

Specialty Metals - Finally Some Reprieve

For those defense contractors feeling oppressed by the requirements of the Berry Amendment (since passage of the John Warner National Defense Authorization Act for Fiscal Year 2007, commonly referred to as the Specialty Metals Clause), there is a glimmer of reprieve. On January 4, 2007, the Under Secretary of Defense for Acquisition, Technology & Logistics determined that "populated circuit card assemblies" do not need to comply with the Specialty Metals Clause:

Determination

For those populated circuit card assemblies that are not excepted from coverage by 10 U.S.C.2533b(g), I hereby determine that satisfactory quality and sufficient quantity of compliant specialty metals in the form of lids and leads in populated circuit card assemblies cannot be procured as and when needed.

As a result, contracting officers may procure end items, and components thereof, containing populated circuit card assemblies notwithstanding the country where the specialty metals contained in such items were melted or produced.

Determination at 1-2. This determination is entitled a "domestic non-availability determination" or "DNAD."

The January 4th DNAD means that defense contractors can purchase and build into their end items and components at all levels populated circuit card assemblies regardless of where the specialty metal contained in the circuit card was melted or produced. The DNAD defines "populated circuit card assemblies" as "circuit card assemblies populated with commercial components." (*Id.* at 1). The Defense Contract Management Agency's website, www.dcma.mil/dnad, has posted this determination and will post any future determinations as to other parts, assemblies or products.

This exception applies to all open contracts, including those awarded prior to January 4th, and all future contracts until such time as the Under Secretary may rescind this determination. Such a rescission would need to address contracts that are in place at the time of the rescission. Until such time, however, industry can rely on the January 4th DNAD in development of its corrective action plan. In other words, it would be appropriate to state in the corrective action plan that the contractor can meet the requirements of the specialty metal clause, with respect to populated circuit card assemblies, only through reliance on the DNAD.

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