

**225.7005 Waiver of certain restrictions.**

(a) 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:

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

(A) 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

(B) 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.

(ii) A notice of 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.

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

(iv) 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—

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

(B) 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.

(2) 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) The restriction would cause unreasonable delays.

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

(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.

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

(3) 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.

(b) In accordance with the provisions of paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restrictions of 10 U.S.C. 2534(a) for certain items manufactured in the United Kingdom, including air circuit breakers for naval vessels and totally enclosed lifeboats (see 225.7016 and 225.7022). This waiver applies to—

(1) Procurements under solicitations issued on or after August 4, 1998; and

(2) Subcontracts and options under contracts entered into prior to August 4, 1998, under the conditions described in paragraphs (a)(1)(iv) of this section.

[63 FR 5745, Feb. 4, 1998, as amended at 63 FR 28284, May 22, 1998; 63 FR 43888, Aug. 17, 1998; 65 FR 39705, June 27, 2000]

**225.7006 Restrictions on construction or repair of vessels in foreign shipyards.**

10 U.S.C. 7309 restricts constructing or repairing vessels in foreign shipyards.

(a) Do not award a contract to construct either of the following in a foreign shipyard—

(1) A vessel constructed for any of the armed forces; or

(2) A major component of the hull or superstructure of any such vessel.

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(b) Do not overhaul, repair, or maintain in a foreign shipyard, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States. This restriction does not apply to voyage repairs.

### **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.

[63 FR 5745, Feb. 4, 1998]

#### **225.7007-2 Applicability.**

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

[60 FR 19533, Apr. 19, 1995]

#### **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.

[63 FR 5745, Feb. 4, 1998]

## 225.7010-2

### **225.7007-4 Waiver.**

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

[63 FR 43888, Aug. 17, 1998]

### **225.7008 Restriction on research and development.**

(a) Public Law 92-570 precludes use of DoD appropriations for award to any foreign corporation, organization, person, or entity for research and development in connection with any weapon system or other military equipment if there is a U.S. corporation, organization, person, or entity—

(1) Equally competent; and

(2) Willing to perform at a lower cost.

(b) The statutory restriction in paragraph (a) of this section does not change the rules for selecting research and development contractors in FAR part 35. However, when a U.S. source and a foreign source are equally competent, award to the source that will provide the services at the lower cost.

### **225.7009 [Reserved]**

### **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.

[60 FR 19533, Apr. 19, 1995, as amended at 62 FR 34123, June 24, 1997; 63 FR 5745, Feb. 4, 1998]

#### **225.7010-2 Exception.**

The restriction of 225.7010-1 does not apply if—the acquisition is for an