

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.