

in the case of an urgent national security requirement, the determination may be provided to the congressional defense committees up to 7 days after it is executed.

(2) After making such a determination, the USD(AT&L) will—

(i) Ensure that the contractor or subcontractor responsible for the non-compliant specialty metal develops and implements an effective plan to ensure future compliance; and

(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]

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

(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 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 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—