**DFARS Case 2023-D005**

**Modification to the National Technology and Industrial Base**

**Final Rule**

**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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**225.7004 Restriction on acquisition of foreign buses.**

**225.7004-1 Restriction.**

In accordance with 10 U.S.C. 4864, do not acquire a multipassenger motor vehicle (bus) unless it is manufactured in the United States, Australia, Canada, **[New Zealand, ]**or the United Kingdom **[of Great Britain and Northern Ireland (United Kingdom)]**.

**225.7004-2 Applicability.**

Apply this restriction if the buses are purchased, leased, rented, or made available under contracts for transportation services.

**225.7004-3 Exceptions.**

This restriction does not apply in any of the following circumstances:

(a) Buses manufactured outside the United States, Australia, Canada, **[New Zealand, ]** or the United Kingdom are needed for temporary use because buses manufactured in the United States**[, Australia,]** ~~or~~ Canada**[, New Zealand, or the United Kingdom]** 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, Australia, Canada, **[New Zealand, ]** or the United Kingdom.

(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, Australia, Canada, **[New Zealand, ]** or the United Kingdom**[ ]**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, Australia, Canada, **[New Zealand, ]** or the United Kingdom are available at no cost to the U.S. Government.

(d) The acquisition is for an amount at or below the simplified acquisition threshold.

**225.7004-4 Waiver.**

The waiver criteria at 225.7008(a) apply to this restriction.

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**225.7006 Restriction on air circuit breakers for naval vessels.**

**225.7006-1 Restriction.**

In accordance with 10 U.S.C. 4864, do not acquire air circuit breakers for naval vessels unless they are manufactured in the United States, Australia, Canada, **[New Zealand,]** or the United Kingdom.

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**225.7008 Waiver of restrictions of 10 U.S.C. 4864.**

When specifically authorized by reference elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 4864(a) may be waived as follows:

(a)(1) The Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)), without power of delegation, may waive a restriction for a particular item for a particular foreign country upon determination that⎯

(i) 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

(ii) 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.

(2) A notice of the determination to exercise the waiver authority shall be published in the Federal Register and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(3) The effective period of the waiver shall not exceed 1 year.

(4) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, the waiver shall be applied as directed or authorized in the waiver to⎯

(i) Subcontracts entered into on or after the effective date of the waiver; and

(ii) 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.

(b) The head of the contracting activity may waive a restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(1) The restriction would cause unreasonable delays.

(2) Satisfactory quality items manufactured in the United States, Australia, ~~or~~ Canada, **[New Zealand, ]**or the United Kingdom are not available.

(3) Application of the restriction would result in the existence of only one source for the item in the United States, Australia, ~~or~~ Canada, **[New Zealand,]** or the United Kingdom.

(4) Application of the restriction is not in the national security interests of the United States.

(5) Application of the restriction would adversely affect a U.S. company.

(c) A restriction is waived when it would cause unreasonable costs. The cost of an item of U.S., Australian, Canadian, **[New Zealand, ]**or United Kingdom origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items that are not of U.S., Australian, Canadian, **[New Zealand, ]**or United Kingdom origin.

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**225.7010 Restrictions on certain naval vessel components and auxiliary ship components.**

**225.7010-1 Restrictions.**

In accordance with 10 U.S.C. 4864, unless manufactured in the United States, Australia, Canada, **[New Zealand, ]**or the United Kingdom, do not acquire:

(a) The following components of naval vessels to the extent they are unique to marine applications:

(1) Gyrocompasses.

(2) Electronic navigation chart systems.

(3) Steering controls.

(4) Pumps.

(5) Propulsion and machinery control systems.

(6) Totally enclosed lifeboats.

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

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**252.225-7037 Evaluation of Offers for Air Circuit Breakers.**

As prescribed in 225.7006-4(a), use the following provision:

EVALUATION OF OFFERS FOR AIR CIRCUIT BREAKERS (~~DEC 2018~~**[JUL 2023]**)

(a) The offeror shall specify, in its offer, any intent to furnish air circuit breakers that are not manufactured in the United States or its outlying areas, Australia, Canada, **[New Zealand, ]**or the United Kingdom **[of Great Britain and Northern Ireland (United Kingdom)]**.

(b) The Contracting Officer will evaluate offers by adding a factor of 50 percent to the offered price of air circuit breakers that are not manufactured in the United States or its**[** **]**outlying areas, Australia,Canada, **[New Zealand,]** or the United Kingdom.

(End of provision)

**252.225-7038 Restriction on Acquisition of Air Circuit Breakers.**

As prescribed in 225.7006-4(b), use the following clause:

RESTRICTION ON ACQUISITION OF AIR CIRCUIT BREAKERS

(~~DEC 2018~~**[JUL 2023]**)

Unless otherwise specified in its offer, the Contractor shall deliver under this contract air circuit breakers manufactured in the United States or its outlying areas, Australia,Canada, **[New Zealand, ]**or the United Kingdom **[of Great Britain and Northern Ireland]**.

(End of clause)

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