

SUBPART 225.7—PROHIBITED SOURCES

(Revised August 5, 2014)

225.701 Restrictions.

See [209.104-1\(g\)](#) for restrictions on contracting with firms owned or controlled by foreign governments.

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 United States Munitions List 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) and section 1243 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81). See [PGI 225.770](#) for additional information relating to this statute, the terms used in this section, and the United States Munitions List.

225.770-1 Definitions.

As used in this section—

(a) “Communist Chinese military company” and “United States Munitions List” are defined in the clause at [252.225-7007](#), Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies.

(b) “Component” means an item that is useful only when used in conjunction with an end item (22 CFR 121.8).

(c) “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 design use (22 CFR 121.8).

225.770-2 Prohibition.

Do not acquire supplies or services covered by the United States Munitions List (USML) (22 CFR Part 121), 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.

225.770-3 Exceptions.

The prohibition in [225.770-2](#) does not apply to supplies or services 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 USML items.

(a) Before issuance of a solicitation, the requiring activity shall notify the contracting officer in writing whether the items to be acquired are covered by the USML. The notification shall identify any covered item(s) and shall provide the pertinent USML reference(s) from 22 CFR Part 121.

(b) The USML includes defense articles and defense services that fall into 21 categories. Since not all USML items are themselves munitions (e.g., protective personnel equipment, military training equipment), the requiring activity should consult the USML before concluding that an item is or is not covered by the USML.

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, Technology, and Logistics).
- (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.

See DoD [Class Deviation 2014-O0020](#), Class Deviation-Prohibition on Contracting with the Enemy. This deviation is applicable to solicitations and contracts awarded on or before December 31, 2018, with an estimated value in excess of \$50,000 that are being, or will be performed, in the U.S. Central Command, U.S. European Command, U.S. Africa Command, U.S. Southern Command, or U.S. Pacific Command theaters of operation.

225.771 Reserved.

225.772 Prohibition on acquisition of commercial satellite services from certain foreign entities.

225.772-0 Scope.

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

225.772-1 Definitions.

As used in this section, “covered foreign country,” “foreign entity,” “government of a covered foreign country,” “satellite services,” and “state sponsor of terrorism” are defined in the provision at [252.225-7049](#), Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations.

225.772-2 Prohibition.

The contracting officer shall not award a contract for commercial satellite services to—

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

(1) Is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations; or

(2) Plans to or is expected to provide or use launch or other satellite services under the contract from a covered foreign country; or

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

225.772-3 Procedures.

(a) If an offeror discloses information in accordance with paragraph (d) of the provision [252.225-7049](#), Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—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](#).

(b)(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.

(a) The prohibition in [225.772-2](#) does not apply if—

(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics,

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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.

Use the provision at [252.225-7049](#), Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations, in solicitations for the acquisition of 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.