

225.7012

(b) Require contractors operating in a Government-owned facility or a facility under the control of DoD to purchase carbon, alloy, or armor steel plate.

[68 FR 15627, Mar. 31, 2003]

225.7012 Restriction on supercomputers.

225.7012-1 Restriction.

In accordance with Section 8112 of Public Law 100-202, and similar sections in subsequent DoD appropriations acts, do not purchase a supercomputer unless it is manufactured in the United States.

[68 FR 15627, Mar. 31, 2003]

225.7012-2 Waiver.

The Secretary of Defense may waive this restriction, on a case-by-case basis, after certifying to the Armed Services and Appropriations Committees of Congress that—

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

[68 FR 15627, Mar. 31, 2003]

225.7012-3 Contract clause.

Unless a waiver has been granted, use the clause at 252.225-7011, Restriction on Acquisition of Supercomputers, in solicitations and contracts for the acquisition of supercomputers.

[68 FR 15627, Mar. 31, 2003]

225.7013 Restrictions on construction or repair of vessels in foreign shipyards.

In accordance with 10 U.S.C. 7309—

(a) Do not award a contract to construct in a foreign shipyard—

(1) A vessel for any of the armed forces; or

(2) A major component of the hull or superstructure of a vessel for any of the armed forces; and

(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

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restriction does not apply to voyage repairs.

[68 FR 15627, Mar. 31, 2003]

225.7014 Restriction on overseas military construction.

For restriction on award of military construction contracts to be performed in the United States outlying areas in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, see 236.274(a).

[70 FR 35545, June 21, 2005]

225.7015 Restriction on overseas architect-engineer services.

For restriction on award of architect-engineer contracts to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, see 236.602-70.

[68 FR 15627, Mar. 31, 2003]

225.7016 Restriction on research and development.

(a) In accordance with Public Law 92-570, do not use DoD appropriations to make an 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) This restriction does not affect the requirements of FAR Part 35 for selection of research and development contractors. 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.

[68 FR 15627, Mar. 31, 2003]

225.7017 Restriction on Ballistic Missile Defense research, development, test, and evaluation.

[68 FR 15627, Mar. 31, 2003]

225.7017-1 Definitions.

Competent, foreign firm, and U.S. firm are defined in the provision at 252.225-7018, Notice of Prohibition of Certain Contracts with Foreign Entities for the

Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation.

[68 FR 15627, Mar. 31, 2003]

225.7017-2 Restriction.

In accordance with Section 222 of the DoD Authorization Act for Fiscal Years 1988 and 1989 (Pub. L. 100-180), do not use any funds appropriated to or for the use of DoD to enter into or carry out a contract with a foreign government or firm, including any contract awarded as a result of a broad agency announcement, if the contract provides for the conduct of research, development, test, and evaluation (RDT&E) in connection with the Ballistic Missile Defense Program.

[68 FR 15627, Mar. 31, 2003]

225.7017-3 Exceptions.

This restriction does 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 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 that the United States and the foreign parties will derive from the contract. 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 U.S. firm cannot competently perform a contract for RDT&E at a price equal to or less than the price at which a foreign government or firm would perform the RDT&E. The contracting officer or source selection authority, as applicable, shall make a determination that will be the basis for the certification.

(1) The determination shall—

(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 a U.S. firm cannot competently perform the effort at a price equal to, or less than, the price at which the foreign awardee would perform it.

(2) When either a broad agency announcement or program research and development announcement is used, or when the determination is otherwise not based on direct competition between foreign and domestic proposals, the determination shall not be merely conclusory.

(i) The determination shall specifically explain its basis, include a description of the method used to determine the competency of U.S. firms, and describe the cost or price analysis performed.

(ii) Alternately, the determination may contain—

(A) A finding, including the basis for such finding, that the proposal was submitted solely in response to the terms of a broad agency announcement, program research and development announcement, or other solicitation document without any technical guidance from the program office; and

(B) A finding, including the basis for such finding, that disclosure of the information in the proposal for the purpose of conducting a competitive acquisition is prohibited.

(3) Within 30 days after contract award, forward a copy of the certification and supporting documentation to the Missile Defense Agency, Attn: MDA/DRI, 7100 Defense Pentagon, Washington, DC 20301-7100.

[68 FR 15627, Mar. 31, 2003]

225.7017-4 Solicitation provision.

Unless foreign participation is otherwise excluded, use the provision at 252.225-7018, Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test,