



ACQUISITION AND
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

February 4, 1998

DP (DAR)

In reply refer to
FAR Case: 97-D321
D. L. 98-001

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

SUBJECT: Waiver of Domestic Source Restrictions

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) at 225.872, 225.70, and 252.225 to implement Section 811 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85). Section 811 limits the waiver authority provided in 10 U.S.C. 2534(d). Therefore, the waiver of the restrictions of 10 U.S.C. 2534(a), that was signed by the Under Secretary of Defense (Acquisition and Technology) on April 7, 1997, under the prior authority of 10 U.S.C. 2534(d), is no longer applicable.

The attached interim DFARS rule is effective immediately and will be included in a future Defense Acquisition Circular.

Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir



**DFARS Case 97-D321
Waiver of Domestic Source Restrictions
Interim Rule**

PART 225—FOREIGN ACQUISITION

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225.872 Contracting with qualifying country sources.

225.872-1 General.

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~~-(d) The Secretary of Defense has waived the restrictions of 10 U.S.C. 2534(a) for the acquisition of defense items manufactured in a qualifying country listed in paragraph (a) or (b) of this subsection, in accordance with the provisions of 10 U.S.C. 2534(d)(3).~~

225.7005 Waiver of certain restrictions.

~~-(a) The Secretary of Defense has waived the restrictions of 10 U.S.C. 2534(a) for the acquisition of defense items manufactured in a qualifying country listed in 225.872-1, in accordance with the provisions of 10 U.S.C. 2534(d)(3).~~

~~(b) Where provided for elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534(a) may be waived as follows:~~

[(a)(1) The Under Secretary of Defense (Acquisition and Technology), without power of delegation, may waive the restriction for a particular item for a particular foreign country upon determination that—

(i) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country; or

(ii) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(2) A notice of the determination to exercise the waiver authority must be published in the Federal Register and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(3) Such waiver shall be in effect for a period not greater than 1 year.

(4[b]) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(i[1]) The restriction would cause unreasonable delays.

(ii) ~~United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.~~

~~(iii) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.~~

(iv[2]) Satisfactory quality items manufactured in the United States or Canada are not available.

(v[3]) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.

(vi[4]) Application of the restriction is not in the national security interests of the United States.

(vii[5]) Application of the restriction would adversely affect a U.S. company.

(2[c]) The restriction is waived when it would cause unreasonable costs. The cost of the item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not of U.S. or Canadian origin.

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225.7007 Restriction on acquisition of foreign buses.

225.7007-1 Restriction.

In accordance with 10 U.S.C. 2534 and 225.7005(a), do not acquire a multipassenger motor vehicle (bus) unless it is manufactured in the United States or a ~~qualifying country~~[Canada].

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225.7007-3 Exceptions.

This restriction does not apply in any of the following circumstances:

(a) Buses manufactured ~~in nonqualifying countries~~ [outside the United States and Canada] are needed for temporary use because buses manufactured in the United States or a ~~qualifying country~~ [Canada] are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States or a ~~qualifying country~~[Canada].

(b) The requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, buses manufactured ~~in nonqualifying countries~~ [outside the United States and Canada] may be used for temporary periods of time. Such use may not, however, exceed the period of time needed to meet the special requirement.

(c) Buses manufactured ~~in nonqualifying countries~~ [outside the United States and Canada] are available at no cost to the U.S. Government.

(d) The acquisition is for an amount that does not exceed the simplified acquisition threshold.

225.7007-4 Waiver.

The waiver criteria at 225.7005(b) apply to this restriction.

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225.7010 Restriction on certain chemical weapons antidote.

225.7010-1 Restriction.

In accordance with 10 U.S.C. 2534 and defense industrial mobilization requirements (see Subpart 208.72), do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the injector[**chemical weapons antidote**] or component is manufactured in the United States or Canada by a company that—

- (a) Is a producer under the industrial preparedness program at the time of contract award;
- (b) Has received all required regulatory approvals; and
- (c) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

225.7010-2 Exception.

~~In accordance with 10 U.S.C. 2534(g) and 225.7005(a), t[**T**]he restriction of 225.7010-1 does not apply to the acquisition of quantities of chemical weapons antidote contained in automatic injectors, or the components for such injectors, that exceed the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity), if—~~

- ~~—(a) T[**t**]he acquisition is for an amount that does not exceed the simplified acquisition threshold;~~
- ~~or~~
- ~~—(b) The chemical weapons antidote contained in automatic injectors, or the components for such injectors, are manufactured in a qualifying country.~~

225.7010-3 Waiver.

The waiver criteria at 225.7005(b) apply to this restriction.

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225.7016 Restriction on air circuit breakers for naval vessels.

225.7016-1 Restriction.

In accordance with 10 U.S.C. 2534 and 225.7005(a), do not acquire air circuit breakers for naval vessels unless they are manufactured in the United States or a qualifying country[**Canada**].

225.7016-2 Exceptions.

This restriction does not apply if—

- (a) The acquisition is for an amount that does not exceed the simplified acquisition threshold;
or
- (b) Spare or repair parts are needed to support air circuit breakers manufactured ~~in a nonqualifying country~~[**outside the United States and Canada**]. Support includes the purchase of spare air circuit breakers where those from alternate sources are not interchangeable.

225.7016-3 Waiver.

The waiver criteria at 225.7005(b) apply to this restriction.

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225.7019 Restrictions on ball and roller bearings.

225.7019-1 Restrictions.

- (a) In accordance with 10 U.S.C. 2534 and 225.7005(a), through fiscal year 2000, do not acquire ball and roller bearings or bearing components that are not manufactured in the United States or a qualifying country [Canada].

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225.7019-3 Waiver.

- (a) The head of the contracting activity may waive the restriction in 225.7019-1(a)—

(1) Upon execution of a determination and findings that—

* * * * *

~~(iii) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.~~

~~(iv) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.~~

~~(v)[iii]~~

~~(vi)[iv]~~

~~(vii)[v]~~

* * * * *

[(b)(1) The Under Secretary of Defense (Acquisition and Technology), without power of delegation, may waive the restriction in 225.7019-1(a) for a particular foreign country upon determination that—

- (i) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country; or**
- (ii) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the**

United States to a greater degree than the United States discriminates against defense items produced in that country.

(2) A notice of the determination to exercise the waiver authority must be published in the Federal Register and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(3) Such waiver shall be in effect for a period not greater than 1 year.

(b)(c) * * *

225.7022 Restrictions on totally enclosed lifeboat survival systems.

225.7022-1 Restrictions.

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(b) In accordance with 10 U.S.C. 2534(a)(3)(B) ~~and 225.7005(a)~~, do not purchase a totally enclosed lifeboat that is a component of a naval vessel, unless it is manufactured in the United States or ~~a qualifying country~~ [Canada]. In accordance with 10 U.S.C. 2534(h), this restriction may not be implemented through the use of a contract clause or certification. Implementation shall be effected through management and oversight techniques that achieve the objective of the restriction without imposing a significant management burden on the Government or the contractor involved.

225.7022-2 Exceptions.

The restriction in 225.7022-1(b) does not apply if—

- (a) The acquisition is for an amount that does not exceed the simplified acquisition threshold; or
- (b) Spare or repair parts are needed to support totally enclosed lifeboats manufactured ~~in a nonqualifying country~~ [outside the United States and Canada].

225.7022-3 Waiver.

The waiver criteria at 225.7005(b) apply only to the restriction of 225.7022-1(b).

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings.

As prescribed in 225.7019-4, use the following clause:

RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS
(~~JUN 1997~~[FEB 1998])

* * * * *

(c)(1) The restriction in paragraph (b) of this clause does not apply to the extent that—

~~(i) T~~[t]he end items or components containing ball or roller bearings are commercial items; ~~or~~

~~(ii) The ball or roller bearings are commercial items manufactured in a qualifying country listed in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.~~

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252.225-7029 Preference for United States or Canadian Air Circuit Breakers.

As prescribed in 225.7016-4, use the following clause:

PREFERENCE FOR UNITED STATES OR CANADIAN AIR CIRCUIT
BREAKERS (~~JUN 1997~~**[FEB 1998]**)

- (a) Unless otherwise specified in its offer, the Contractor agrees that air circuit breakers for naval vessels provided under this contract shall be manufactured in the United States or ~~a qualifying country listed in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement (DFARS)~~**[Canada]**.
- (b) Unless an exception applies or a waiver is granted under 225.7005~~[(a) or](b)(1)~~ of the ~~DFARS~~**[Defense Federal Acquisition Regulation Supplement]**, preference will be given to air circuit breakers manufactured in the United States or Canada by adding 50 percent for evaluation purposes to the offered price of all other air circuit breakers, ~~except air circuit breakers manufactured in a qualifying country.~~

(End of clause)