

4.0 Market Constraints

4.1 Major Restrictions

While Canadian companies have general access to the U.S. defence market, there are constraints which are identified in the U.S. Federal Acquisition Regulations Defense Supplement (DFARS) and the annual United States Appropriations Act. The major restrictions are:

- i) Ships
- ii) Food
- iii) Textiles
- iv) Construction material and
- v) Small business "set-asides"

There are also occasions where close control of certain United States technology is considered to be in the United States national interest and not releasable outside the United States.

4.2 Special Conditions

At various times special conditions have been introduced in U.S. defence spending legislation which may restrict the usage of authorized funds to the benefit of U.S. domestic producers. These legislative restrictions tend to become perpetuated in subsequent annual Defense Appropriations Acts, and sometimes they permanently restrict the scope of Canadian participation in U.S. defence programs. Some of these restrictions are outlined below.

4.3 DFARS 25.70

DFARS 25.70 implements the Defense Appropriations Act restrictions with regard to the following:

- Food, clothing, cotton, wood, woven silk, woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, specialty metals and tools. This is known as the Berry Amendment
- Buses (25.7006)
- R and D contracting (25.7007 — Bayh Amendment)
- Construction of major components of the hull or superstructure of any naval vessel (25.7005 — Burns Tollefson Amendment)
- Manual typewriters (25.7004)
- Construction contracts

NOTE: Periodically, there are waivers to the above restrictions such as specialty metals, therefore if your defence exports contain these items, check with the Defence Programs Bureau.

4.4 Small Business Set-Asides

The U.S. Small Business Administration has developed programs with the U.S. Department of Defense under which government acquisitions are set aside, in whole or in part, for tendering by U.S. small business firms on a competitive basis. (FAR Part 19). Similar set-asides occur in:

- Labour surplus areas
- Small disadvantaged businesses
- Depressed industries
- Women-owned businesses

NOTE: While Canadian companies do not qualify as U.S. small business for prime contracts they are *not* precluded from subcontracting.

4.5 U.S. National Disclosure

The U.S. government has a policy which defines those areas of technology and weapon systems which it considers to be not in the national interest of the U.S. to disclose to any other country.

This National Disclosure Policy, which itself is unavailable to Canada, is known from experience to prohibit disclosure to any country, including Canada.