Ball and Roller Bearings

Domestic Sourcing Restrictions
(an overview)
Overview

• How Does Congress Restrict Sourcing?
• Specialty Metals: The Berry Amendment
• Ball and Roller Bearings:
  - 10 USC 2534
  - Annual Appropriations Act
• What is needed to approve non-domestic buys?
The Constitution

• Article I, Sec 8: The Congress shall have Power To lay and collect Taxes …

• Article I, Sec 9: No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; …

• A Federal Agency \textit{may not} make a payment from the Treasury unless Congress has made the funds available.
Show Me the Money
Establishing a Program vs. Actually Funding It

- Authorization legislation is considered and reported by the committees with legislative jurisdiction over the particular subject matter.
- Appropriation bills are exclusively within the jurisdiction of the appropriations committees.
Limitations on the Use of Appropriated Funds

- Purpose
- Time
- Amount
Fiscal Handcuffs

• The Appropriations Clause has been described as the most important curb in the Constitution on Presidential Power.

• Gov’t Employee who violates purpose, time, or amount restrictions may be subject to civil and/or criminal prosecution under the Anti-Deficiency Act.
Berry Amendment

• 1940 Naval Appropriations Act:
  • No part of this appropriation shall be available for any article of “food” not grown or produced in the United States.
Berry Amendment Add-Ons: Frankenstein’s Monster

- 1950: allowed foods to be “processed” in US (jams, jellies, …)
- 1953: cotton/wool
- 1956: silk
- 1967: synthetic fabrics
- 1973: specialty metals (including stainless steel flatware)
- 1978: protective clothing
- 1988: tents
Specialty Metals

- Steel if it contains manganese, silicon, copper, aluminum, chromium, nickel, titanium, tungsten…;
- Metal alloys consisting of nickel, iron-nickel, cobalt base alloys;
- Titanium and titanium alloys;
- Zirconium and zirconium base alloys.
When Does Specialty Metals Apply?

- Only procurements above the Simplified Acquisition Threshold (currently $100,000)
- Basic or Alt I?
- Basic does not flow down requirement to subs; Alt I does.
- Aircraft; Missile and Space Systems; Ships; Tank-automotive; Weapons; Ammunition. (Alt I).
What Does the Specialty Metals Clause Require?

- Contractor agrees that any specialty metals incorporated in articles delivered under the contract will be melted in the US (for Alt I, would include subs).
- Exception: Melted in a Qualifying Country or is incorporated in an article manufactured in a Qualifying Country.
Ball and Roller Bearing Restrictions

- If one is good: two must be better.
- Two separate Congressional restrictions on the purchase of ball and roller bearings:
  - Authorization Act restriction
  - Appropriation Act restriction
- Need waivers from both to acquire nondomestic ball and roller bearings.
Bearing components defined:

- Bearing element;
- Retainer;
- Inner race; or
- Outer race.
Authorization Act restriction:

- 1995 DoD Authorization Act
- Codified at 10 USC 2534
- Delegated waiver authority
Appropriations Act restriction:

- 1996 DoD Appropriations Act (and subsequent years)
- Requires Secretary of Military Department to certify to House and Senate Appropriations Committee that no domestic sources meet DoD needs.
- Applies to bearings purchased as end items.
- No dollar threshold exclusion- absolute prohibition unless waiver is granted.
Why is the waiver process at a higher level today than it was previously?

- DAR Council created commercial item exception; Congress took away the commercial item exception in 2000.
- Berets (or the lack thereof).
- OSD level must now approve waivers from both DoD Appropriations Act ball and Roller Bearing restriction and Specialty Metal restriction.