

L-3 Communications Corporation 22 CFR 124.13 Offshore Procurement Guidelines

The procedures to send out technical data (build-to-print/specifications) for Offshore Procurement of Defense Articles are:

Export of Build-to-Print Technical Data for Bid Consideration for Offshore Procurement

1. Determine if an Exemption applies to the export of technical data. If not, then
2. Submit a DSP-5 Technical Data License Application
 - Cover Letter Subject: DSP-5 Technical Data License Application For Potential Offshore Procurement of [Commodity] in [Country] for [Program/Purpose]
 - Enclose Technical Data (build-to-print, specifications, drawings, Request For Proposal (RFP))
 - DSP-5 Application Form
 - Block 20 shall state: "Technical Bid Package for Potential Offshore Procurement of [Commodity] for [Program/Purpose]"

Initiation of Offshore Procurement

- Draft Contract or Purchase Order to Foreign Entity
 - Must include ITAR clauses 22 CFR 124.13(c)(1-6)
 - Must not become effective until AFTER notified to DDTC
- Submit Notification Letter to DDTC
 - Subject: Execution of Offshore Procurement License (Number)
 - Reference Offshore Procurement License
 - Enclose Contract, Purchase Order (PO), Statement of Work (SOW)
 - Contract, PO, or SOW shall contain clauses stipulated in 22 CFR 124.13(c)(1-6)
 - In the letter, provide a chart of where required ITAR clauses are located within the Contract, PO, or SOW

*Use a DSP-73 Temporary Export License Application to accomplish the following:

- Export specialized testing or tooling equipment that will be returned to the U.S.
- Return defective commodity that was manufactured under the Offshore Procurement for repair or replacement

*Use a DSP-5 Hardware License Application to accomplish the following:

- Export components to be incorporated into the commodity that is being manufactured under the Offshore Procurement

* In these cases, ensure that the specific purpose (Block 21 of the DSP-73 and Block 20 of the DSP-5) include "in furtherance of Offshore Procurement License [Number] in accordance with the conditions established in the ITAR, including §124.13"

Notes

- Offshore Procurement cannot involve Significant Military Equipment (SME), which shall be the subject of a Manufacturing License Agreement (MLA).
- Offshore Procurement is limited to build-to-print or build-to-specification technical data and does not cover other manufacturing know-how or assistance.
- Offshore Procurement is limited to the delivery of the commodity to the U.S. Applicant or USG.
- If the foreign entity requires manufacturing information or know-how, then a Manufacturing License Agreement (MLA) is required.
- If the foreign entity requires technical assistance other than manufacturing information or know-how, e.g. assembly, then a Technical Assistance Agreement (TAA) is required.
- Exemption 22 CFR 125.4(c) cannot be used to establish Offshore Procurement.
- See ITAR 22 CFR 124.13 for all requirements and provisions of Offshore Procurement

Definitions:

- Build-to-Print (22 CFR 124.13) – Producing an end-item (i.e., system, subsystem or component) from technical drawings and specifications (which contain no process or know-how information) without the need for additional technical assistance.
- Build-to-Print (22 CFR 125.4) – Foreign consignee can produce a defense article from engineering drawings without any technical assistance from an U.S. exporter. This transaction is based strictly on a “hands-off” approach since the foreign consignee is understood to have the inherent capability to produce the defense article and only lacks the necessary drawings. Supporting documentation such as acceptance criteria, and specifications, may be released on an as-required basis (i.e. “must have”) such that the foreign consignee would not be able to produce an acceptable defense article without this additional supporting documentation. Documentation which is not absolutely necessary to permit manufacture of an acceptable defense article (i.e. “nice to have”) is not considered within the boundaries of a “Build-to-Print” data package.
- Build/Design-to-Specification (22 CFR 125.4) – Foreign Consignee can design and produce a defense article from requirement specifications without any technical assistance from the U.S. exporter. This transaction is based strictly on a “hands-off” approach since the foreign consignee is understood to have the inherent capability to both design and produce the defense article and only lacks the necessary requirement information.