

2000-D301-3

To: Defense Acquisition Regulations Council  
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Subject: Defense Federal Acquisition Regulation Supplement, Domestic Source  
Restrictions-Ball and Roller Bearings and Vessel Propellers

1. The U.S. Department of Commerce, Bureau of Export Administration (BXA), has identified the ball and roller bearings and vessel propeller industries to be strategic assets, critical to our national security. As such, we are concerned with the proposed interim rule designed to implement Congressional restrictions to domestic sources. Therefore, we are submitting the following comments on DFARS Case 2001-D301.

With regards to the ball and roller bearings sector, BXA has conducted three national security assessments over the past fifteen years. In addition, testimony has been provided to Congressional Committees regarding the restriction to domestic sources. Given the intent of Congress as expressed in H.R. 4576, Sec 8063, we request several changes to the interim rule language.

Based on our reading of Sec 8063, the proposed rule does not follow Congressional intent. We contend that Congress intended to extend for five years the previous restriction. Congress intended that the bearings contained in all military items, including replacement bearings, would be sourced from a domestic producer. The proposed interim rule dilutes the Intent of Congress to maintain a domestic capability. We also have concerns with the proposed language that would permit the procurement of bearings from sources in the United Kingdom (UK) except when the bearings are incidental to procurements and the original equipment manufacturer is a UK firm.

For commercial items, such as administrative and office computers, the end item may possess foreign bearings. However, any bearing replacements are required to have been produced by a domestic source. There is ample evidence that domestic

distributors are buying bearings from foreign sources and selling them to DoD as commercial items.

The proposed interim rule undermines Congress' intent by adding confusion to the waiver provision. As proposed, the DFARS language both confuses the interpretation of the restriction to the extent that each procurement officer could come to a different conclusion on whether the restriction applied or not as well as it opens procurements to foreign products made available through a domestic distribution center which is inconsistent with the intent of Congress. H.R. 4576 Sec. 8063 states "None of the funds appropriated by this Act may be used for the procurement of ball and roller bearings other than those produced by a domestic source and of domestic origin..." The Conference Report to accompany H.R. 4205, Sec. 805 provides that the Senate recedes on this issue.

2. Specific comments to the proposed language are provided.

a. Reference DFARS 252.225-7016(c)(1)(ii). The Congressional language does not differentiate between ball and roller bearings being procured as an end item or as a component. The proposed rule should not include provisions that make such a distinction.

b. Reference DFARS 225.7020-2. The same discussion as above relating to commercial items applies to vessel propellers.

c. Reference DFARS 225.7020-3. The waiver provision in subparagraph (a) would allow for foreign procurements as a result of improper demand forecasts, delays in approval of funds, untimely issuance of requests for proposals, and any number of shortcomings to the logistics and acquisition processes within the department. Clearly Congress did not intend to permit these events to permit a waiver to the domestic restriction.

d. Reference DFARS 252.225-7023(b)(2). I am confident that the DFARS Council did not intend that a Contractor would participate in the approval process of a waiver request for propellers. Therefore, I suspect the Council intended for the department to make such a request and that the request, or as a minimum the determination, would be presented to the Appropriations Committees who implemented the restriction.

3. We recommend that the following language be considered in lieu of the proposed interim rule.

a. In DFARS 225.7019-2(b). The restriction in 225.7019-1(b) does not apply to contracts or subcontracts for acquisition items, except for ball and roller bearings.

b. In DFARS 252.225-7016(c)(1)(i). The end items or components containing ball or roller bearings are produced by a domestic source and of domestic origin.

c. In DFARS 252.225-7016(c)(1)(ii). The ball or roller bearings are manufactured in the United Kingdom for repair or replacement of bearings on the end item or assembly where a United Kingdom supplier was the provider of the original end item.

d. In DFARS 225.7020-3(a). Domestic supplies or production capability are not available to meet DoD requirements.

e. In DFARS 252.225-7023(b)(1). Does not apply to vessel propellers that are designed to meet the requirements for a class of commercial vessels readily available to the general public for commercial or recreational purposes.

f. In DFARS 252.225-7023(b)(2). The Secretary of the department responsible for acquisition may waive this restriction on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that domestic supplies or production capability are not available to meet DoD requirements.

4. In the U.S. Department of Commerce, Bureau of Export Administration, Office of Industrial Resource Administration, Strategic Analysis Division, National Security report *Assessment of the Antifriction Bearings Industry-A Report to the Department of Defense*, February 1993 reported Inspector General findings that "it was found that the DFAR restriction was being incompletely implemented." We continue to witness this condition. Therefore, it is highly encouraged that DoD consider procedures to ensure future compliance and appropriate remedies in instances of non-compliance.

5. I submit that the DFARS Council has extended the intent of Congress and that the interim rule should be immediately withdrawn and revision made consistent with the above.

6. Lastly, the scope of this rule should be reviewed for applicability of Executive Order 12866.

7. We are prepared to meet with and discuss our concerns and develop acceptable language with the DFARS Council.

Respectfully,

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