

2000-0301-2

TIMKEN

Donna J. Demerling
President

WORLDWIDE LEADER IN BEARINGS AND STEEL

February 12, 2001

Defense Acquisition Regulations Council
Attn: Ms. Amy Williams
OUSD(AT&L) DP (DAR) IMD 3C132
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Washington, DC 20301-3062
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Re: DFARS Case 2000-D301: Comments of Timken Aerospace on the Interim Rule Concerning Domestic Source Restrictions on Ball and Roller Bearings

Dear Sirs:

On behalf of Timken Aerospace & Super Precision Bearings ("Timken Aerospace"), of Keene, New Hampshire, a domestic producer of antifriction bearings, we hereby respond to the request for comments concerning the Interim Rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) with respect to domestic source restrictions on ball and roller bearings. The Interim Rule, with request for comments, was published in the *Federal Register* on December 13, 2000 (65 Fed. Reg. 77827).

Introduction

Timken Aerospace was founded in 1927 and is a wholly-owned subsidiary of the Timken Company, of Canton, Ohio. Timken Aerospace is one of the few remaining U.S.-owned producer of aerospace bearings. Timken Aerospace produces both ball and cylindrical roller bearings ranging in size from a few millimeters across to over 500 mm (or about 20 inches) in diameter. Timken Aerospace bearings are used in aerospace applications and for "super precision" applications in



Timken Aerospace & Super Precision

A Timken Company Subsidiary

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which the highest standards of precision and quality are required. Timken Aerospace bearings are found in military fighter planes and helicopters, and are the sole source for the gimbal bearings for cruise missiles. As such, Timken Aerospace bearings have been and are important to maintaining a domestically-sourced U.S. defense capability.

Under the Defense-Federal Acquisition Regulations (DFARS), Timken Aerospace has benefited from a Buy-American preference for that part of its sales that are purely military. Historically, this has accounted for a significant portion of Timken Aerospace's production. Accordingly, Timken Aerospace has a substantial interest in the effective administration of the DFARS' domestic preference restrictions with respect to ball and roller bearings.

The Interim Rule

The *Federal Register* notice states that:

Th[e] interim rule implements Section 8064 of the DoD Appropriations Act for Fiscal Year 2001 (Public Law 106-259) and Section 805 of the DoD Authorization Act for Fiscal Year 2001 (Public Law 106-398). Section 8064 of Public Law 106-259 restricts the acquisition of ball and roller bearings and vessel propellers to those produced by a domestic source and of domestic origin. Section 805 of Public Law 106-398 extends the restriction on acquisition of ball and roller bearings at 10 U.S.C. 2534 through fiscal year 2005. Section 8064 of Public Law 106-259 became effective on August 9, 2000, and Section 805 of Public Law 106-398 became effective on October 30, 2000.

65 Fed. Reg. at 77827-77828.

The Statutory Provisions Implemented By the Interim Rule

Section 8064 of the Department of Defense Appropriations Act 2001 provides:

SEC. 8064. None of the funds appropriated in fiscal year 2000 and by this Act may be used for the procurement of vessel propellers and ball and roller bearings other than those produced by a domestic source and of domestic origin: Provided, That the Secretary of the military department responsible for such procurement may waive this restriction on a case-by-case

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basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate, that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: Provided further, That this restriction shall not apply to the purchase of "commercial items", as defined by section 4(12) of the Office of Federal Procurement Policy Act, except that the restriction shall apply to ball or roller bearings purchased as end items.

P.L. 106-259 at § 8064.

Section 805 of the Department of Defense Authorization Act 2001 provides:

Sec. 805. EXTENSION OF TIME PERIOD OF LIMITATION ON PROCUREMENT OF BALL BEARINGS AND ROLLER BEARINGS.

Section 2534(c)(3) of title 10, United States Code, is amended by striking 'October 1, 2000' and inserting 'October 1, 2005'.

P.L. 106-398 at § 805.

Comment on Interim Rule

Timken Aerospace believes that the Interim Rule published at 65 Fed. Reg. 77828-77829 accurately implements the two statutory provisions -- section 8064 of P.L. 106-259 and section 805 of P.L. 106-398. The Interim Rule:

(1) extends the restrictions on foreign acquisition of ball and roller bearings through fiscal year 2005 (section 225.7019-1);

(2) takes account of the "commercial items" exception to the domestic content restrictions applicable to ball and roller bearing acquisitions (sections 212.503, 212.504, 225.7019-2(b), 252.212-7001, and 252.225-7016)); and

(3) provides that "commercial" ball or roller bearings purchased as "end items" do not benefit from the "commercial items" exception (sections 212.503, 212.504, 225.7019-2(b)).

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Accordingly, Timken Aerospace believes that the final rule should adopt the provisions of the Interim Rule.

Additional Comments: Proposal for Monitoring Mechanism

On its face, the Interim Rule implements the relevant statutory provisions. However, Timken Aerospace believes that the final rule should also address the matter of effective monitoring and compliance with the domestic content restrictions applicable to ball and roller bearing acquisitions.

Effective enforcement of the DFARS is important both to maintaining effective defense capability and domestic production of critical products, such as bearings. Without effective monitoring and enforcement of the DFARS' requirements, foreign producers may be able to enter the defense procurement market and undercut domestic producers, thereby negatively affecting domestic production, sales, and capital investment. In turn, this would eventually lead to reductions in the capability to produce bearings domestically, which would adversely affect national defense readiness. Indeed, the DFARS recognize that, pursuant to Departmental policy, "contracts should be awarded to domestic bearing manufacturers to increase their capability to reinvest and become more competitive." 48 C.F.R. 225.7019-3(a)(ii).

Timken Aerospace therefore proposes that, in the final rule, DoD consider providing some mechanism that would allow interested domestic producers, as well as the general public, to review compliance of defense contractors with the DFARS' restrictions on acquisition of foreign-sourced ball and roller bearings. One possible way to implement this proposal would be to make a yearly report to Congress or to the general public. In such report, the DoD could detail the annual number of procurements of ball and roller bearings, together with information relevant to the DFARS

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compliance of such procurements. The report should contain such important information as the number of procurements that were made under the "commercial items" exception.

In a report issued several years ago, the Department of Commerce reported that implementation of and compliance with DFARS restrictions had been problematic. The report indicated the types of problems encountered with enforcing the DFAR restrictions and it underscores the need for effective monitoring.

The effectiveness of the 1988 DFAR bearing restriction in meeting its national security objectives clearly depends upon the efficacy with which it is being implemented by DOD and its contracting activities. In separate audits conducted by DOD's Office of the Inspector General (IG) in 1991 and 1992, it was found that the DFAR restriction was being incompletely implemented. These reports found that, in some cases, the procurement restrictive clause was not included in DOD contracts, and in other cases when the clause was included, contractors often did not make the required certification that bearings were domestically manufactured and/or made insufficient effort to verify that contracts actually complied with the DFAR clause.

U.S. Department of Commerce, Bureau of Export Administration, *National Security Assessment of the Antifriction Bearings Industry: A Report to the Department of Defense*, at 70 (Feb. 1993).

An annual monitoring and compliance report by the DoD would identify problems such as those revealed by the Department of Commerce's report, and would encourage compliance with DFARS requirements.

Moreover, a recent report by the U.S. General Accounting Office indicates that an annual review of ball and roller bearings procurements would be feasible. In its report, the GAO reviewed various products subject to domestic source restrictions. With respect to bearings, the GAO reported that:

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Antifriction bearings are essential in any metal product with moving parts and, therefore, are necessary for manufacturing defense products varying from motor vehicles to high-accuracy gyroscopes for missile guidance systems.

* * *

Item Suppliers: DOD purchased bearings from 159 domestic and 5 British companies in fiscal year 1997. The domestic companies are located throughout the United States.

Defense Acquisition: Rationale for Imposing Domestic Source Restrictions (Letter Report, 07/17/98, GAO/NSIAD-98-191), at Appendix III-7. That the GAO reviewed and reported DoD purchases of ball and roller bearings indicates that such information is capable of collection, as well as important to monitoring the proper functioning of the DFARS' domestic source restrictions.

In addition, as the regulations currently require contractors to "retain records showing compliance" with the domestic source restrictions on acquisition of ball and roller bearings "until 3 years after final payment and to make records available upon request of the Contracting Officer," it would not be unduly burdensome on the Department to collect or review the documents relevant to compiling a compliance report. 48 C.F.R. § 252.225-7016(e).

In sum, Timken Aerospace urges the Department to consider including in the final rule a mechanism that would regularly monitor compliance with the DFARS domestic source restrictions on ball and roller bearings. Such a mechanism would allow domestic producers (one of the intended beneficiaries of the domestic source restrictions) and the general public to review the effectiveness of the DFARS.

Conclusion

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Timken Aerospace appreciates the opportunity to submit the foregoing comments regarding the Interim Rule concerning domestic source restrictions on ball and roller bearings, and requests that the Department consider the comments in its preparation of the final rule.

Respectfully submitted,



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President