



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JAN 28 2019

In reply refer to
DARS Tracking Number: 2019-O0006


MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
INSPECTOR GENERAL OF THE DEPARTMENT OF
DEFENSE
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION & PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DEFENSE FIELD ACTIVITIES

SUBJECT: Class Deviation—Restriction on Acquisition of Certain Magnets and Tungsten

Effective immediately, contracting officers shall follow the procedures provided in the attachment to this class deviation, unless acquiring items outside the United States for use outside the United States.

This class deviation implements section 871 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232), now codified at 10 U.S.C. 2533c. With some exceptions, section 871 prohibits the acquisition of any covered material melted or produced in any covered country or any end item that contains a covered material manufactured in any covered country. Covered countries are North Korea, China, Russia, and Iran. Covered material means samarium-cobalt magnets, neodymium-iron-boron magnets, tungsten metal powder, and tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

This class deviation remains in effect until it is incorporated in the Defense Federal Acquisition Regulation Supplement, or until it is otherwise rescinded. My point of contact is Ms. Patricia Foley, who is available at patricia.g.foley.civ@mail.mil.


Kim Herrington
Acting Principal Director,
Defense Pricing and Contracting

PART 225—FOREIGN ACQUISITION

**225.7018 Restriction on acquisition of certain magnets and tungsten.
(DEVIATION 2019-O0006)**

(a) *Definitions.* “Covered material” and “covered country” have the meanings given in the clause at 252.225-7978 (2019-O0006).

(b) *Individual nonavailability determinations.*

(1) The following officials are authorized, without power of redelegation, to make a nonavailability determination on an individual basis (i.e., applies to only one contract) that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price from a source other than a covered country:

- (i) The Under Secretary of Defense (Acquisition and Sustainment).
- (ii) The Secretary of the Army.
- (iii) The Secretary of the Navy.
- (iv) The Secretary of the Air Force.
- (v) The Director of the Defense Logistics Agency.

(2) The supporting documentation for the determination shall include—

(i) An analysis of alternatives that would not require a nonavailability determination; and

(ii) A written certification by the requiring activity that describes, with specificity, why such alternatives are unacceptable.

(3) Defense agencies other than the Defense Logistics Agency shall submit a request for a nonavailability determination, including the proposed determination, to the Principal Director, Defense Pricing and Contracting, ATTN: OUSD(A&S)(A) DPC/CP, 3060 Defense Pentagon, Washington, DC 20301-3060.

(4)(i) A copy of individual nonavailability determinations with supporting documentation shall be provided to USD(A&S), DASD (Industrial Policy), U.S. Department of Defense, 3330 Defense Pentagon, Room 3B854, Washington, DC 20101.

(ii) Also notify Industrial Policy when individual waivers are requested , but denied.

(c) *Class nonavailability determinations.*

A class nonavailability determination (i.e., a nonavailability determinations that applies to more than one contract) that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price from a source other than a covered country requires the approval of the USD(A&S). Submit a request for a class nonavailability determination, including the proposed determination, to the Principal Director, Defense Pricing and Contracting, ATTN: OUSD(A&S)(A) DPC/CP, 3060 Defense Pentagon, Washington, DC 20301-3060.

(1) At least 30 days before making a nonavailability determination that would apply to more than one contract, the USD(A&S) will, to the maximum extent practicable, and in a manner consistent with the protection of national security and confidential business information—

(i) Publish a notice on the Federal Business Opportunities website (www.FedBizOpps.gov) of the intent to make the nonavailability determination; and

(ii) Solicit information relevant to such notice from interested parties, including producers of mill products from covered materials.

(2) The USD(A&S)—

(i) Will take into consideration all information submitted in response to the notice in making a class nonavailability determination;

(ii) May consider other relevant information that cannot be made part of the public record consistent with the protection of national security information and confidential business information; and

(iii) Will ensure that any such nonavailability determination and the rationale for the determination are made publicly available to the maximum extent consistent with the protection of national security and confidential business information.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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**252.225-7978 Restriction on Acquisition of Certain Magnets and Tungsten.
(DEVIATION 2019-O0006)**

Unless acquiring items outside the United States for use outside the United States or a nonavailability determination has been made in accordance with 225.7018, use the following clause in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that exceed the simplified acquisition threshold:

RESTRICTION ON ACQUISITION OF CERTAIN MAGNETS AND TUNGSTEN
(JAN 2019) (DEVIATION 2019-O0006)

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

“Covered material” means—

- (1) Samarium-cobalt magnets;
- (2) Neodymium-iron-boron magnets;
- (3) Tungsten metal powder; and
- (4) Tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

“Covered country” means—

- (1) The Democratic People’s Republic of North Korea;
- (2) The People’s Republic of China;
- (3) The Russian Federation; and
- (4) The Islamic Republic of Iran.

(b)(1) Except as provided in paragraph (c) of this clause, the Contractor shall not deliver under this contract any covered material melted or produced in any covered country or any end item, manufactured in any covered country, that contains a covered material.

(2) For samarium-cobalt magnets and neodymium iron-boron magnets, this restriction includes—

(i) Melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy; and

(ii) All subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.

(3) The restriction on melting and producing of samarium-cobalt magnets is in addition to any applicable restrictions on melting of specialty metals if the clause at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, is included in the contract.

(c) This clause does not apply—

(1) To an end item that is—

(i) A commercially available off-the-shelf item, other than—

(A) A commercially available off-the-shelf item that is 50 percent or more tungsten by weight; or

(B) A tungsten heavy alloy mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that had not been incorporated into an end item, subsystem, assembly, or component;

(ii) An electronic device, unless otherwise specified in the contract; or

(iii) A neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(2) If the authorized agency official concerned has made a nonavailability determination that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price from a source other than a covered country.

(End of clause)

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