

BERRY AMENDMENT – PREFERENCE FOR DOMESTIC SPECIALTY METALS
DFARS 252.225-7014
COMPLIANCE CHECKLIST
(REVISED 1/18/06)

As you know, we previously issued a Raytheon Rapid Alert and provided guidance about what to do in light of the notification by **Anixter-Pentacore** in November 2005 that it has supplied parts containing specialty metals that do not comply with DFARS 252.225-7014 Alt 1. Also, please note that, in addition to **Anixter-Pentacore**, **Parker-Hannifin**, **Roller Bearing Company**, **Cortland Co.** and **D. B. Roberts Company** have notified Raytheon that they have supplied parts that do not comply with this requirement. In addition, **NYF Corp**, **Pall Aeropower Corporation**, **CDP Fastener Group, Inc.**, **Aero-Glen, Inc.**, **Hardware Specialty Co., Inc.**, **Alcoa Fastening Systems**, and **Bisco** have advised Raytheon that they are investigating whether they have supplied non-compliant parts. Finally, please note that we are currently following-up with **Pacific Western** and **MS Inserts & Fasteners** to determine if they have complied with Alt 1. The Company has been negotiating with John McGrath, Defense Corporate Executive of DCMA, regarding the conditions under which Raytheon may ship products that might contain specialty metals that do not comply with Alt 1. We summarize here the approach agreed to by Mr. McGrath and then provide complete, supplemented guidance below.

SUMMARY OF GUIDANCE AS AGREED TO BY JOHN MCGRATH

You should first ask the cognizant PCO if an exception is available. If the PCO determines that an exception is not available, then you should seek to obtain the cognizant PCO's agreement to ship on a "withhold basis."

DCMA seeks to ensure that the Alt 1 non-compliance has not affected quality. Please coordinate with DCMA quality representatives so that they can evaluate the specialty metal parts and determine that the quality conforms to the relevant specifications. DCMA should report the results of their evaluation in writing to you.

You must notify the cognizant PCO in writing of your request to ship on a withhold basis. Mr. McGrath has asked that, to the extent possible, Raytheon's letter to the PCO state the part number of the affected deliverables, the part number of the lowest auditable part containing potentially non-compliant specialty metals, state that DCMA has evaluated quality and has found no concerns, state the withhold amount, and request that the PCO proceed. If the PCO agrees, he or she should sign and return the letter to Raytheon, which Raytheon should attach to its DD250 or other shipping document.

Mr. McGrath and Raytheon have agreed that the following language (from paragraph 11 of the Fire-Proofing Memo on the Berry Amendment recently issued by DCMA's Office of Counsel, plus additional language negotiated by Raytheon) will be included in the DD250 or shipping document:

"1. This item is conditionally accepted with parts that may have been manufactured with non-compliant specialty metals as described in [insert contractor's name] letter, pending completion of the contractor's investigation and Government concurrence. The contractor remains liable for any non-conformance with 10 U.S.C. 2533a as implemented in DFARS clause 252.225-7014 (Preference for Domestic Specialty Metals) and Alt 1. Further, acceptance of this part does not constitute a waiver by the Government of any rights, contractual, statutory, or otherwise, relating to any matter involving the production or delivery of this part, and does not waive any claim by the United States for fraud, false claims, or any other conduct on the part of any party which may be actionable under law. Moreover, the Government acknowledges that the contractor

maintains that its actions in this regard are taken without conceding any violation of regulation or law, including the False Claims Act, and without prejudice to the contractor's rights under law, regulation, and contract.

2. The Contractor has certified or has presented documentation that there are no quality, safety, performance, or specification issues as a result of the nonconformance.

3. Payment under this contract shall include a withhold in the amount of [insert], based upon the contractor's representation of the estimated cost of the non-compliant specialty metal parts, plus applicable burden and profit."

If you are unable to estimate the approximate cost of the possibly non-compliant parts, you should attempt to ship products under the refund scenario. (See Comprehensive Guidance below.) The refund scenario should rarely be used. The withhold scenario should be followed if possible.

DCMA has requested that to the extent possible, each business provide to DCMA a listing of the following information: the affected deliverable part number, the lowest auditable part number containing potentially non-compliant specialty metals, the contract number, the program, due date and quantity of the deliverables, and the withhold amount.

For deliverables requiring Alt 1 compliance that do not contain any non-compliant parts from any of the suppliers listed in the first paragraph of this Guidance, you may present products but should state in the remarks section of the DD250 or other shipping documents as follows: this shipment contains no DFARS 252.225-7014 Alt 1 non-compliant parts from [supplier(s)].

In addition to these steps, you should continue to use the appropriate disclaimer language on the invoices as instructed below. Please see below for more comprehensive guidance.

COMPREHENSIVE GUIDANCE

Many products that Raytheon provides to the military contain stainless steel, such as ball bearings, screws, bolts, and other parts. If the product is to be used in military programs for aircraft, missile and space systems, ships, tank-automotive, weapons, or ammunition, the raw material (stainless steel or other "specialty metal") must have been melted in the United States, its outlying areas, or other "qualifying countries" specified in the DFARS. The following companies, which supply Raytheon with parts that contain specialty metals, have advised Raytheon that they have supplied parts that do not comply with this requirement: **Anixter-Pentacore, Parker-Hannifin, Roller Bearing Company, Cortland Co. and D. B. Roberts Company**. In addition, **NYF Corp, Pall Aeropower Corporation, CDP Fastener Group, Inc., Aero-Glen, Inc., Hardware Specialty Co., Inc., Alcoa Fastening Systems**, and **Bisco** have advised Raytheon that they are investigating whether they have supplied non-compliant parts. If necessary, other Raytheon suppliers may be added to this list.

Some of these companies have provided some information about which of their parts may not comply with the DFARS requirement. Note that this issue relates only to the country of origin of the raw material used to make the parts; we have no information that the quality, form, fit, function, or safety of the parts is in question. We are working with these suppliers to obtain information from them about which parts are compliant and which are not and expect that these suppliers will advise Raytheon of the results of their investigations. At this time, Raytheon does not fully know whether its products scheduled for delivery under its Department of Defense contracts contain non-compliant specialty metals provided by these suppliers. Pending review of the information from these suppliers about their parts and a determination as to compliance,

Raytheon must continue to deal with its government customers and continue to deliver products to the maximum extent possible. To that end, this Checklist provides guidance on how to proceed pending the outcome of these investigations.

CONTACT THE PCO TO REQUEST AN EXCEPTION UNDER DFARS 225.7002-2

Under certain circumstances, the PCO is authorized to accept products that contain non-compliant specialty metals. Before proceeding to the options listed below, you should contact the cognizant PCO to request an exception under DFARS 225.7002-2. An exception that is frequently used is where the products are needed in support of “contingency operations.” If the PCO grants the exception, you may ship the products to the government without regard to the compliance of any parts contained therein and you need not proceed under either option below.

OPTIONS FOR DELIVERY OF PRODUCTS TO THE GOVERNMENT IF THE PCO DOES NOT GRANT AN EXCEPTION

As long as your particular customer has not indicated otherwise, Raytheon has determined that it is generally proper and appropriate to continue to deliver products to its DOD customers in spite of the uncertainty about the compliance of the parts with DFARS 252.225-7014 Alt 1, provided that adequate assurances are given to the government that its interests will be protected. Accordingly, pending receipt of complete information from each supplier about its parts and a determination as to compliance, you may continue to deliver products to the government under the procedures set forth below. These procedures assume either (i) that you are able to estimate the approximate cost of the possibly non-compliant parts so that you can propose to ship product, with a temporary withhold of an appropriate amount from your invoice, or (ii) that you are unable to estimate that cost and will propose to ship product, with a promise to later refund an appropriate amount, plus interest, to account for any non-compliant parts.

OPTION 1 (WITHHOLD SCENARIO). If you are able to estimate the approximate cost of the possibly non-compliant parts, you should advise the cognizant PCO of the situation both orally and in writing (or in instances where the former is not feasible, in writing only). You should inform the PCO that Raytheon will ship its products that may contain possibly non-compliant parts, will withhold from its invoice an approximate cost of those parts plus burden and profit, and reserves the right (i) to invoice for that withheld amount if the parts are subsequently determined to comply with DFARS 252.225-7014 Alt 1, or (ii) to propose an appropriate contract adjustment if some of the parts are subsequently determined to be non-compliant. This is the preferred option and should be used if possible. Please see Exhibits 1a and 1b below for suggested form letters to the PCO if this Option 1 is followed.

OPTION 2 (REFUND SCENARIO). If you are unable to estimate the approximate cost of the possibly non-compliant parts, you should advise the cognizant PCO of the situation both orally and in writing (or in instances where the former is not feasible, in writing only). You should inform the PCO that you intend to deliver product, with the assurance that, if it is subsequently determined that the product delivered contains parts that do not comply with DFARS 252.225-7014 Alt 1, Raytheon will refund, by credit or otherwise, an appropriate amount, plus interest, to account for the non-compliant parts. Please see Exhibits 2a and 2b for suggested form letters to the PCO if this Option 2 is followed.

In the event your DoD customer has indicated that it will accept products containing parts from any of the suppliers listed above only if Raytheon has affirmatively verified that the components comply with DFARS 252.225-7014 Alt 1, then neither of the two options outlined above can be used. In that case, please consult your local Raytheon legal counsel or Molly Brown (see below) for additional guidance.

ADDITIONAL PROCEDURES FOR OPTION 1 – WITHHOLD SCENARIO

You must also notify the appropriate Raytheon personnel charged with billing the government under each potentially affected contract that the billing should reflect the appropriate withhold amount and should be accompanied by a disclaimer stating that the withhold is made without prejudice and that Raytheon reserves the right (i) to invoice for the withheld amount if the parts are determined to be compliant with DFARS 252.225-7014 Alt 1, and (ii) to propose an appropriate contract adjustment if some of the parts are found to be non-compliant. The disclaimer also reserves Raytheon's legal rights. Please see Exhibit 3a for a sample disclaimer for the invoices from which amounts have been withheld.

ADDITIONAL PROCEDURES FOR OPTION 2 – REFUND SCENARIO

You must also notify the appropriate Raytheon personnel charged with billing the government under each potentially affected contract that the billing should be accompanied by a disclaimer stating that if it is subsequently determined that the product delivered contained parts that do not comply with DFARS 252.225-7014 Alt 1, Raytheon will refund, by credit or otherwise, an appropriate amount, plus interest, to account for the non-compliant parts. The disclaimer also reserves Raytheon's legal rights. Please see Exhibit 3b below for a sample disclaimer where Raytheon is billing in full, but promising a refund, with interest.

INVENTORY REVIEW

Although Raytheon is proposing to the government that it be permitted to continue use of parts from the suppliers listed above subject to the above procedures, the government may not agree. Accordingly, if it is feasible to identify parts from these suppliers in inventory that will not be needed for use in the immediate future, you should segregate those parts. We understand that this may not be feasible, depending on the manner in which the parts have been stored.

If you have any questions about any of the items on this Checklist, contact your local Raytheon legal counsel or Molly Brown, Raytheon Corporate Legal Department, by phone at 781.522.3061 or by e-mail at Molly.Brown@raytheon.com.

The Company will issue additional guidance (i) after the suppliers listed above advise of the results of their investigations and (ii) if additional Raytheon suppliers need to be added.

*** END OF GUIDANCE. SEE ATTACHED FOR LETTERS AND DISCLAIMER LANGUAGE ***

EXHIBIT 1A – DRAFT LETTER TO PCO UNDER OPTION 1 (WITHHOLD SCENARIO) CONFIRMING ORAL ADVICE

Re: Contract _____

Dear _____:

This confirms the advice we previously provided about a situation involving one of our suppliers and our proposed interim resolution of that situation.

[supplier name], which supplies Raytheon with parts made of specialty metals has recently advised Raytheon that it has supplied some parts that do not comply with the requirements of DFARS 252.225-7014 Alt 1, but [supplier name] has not provided complete, specific information about which parts may not comply. It is important to emphasize that this possible non-compliance relates only to the country of origin of the raw material used to manufacture the [supplier name] parts; we have no information that the quality, form, fit, function, or safety of the parts is in question. [supplier name] has advised that it is in the process of determining which parts are compliant and which are not and will notify Raytheon of the results of its investigation. At this time, Raytheon does not fully know whether its products scheduled for delivery under the subject contract contain non-compliant metals provided by [supplier name]. Accordingly, pending review of [supplier name]'s information about its parts and a determination as to compliance, Raytheon plans to deliver its products to you according to schedule.

The number of potentially affected deliverables is _____. The part number of the lowest auditable part containing potentially non-compliant specialty metals is _____. DCMA has evaluated the quality of [insert supplier name] parts and has found no concerns. [Please see attached evaluation by DCMA.] We have been able to estimate the approximate cost of the possibly defective [supplier name] parts at \$ _____ and will withhold this amount, plus burden and profit, from our invoices for Raytheon products delivered under the subject contract. If it is subsequently determined that the [supplier name] parts are compliant, Raytheon will submit an invoice for the withheld amount. If it is determined that the [supplier name] parts are non-compliant, Raytheon will propose a contract adjustment. The value of the withhold is not to be considered the appropriate contract adjustment, and we reserve the right to propose an appropriate contract adjustment.

Please sign below to indicate your agreement with this procedure and return the letter to me so that I can attach it to the DD250 or other shipping document per DCMA's request. If you have any questions about this matter, please do not hesitate to contact the undersigned.

Agreed to by PCO

EXHIBIT 1B – DRAFT LETTER TO PCO UNDER OPTION 1 (WITHHOLD SCENARIO) WITH NO PRIOR ORAL ADVICE

Re: Contract _____

Dear _____:

We are writing to inform you about a situation involving one of our suppliers and our proposed interim resolution of that situation.

[supplier name], which supplies Raytheon with parts made of specialty metals has recently advised Raytheon that it has supplied some parts that do not comply with the requirements of DFARS 252.225-7014 Alt 1, but [supplier name] has not provided complete, specific information about which parts may not comply. It is important to emphasize that this possible non-compliance relates only to the country of origin of the raw material used to manufacture the [supplier name] parts; we have no information that the quality, form, fit, function, or safety of the parts is in question. [supplier name] has advised that it is in the process of determining which parts are compliant and which are not and will notify Raytheon of the results of its investigation. At this time, Raytheon does not fully know whether its products scheduled for delivery under the subject contract contain non-compliant metals provided by [supplier name]. Accordingly, pending review of [supplier name]'s information about its parts and a determination as to compliance, Raytheon plans to deliver its products to you according to schedule.

The number of potentially affected deliverables is _____. The part number of the lowest auditable part containing potentially non-compliant specialty metals is _____. DCMA has evaluated the quality of [insert supplier name] parts and has found no concerns. [Please see attached evaluation by DCMA.] We have been able to estimate the approximate cost of the possibly defective [supplier name] parts at \$ _____ and will withhold this amount, plus burden and profit, from our invoices for Raytheon products delivered under the subject contract. If it is subsequently determined that the [supplier name] parts are compliant, Raytheon will submit an invoice for the withheld amount. If it is determined that the [supplier name] parts are non-compliant, Raytheon will propose a contract adjustment. The value of the withhold is not to be considered the appropriate contract adjustment, and we reserve the right to propose an appropriate contract adjustment.

Please sign below to indicate your agreement with this procedure and return the letter to me so that I can attach it to the DD250 or other shipping document per DCMA's request. If you have any questions about this matter, please do not hesitate to contact the undersigned.

Agreed to by PCO

EXHIBIT 2A – DRAFT LETTER TO PCO UNDER OPTION 2 (REFUND SCENARIO) CONFIRMING ORAL ADVICE

Re: Contract _____

Dear _____:

This confirms the advice we previously provided about a situation involving one of our suppliers and our proposed interim resolution of that situation.

[supplier name], which supplies Raytheon with parts made of specialty metals has recently advised Raytheon that it has supplied some parts that do not comply with the requirements of DFARS 252.225-7014 Alt 1, but [supplier name] has not provided complete, specific information about which parts may not comply. It is important to emphasize that this possible non-compliance relates only to the country of origin of the raw material used to manufacture the [supplier name] parts; we have no information that the quality, form, fit, function, or safety of the parts is in question. [supplier name] has advised that it is in the process of determining which parts are compliant and which are not and will notify Raytheon of the results of its investigation. At this time, Raytheon does not fully know whether its products scheduled for delivery under the subject contract contain non-compliant metals provided by [supplier name]. Accordingly, pending review of [supplier name]'s information about its parts and a determination as to compliance, Raytheon plans to deliver its products to you according to schedule. Raytheon will refund to the government, by credit or otherwise, an appropriate amount, plus interest, to account for any non-compliant [supplier name] parts subsequently determined to be included in Raytheon products delivered under the subject contract.

Please sign below to indicate your agreement with this procedure and return the letter to me so that I can attach it to the DD250 or other shipping document per DCMA's request. If you have any questions about this matter, please do not hesitate to contact the undersigned.

Agreed to by PCO

EXHIBIT 2B – DRAFT LETTER TO PCO UNDER OPTION 2 (REFUND SCENARIO) WITH NO PRIOR ORAL ADVICE

Re: Contract _____

Dear _____:

We are writing to inform you about a situation involving one of our suppliers and our proposed interim resolution of that situation.

[supplier name], which supplies Raytheon with parts made of specialty metals has recently advised Raytheon that it has supplied some parts that do not comply with the requirements of DFARS 252.225-7014 Alt 1, but [supplier name] has not provided complete, specific information about which parts may not comply. It is important to emphasize that this possible non-compliance relates only to the country of origin of the raw material used to manufacture the [supplier name] parts; we have no information that the quality, form, fit, function, or safety of the parts is in question. [supplier name] has advised that it is in the process of determining which parts are compliant and which are not and will notify Raytheon of the results of its investigation. At this time, Raytheon does not fully know whether its products scheduled for delivery under the subject contract contain non-compliant metals provided by [supplier name]. Accordingly, pending review of [supplier name]'s information about its parts and a determination as to compliance, Raytheon plans to deliver its products to you according to schedule unless you object. Raytheon will refund to the government, by credit or otherwise, an appropriate amount, plus interest, to account for any non-compliant [supplier name] parts subsequently determined to be included in Raytheon products delivered under the subject contract.

If you object to this procedure, please notify us immediately. Otherwise, please sign below to indicate your agreement with this procedure and return the letter to me so that I can attach it to the DD250 or other shipping document per DCMA's request. If you have any questions about this matter, please do not hesitate to contact the undersigned.

Agreed to by PCO

EXHIBIT 3A – SAMPLE DISCLAIMER UNDER OPTION 1 (WITHHOLD SCENARIO)
(This must accompany each invoice for shipments under Option 1 above.)

Notice to Government Re: Certain Raytheon Billings

[supplier name], which supplies Raytheon with parts made of specialty metals, has recently advised Raytheon that it has supplied some parts that do not comply with the requirements of DFARS 252.225-7014 Alt 1, but [supplier name] has not provided complete, specific information about which parts may not comply. This possible non-compliance relates only to the country of origin of the raw material used to manufacture the [supplier name] parts; we have no information that the quality, form, fit, function, or safety of the parts is in question. [supplier name] has advised that it is in the process of determining which parts are compliant and which are not and will notify Raytheon of the results of its investigation. Because Raytheon does not fully know whether the specific products scheduled for delivery under this contract contain non-compliant metals provided by [supplier name], pending receipt of [supplier name]'s information about its parts and a determination as to compliance, Raytheon is continuing to deliver products to the government, subject to Raytheon voluntarily and temporarily withholding the estimated cost of the possibly non-compliant [supplier name] parts from the invoices applicable to such products.

The invoice to which this notice is attached reflects Raytheon's billing reduction as described above. Raytheon reserves the right to submit an invoice for the withheld amount, or negotiate a contract adjustment, as appropriate, based on a determination of the compliance of the [supplier name] parts. The withhold amount is not to be considered to be the amount of an appropriate contract adjustment.

Raytheon's actions in this regard are taken without conceding any violation of regulation or law, including the False Claims Act, and without prejudice to Raytheon's rights under law, regulation and contract.

EXHIBIT 3B – SAMPLE DISCLAIMER UNDER OPTION 2 (REFUND SCENARIO)
(This must accompany each invoice for shipments under Option 2 above.)

Notice to Government Re: Certain Raytheon Billings

[supplier name], which supplies Raytheon with parts made of specialty metals, has recently advised Raytheon that it has supplied some parts that do not comply with the requirements of DFARS 252.225-7014 Alt 1, but [supplier name] has not provided complete, specific information about which parts may not comply. This possible non-compliance relates only to the country of origin of the raw material used to manufacture the [supplier name] parts; we have no information that the quality, form, fit, function, or safety of the parts is in question. [supplier name] has advised that it is in the process of determining which parts are compliant and which are not and will notify Raytheon of the results of its investigation. Because Raytheon does not fully know whether the specific products scheduled for delivery under this contract contain non-compliant metals provided by [supplier name], pending receipt of [supplier name]'s information about its parts and a determination as to compliance, Raytheon is continuing to deliver products to the government, subject to refunding to the government, by credit or otherwise, an appropriate amount, plus interest, to account for any non-compliant [supplier name] parts subsequently determined to be included in Raytheon products delivered under this contract.

If it is determined that the Raytheon product that is the subject of this invoice contains [supplier name] parts that do not comply with DFARS 252.225-7014 Alt 1, Raytheon will refund, by credit or otherwise, an appropriate amount, plus interest.

Raytheon's actions in this regard are taken without conceding any violation of regulation or law, including the False Claims Act, and without prejudice to Raytheon's rights under law, regulation, and contract.

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