



Customer Success Is Our Mission

October 1, 2007

Re: Preference for Domestic Specialty Metals Under Defense Department Contracts  
**(Please forward to appropriate individuals in your company)**

Dear Supplier,

Last year, Raytheon sent letters to its suppliers reminding them about their obligation to comply with the contract clause at DFARS 252.225-7014, Preference for Domestic Specialty Metals, Alternate I (“Alt. I”). Since then, Congress has enacted a new law governing the acquisition of specialty metals by the Department of Defense (“DoD”), *see* Section 842 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (“FY07 NDAA”), and DoD has taken steps to implement portions of that Act. Many of these recent developments are detailed in the several documents referenced at the end of this letter.<sup>1</sup> Copies of these documents may be accessed through Raytheon’s external supplier web site at <http://www.raytheon.com/connections/supplier/index.html>

#### **Current Specialty Metals Requirements**

There are now two Alt. I clauses – one applicable to prime contracts entered into prior to November 16, 2006 (“Alt. I”), and another one applicable to prime contracts entered into after November 15, 2006 (“Alt. I (Deviation)”). Both clauses provide the same definition of specialty metals and both clauses prohibit Raytheon and all of its suppliers at every tier from incorporating specialty metals into military parts, components and/or end item deliverables unless the specialty metals have been melted (the Deviation clause adds “or produced”) in the United States, its outlying areas, or a qualifying country listed in DFARS 225.872-1.

You are required to flow the appropriate Alt. I clause down to your suppliers with instructions that they must flow the clause down to their suppliers. Accordingly, you must be able to verify your compliance with this flow down requirement, and require your suppliers to provide you with objective evidence that they have supplied you with compliant specialty metals. In addition, you must make certain (i) that your employees understand the Alt. I requirements, and (ii) that you use only compliant specialty metals to manufacture articles supplied to Raytheon, or immediately notify Raytheon if you are not.

#### **Exceptions From Current Specialty Metals Requirements**

Notwithstanding these Alt. I requirements, your products may qualify for one or more exceptions that would permit you to provide products to Raytheon (and for Raytheon to provide them to DoD) without concern about their compliance with Alt. I, as follows:

##### **Articles Manufactured In A Qualifying Country**

Articles, end items, parts, components, etc., that are manufactured in a qualifying country listed in DFARS 225.872-1 are exempt from the Alt. I requirements, regardless of where the specialty metals in such articles, end items, parts, components, etc. may have been melted. *See* Alt. I (Deviation). In this regard, note that *the United States is not a qualifying country*. If you believe that your products qualify for relief under this exception, you must provide Raytheon with documents and information sufficient to substantiate that the items for which you claim this exception were manufactured in a qualifying country.

### **Commercially Available Electronic Components With De Minimis Specialty Metal Content**

This exception added by the new law and included in the Alt. I (Deviation) clause, provides that the Alt. I requirements do not apply to specialty metals incorporated into a commercially available electronic component, if the value of the specialty metal content in the electronic component does not exceed 10 percent of the overall value of the lowest level electronic component, containing specialty metal, that is (i) produced by the contractor, or (ii) if the contractor does not produce the electronic component, produced by the subcontractor from which the electronic component was acquired.

This exemption has several important elements. The term “commercially available” has not been defined for purposes of this exception. So, the exception could apply broadly to “commercial items” as defined by FAR § 2.101, or more narrowly only to commercial off-the-shelf (“COTS”) items, as defined by 41 U.S.C. § 431©. Raytheon believes that, pending DoD action to define the term, it would be reasonable to treat any item that qualifies as a COTS item as “commercially available.” “Electronic component” is defined in the Alt. I (Deviation) clause as “an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections of electrical devices such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits.”

If you believe that any of your products meet the definition of “commercially available electronic component,” you must provide documents and information to Raytheon sufficient to substantiate your belief that your products meet that definition. You must also provide Raytheon with information about the value of the specialty metal content in the part. Note in this regard that the DoD guidance issued with the Class Deviation makes clear that “[i]t is not necessary to know the exact value of the specialty metal, only to reasonably estimate that it is less than 10 percent of the total value.

### **One-Time Waiver**

The new law established a one-time waiver opportunity to deal with situations in which specialty metals were incorporated into items produced, manufactured, or assembled in the United States prior to the effective date of the law (October 17, 2006), where final acceptance occurs after that date. Prerequisites for granting such a waiver are written determinations by the contracting officer that

- (i) removal or replacement of the non-compliant specialty metals “in such items” or the substitution of non-compliant items with compliant items is impractical or uneconomical;
- (ii) the prime and subcontractor responsible for the non-compliance have effective correction plans to ensure compliance of items produced, manufactured, or assembled in the U.S. after the date of the enactment; and
- (iii) the non-compliance is not knowing or willful.

If you believe that any of your products qualify for a one-time waiver, you must provide Raytheon with documents and information that relate in any way to the three determinations listed above, and provide documents and information sufficient to substantiate that the products were produced, manufactured, or assembled in the United States prior to October 17, 2006. In addition, you need to provide Raytheon with documents and information about when your products will be compliant with the Alt. I requirements, as Raytheon will be pursuing your compliance and the compliance of all its suppliers, under its Corrective Action Plan, through supplier quality audits and otherwise.

### **DNAD For Populated Circuit Card Assemblies**

On January 4, 2007, DoD issued a Domestic Non-Availability Determination (“DNAD”), exempting populated circuit card assemblies (“CCAs”) from the specialty metals restrictions on the ground that compliant CCAs are not reasonably available. As long as the CCA DNAD remains in place, it applies automatically to any existing and future DoD contract. If you believe that your products are covered by the CCA DNAD, you must provide Raytheon with documents and information sufficient to demonstrate that your products are covered by the DNAD.

### **DNAD For Fasteners**

On April 10, 2007, DoD issued a DNAD, exempting fasteners including all items in Federal Stock Classes 5305, 5306, 5307, 5310, 5320 and 5325, or NAICS code 332722 from the specialty metals restrictions on the ground that compliant fasteners are not reasonably available (the “Fasteners DNAD”). As long as the Fasteners DNAD remains in place, it applies automatically to any existing and future DoD contract. If you believe that your products are covered by the Fasteners DNAD, you must provide Raytheon with documents and information sufficient to demonstrate that your products are covered by the DNAD.

### **DNAD for Dual Use Needle Bearings**

On June 7, 2007, DoD issued a DNAD, exempting dual use needle bearings, including items in Federal Stock Classes 3110, 3120 and 3130, or NAICS code 332991, but excluding ball bearings, bushing sleeves, bearing sleeves, rod ends, mounted bearings, and bearings built-to-print for military-specific applications, from specialty metals restrictions on the ground that compliant dual use needle bearings are not reasonably available (the “Dual Use Needle Bearings DNAD”). As long as the Dual Use Needle Bearings DNAD remains in place, it applies automatically to any existing and future DoD contract. If you believe that your products are covered by the Dual Use Needle Bearings DNAD, you must provide Raytheon with documents and information sufficient to demonstrate that your products are covered by the DNAD.

Because violations of the Alt. I requirements can result in government investigations, monetary forfeitures, delayed deliveries to DoD customers, and other sanctions or problems, Raytheon seeks and expects your full cooperation with these matters.

### **Future Compliance With Specialty Metals Requirements Mandated**

All Raytheon suppliers will be expected to comply with all specialty metals requirements flowed down by purchase order unless one or more of the limited exemptions referenced above are sufficiently demonstrated as having application, through the submission of supporting documentation to Raytheon by the supplier.

Raytheon will also seek assurances from each Raytheon supplier of products which contain specialty metals, through supplier quality audits or otherwise, as to steps that the supplier is taking to ensure future compliance with all specialty metals requirements, including information concerning:

- Methods that the supplier uses to verify whether or not the Raytheon part contains specialty metals;
- Methods that the supplier uses to obtain quotes from OEMs that are for compliant hardware;
- Methods of validating that the supplier has received quotes from OEMs for compliant hardware;
- Methods of flowing down specialty metals requirements to OEMs;
- Methods of validating that the supplier has received compliant hardware from OEMs;
- Supplier’s record management practices regarding specialty metals compliance documentation;
- Supplier’s inventory process for identifying and handling compliant hardware; and
- Supplier training on specialty metals requirements.

In demonstrating steps towards future compliance, suppliers will need to provide Raytheon with documents and information about when their products will be compliant with the Alt. I requirements, as Raytheon will be pursuing their compliance and the compliance of all its suppliers, under its Corrective Action Plan.

If you have any questions, please contact your supply chain contact for specialty metals issues, Vincent Dailey at 781-768-3975.

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1. Text of Section 842 of the John Warner National Defense Authorization Act for Fiscal Year 2007.
  2. DoD's Class Deviation 2006-O0004, Restriction on Acquisition of Specialty Metals, dated December 6, 2006 ("Class Deviation") which, among other things, provided the text of the new Alt. I (Deviation) clause.
  3. DoD's Domestic Non-Availability Determination ("DNAD"), dated January 4, 2007, which exempts populated circuit card assemblies ("CCAs") from the Alt. I requirements on the ground that compliant CCAs are not reasonably available.
  4. DoD's Domestic Non-Availability Determination ("DNAD"), dated April 10, 2007, which exempts fasteners from the Alt. I requirements on the ground that compliant fasteners are not reasonably available.
  5. Defense Contract Management Agency ("DCMA") Information Memorandum No. 07-042, dated December 8, 2006, regarding review and approval of contractor corrective action plans ("CAPs").
  6. DCMA Information Memorandum No. 07-064, dated January 9, 2007, regarding the class DNAD for populated CCAs.
  7. January 17, 2007 Memorandum from Shay Assay, Director, Defense Procurement and Acquisition Policy, regarding "Factors to be Considered in Making Domestic Non-availability Determinations (DNAD) Under 10 U.S.C. 2533b."
  8. Letter to the defense industry from the Joint Aeronautical Logistical Commanders asking that contractors develop requests for DNADs at the corporate-wide multi-Service level when multiple services are affected by the non-availability.