225.7018-4 Nonavailability determination.

(a) *Individual nonavailability determinations*.

(1) The head of the contracting activity is authorized to make a nonavailability determination described in 225.7018-3 (d) on an individual basis (i.e., applies to only one contract).

(2) The supporting documentation for the determination shall include an analysis and written certification by the requiring activity that describes, with specificity, why alternatives that would not require a nonavailability determination are unacceptable. The template for an individual nonavailability determination is available at PGI 225.7018-4(a)(2).

(3) Provide to USD(A&S) DASD (Industrial Policy), in accordance with the procedures at PGI 225.7018-4 (a)(4)—

(i) A copy of individual nonavailability determinations with supporting documentation; and

(ii) Notification when individual nonavailability determinations are requested, but denied.

(b) *Class nonavailability determinations*. A class nonavailability determination (i.e., a nonavailability determinations that applies to more than one contract) requires the approval of the USD(A&S). Follow the procedures at PGI 225.7018-4 (b) when submitting a request for a class nonavailability determination.

(1) At least 30 days before making a nonavailability determination that would apply to more than one contract, the USD(A&S) will, to the maximum extent practicable, and in a manner consistent with the protection of national security and confidential business information—

(i) Publish a notice in the GPE (https://www.sam.gov) of the intent to make the nonavailability determination; and

(ii) Solicit information relevant to such notice from interested parties, including producers of mill products from covered materials.

(2) The USD(A&S)—

(i) Will take into consideration all information submitted in response to the notice in making a class nonavailability determination;

(ii) May consider other relevant information that cannot be made part of the public record consistent with the protection of national security information and confidential business information; and

(iii) Will ensure that any such nonavailability determination and the rationale for the determination are made publicly available to the maximum extent consistent with the protection of national security and confidential business information.

Parent topic: 225.7018 Restriction on acquisition of certain magnets, tantalum, and tungsten.