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MEMORANDUM FOR DISTRIBUTION

Subj: Factors to be Considered in Making Domestic Non-availability Determinations  
Under 10 U.S.C. 2533b

Encl: (1) OUSD(AT&L) DPAP memorandum dated January 17, 2007

This memorandum forwards enclosure (1) to provide guidance on factors which should be taken into consideration for specialty metal Domestic Non-availability Determinations.

For further information on this issue, please contact Katherine Petersen at (703) 614-9641 or e-mail at [Katherine.Petersen@navy.mil](mailto:Katherine.Petersen@navy.mil).

  
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Under 10 U.S.C. 2533b

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JAN 17 2007

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
ASSISTANT SECRETARY OF THE ARMY (ACQUISITION,  
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(ACQUISITION)  
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Factors to be Considered in Making Domestic Non-availability  
Determinations (DNAD) Under 10 U.S.C. 2533b

10 U.S.C. 2533b(b) authorizes an availability exception to the requirement that only compliant specialty metals be procured by the Department of Defense. It states:

“Subsection (a) does not apply to the extent that the Secretary of Defense or the Secretary of the military department concerned determines that compliant specialty metal of satisfactory quality and sufficient quantity, and in the required form, cannot be procured as and when needed.”

Several factors can and should be taken into consideration in making a determination that compliant specialty metal is not available. Are compliant parts, assemblies or components available in the required form as and when needed? What are the costs and time delays if requalification of certain parts of the system is required? What will be the impact on the program's delivery schedule, program costs and mission needs?

This exception should not be read to require that compliant metal must be totally unavailable, i.e., cannot be obtained at any cost. There is some cost limit that any reasonable person would agree makes the metal effectively “unavailable”. To assist in making such determinations, we should make use of the tools that are used to analyze the generally accepted concept of Government procurement that only fair and reasonable prices be paid. FAR 15-402 places a requirement that Contracting Officers must purchase supplies and services at fair and reasonable prices. Thus, Contracting Officers are experienced at determining if the increase in contract price that results from providing



Enclosure (1)

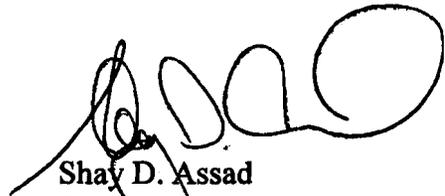
compliant specialty metal is fair and reasonable given the circumstances of the particular situation. In those cases where a Contracting Officer determines that the price would not be fair and reasonable, the Secretary of the Military Department involved may use that information in determining whether the unreasonable price causes compliant specialty metal to be effectively "unavailable". Where these "reasonable" limits should be drawn is a case-by-case decision keeping in mind that Congress would not have imposed the restriction unless they expected DoD to incur some additional cost. A similar approach can be used to determine whether delays associated with incorporating compliant specialty metal into items being procured results in the metals being unavailable "as and when needed."

In some cases, the Department may be unable to obtain compliant specialty metal parts in the form that is required. For example, a recent DNAD was approved that determined that populated circuit card assemblies are only available with lids and leads made of specialty metal that are not domestically produced. Globalization has resulted in the manufacture of most of these items to occur outside the U.S. Since the U.S. government makes up less than 2 percent of the semiconductor/microcircuit customer base, it does not have the buying power to require that the specialty metals contained in these items be produced domestically. Therefore, populated circuit card assemblies with compliant lids and leads, are not available.

When considering whether specialty metal is available in the required form, we interpret the phrase "in the required form" to relate to specialty metal that is formed in some fashion into a part.

There are no definitive rules that can be applied across the board for DNADs. Each case must be evaluated on its own merits. The Secretaries of the Military Departments have the authority to approve DNADs. Accordingly, the sufficiency of the rationale for an individual DNAD is subject to their discretion.

Questions on these matters should be directed to Nancy Dowling, (703) 697-9352, or [nancy.dowling@osd.mil](mailto:nancy.dowling@osd.mil).



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Enclosure (1)