

DFARS Procedures, Guidance, and Information

PGI 202—DEFINITIONS OF WORDS AND TERMS

(Revised March 28, 2014)

PGI 202.1—DEFINITIONS

PGI 202.101 Definitions.

DoD contracting activities are—

- (1) Department of Defense.
 - Department of Defense Education Activity
 - Joint Improvised Explosive Device Defeat Organization
 - TRICARE Management Activity
 - Washington Headquarters Services, Acquisition Directorate

- (2) Department of the Air Force.
 - Office of the Assistant Secretary of the Air Force (Acquisition)
 - Office of the Deputy Assistant Secretary (Contracting)
 - Air Force Materiel Command
 - Air Force Space Command
 - Air Combat Command
 - Air Mobility Command
 - Air Education and Training Command
 - Pacific Air Forces
 - United States Air Forces in Europe
 - Air Force Special Operations Command
 - Air Force Reserve Command
 - Air Force Global Strike Command
 - Air Force Life Cycle Management Center
 - Air Force District of Washington
 - United States Air Force Academy
 - Air Force Operational Test and Evaluation Center
 - Space and Missile Systems Center
 - Air Force Intelligence, Surveillance and Reconnaissance Agency

- (3) Department of the Army.
 - Deputy Assistant Secretary of the Army (Procurement)
 - Headquarters, U.S. Army Materiel Command
 - Headquarters, U.S. Army Medical Command
 - Joint Theater Support Contracting Command
 - National Guard Bureau
 - Program Executive Office for Simulation, Training, and Instrumentation
 - U.S. Army Corps of Engineers
 - U.S. Army Intelligence and Security Command

- (4) Department of the Navy.

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Office of the Deputy Assistant Secretary of the Navy (Acquisition & Procurement)

Marine Corps Systems Command
Military Sealift Command
Installations and Logistics, Headquarters, U.S. Marine Corps
Naval Air Systems Command
Naval Facilities Engineering Command
Naval Sea Systems Command
Naval Supply Systems Command
Office of Naval Research
Space and Naval Warfare Systems Command
Strategic Systems Programs

(5) Defense Advanced Research Projects Agency.
Office of the Deputy Director, Management

(6) Defense Commissary Agency.
Directorate of Contracting

(7) Defense Contract Management Agency.
Office of the Executive Director, Contracts, Defense Contract Management Agency

(8) Defense Finance and Accounting Service.
External Services, Defense Finance and Accounting Service

(9) Defense Information Systems Agency.
Defense Information Technology Contracting Organization

(10) Defense Intelligence Agency.
Office of Procurement

(11) Defense Logistics Agency.
DLA Acquisition (J-7)
DLA Aviation
DLA Energy
DLA Land and Maritime
DLA Troop Support

(12) Defense Security Cooperation Agency.
Contracting Division

(13) Defense Security Service.
Office of Acquisitions

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- (14) Defense Threat Reduction Agency.
Acquisition Management Office
- (15) Missile Defense Agency.
Headquarters, Missile Defense Agency
- (16) National Geospatial-Intelligence Agency.
Procurement and Contracting Office
- (17) National Security Agency.
Headquarters, National Security Agency
- (18) United States Special Operations Command.
Headquarters, United States Special Operations Command
- (19) United States Transportation Command.
Directorate of Acquisition

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PGI 203—Improper Business Practices and Personal Conflicts of Interest

(Revised March 28, 2014)

PGI 203.5--OTHER IMPROPER BUSINESS PRACTICES

PGI 203.570 Prohibition on persons convicted of fraud or other defense-contract-related felonies.

PGI 203.570-1 Scope.

The complete text of 10 U.S.C. 2408, Prohibition on Persons Convicted of Defense-Contract Related Felonies and Related Criminal Penalty on Defense Contractors, is available at <http://uscode.house.gov/> (Select “Search the U.S. Code”; then type “10 USC Sec. 2408” (including the quotation marks) in the search engine window and click on the search button).

PGI 203.570-2 Prohibition period.

(a)(1) The contracting officer shall—

- (i) Review any request for waiver; and
- (ii) Deny the request if the contracting officer decides the waiver is not required in the interests of national security; or
- (iii) Forward the request to the head of the agency or designee for approval if the contracting officer decides the waiver may be in the interest of national security.

(2) The head of the agency or designee shall report all waivers granted, and the reasons for granting the waiver, to the Under Secretary of Defense (Acquisition, Technology, and Logistics), who will forward the report to Congress as required by 10 U.S.C. 2408(a)(3).

(3) Guidance on using the Exclusions section of the System for Award Management is available at [PGI 209.105-1](#).

(b) Submit a copy of the determination to Bureau of Justice Assistance, U.S. Department of Justice, 810 Seventh Street, NW, Washington, DC 20531.

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PGI 225—Foreign Acquisition

(Revised March 28, 2014)

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

PGI 225.7002 Restrictions on food, clothing, fabrics, 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 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\(m\)](#)).

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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) *Hand or measuring tools.*

(1) As applied to hand or measuring tools, “produced in the United States” means that the hand or measuring tool was assembled in the United States out of components, or otherwise made from raw materials into the finished product that is to be provided to the Government.

(2) If a hand or measuring tool was assembled in a country other than the United States, then disassembled and reassembled in the United States, the hand or measuring tool was not produced in the United States.

(3) The requirement to buy hand or measuring tools produced in the United States does not impose any restriction on the source of the components of the hand or measuring tools. This is unlike the Berry Amendment restriction on clothing (see [225.7002-1\(a\)\(2\)](#)), which explicitly requires domestic source for the materials and components of clothing (other than unusual components such as sensors or electronics), as well as the additional separate restrictions on various types of fibers and fabrics that might be components of the clothing.

(4) If the acquisition of the hand or measuring tools is also subject to the Buy American statute (see FAR subpart 25.1), then in order to qualify as a domestic end product, the cost of the components mined, produced, or manufactured in the United States or a qualifying country, must exceed 50 percent of the cost of all the components of the hand or measuring tool.

PGI 225.7002-2 Exceptions.

(b) *Domestic nonavailability determinations.*

(3) *Defense agencies other than the Defense Logistics Agency.*

(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/CPIC
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) (USD(AT&L)) as appropriate.

(4) *Reciprocal use of domestic nonavailability determinations (DNADs).*

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The military departments and the Defense Logistics Agency should establish approval authority, policies, and procedures for the reciprocal use of DNADs. General requirements for broad application of DNADs are as follows:

(A) A class DNAD approved by the USD(AT&L), the Secretary of a military department, or the Director of the Defense Logistics Agency may be used by USD(AT&L), another military department, or the Defense Logistics Agency, provided the same rationale applies and similar circumstances are involved.

(B) DNADs should clearly establish—

- (1) Whether the determination is limited or unlimited in duration; and
- (2) If application outside the approving military department is appropriate.

(C) Upon approval of a DNAD, if application outside the approving military department is appropriate, the approving department shall provide a copy of the DNAD, with information about the items covered and the duration of the determination, to—

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

(D) Before relying on an existing DNAD, contact the approving office for current guidance as follows:

- (1) USD(AT&L): DPAP/CPIC, 703-697-9352.
- (2) Army: ASA/ALT, 703-604-7006.
- (3) Navy: DASN (Acquisition and Logistics Management), 703-614-9600.
- (4) Air Force: AQCK, 571-256-2384.
- (5) Defense Logistics Agency: J-71, Acquisition Policy Division, 703-767-1461.

PGI 225.7003 Restrictions on acquisition of specialty metals.

PGI 225.7003-2 Restrictions.

(a)(i) This restriction applies to the item containing the specialty metal, not just the specialty metal, as was true when the restriction was part of 10 U.S.C. 2533a. The previous practice of withholding payment while conditionally accepting noncompliant items is not permissible for—

(A) Contracts entered into on or after November 16, 2006; or

(B) New procurements or out-of-scope changes accomplished on or after November 16, 2006, through the use of bilateral modifications to contracts originally awarded prior to

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November 16, 2006.

(ii) Consistent with the definition of “component” in the clause at DFARS [252.225-7009](#), a component is any item supplied to the Government as part of an end item or of another component. Items that are not incorporated into any of the items listed in DFARS [225.7003-2\(a\)](#) are not components of those items. For example, test equipment, ground support equipment, or shipping containers are not components of the missile system.

PGI 225.7003-3 Exceptions.

(b)(2) *Report of COTS items.*

If a department or agency uses the exception at DFARS [225.7003-3\(b\)\(2\)](#) for an acquisition of COTS end items valued at \$5 million or more per item, the department or agency shall address use of the exception in a year-end report, to be prepared and submitted as follows:

(A) Entitle the report “COTS Specialty Metal Exceptions Granted During Fiscal Year _____.”

(B) For each excepted COTS item purchased during the fiscal year, include in the report, at a minimum, the applicable—

- (1) Contract number and any applicable delivery order number;
- (2) Dollar value; and
- (3) Item description.

(C) Submit the report by October 31 of each year to:

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

(b)(5) Domestic specialty metals nonavailable as and when needed.

(A) Determining availability.

(1) FAR 15.402 requires that contracting officers purchase supplies and services at fair and reasonable prices. Thus, contracting officers must determine whether any increase in contract price that results from providing compliant specialty metal is fair and reasonable, given the circumstances of the particular situation. In those cases where the contracting officer determines that the price would not be fair and reasonable, the Secretary of the military department concerned may use that information in determining whether the unreasonable price causes the compliant metal to be effectively “nonavailable.” Where these “reasonableness” limits should be drawn is a case-by-case decision.

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(2) A similar approach may be used to determine whether delays associated with incorporating compliant specialty metals into items being acquired results in the metals being effectively nonavailable.

(B) Class domestic nonavailability determinations (DNADS). Class DNADS approved by USD(AT&L), that are available for reciprocal use in contracts issued before July 26, 2008, can be found at <http://www.dema.mil/dnad/>. These determinations are not authorized for use in contracts issued on or after July 26, 2008.

(C)(1) A department or agency requesting a determination or approval from USD(AT&L) in accordance with DFARS [225.7003-3\(b\)\(5\)](#) shall submit the request, including the proposed determination, to—

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

(2) The Director, Defense Procurement and Acquisition Policy, will forward the request to USD(AT&L) as appropriate.

(b)(6) *Application of specialty metals restrictions to magnets.*

HPM = High performance magnet
COTS = Commercially available off-the-shelf

Magnet made of specialty metal is:	Commercially available, HPM	NOT Commercially available, HPM	COTS, NOT HPM	NOT COTS, NOT HPM
Incorporated into COTS assembly or COTS end item	NOT restricted	*	NOT restricted	*
NOT incorporated into COTS assembly or COTS end item	Restricted	Restricted	NOT restricted	Restricted
Included in 2 percent minimum content?	Cannot be included in 2 percent minimum content	Cannot be included in 2 percent minimum content	NOT restricted	Can be included in 2 percent minimum content

* By definition, COTS assemblies and COTS end items will not include a HPM that is not commercially available or any other magnet that is not COTS.

(c) Compliance for commercial derivative military articles.

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(i) A department or agency requesting a determination or approval from USD(AT&L) in accordance with DFARS 225.7003-3(c) shall submit the request, including the proposed determination, to—

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

(ii) The Director, Defense Procurement and Acquisition Policy, will forward the request to USD(AT&L) as appropriate.

(d) National security waiver.

(i) A department or agency requesting a national security waiver from USD(AT&L) in accordance with DFARS 225.7003-3(d) shall submit the request, including the draft determination and draft letters of notification to the congressional defense committees, as follows:

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

(ii) The request shall include—

- (A) The quantity of end items to which the waiver would apply;
- (B) The time period that the waiver will cover;
- (C) A description of the contractor's efforts to develop a corrective plan; and
- (D) Information helpful to a determination as to whether any noncompliance was knowing and willful.

(iii) The Director, Defense Procurement and Acquisition Policy, will forward the request to USD(AT&L) as appropriate.