



NOV 27 2007

GSA Acquisition Letter V-07-02
Supplement Number 1

MEMORANDUM FOR GSA ACQUISITION WORKFORCE ASSOCIATES

FROM: MOLLY WILKINSON
CHIEF ACQUISITION OFFICER

SUBJECT: New DoD Deviation for Specialty Metals Contracting Requirements
for Assisted Acquisitions Using DoD Funds

1. **Purpose:** The Berry Amendment, 10 U.S.C. 2533a and b, restricts the source for procurement of certain specialty metals, including hand or measuring tools that may contain specialty metals, when purchased with DoD funds.
2. **Background:** The Berry Amendment requirements are located in the Defense Federal Acquisition Regulation Supplement (DFARS) at 225.7001 and 225.7002, and the associated clause for specialty metals is 252.225-7014, with its Alternate I. GSA Acquisition Letter V-07-02, dated January 25, 2007, directed GSA acquisition personnel to review requests for assisted services from DoD for Berry Amendment applicability and include the appropriate DFARS clause(s) in the resulting procurements.

On October 26, 2007, the Director, Defense Procurement and Acquisition Policy, issued a revision to the previous deviation from Berry Amendment applicability for specialty metals. This superseded the attachment to the class deviation that was included with GSA Acquisition Letter V-07-02 and makes the changes listed below at paragraph 6 regarding purchases of specialty metals and articles containing specialty metals.

3. **Effective Date:** Immediately.
4. **Termination:** This Supplement remains in effect until the General Services Acquisition Manual (GSAM) is amended.
5. **Applicability:** This policy pertains to purchases of specialty metals and articles containing specialty metals when using DoD funds. The Berry Amendment, and the DoD deviation, apply solely to acquisitions made using DoD funds.
6. **Policy:** Acquisition Letter V-07-02 remains in effect with the following changes:

- (a) The attachment in this Supplement is substituted for the original attachment to V-07-02.
- (b) The requirement to purchase strategic materials critical to national security from American sources is not applicable to contracts and subcontracts for the acquisition of commercially available off-the-shelf items, as defined in (b) below.
- (c) Defines “Commercially available off-the-shelf (COTS) item,” in accordance with 41 U.S.C. 431,” to mean any item of supply that is (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101); (ii) sold in substantial quantities in the commercial marketplace; and (iii) offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace. COTS items do not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.
- (d) A COTS item that is modified prior to incorporation in the end item is no longer a COTS item.
- (e) A component can be a COTS item if it is offered to the Government, without modification, as part of an end item purchased by the Government.

ATTACHMENT: Director, Defense Procurement and Acquisition Policy,
Memorandum 2007-O0011 dated October 26, 2007, entitled
“Class Deviation—Waiver of Specialty Metals Restriction for
Acquisition of COTS Items”



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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

DPAP(DARS)

OCT 26 2007

In reply refer to
DAR Tracking Number: 2007-O0011

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE
ASSISTANT SECRETARY OF THE ARMY
(ACQUISITION, LOGISTICS, AND TECHNOLOGY)
ASSISTANT SECRETARY OF THE NAVY (RESEARCH,
DEVELOPMENT AND ACQUISITION)
ASSISTANT SECRETARY OF THE AIR FORCE
(ACQUISITION)
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Class Deviation—Waiver of Specialty Metals Restriction for Acquisition of
COTS Items

Director, Defense Procurement and Acquisition Policy issued Class Deviation 2006-O0004, on December 6, 2006, to implement Section 842 of the National Defense Authorization Act of Fiscal Year 2007 (Pub. L. 109-364). Section 842 established the restriction on acquisition of specialty metals under a new section 10 U.S.C. 2533b. The basic memo of Class Deviation 2006-O0004 remains in effect, except for two minor corrections: (1) In the third paragraph, wherever the term “end product” is used, it should be replaced with the phrase “aircraft, missile and space system, ship, tank and automotive item, weapon system, or ammunition.” (2) The correct date for the one-time waiver (third paragraph on page 2) is prior to October 17, 2006.

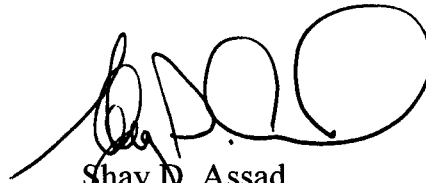
The attachment to this Class Deviation 2007-O0011 supersedes the attachment to the class deviation 2006-O0004, and makes the following changes:

- Lists 10 U.S.C. 2533b(a)(1) as a statute that is inapplicable to the acquisition of commercially available off-the-shelf items, in accordance with 41 U.S.C. 431.
- Reiterates the clause prescription from Class Deviation 2006-O0004, except that the definition of component is clarified in accordance with PGI 225.7002-3(b)(i). The tiers apply to assemblies of major systems in the six major product categories, and do not change from contract to contract, even if an assembly that was a component of the major system is purchased separately as an end product.



- Makes no changes to the basic clause as provided in Class Deviation 2006-O0004.
- Revises Alternate I, as provided in Class Deviation 2006-O0004, by adding a definition of “commercially available off-the shelf item” in paragraph (a) and adding the exception for specialty metals contained in commercially available off-the-shelf items in paragraph (c). The definition of “commercially available off-the-shelf item” requires that an item be offered “to the Government,” without modification, in the same form in which it is sold in the commercial marketplace. A component can be a COTS item if it is offered to the Government, without modification, as part of an end item purchased by the Government. The installation of a component in the end product is not in itself a modification. COTS items that are modified prior to incorporation in the end item are no longer COTS items.

This class deviation is effective upon signature, and remains in effect until incorporated in the DFARS or until otherwise rescinded. For questions concerning this deviation, please contact Amy Williams, 703-602-0328, or amy.williams@osd.mil.

A handwritten signature in black ink, appearing to read 'Shay D. Assad', with a large, stylized flourish at the end.

Shay D. Assad
Director, Defense Procurement and
Acquisition Policy

Attachment:
As stated

cc:
DSMC, Ft. Belvoir

Class Deviation 2007-O0011

Waiver of Specialty Metals Restriction for Acquisition of COTS items.

{Changes from Class Deviation 2007-O0004 are underlined}

PART 212—ACQUISITION OF COMMERCIAL ITEMS

* * * * *

212.570 Applicability of certain laws to contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

Paragraph (a)(1) of 10 U.S.C. 2533b, Requirement to buy strategic materials critical to national security from American sources, is not applicable to contracts and subcontracts for the acquisition of commercially available off-the-shelf items, as defined in the clause 252.225-7014, Preference for Domestic Specialty Metals, Alternate I (DEVIATION 2007-O0011), as provided in this deviation.

* * * * *

Clause Prescription:

Unless an exception applies—

(a) Use the clause 252.225-7014, Preference for Domestic Specialty Metals (DEVIATION 2007-O0011), as provided in this deviation, in solicitations and contracts exceeding the simplified acquisition threshold that require delivery of specialty metals as end products.

(b) Use the clause with its revised Alternate I (DEVIATION 2007-O0011) in solicitations and contracts exceeding the simplified acquisition threshold and requiring delivery of an article containing specialty metal, if the article is an end product, or a component thereof, in any of the following product categories:

- (i) Aircraft.
- (ii) Missile and space systems.
- (iii) Ships.
- (iv) Tank and automotive items.
- (v) Weapon systems.
- (vi) Ammunition.

(c) If the solicitation and contract require acquisition of specialty metals as end products as described in paragraph (a) and delivery of articles containing specialty metals as described in paragraph (b) of this clause prescription, then indicate in the Schedule those items covered by the basic clause and those items covered by Alternate I.

“Automotive item” means a self-propelled military transport vehicle, primarily intended for personnel and cargo carrying, such as a car, truck, or van. The term does not include

construction equipment (such as bulldozers, excavators, lifts, or loaders) or other self-propelled equipment (such as cranes or aircraft ground support equipment).

“Component” means those first-tier parts and assemblies that are incorporated directly into an aircraft, missile and space system, ship, tank and automotive item, weapon system, or ammunition (i.e., first-tier components). Parts and assemblies that are incorporated directly into a first-tier component are also components (i.e., second-tier components). Third-tier and below parts and assemblies are not components.

252.225-7014 Preference for Domestic Specialty Metals.

PREFERENCE FOR DOMESTIC SPECIALTY METALS (DEVIATION 2007-O0011)

(a) *Definitions.* As used in this clause—

(1) “Qualifying country” means any country listed in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(2) “Specialty metal” means any of the following:

(i) Steel—

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium.

(ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent.

(iii) Titanium and titanium alloys.

(iv) Zirconium and zirconium base alloys.

(b) Any specialty metal delivered under this contract shall be melted or produced in the United States or its outlying areas or a qualifying country.

(End of clause)

ALTERNATE I (DEVIATION 2007-O0011)

(a) *Definitions.* As used in this clause—

(1) “Commercially available off-the-shelf item”—

(i) Means any item of supply, including any component, that is—

(A) A commercial item (as defined in FAR 2.101);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.]

(2) “Electronic component” means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections of electrical devices such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits. An item can be an “electronic component” regardless of the tier of the end product at which it is installed.

(3) “End product” means supplies delivered under a line item of this contract.

(4) “Qualifying country” means any country listed in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(5) “Specialty metal” means any of the following:

(i) Steel—

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium.

(ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent.

(iii) Titanium and titanium alloys.

(iv) Zirconium and zirconium base alloys.

(b) Any specialty metals incorporated in articles delivered under this contract shall be melted or produced in the United States or its outlying areas.

(c) This clause does not apply to specialty metals—

(1) Melted in a qualifying country or incorporated in an article manufactured in a qualifying country;

(2) Contained in commercially available off-the-shelf items, acquired either as end items or components; or

(3) Incorporated in a commercially available electronic component, if the value of the specialty metal content in the electronic component does not exceed 10 percent of the overall value of the lowest level electronic component, containing specialty metal, that is—

(i) Produced by the Contractor; or

(ii) If the Contractor does not produce the electronic component, produced by the subcontractor from which the electronic component was acquired.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts for items containing specialty metals.

(End of clause)