

## 225.7003-4

(ii) Determine whether or not the noncompliance was knowing and willful. If the USD(AT&L) determines that the noncompliance was knowing and willful, the appropriate debarring and suspending official shall consider suspending or debarring the contractor or subcontractor until such time as the contractor or subcontractor has effectively addressed the issues that led to the noncompliance.

(3) Because national security waivers will only be granted when the acquisition in question is necessary to the national security interests of the United States, the requirement for a plan will be applied as a condition subsequent, and not a condition precedent, to the granting of a waiver.

[74 FR 37636, July 29, 2009, as amended at 75 FR 48280, Aug. 10, 2010; 79 FR 17446, Mar. 28, 2014]

### 225.7003-4 One-time waiver.

DoD may accept articles containing specialty metals that are not in compliance with the specialty metals clause of the contract if—

(a) Final acceptance takes place before September 30, 2010;

(b) The specialty metals were incorporated into items (whether end items or components) produced, manufactured, or assembled in the United States before October 17, 2006;

(c) The contracting officer determines in writing that—

(1) It would not be practical or economical to remove or replace the specialty metals incorporated in such items or to substitute items containing compliant materials;

(2) The contractor and any subcontractor responsible for providing items containing non-compliant specialty metals have in place an effective plan to ensure compliance with the specialty metals clause of the contract for future items produced, manufactured, or assembled in the United States; and

(3) The non-compliance was not knowing or willful;

(d) The determination is approved by—

(1) The USD(AT&L); or

(2) The service acquisition executive of the military department concerned; and

## 48 CFR Ch. 2 (10-1-14 Edition)

(e) Not later than 15 days after approval of the determination, the contracting officer posts a notice on the Federal Business Opportunities Web site at <http://www.FedBizOpps.gov>, stating that a waiver for the contract has been granted under Section 842(b) of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364).

[74 FR 37636, July 29, 2009]

### 225.7003-5 Solicitation provision and contract clauses.

(a) Unless the acquisition is wholly exempt from the specialty metals restrictions at 225.7003-2 because the acquisition is covered by an exception in 225.7003-3(a) or (d) (but see paragraph (d) of this subsection)—

(1) Use the clause at 252.225-7008, Restriction on Acquisition of Specialty Metals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—

(i) Exceed the simplified acquisition threshold; and

(ii) Require the delivery of specialty metals as end items.

(2) Use the clause at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—

(i) Exceed the simplified acquisition threshold; and

(ii) Require delivery of any of the following items, or components of the following items, if such items or components contain specialty metal:

(A) Aircraft.

(B) Missile or space systems.

(C) Ships.

(D) Tank or automotive items.

(E) Weapon systems.

(F) Ammunition.

(b) Use the provision at 252.225-7010, Commercial Derivative Military Article—Specialty Metals Compliance Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, —

(1) That contain the clause at 252.225-7009; and

(2) For which the contracting officer anticipates that one or more offers of commercial derivative military articles may be received.

(c) If an agency cannot reasonably determine at time of acquisition whether some or all of the items will be used in support of combat operations or in support of contingency operations, the contracting officer should not rely on the exception at 225.7003-3(a)(2) or (3), but should include the appropriate specialty metals clause or provision in the solicitation and contract.

(d) If the solicitation and contract require delivery of a variety of contract line items containing specialty metals, but only some of the items are subject to domestic specialty metals restrictions, identify in the Schedule those items that are subject to the restrictions.

[74 FR 37636, July 29, 2009; 75 FR 48280, Aug. 10, 2010; 78 FR 37987, June 25, 2013]

**225.7004 Restriction on acquisition of foreign buses.**

**225.7004-1 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.

[68 FR 15627, Mar. 31, 2003]

**225.7004-2 Applicability.**

Apply this restriction if the buses are purchased, leased, rented, or made available under contracts for transportation services.

[68 FR 15627, Mar. 31, 2003]

**225.7004-3 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 at or below the simplified acquisition threshold.

[68 FR 15627, Mar. 31, 2003]

**225.7004-4 Waiver.**

The waiver criteria at 225.7008(a) apply to this restriction.

[68 FR 15627, Mar. 31, 2003, as amended at 74 FR 37639, July 29, 2009]

**225.7005 Restriction on certain chemical weapons antidote.**

**225.7005-1 Restriction.**

In accordance with 10 U.S.C. 2534, 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) Has received all required regulatory approvals; and

(b) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

[74 FR 68384, Dec. 24, 2009]

**225.7005-2 Exception.**

This restriction does not apply if the acquisition is for an amount at or below the simplified acquisition threshold.

[68 FR 15627, Mar. 31, 2003]

**225.7005-3 Waiver.**

The waiver criteria at 225.7008(a) apply to this restriction.

[68 FR 15627, Mar. 31, 2003, as amended at 74 FR 37639, July 29, 2009]