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IN REPLY REFER TO DLSC-P
PROCLTR 98- 13

JUL 0 1 1998

MEMORANDUM FOR PROCLTR DISTRIBUTION

SUBJECT: Waiver of Domestic Source Restrictions

The purpose of the PROCLTR is to provide a copy of the Director of Defense Procurement Departmental Letter (D. L.) 98-010, dated May 22, 1998. This letter amends the interim rule provided in D. L. 98-001 (see PROCLTR 98-04) and provides the final rule, with changes, to Defense Federal Acquisition Regulation Supplement (DFARS) coverage at 225.70.

The interim rule partially implemented Section 811 of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105-85) which limited the authority provided to DoD in 10 U.S.C. 2534(d) to waive domestic source restrictions. The attached DFARS revision adds guidance to clarify the application of waivers to modifications of existing contracts. The final rule retains the deletion of DFARS 225.872-1(d) shown in the interim rule.

This PROCLTR supersedes PROCLTR 98-04, dated March 12, 1998, which is hereby canceled. This PROCLTR is effective immediately and expires upon incorporation in a future Defense Acquisition Circular, or 1 year from the date of this letter, whichever occurs first. The point of contact for this PROCLTR, should you have questions, is Stephanie Pennello. She can be contacted telephonically at (703) 767-1355 or DSN 427-1355, or via E-mail at stephanie_pennello@hq.dla.mil.

Attachment

THOMAS D. RAY
Assistant Executive Director, Procurement
(Operations & Program Management)

Federal Recycling Program Printed on Recycled Paper

ACQUISITION AND TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

May 22, 1998

DP(DAR)

In reply refer to
DFARS Cases: 97-D321
D. L. 98-010

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 225.70 to revise and finalize the interim rule issued by Departmental Letter 98-001, which implemented 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). We have added guidance to clarify the application of waivers to subcontracts and certain options under existing contracts.

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

Eleanor Spector

Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir

DFARS Case 97-D321
Waiver of Domestic Source Restrictions
Final Rule

PART 225—FOREIGN ACQUISITION

* * * * *

225.7005 Waiver of certain restrictions.
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) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, such waiver shall be applied as directed or authorized in the waiver to—

(i) Subcontracts entered into on or after the effective date of the waiver; and

(ii) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.]

(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:

(1) The restriction would cause unreasonable delays.

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

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

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

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

(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.

* * * * *

225.7007 Restriction on acquisition of foreign buses.

225.7007-1 Restriction.
In accordance with 10 U.S.C. 2534, do not acquire a multipassenger motor vehicle (bus) unless it is manufactured in the United States or Canada.

* * * * *

225.7007-3 Exceptions.
This restriction does not apply in any of the following circumstances:

(a) Buses manufactured outside the United States and Canada are needed for temporary use because buses manufactured in the United States or 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 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 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 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 apply to this restriction.

* * * * *

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 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.
The restriction of 225.7010-1 does not apply if the acquisition is for an amount that does not exceed the simplified acquisition threshold.

225.7010-3 Waiver.
The waiver criteria at 225.7005 apply to this restriction.

* * * * *

225.7016 Restriction on air circuit breakers for naval vessels.

225.7016-1 Restriction.
In accordance with 10 U.S.C. 2534, do not acquire air circuit breakers for naval vessels unless they are manufactured in the United States or 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 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 apply to this restriction.

* * * * *

225.7019 Restrictions on ball and roller bearings.

225.7019-1 Restrictions.

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

* * * * *

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—

(i) No domestic (U.S. or Canadian) bearing manufacturer meets the requirement;

(ii) It is not in the best interests of the United States to qualify a domestic bearing to replace a qualified nondomestic bearing. This determination must be based on a finding that the qualification of a domestically manufactured bearing would cause unreasonable costs or delay. A finding that a cost is unreasonable should take into consideration DoD policy to assist the domestic industrial mobilization base. Contracts should be awarded to domestic bearing manufacturers to increase their capability to reinvest and become more competitive;

(iii) Application of the restriction would result in the existence of only one source for the item in the United States or Canada;

(iv) Application of the restriction is not in the national security interests of the United States; or

(v) Application of the restriction would adversely affect a U.S. company.

* * * * *

(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.

[(4) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, such waiver shall be applied as directed or authorized in the waiver to—

(i) Subcontracts entered into on or after the effective date of the waiver; and

(ii) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.]

(c) The Secretary of the department responsible for the acquisition may waive the restriction in 225.7019-1(b) on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(1) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(2) The acquisition must be made in order to acquire capability for national security purposes.

* * * * *

225.7022 Restrictions on totally enclosed lifeboat survival systems.

225.7022-1 Restrictions.

* * * * *

(b) In accordance with 10 U.S.C. 2534(a)(3)(B), do not purchase a totally enclosed lifeboat that is a component of a naval vessel, unless it is manufactured in the United States or 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 outside the United States and Canada.

225.7022-3 Waiver.
The waiver criteria at 225.7005 apply only to the restriction of 225.7022-1(b).

* * * * *

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
(FEB 1998)

* * * * *

(c)(1) The restriction in paragraph (b) of this clause does not apply to the extent that the end items or components containing ball or roller bearings are commercial items.

* * * * *

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 (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 Canada.

(b) Unless an exception applies or a waiver is granted under 225.7005(a) or (b) of the 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.

(End of clause)