedule from quarterly to six monthly

- Period for discharge of offset obligations and extension of time for discharge
- Minimum 70% mandatory offset discharge through four avenues
- Multipliers for selecting IOPs from MSME segment and for technology acquisition by DRDO

- Cap of 20% on overall penalty within main contractual period but no capping beyond main contract
- Offset proposals are approved by Def Min regardless of their value and signed by the Acq Manager
- Simplification of Offset Banking procedure and its utilisation mechanism
ENHANCEMENT OF OFFSET THRESHOLD

- Previously (till 31 Mar 2016)
  - Capital Acquisitions categorised as ‘Buy (Global)’ ‘Buy and Make with Transfer of Technology’
  - Estimated cost of the acquisition proposal is 300 crore or more.

- Current (with effect from 01 Apr 2016)
  - Capital Acquisitions categorised as ‘Buy (Global)’ ‘Buy and Make’
  - Estimated cost of the acquisition proposal is 2000 crore or more.
Offset obligations may be discharged by any one or a combination of the following methods:

- Direct purchase of, or executing export orders for, eligible products manufactured by, or services provided by Indian enterprises. Products and services eligible for discharge of offset obligations are enlisted.

- Foreign Direct Investment in joint ventures with Indian enterprises (equity investment) for the manufacture and/or maintenance of eligible products and provision of eligible services. Such investment would be subject to the guidelines/licensing requirements.
AVENUES FOR DISCHARGE OF OFFSET OBLIGATIONS

- Investment in „kind“ in terms of 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.

- Under this avenue, the offset credit for ToT shall be 10% of the value of buyback during the period of the offset contract, to the extent of value addition in India.
AVENUES FOR DISCHARGE OF OFFSET OBLIGATIONS

- 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).

- Where the discharge of offset obligations is proposed under this avenue, the vendor will be required to buyback a minimum 40 percent of the eligible product and/or service (by value) within the permissible period for discharge of offset obligations.
AVENUES FOR DISCHARGE OF OFFSET OBLIGATIONS

- Provision of equipment and/or ToT to Government institutions and establishments engaged in the manufacture and/or maintenance of eligible products and provision of eligible services, including DRDO (as distinct from Indian enterprises). This will include augmenting capacity for Research, Design and Development, Training and Education but exclude civil infrastructure.

- Technology Acquisition by the DRDO in areas of high technology as listed in the guidelines.

- Foreign vendors could consider creation of offset programmes in anticipation of future obligations through offset banking.
A minimum 70 percent of the offset obligation must be discharged by any one or combination of the following avenues:

- Direct purchase of, or executing export orders.
- Foreign Direct Investment in joint ventures with Indian enterprises (equity investment).
- Investment in „kind“ in terms of ToT to Indian enterprises.
- Investment in „kind“ in Indian enterprises in terms of provision of equipment through the non-equity route.
• Defence Products including software specially designed or modified for the development, production or use of these items (as listed)

• Products for Inland/Coastal Security including software specially designed, developed and modified for all types of Coastal and Maritime security domain awareness, operations and data exchange and training aids

• Civil Aerospace Products including software specially designed, developed or modified for these products, training aids and test facilities and equipment

• Services (related to eligible products) viz. MRO, Upgradation, life extension, Engineering, design & testing etc
Six monthly reports are subject to audit to verify the actual status of offset implementation

- It indicates actual value fulfilled by the reporting date

- Supporting enclosures with respect to actual value fulfilled

- DOMW is responsible for monitoring the discharge of offset obligations including audit and review of yearly progress reports received from vendors

- Second report of each year indicates the annual implementation status based on which appropriate actions are initiated
VALUATION OF OFFSETS

- Only Contracts for direct purchase or export of eligible products or services or investments made in eligible products or services after signing of the main procurement contract shall be reckoned for discharging offset obligations (excluding Offset Banking).

- For the purpose of these offset guidelines, the date of discharge of offset obligations under direct purchase of, or executing export orders for, shall be reckoned as the date of invoice or the date of final payment whichever is later.

- In case of equity investment under Foreign Direct Investment or other investments or ToT and Technology Acquisition, the date of completion of the transaction shall be reckoned as the date of discharge of offset obligation.
The value of the offset components for which offset credits are sought would have to be supported by documentary evidence.

List of supporting documents required for each avenues of offset discharge is available in DOMW website.

Check lists for submission of offset implementation report and offset banking application are available at DOMW website.
PERIOD FOR DISCHARGE AND EXTENSION OF PERIOD OF PERFORMANCE (POP)

- Offset obligations are to be discharged within the period of the main procurement contract

- The period of the main contract includes the period of warranty of the equipment being procured under the main contract

- Offset obligations are to be discharged within a time frame that can extend beyond the period of the main procurement contract by a maximum period of two years

- For availing extension, the vendor is required to furnish an additional Performance Bond in the form of a Bank Guarantee covering the full value of the un-discharged offset obligations falling beyond the period of the main procurement contract. This has to be submitted six months prior to expiry of main Performance-cum-Warranty Bond
MULTIPLIER FOR MICRO, SMALL AND MEDIUM ENTERPRISES (MSME)

- In the discharge of offset obligations through Direct Purchase of, or executing export orders for, Foreign Direct Investment in joint ventures, Investment in ‘kind’ in terms of ToT and Investment in ‘kind’ in terms of provision of equipment, a multiplier of 1.50 will be permitted where MSMEs are Indian Offset Partners (IOPs).

- Monetary limit for MSMEs engaged in manufacturing of goods and engaged in providing services are defined. These monetary limits are subject to change as notified from time to time.
MULTIPLIER FOR TECHNOLOGY ACQUISITION BY DRDO

In the discharge of offset obligations through the avenue relating to technology acquisition by DRDO, a multiplier up to 3 will be permitted. Multipliers for technology acquisition by DRDO will be assigned as under:-

- Multiplier of 2.0 will be applicable when the technology is offered for use by Indian Armed Forces only but without any restriction on the numbers that can be produced.

- Multiplier of 2.5 will be applicable when the technology is offered for use only in Indian Market but for both military and civil applications and without any restriction on the numbers that can be produced.

- Multiplier of 3.0 will be applicable when the technology is offered without any restriction and with full and unfettered rights, including right to export.
LEXY OF PENALTIES

- If a vendor fails to fulfil the offset obligation in a particular year in accordance with the annual phasing as agreed in the offset contract, a penalty equivalent to five percent of the unfulfilled offset obligation will be levied on the vendor.

- The unfulfilled offset value will thereafter be re-phased over the remaining period of the offset contract.

- The penalty may either be paid by the vendor or recovered from the bank guarantee of the main procurement contract or deducted from the amount payable under the main procurement contract or recovered from the Performance Bond of the offset contract.
LEVY OF PENALTIES

- The overall cap on penalty will be 20 percent of the total offset obligation during the period of the main procurement contract.

- There will be no cap on penalty for failure to implement offset obligations during the period beyond the main procurement contract.

- The penalties are administered by DOMW in consultation with Acquisition Wing, as required.
All Offset proposals are processed by the Acquisition Manager and approved by Defence Minister, regardless of their value.

Offset proposals are also put up to Competent Financial Authority (CFA) for information.

The offset contract are signed by the Acquisition Manager after the main procurement proposal has been approved by the CFA.

Signed copies of the offset contract are made available to DOMW.
OFFSET BANKING

- Pre-approved banked offset credits are considered for discharge of offset obligations subject to a maximum of 50 percent of the total offset obligation under each procurement contract.

- The banked offset credits are remain valid for a period of seven years from the date of acceptance.

- Banked offset credits are not transferable except between the main vendor and his Tier-1 sub-vendors within the same procurement contract.

- The main vendor is required to submit a list of such Tier-1 sub-vendors along with the technical and commercial offset proposals.

- Banking of offset credits is permissible only in respect of Direct purchase of, or executing export orders for, Foreign Direct Investment in joint ventures, Investment in „kind“ in terms of ToT and Investment in „kind“ in terms of provision of equipment of offset discharge.
GUIDELINES FOR OFFSET BANKING

- The proposals for banking of offsets are to be submitted to DOMW by the vendor in the given format (Annexure III to Appendix D). The vendor shall be required to apply for banking offset credits within one year of completion of the transaction.

- A unique Project Identification Number is allotted to each proposal by DOMW.

- Offset credits are assigned for banking of offsets only after completion of the transaction. Date of completion of transaction will be the date of invoice or the date of payment whichever is later, in case of purchase of goods/services; date of financial transaction in case of equity investment; and date of commissioning of equipment/technology in India in case of investment “in kind” supported by documentary evidence. Banked offsets will be credited based on the foreign exchange value at the time of completion of the transaction.
GUIDELINES FOR OFFSET BANKING

- Banked offset credits is valid for a period of seven years from the date of acceptance by DOMW.

- If a vendor creates more offsets than his obligation under a particular contract, the surplus offset credits can be banked and would remain valid for a period of seven years from the time surplus credits are recognised and accepted by DOMW.

- Applications for banking of offset credits are normally to be disposed off by DOMW within 8 weeks.
Indian enterprises and institutions and establishments engaged in manufacture of eligible products and/or provision of eligible services, including DRDO, are referred to as the Indian Offset Partner (IOP)

The Indian offset partner shall, besides any other regulations in force, also comply with the guidelines/licensing requirements stipulated by the Department of Industrial Policy and Promotion (DIPP) as applicable (Contd).
The OEM/vendor/Tier-1 sub-vendor will be free to select the Indian offset partner for implementing the offset obligation provided the IOP has not been barred from doing business by the Ministry of Defence.

The agreement between the OEM/vendor/Tier-1 sub vendor and the IOP shall be subject to the laws of India.
RESPONSIBILITY OF VENDOR

- The Vendor of the equipment under the main procurement contract is responsible for the fulfilment of offset obligations.

- The Vendor may allow his Tier-1 sub-vendors under the main procurement contract to discharge offset obligations, to the extent of their work share (by value), on behalf of the main/prime vendor. However, overall responsibility and liability for the full discharge of offset obligations shall continue to remain with the main/prime vendor.

- Any shortfall by the Tier-1 sub-vendor shall be made good by the main/prime vendor, failing which the vendor shall be liable for penalty and debarment as stipulated in the offset guidelines.
The concept of value addition is applied only for direct purchase/export of eligible products. Value Addition will be determined by subtracting (i) value of imported components (i.e.) import content in the product and (ii) any fees/royalty paid
MANAGEMENT OF OFFSETS
FUNCTIONS OF DOMW

▪ Formulation of Defence Offset guidelines

▪ Monitoring the discharge of offset obligations, including audit and review of progress reports received from vendors

▪ Participation in Technical and Commercial evaluation of offset proposals as members of TOEC and CNC

▪ Implementation of Offset Banking guidelines

▪ Administration of penalties under offset contracts in consultation with Acquisition Wing

▪ Assisting vendors in interfacing with Indian industry

▪ Other responsibilities assigned under the offset guidelines or entrusted by the Government
FLOW CHART OF OFFSETS

DATE FOR SUBMISION OF OFFSET OFFER SPECIFIED IN RFP

RFP

OFFSET CONDITIONS DEFINED

SUBMISSION OF OFFERS

TOEC

CNC (MAIN & OFFSET)

CONTRACT (MAIN & OFFSET)

POST CONTRACT IMPLEMENTATION
Terms and conditions for submission of technical and commercial offset offer are given in RFP

Vendor to submit a written undertaking stating to meet the offset obligation as per RFP. Failure at any stage to meet the offset obligation will disqualify the vendor from any further participation in the contract and render his offer as null and void.

Date of Submission of Offset Offers (both Technical and Commercial) is given in the RFP.

Model formats for submission of Technical and Commercial offset offer are given in the offset guidelines which may be amended by the vendor without however deviating from the mandatory offset requirements prescribed in the RFP.
PROCESSING OF TECHNICAL OFFSET OFFER

- Technical Offset Offer comprise the following: -

  - Details of Products, Services & Investment as per format (Relative percentage)

- Details of Proposed Indian Offset Partners (IOP)

- Details of Banked Offset Credits, if any

- The commercial values of the offset proposals are not to be indicated in the technical offset offer
TECHNICAL EVALUATION

- The Technical Offset Evaluation Committee (TOEC) is constituted to evaluate the Technical offset proposal.

- TOEC may advise the vendor to undertake changes to bring his offset proposals in conformity with the offset guidelines.

- During TOEC, the vendor is expected to provide details pertaining to IOP wise work share, specific products and supporting documents indicating eligibility of IOPs in addition to conformity with other clauses in the offset guidelines. If the vendor is unable to provide these details at the time of the TOEC, the same may be provided to DOMW either at the time of seeking offset credits or one year prior to discharge of offset obligations through that IOP.
TECHNICAL EVALUATION

- If the vendor submits the required documents at the time of seeking offset credits, DOMW will establish eligibility of IOP, product and offset discharge avenue along with other compliance issues and if found ineligible on any count, penalty will be imposed by treating the transactions as invalid.

If the vendor submits the required documents one year prior to discharge of offset obligations through a particular IOP, the final decision regarding admissibility of proposal shall be intimated by DOMW within three months of receipt of complete documents. If the proposal is found ineligible the vendor incurs the risk of re-phasing with consequent enhancement of 5% in obligations, in case, the annual commitments change due to such ineligibility.

- The TOEC will be expected to submit its report within 4-8 weeks of its constitution.
Offset Proposals relating to Technology Acquisition by the DRDO in areas of high technology is assessed by a Technology Acquisition Committee (TAC) to be constituted by the DRDO with the approval of Scientific Advisor to Raksha Mantri. The assessments will cover both technical as well as financial parameters, including valuation of technology and also indicate the time frame and strategy for utilising the technology. The TAC will send its recommendations, duly approved by SA to RM, to the TM within a period of 4-8 weeks of its constitution, for incorporation in the TOEC Report.
PROCESSING OF COMMERCIAL OFFSET OFFER

- Commercial Offset Offer to include:
  - Translation of Technical Proposal into a Business Implementation Plan
  - Absolute amount of the Offset with detail Products, Services & Investment
  - Details of Annual Phasing/Schedule
  - Details of Indian Offset Partners (IOPs)
  - Details of Banked Offset Credits, if any
COMMERCIAL EVALUATION

The commercial offset offer will be opened along with the main commercial offer after the TOEC report has been accepted by the DG (Acquisition).

The commercial offset offer will have no bearing on determination of the L-1 vendor.

The Contract Negotiation Committee (CNC) for the main procurement case will verify that the Commercial offset offer meets the stipulated offset obligations.
COMMERCIAL EVALUATION

Only the commercial offset offer of the L-1 vendor in the main procurement proposal will be evaluated by the CNC.

The L-1 vendor may amend the Commercial offset offer at this stage, to align the proposal with the technical offset proposal, if required.

The commercial valuation of Technology Acquisition by TAC will be incorporated in the CNC Report.
SIGNING OF OFFSET CONTRACT

- Offset Contract is signed as per Model Offset Contract contained in the DPP/offset policy guidelines
- May vary depending on facts and circumstances of each case
- Offset contract is subject to the laws of India
- General term/clause that is not included in the offset contract but is included in the main procurement contract (e.g. Force Majeure, Arbitration, jurisdiction of Indian Courts, use of undue influence, Agents etc) would ipso facto apply to the offset contract
MONITORING, AUDIT AND REVIEW OF YEARLY PROGRESS REPORTS

- Vendor to submit 06 monthly reports in the specified format to DOMW. Audit of offset claims may be conducted by a nominated agency to verify the actual status of implementation.

- Offset credits are to be assigned by DOMW after scrutiny of six monthly reports.
To verify the actual status of offset implementation, following actions are taken:-

- Verification of documents as per check list
- Preliminary examination of claims by DOMW
- Complete audit by nominated agency
- Clarifications, if any, is sought from the vendor
- Status report is intimated to the vendor
- Assignment of offset credits to the vendor
OFFSET CONTRACT AMENDMENT

- Re-phasing of offset obligations
- Change of IOP and offset components
- Extension of Period of Performance (POP)
- Signing of Supplementary Offset Contract
- Clarifications at post contract stage is provided by DOMW
- Difference or disputes with vendors are to be settle through discussion
FACILITATION

- Functioning of Facilitation Cell of DOMW
- Clarifications on requirements of Industrial License
- Clarification on FDI in Defence Sector
- Continuous review of offset policy
THANK YOU