**DFARS Case 2020-D007**

**Restriction on Acquisition of Tantalum**

**Final Rule (Interim to Final with changes)**

**PART 212—ACQUISITION OF COMMERCIAL ITEMS**

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**SUBPART 212.3—SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS**

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

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(f) The following additional provisions and clauses apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items. If the offeror has completed any of the following provisions listed in this paragraph electronically as part of its annual representations and certifications at *https://www.sam.gov*, the contracting officer shall consider this information instead of requiring the offeror to complete these provisions for a particular solicitation.

**\* \* \* \* \***

(x) *Part 225—Foreign Acquisition.*

**\* \* \* \* \***

(FF) Use the clause at 252.225-7052, Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten, as prescribed in 225.7018-5**[, to comply with 10 U.S.C. 2533c]**.

**\* \* \* \* \***

**212.505 Applicability of certain laws to contracts for the acquisition of COTS items.**

**[(a) ]**Paragraph (a)(1) of 10 U.S.C. 2533b, Requirement to buy strategic materials critical to national security from American sources, is not applicable to contracts and subcontracts for the acquisition of commercially available off-the-shelf items, except as provided at 225.7003-3(b)(2)(i).

**[(b) Paragraph (a)(1) of 10 U.S.C. 2533c, Prohibition on acquisition of sensitive materials from non-allied foreign nations, is not applicable to contracts and subcontracts for the acquisition of commercially available off-the-shelf items, except as provided at 225.7018-3(c)(1).]**

**PART 225—FOREIGN ACQUISITION**

**\* \* \* \* \***

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

**\* \* \* \* \***

**225.7002-2 Exceptions.**

\* \* \* \* \*

(b) \* \* \*

(2) The supporting documentation for the determination shall include an analysis and written certification by the requiring activity, with specificity, whyalternatives that would not require a domestic nonavailability determinationare unacceptable.

\* \* \* \* \*

**225.7003 Restrictions on acquisition of specialty metals.**

\* \* \* \* \*

**225.7003-3 Exceptions.**

**\* \* \* \* \***

(b) \* \* \*

(5) \* \* \*

(i) The Secretary of the military department concerned is authorized, without power of redelegation, to make a domestic nonavailability determination that applies to only one contract. The supporting documentation for the determination shall include an analysis and written documentation by the requiring activity, with specificity, why alternatives that would not require a domestic nonavailability determination are unacceptable.

\* \* \* \* \*

**225.7018 Restriction on acquisition of certain magnets, tantalum, and tungsten.**

**225.7018-1 Definitions.**

\* \* \* \* \*

“Covered material” means—

(1) Samarium-cobalt magnets;

(2) Neodymium-iron-boron magnets;

(3) Tantalum metal**[s]** and alloys;

(4) Tungsten metal powder; and

(5) Tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

\* \* \* \* \*

**225.7018-2 Restriction.**

\* \* \* \* \*

(c) For production of tantalum metal[s of any kind] and alloys, this restriction includes the reduction [or melting of any form] of tantalum ~~chemicals such as oxides, chlorides, or potassium salts, to metal powder and~~ [to create tantalum metal including unwrought, powder, mill products, and alloys. The restriction also covers] all subsequent phases of production of tantalum metal[s] and alloys~~, such as consolidation of metal powders~~.

(d) \* \* \*

**225.7018-3 Exceptions.**

\* \* \* \* \*

(c) Of an end item **[containing a covered material]** that is—

(1) A commercially available off-the-shelf item (but see PGI 225.7018-3(c)(1)~~(i)~~ with regard to commercially available samarium-cobalt magnets), other than—

\* \* \* \* \*

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

(2) An electronic device, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to 10 U.S.C. 187 determines that the domestic availability of a particular electronic device is critical to national security (but see PGI 225.7018-3(c)(2)with regard to samarium-cobalt magnets used in electronic components); or

\* \* \* \* \*

(d) If the authorized agency official concerned, as specified in 225.7018-4, determines that compliant covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price.

(1) For tantalum metal, tantalum alloy, or tungsten heavy alloy, the term “required form” refers to the form of the mill product, such as bar, billet, wire, slab, plate, or sheet, in the grade appropriate for the production of a finished end item to be delivered to the Government under this contract; or a finished component assembled into an end item to be delivered to the Government under the contract.

\* \* \* \* \*

**225.7018-4 Nonavailability determination.**

(a) *\* \* \**

(2) The supporting documentation for the determination shall include an analysis and written certification by the requiring activity that describes, with specificity, why alternatives that would not require a nonavailability determinationare unacceptable. The template for an individual nonavailability determination is available at PGI 225.7018-4(a)(2).

(3) \* \* \*

(ii) Notification when individual nonavailability determinations are requested, but denied.

**\* \* \* \* \***

**225.7018-5 Contract clause.**

Unless acquiring items outside the United States for use outside the United States or a nonavailability determination has been made in accordance with 225.7018-4, use the clause at 252.225-7052, Restriction on Acquisition of Certain Magnets, Tantalum, and Tungsten, 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.

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**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**\* \* \* \* \***

252.225-7052 Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten.

[As prescribed in 225.7018-5, use the following clause:]

RESTRICTION ON THE ACQUISITION OF CERTAIN MAGNETS, TANTALUM, AND TUNGSTEN (~~OCT 2020~~ [AUG 2022])

(a) *Definitions.* \* \* \*

“Covered material” means—

(1) Samarium-cobalt magnets;

(2) Neodymium-iron-boron magnets;

(3) Tantalum metal[s] and alloys;

(4) Tungsten metal powder; and

(5) Tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

\* \* \*

(b) *Restriction*. *\* \* \**

(3) For production of tantalum metal[s of any kind] and alloys, this restriction includes the reduction [or melting of any form] of tantalum ~~chemicals such as oxides, chlorides, or potassium salts, to metal powder and~~ [to create tantalum metal including unwrought, powder, mill products, and alloys. The restriction also covers] all subsequent phases of production of tantalum metal[s] and alloys~~, such as consolidation of metal powders~~.

(4) \* \* \*

(c) *Exceptions*. *\* \* \**

(1) To an end item [containing a covered material] that is—

(i) \* \* \*

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

\* \* \* \* \*

(2) \* \* \*

(i) For tantalum metal, tantalum alloy, or tungsten heavy alloy, the term “required form” refers to the form of the mill product, such as bar, billet, wire, slab, plate, or sheet, in the grade appropriate for the production of a finished end item to be delivered to the Government under this contract; or a finished component assembled into an end item to be delivered to the Government under the contract.

\* \* \*

(d) *Subcontracts*. \* \* \*

(End of clause)

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