

DFARS Procedures, Guidance, and Information

PGI 225—Foreign Acquisition

(Revised January 22, 2007)

PGI 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION

PGI 225.7002 Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools.

PGI 225.7002-1 Restrictions.

(a)(2)(A) The following are examples, not all-inclusive, of Federal Supply Classes that contain items of clothing:

(1) Clothing apparel (such as outerwear, headwear, underwear, nightwear, footwear, hosiery, or handwear) listed in Federal Supply Class 8405, 8410, 8415, 8420, 8425, 8450, or 8475.

(2) Footwear listed in Federal Supply Class 8430 or 8435.

(3) Hosiery, handwear, or other items of clothing apparel, such as belts and suspenders, listed in Federal Supply Class 8440 or 8445.

(4) Badges or insignia listed in Federal Supply Class 8455.

(B) The Federal Supply Classes listed in paragraph (a)(2)(A) of this subsection also contain items that are not clothing, such as—

(1) Visors;

(2) Kevlar helmets;

(3) Handbags; and

(4) Plastic identification tags.

(C) Each item should be individually analyzed to determine if it is clothing, rather than relying on the Federal Supply Class alone to make that determination.

(D) The fact that an item is excluded from the foreign source restriction of the Berry Amendment applicable to clothing does not preclude application of another Berry Amendment restriction in DFARS 225.7002-1 to the components of the item.

(E) Small arms protective inserts (SAPI plates) are an example of items added to, and not normally associated with, clothing. Therefore, SAPI plates are not covered

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under the Berry Amendment as clothing. However, fabrics used in the SAPI plate are still subject to the foreign source restrictions of the Berry Amendment. If the fabric used in the SAPI plate is a synthetic fabric or a coated synthetic fabric, the fibers and yarns used in the fabric are not covered by the Berry Amendment, because the fabric is a component of an end product that is not a textile product (see DFARS 225.7002-2(o)).

Example: A SAPI plate is compliant with the Berry Amendment if the synthetic fiber or yarn is obtained from foreign country X and woven into synthetic fabric in the United States, which is then incorporated into a SAPI plate manufactured in foreign country Y.

(b) Under Secretary of Defense (Acquisition, Technology, and Logistics) memorandum of June 1, 2006, Subject: Berry Amendment Compliance for Specialty Metals, provides guidance on dealing with specialty metal parts that are noncompliant with the requirements of the Berry Amendment (10 U.S.C. 2533a). Also see the DCMA interim instruction addressing noncompliance with the Preference for Domestic Specialty Metals clause, DFARS 252.225-7014, at <http://guidebook.dcm.mil/225/instructions.htm>.

PGI 225.7002-2 Exceptions.

(b) *Domestic nonavailability determination.*

(3) *Defense agencies.*

(A) A defense agency requesting a domestic nonavailability determination must submit the request, including the proposed determination, to—

Director, Defense Procurement and Acquisition Policy
ATTN: OUSD(AT&L)DPAP(PAIC)
3060 Defense Pentagon
Washington, DC 20301-3060.

(B) The Director, Defense Procurement and Acquisition Policy, will forward the request to the Under Secretary of Defense (Acquisition, Technology, and Logistics) as appropriate.

(C) If the domestic nonavailability determination is for the acquisition of titanium or a product containing titanium, the submission shall also include the associated congressional notification letters required by DFARS 225.7002-2(b)(4), for concurrent signature by the Under Secretary of Defense (Acquisition, Technology, and Logistics). The defense agency does not need to take any further action with regard to DFARS 225.7002-2(b)(4).

(4) *Army, Navy, and Air Force.*

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Send the copy of the congressional notification and the domestic nonavailability determination for the acquisition of titanium or a product containing titanium to—

Director, Defense Procurement and Acquisition Policy
ATTN: OUSD(AT&L)DPAP(PAIC)
3060 Defense Pentagon
Washington, DC 20301-3060.

(5) *Related policy memoranda.*

The DoD memoranda regarding domestic nonavailability determinations implemented in DFARS 225.7002-2(b) are as follows:

Deputy Secretary of Defense memorandum of May 1, 2001, Subject: The Berry Amendment, provides policy regarding domestic nonavailability determinations. This memorandum is implemented at DFARS 225.7002-2(b)(1) through (3).

Under Secretary of Defense (Acquisition, Technology, and Logistics) memorandum of October 22, 2004, Subject: Congressional Notification of Determinations Under 10 U.S.C. 2533a (The Berry Amendment) for Procurement of Foreign Titanium, provides policy regarding Congressional notification of domestic nonavailability determinations involving titanium or products containing titanium. This memorandum is implemented at DFARS 225.7002-2(b)(4).

PGI 225.7017 Restriction on Ballistic Missile Defense research, development, test, and evaluation.

PGI 225.7017-3 Exceptions.

(b) Before awarding a contract to a foreign entity for conduct of ballistic missile defense research, development, test, and evaluation (RDT&E), the head of the contracting activity must certify, in writing, that a U.S. firm cannot competently perform a contract for RDT&E at a price equal to or less than the price at which a foreign government or firm would perform the RDT&E. The contracting officer or source selection authority must make a determination that will be the basis for that certification, using the following procedures:

- (i) The determination shall—
 - (A) Describe the contract effort;
 - (B) State the number of proposals solicited and received from both U.S. and foreign firms;
 - (C) Identify the proposed awardee and the amount of the contract;

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(D) State that selection of the contractor was based on the evaluation factors contained in the solicitation, or the criteria contained in the broad agency announcement; and

(E) State that a U.S. firm cannot competently perform the effort at a price equal to, or less than, the price at which the foreign awardee would perform it.

(ii) When either a broad agency announcement or program research and development announcement is used, or when the determination is otherwise not based on direct competition between foreign and domestic proposals, use one of the following approaches:

(A) The determination shall specifically explain its basis, include a description of the method used to determine the competency of U.S. firms, and describe the cost or price analysis performed.

(B) Alternately, the determination may contain—

(1) A finding, including the basis for such finding, that the proposal was submitted solely in response to the terms of a broad agency announcement, program research and development announcement, or other solicitation document without any technical guidance from the program office; and

(2) A finding, including the basis for such finding, that disclosure of the information in the proposal for the purpose of conducting a competitive acquisition is prohibited.

(iii) Within 30 days after contract award, forward a copy of the certification and supporting documentation to the Missile Defense Agency, ATTN: MDA/DRI, 7100 Defense Pentagon, Washington, DC 20301-7100.

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PGI 246—Quality Assurance

(Added January 22, 2007)

PGI 246.3—CONTRACT CLAUSES

PGI 246.371 Notification of potential safety issues.

(1) The objective of this requirement is to ensure that the Government receives timely notification of potential safety defects so that—

(i) Systems and equipment likely affected by the situation can be identified; and

(ii) An appropriate engineering investigation and follow-on actions can be taken to establish and mitigate risk.

(2) The notification is intended to be neither an admission of nor a release from liability.

(3) Upon notification of a potential safety nonconformance or deficiency—

(i) The procuring contracting officer must—

(A) Advise the affected program office(s) or integrated materiel manager(s); and

(B) Request a point of contact from the affected program office(s) or materiel management organization to assess the impact of the situation, address technical concerns, and provide recommendations;

(ii) The administrative contracting officer must—

(A) Confirm that potentially affected program offices, integrated materiel managers, and other contract management offices that may be recipients of the suspect items are aware of the situation; and

(B) Identify a point of contact to provide support and technical assistance to the investigative team; and

(iii) For replenishment parts, the integrated materiel manager must—

(A) Identify any potentially affected programs or equipment; and

(B) Request engineering assistance from affected engineering support activities, as prescribed by—

(1) DLAI 3200.1/PAM 715.13/NAVSUPINST 4120.30A/AFI 21-408/MCO 4000.18, Engineering Support Instruction for Items Supplied by Defense Logistics Agency;

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(2) SECNAVINST 4140.2/AFI 20-106/DA PAM 95-9/DLAI 3200.4/DCMA INST CSI (AV), Management of Aviation Critical Safety Items;

(3) DA PAM 738-751, Functional Users Manual for the Army Maintenance Management System—Aviation (TAMMS-A);

(4) AMCOM REG 702-7, Flight Safety Parts/New Source Testing Program Management; or

(5) Internal agency procedures.