

**SUBPART 225.7—PROHIBITED SOURCES**

*(Revised December 21, 2018)*

See DoD [Class Deviation 2015-O0016](#), **Prohibition on Providing Funds to the Enemy and Authorization of Additional Access to Records**. This deviation is applicable to solicitations and contracts awarded on or before December 31, 2019, with an estimated value in excess of \$50,000 that are being, or will be performed, outside the United States and its outlying areas, in support of a contingency operation in which members of the Armed Forces actively engaged in hostilities.

See DoD [Class Deviation 2015-O0013](#), **Class Deviation-Additional Access to Contractor and Subcontractor Records**. This deviation is applicable to solicitations and contracts awarded on or before December 19, 2017, with an estimated value in excess of \$100,000, that will be performed in the U.S. Central Command theater of operation.

**225.701 Restrictions.**

**225.701-70 Exception.**

DoD personnel are authorized to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by the Department of the Treasury, Office of Foreign Assets Control.

**225.770 Prohibition on acquisition of certain items from Communist Chinese military companies.**

This section implements section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163), section 1243 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81), and section 1296 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328). See [PGI 225.770](#) for additional information relating to this statute, the terms used in this section, the United States Munitions List (USML), and the 600 series of the Commerce Control List (CCL).

**225.770-1 Definitions.**

As used in this section—

“Component” means an item that is useful only when used in conjunction with an end item (15 CFR 772.1 and 22 CFR 120.45(b)).

“Item” means—

- (1) A USML defense article, as defined at 22 CFR 120.6;
- (2) A USML defense service, as defined at 22 CFR 120.9; or
- (3) A 600 series item, as defined at 15 CFR 772.1.

“Part” means any single unassembled element of a major or minor component, accessory, or attachment, that is not normally subject to disassembly without the destruction or impairment of designed use (15 CFR 772.1 and 22 CFR 120.45(d)).

**225.770-2 Prohibition.**

Do not acquire items covered by the USML or the 600 series of the CCL, through a contract or subcontract at any tier, from any Communist Chinese military company. This prohibition does not apply to components and parts of covered items unless the components and parts are themselves covered by the USML or the 600 series of the CCL.

**225.770-3 Exceptions.**

The prohibition in [225.770-2](#) does not apply to items acquired—

- (a) In connection with a visit to the People’s Republic of China by a vessel or an aircraft of the U.S. armed forces;
- (b) For testing purposes; or
- (c) For the purpose of gathering intelligence.

**225.770-4 Identifying items covered by the USML or the 600 series of the CCL.**

(a) Before issuance of a solicitation, the requiring activity will notify the contracting officer in writing whether the items to be acquired are covered by the USML or the 600 series of the CCL. The notification will identify any covered item(s) and will provide the pertinent USML reference(s) from 22 CFR part 121 or the 600 series of the CCL references from 15 CFR part 774, Supplement No. 1.

(b) The USML includes defense articles and defense services that fall into 21 categories. The CCL includes ten categories and five product groups in each category, many of which contain 600 series items. Since not all items covered by the USML or 600 series of the CCL are themselves munitions (e.g., protective personnel equipment, military training equipment), the requiring activity should consult the USML and the 600 series of the CCL before concluding that an item is or is not covered. See [PGI 225.770-4](#).

**225.770-5 Waiver of prohibition.**

(a) The prohibition in [225.770-2](#) may be waived, on a case-by-case basis, if an official identified in paragraph (b) of this subsection determines that a waiver is necessary for national security purposes.

(b) The following officials are authorized, without power of delegation, to make the determination specified in paragraph (a) of this subsection:

- (1) The Under Secretary of Defense (Acquisition and Sustainment).
- (2) The Secretaries of the military departments.
- (3) The Component Acquisition Executive of the Defense Logistics Agency.

(c)(1) The official granting a waiver shall submit a report to the congressional defense committees, with a copy to the Director of Defense Procurement and Acquisition Policy (see [PGI 225.770-5](#)), not less than 15 days before issuing the waiver.

(2) In the report, the official shall—

- (i) Identify the specific reasons for the waiver; and
- (ii) Include recommendations as to what actions may be taken to develop alternative sourcing capabilities in the future.

**225.771 Prohibition on contracting or subcontracting with a firm that is owned or controlled by the government of a country that is a state sponsor of terrorism.**

**225.771-0 Scope.**

This section implements 10 U.S.C. 2327(b).

**225.771-1 Definition.**

“State sponsor of terrorism,” as used in this section, is defined in the provision at [252.225-7050](#), Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

**225.771-2 Prohibition.**

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(a) The contracting officer shall not award a contract of \$150,000 or more to a firm when a foreign government that is a state sponsor of terrorism owns or controls, either directly or indirectly, a significant interest in—

- (i) The firm;
- (ii) A subsidiary of the firm; or
- (iii) Any other firm that owns or controls the firm.

(b) For restrictions on subcontracting with a firm, or a subsidiary of a firm, that is identified by the Secretary of Defense as being owned or controlled by the government of a country that is a state sponsor of terrorism, see [209.405-2](#).

#### **225.771-3 Notification.**

Any disclosure that the government of a country that is a state sponsor of terrorism has a significant interest in an offeror, a subsidiary of an offeror, or any other firm that owns or controls an offeror shall be forwarded through agency channels to the address at [PGI 225.771-3](#).

#### **225.771-4 Waiver of prohibition.**

The prohibition in [225.771-2](#) may be waived if the Secretary of Defense determines that a waiver is not inconsistent with the national security objectives of the United States in accordance with 10 U.S.C. 2327(c).

#### **225.771-5 Solicitation provision.**

Use the provision at [252.225-7050](#), Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items (other than commercial satellite services), that are expected to result in contracts of \$150,000 or more. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision [252.225-7050](#) in the solicitation.

#### **225.772 Prohibition on acquisition of certain foreign commercial satellite services.**

##### **225.772-0 Scope.**

This section implements 10 U.S.C. 2279.

##### **225.772-1 Definitions.**

As used in this section—

“Covered foreign country” means—

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- (1) The People’s Republic of China;
- (2) North Korea;
- (3) The Russian Federation; or
- (4) Any country that is a state sponsor of terrorism. (10 U.S.C. 2279)

“Cybersecurity risk” means threats to and vulnerabilities of information or information systems and any related consequences caused by or resulting from unauthorized access, use, disclosure, degradation, disruption, modification, or destruction of such information or information systems, including such related consequences caused by an act of terrorism. (10 U.S.C. 2279)

“Foreign entity” means—

(1) Any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(2) Notwithstanding paragraph (1) of this definition, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity. (31 CFR 800.212)

“Government of a covered foreign country” includes the state and the government of a covered foreign country, as well as any political subdivision, agency, or instrumentality thereof.

“Launch vehicle” means a fully integrated space launch vehicle. (10 U.S.C. 2279)

“Satellite services” means communications capabilities that utilize an on-orbit satellite for transmitting the signal from one location to another.

“State sponsor of terrorism” means a country determined by the Secretary of State, under section 1754(c)(1)(A)(i) of the Export Control Reform Act of 2018 (Title XVII, Subtitle B, of the National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of December 21, 2018, state sponsors of terrorism include: Iran, North Korea, Sudan, and Syria. (10 U.S.C. 2327)

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#### **225.772-2 Prohibitions.**

Except as provided in [225.772-4](#), the contracting officer shall not award a contract for commercial satellite services to—

(a)(1) A foreign entity if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that—

(i) The foreign entity is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations;

(ii) The foreign entity plans to or is expected to provide satellite services under the contract from a covered foreign country; or

(iii) Entering into such contract would create an unacceptable cybersecurity risk for DoD, as determined by the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy; or

(2) An offeror that is offering commercial satellite services provided by a foreign entity as described in paragraph (a) of this section; or

(b)(1) Any entity, except as provided in paragraph (b)(2) of this section, for a launch that occurs on or after December 31, 2022, if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that such satellite services will be provided using satellites that will be—

(i) Designed or manufactured—

(A) In a covered foreign country; or

(B) By an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country; or

(ii) Launched outside the United States using a launch vehicle that is—

(A) Designed or manufactured in a covered foreign country; or

(B) Provided by—

(1) The government of a covered foreign country; or

(2) An entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country.

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(2) The prohibition in paragraph (b)(1) of this section does not apply with respect to launch services for which a satellite service provider has a contract or other agreement that, prior to June 10, 2018, was either fully paid for by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services.

#### **225.772-3 Procedures.**

(a)(1) The contracting officer shall not award to any source that is a foreign satellite service provider or is offering satellite services provided by a foreign entity if such award presents an unacceptable cybersecurity risk, as determined by the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy.

(2) When procuring commercial satellite services from a foreign entity, the contracting officer shall review the exclusion records in the System for Award Management (SAM) database as required at FAR 9.405, to ensure that an entity identified in, or otherwise known to be involved in, the otherwise successful offer is not listed as ineligible in the SAM database (see FAR 9.405).

(b) If an offeror discloses information in accordance with paragraph (c) of the provision [252.225-7049](#), Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations, the contracting officer—

(1) Shall forward the information regarding the offeror through agency channels to the address at [PGI 225.772-3](#); and

(2) Shall not award to that offeror, unless an exception is determined to apply in accordance with [225.772-4](#).

(c)(1) If the otherwise successful offeror provides negative responses to all representations in the provision at [252.225-7049](#), the contracting officer may rely on the representations, unless the contracting officer has an independent reason to question the representations.

(2) If the contracting officer has an independent reason to question a negative representation of the otherwise successful offeror, the contracting officer shall consult with the office specified in [PGI 225.772-3](#), prior to deciding whether to award to that offeror.

#### **225.772-4 Exception.**

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(a) The prohibitions in [225.772-2](#)(a) and (b) do not apply if—

(1) The Under Secretary of Defense for Acquisition and Sustainment, or the Under Secretary of Defense for Policy, without power of redelegation, determines that it is in the national security interest of the United States to enter into such contract; and

(2) Not later than seven days before entering into such contract, the Under Secretary of Defense making the determination in paragraph (a)(1) of this section, in consultation with the Director of National Intelligence, submits to the congressional defense committees a national security assessment, in accordance with 10 U.S.C. 2279.

(b) If requesting an exception pursuant to paragraph (a) of this section, the contracting officer shall forward the request through agency channels to the address at [PGI 225.772-3](#), providing any available information necessary for the Under Secretary of Defense making the determination in paragraph (a)(1) of this section to evaluate the request and perform a national security assessment, in accordance with 10 U.S.C. 2279.

#### **225.772-5 Solicitation provision and contract clauses.**

(a) Use the provision at [252.225-7049](#), Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations, in solicitations that include the clause at [252.225-7051](#), Prohibition on Acquisition of Certain Foreign Commercial Satellite Services. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision [252.225-7049](#) in the solicitation.

(b) Use the clause at [252.225-7051](#), Prohibition on Acquisition of Certain Foreign Commercial Satellite Services, in solicitations and contracts for the acquisition of commercial satellite services, including solicitation and contracts using FAR part 12 procedures for the acquisition of commercial items.

(c) Use the clause at [252.239-7018](#), Supply Chain Risk, as prescribed at [239.7306](#)(b), when applicable.