

Department of Defense

(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]

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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

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amount that does not exceed the simplified acquisition threshold.

[63 FR 5745, Feb. 4, 1998]

225.7010-3 Waiver.

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

[63 FR 43888, Aug. 17, 1998]

225.7011 Restriction on Ballistic Missile Defense research, development, test, and evaluation.

225.7011-1 Definitions.

Competent, foreign firm, and U.S. firm have the meanings given in the provision at 252.225-7018, Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense RDT&E.

[56 FR 36367, July 31, 1991, as amended at 59 FR 27672, May 27, 1994]

225.7011-2 Restriction.

(a) Section 222 of the Defense Authorization Act for FY1988 and 1989 (Pub. L. 100-180) prohibits the award of certain contracts for the conduct of Ballistic Missile Defense (BMD) Program research, development, test, and evaluation (RDT&E), to foreign governments or firms unless the Secretary of Defense certifies to Congress in writing at any time during the applicable fiscal year that work cannot be competently performed by a U.S. firm at a price equal to or less than the price of the foreign government or firm.

(b) For purposes of implementing this section, heads of contracting activities are authorized to make this certification (see 225.7011-3(b)).

(c) Except as provided in 225.7011-3, do not use any funds appropriated to, or for the use of, DoD to enter into or carry out any contract, including any contract awarded as a result of a broad agency announcement, with a foreign government or firm if the contract provides for the conduct of RDT&E in connection with the BMD.

(d) This prohibition is not intended to deny access to foreign expertise when contract performance requires a level of competency unavailable in the United States.

[56 FR 36367, July 31, 1991, as amended at 59 FR 27672, May 27, 1994]

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225.7011-3 Exceptions.

This prohibition shall not apply—

(a) To contracts awarded to a foreign government or firm if the contracting officer determines that—

(1) The contract will be performed within the United States;

(2) The contract is exclusively for RDT&E in connection with antitactical ballistic missile systems; or

(3) The foreign government or foreign firm agrees to share a substantial portion of the total contract cost. Consider the foreign share as substantial if it is equitable with respect to the relative benefits to be derived from the contract by the United States and the foreign parties. For example, if the contract is more beneficial to the foreign party, its share of the cost should be correspondingly higher; or

(b) If the head of the contracting activity certifies in writing, before contract award, that a contract for research, development, testing, or evaluation (other than for RDT&E described in paragraph (a)(2) of this subsection) cannot be competently performed by a U.S. firm at a price equal to or less than the price at which the RDT&E would be performed by a foreign government or firm.

225.7011-4 Procedures.

(a) When awarding a prime contract to a foreign government or firm under 225.7011-3(b), the contracting officer or source selection authority, as applicable, shall make a determination that will be the basis for the certification.

(1) The determination must—

(i) Describe the contract effort;

(ii) State the number of proposals solicited and received from both U.S. and foreign firms;

(iii) Identify the proposed awardee and the amount of the contract;

(iv) State that selection of the contractor was based on the evaluation factors contained in the solicitation, or the criteria contained in the broad agency announcement; and

(v) State that the effort cannot be competently performed by a U.S. firm at a price equal to, or less than, the price at which it would be performed by the foreign awardee.