DFARS Case 2020-D030

Improved Energy Security for Main Operating Bases in Europe

Final Rule

PART 212—ACQUISITION OF COMMERCIAL ITEMS

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**Subpart 212.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

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**212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

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(f) \* \* \*

(ix) \* \* \*

(FF) Use the clause at 252.225-7052, Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten, as prescribed in 225.7018-5.

**[(GG) Use the provision at 252.225-7053, Representation Regarding Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, as prescribed in 225.7019-4(a), to comply with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92).**

**(HH) Use the clause at 252.225-7054, Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, as prescribed in 225.7019-4(b), to comply with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92).]**

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**PART 225—FOREIGN ACQUISITION**

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**SUBPART 225.70--AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION**

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**[225.7019 Prohibition on use of certain energy sourced from inside the Russian Federation.**

**225.7019-1 Definitions.**

**As used in this section—**

**“Covered military installation”means a military installation in Europe identified by DoD as a main operating base.**

**“Furnished energy” means energy furnished to a covered military installation in any form and for any purpose, including heating, cooling, and electricity.**

**“Main operating base”means a facility outside the United States and its territories with permanently stationed operating forces and robust infrastructure.**

**225.7019-2 Prohibition.**

**In accordance with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), contracts for the acquisition of furnished energy for a covered military installation shall not use any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation. The prohibition—**

(a) Applies to all forms of energy that are furnished to a covered military installation; and

(b) Does not apply to energy converted by a third party into another form of energy and not directly delivered to a covered military installation.

**225.7019-3 Waiver.**

**(a) *Request and approval of waiver.* The requiring activity may submit to the contracting activity a request for waiver of the prohibition in 225.7019-2 for a specific contract for the acquisition of furnished energy for a covered military installation. The head of the contracting activity, without power of redelegation, may approve the waiver, upon certification to the congressional defense committees that—**

(1) The waiver of section 2821 is necessary to ensure an adequate supply of furnished energy for the covered military installation; and

(2) National security requirements have been balanced against the potential risk associated with reliance upon the Russian Federation for furnished energy.

(b) *Submission of waiver notice*.

(1) Not later than 14 days before the execution of any energy contract for which a waiver is granted under paragraph (a) of this section, the head of the contracting activity shall submit to the congressional defense committees a notice of the waiver. See PGI 225.7019-3 for waiver procedures.

(2) The waiver notice shall include the following:

(i) The rationale for the waiver, including the basis for the certifications required by paragraph (a) of this section.

(ii) An assessment of how the waiver may impact DoD’s European energy resilience strategy.

(iii) An explanation of the measures DoD is taking to mitigate the risk of using Russian Federation furnished energy.

**225.7019-4 Solicitation provision and contract clause.**

**Unless a waiver has been granted in accordance with 225.7019-3--**

**(a) Use the provision at 252.225-7053, Representation Regarding Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items and solicitations at or below the simplified acquisition threshold, that are for the acquisition of furnished energy for a covered military installation; and**

**(b) Use the clause at 252.225-7054, Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items and solicitations and contracts at or below the simplified acquisition threshold, that are for the acquisition of furnished energy for a covered military installation.]**

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**part 252--SOLICITATION provisions and CONTRACT clauses**

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**[252.225-7053 Representation Regarding Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation.**

**As prescribed in 225.7019-4(a), use the following provision:**

**REPRESENTATION REGARDING PROHIBITION ON USE OF CERTAIN ENERGY SOURCED FROM INSIDE THE RUSSIAN FEDERATION (AUG 2021)**

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

“Covered military installation”means a military installation in Europe identified by DoD as a main operating base.

**“Furnished energy” means energy furnished to a covered military installation in any form and for any purpose, including heating, cooling, and electricity.**

“Main operating base”means a facility outside the United States and its territories with permanently stationed operating forces and robust infrastructure.

**(b) *Prohibition*. In accordance with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), contracts for the acquisition of furnished energy for a covered military installation shall not use any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation, unless a waiver is approved. The prohibition—**

(1) Applies to all forms of energy that are furnished to a covered military installation; and

(2) Does not apply to energy converted by a third party into another form of energy and not directly delivered to a covered military installation.

**(c) *Representation*.**  **By submission of its offer, the Offeror represents that the Offeror will not use or provide any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation in the performance of any contract, subcontract, or other contractual instrument resulting from this solicitation.**

**(End of provision)**

**252.225-7054 Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation.**

**As prescribed in 225.7019-4(b), use the following clause:**

**PROHIBITION ON USE OF CERTAIN ENERGY SOURCED FROM INSIDE THE RUSSIAN FEDERATION (AUG 2021)**

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

**“Covered military installation” means a military installation in Europe identified by DoD as a main operating base.**

**“Furnished energy”means energy furnished to a covered military installation in any form and for any purpose, including heating, cooling, and electricity.**

**“Main operating base”means a facility outside the United States and its territories with permanently stationed operating forces and robust infrastructure.**

**(b) *Prohibitio*n. In accordance with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), the Contractor shall not use in the performance of this contract any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation unless a waiver is approved. The prohibition—**

**(1) Applies to all forms of energy that are furnished to a covered military installation; and**

**(2) Does not apply to energy converted by a third party into another form of energy and not directly delivered to a covered military installation.**

**(c) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts and other commercial instruments that are for furnished energy at a covered military installation, including subcontracts and commercial instruments for commercial items.**

**(End of clause)]**

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