



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

In reply refer to
DARS Tracking Number: 2020-O0018

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DEFENSE FIELD ACTIVITIES

SUBJECT: Class Deviation—Prohibition on Use of Certain Energy Sourced from Inside the
Russian Federation

Effective immediately, unless a waiver is granted, contracting officers shall not award a contract for the acquisition of furnished energy for a covered military installation, if the contract uses any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation. For the purposes of this deviation—

- “Covered military installation” means a military installation in Europe identified by the Department of Defense as a main operating base; and
- “Furnished energy” means energy furnished to a covered military installation in any form and for any purpose, including heating, cooling, and electricity.

Contracting officers shall use the solicitation provision provided in Attachment 1 and the contract clause provided in Attachment 2, as prescribed in the attachments.

This class deviation implements section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92). The head of the agency may waive application of this prohibition to a specific contract for furnished energy, if the head of the agency certifies to the congressional defense committees that—

- Waiver of the prohibition requirements is necessary to ensure an adequate supply of furnished energy for the covered military installation; and

- The official has balanced these national security requirements against the potential risk associated with reliance upon the Russian Federation for furnished energy.

If a waiver has been granted for a contract for furnished energy, not later than 14 days prior to entering into the contract, the official granting the waiver shall submit notice of the waiver to the congressional defense committees with a copy to the Principal Director of Defense Pricing and Contracting via email at *osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil*. The waiver notice shall include—

- The rationale for the waiver, including the basis for the above certifications;
- An assessment of how the waiver may impact the European energy resiliency strategy; and
- An explanation of the measures the Department of Defense is taking to mitigate the risk of using Russian Federation furnished energy.

The contracting officer shall obtain a copy of the waiver and notice from the requiring activity or program manager prior to awarding the contract and include a copy of the waiver and notice in the contract file.

This class deviation remains in effect until it is incorporated in the Defense Federal Acquisition Regulation Supplement, or is otherwise rescinded. My point of contact is Mr. Jeff Grover, who is available at 703-697-9352 or *jeffrey.c.grover.civ@mail.mil*.

Kim Herrington
Acting Principal Director,
Defense Pricing and Contracting

Attachment:
As stated

252.225-7971 Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation—Representation. (DEVIATION 2020-O0018)

Use the following provision in solicitations for the acquisition of furnished energy for a covered military installation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, unless a waiver has been granted by the head of agency in accordance with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92):

**PROHIBITION ON USE OF CERTAIN ENERGY SOURCED FROM INSIDE
THE RUSSIAN FEDERATION—REPRESENTATION (DEVIATION 2020-
O0018) (MAY 2020)**

(a) *Definitions.* As used in this clause—

“*Covered military installation*” means a military installation in Europe identified by the Department of Defense as a main operating base; and

“*Furnished energy*” means energy furnished to a covered military installation in any form and for any purpose, including heating, cooling, and electricity.

(b) *Prohibition.* Section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92) prohibits contracting officers from entering into a contract for the acquisition of furnished energy for a covered military installation that uses any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation.

(c) *Representation.* By submission of its offer, the Offeror represents that the Offeror will not use any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation in the performance of any contract, subcontract, or other contractual instrument resulting from this solicitation.

(End of provision)

252.225-7970 Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation. (DEVIATION 2020-O0018)

Use the following clause in solicitations and contracts for the acquisition of furnished energy for a covered military installation, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, unless a waiver has been granted by the head of agency in accordance with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92):

**PROHIBITION ON USE OF CERTAIN ENERGY SOURCED FROM INSIDE
THE RUSSIAN FEDERATION (DEVIATION 2020-O0018) (MAY 2020)**

(a) *Definitions.* As used in this clause—

“*Covered military installation*” means a military installation in Europe identified by the Department of Defense as a main operating base; and

“*Furnished energy*” means energy furnished to a covered military installation in any form and for any purpose, including heating, cooling, and electricity.

(b) *Prohibition.* In accordance with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), the Contractor shall not use in the performance of this contract any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation.

(c) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts and other contractual instruments that are for furnished energy at a covered military installation, including subcontracts and other contractual instruments for commercial items.

(End of clause)