OFFICE OF THE UNDER SECRETARY OF DEFENSE
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WASHINGTON, DC 20301-3000

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

NOV 12 2009

In reply refer to
DARS Tracking Number: 2009-O0012

MEMORANDUM FOR COMMANDER UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY, (PROCUREMENT), ASA(ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION & LOGISITICS MANAGEMENT), ASN(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DoD FIELD ACTIVITIES

SUBJECT: Class Deviation to Implement Temporary Authority to Acquire Products and Services Produced in Countries along a Major Route of Supply to Afghanistan

I hereby approve a class deviation to implement section 801 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-084). Section 801 provides temporary authority to limit competition to, or provide a preference for products and services that are from countries along the Northern Distribution Network in support of operations in Afghanistan when it is determined that it is in the national security interest of the United States.

The following procedures are to be followed by all DoD contracting officers when using the temporary authority to acquire products and services produced in Georgia, the Kyrgyz Republic, Pakistan, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan:

- Prepare and execute a written determination if the procurement is an "acquisition in support of operations in Afghanistan" in accordance with DFARS 225.7799-2 (DEVIATION).

- Evaluate offers in accordance with DFARS 225.7799-3 (DEVIATION).

- Include the new provision 252.225-7998, Preference for Products or Services from Central Asia, Pakistan, or the South Caucasus (November2009) (DEVIATION) (attachment 1) in solicitations that provide a preference for products or services from Central Asia, Pakistan, or the South Caucasus in accordance with 225.7799-1(a)(1)(DEVIATION).

- Include the new clause 252.225-7999, Requirement for Products or Services from Central Asia, Pakistan, or the South Caucasus (November 2009) (DEVIATION) (attachment 1) in all solicitations and that include the provision at 252.225-7998, Preference for Products or Services from Central Asia, Pakistan, or the South Caucasus (DEVIATION), and in the resulting contract.

- When the Trade Agreements provision and clause apply (see 225.1101(5) and (6), then class deviation 2009-O0007 also is applicable, until incorporated into the DFARS or rescinded.

This class deviation is effective upon signature, and remains in effect until October 27, 2012, unless incorporated in the DFARS or until rescinded. My point of contact is Patricia Foley, who may be reached at 703-693-1145, or patricia.foley@osd.mil.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

Attachment 1 – Deviation 2009-O0012

Class Deviation to Implement Temporary Authority to Acquire Products and Services Produced in Countries along a Major Route of Supply to Afghanistan (Class Deviation 2009-O0012)

PART 225—FOREIGN ACQUISITION

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SUBPART 225.75—BALANCE OF PAYMENTS PROGRAM

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225.7501 Policy. (DEVIATION)
Acquire only domestic end products for use outside the United States, and use only domestic construction material for construction to be performed outside the United States, including end products and construction material for foreign military sales, unless—

(a) Before issuing the solicitation—

* * * * *

(5) Use of a procedure specified in 225.7703-1(a) **or 225.7799-1(a)(DEVIATION)** is authorized for an acquisition in support of operations in Iraq or Afghanistan;

* * * * *

SUBPART 225.77—ACQUISITIONS IN SUPPORT OF OPERATIONS IN IRAQ OR AFGHANISTAN

225.7700 Scope. (DEVIATION)
This subpart implements Section 886 and Section 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181) **and Section 801 of the National Defense Authorization Act of Fiscal Year 2010 (Pub. L. 111-084).**

225.7701 Definitions. (DEVIATION)
As used in this subpart—

* * * * *

"Product from Central Asia, Pakistan, or the South Caucasus"

means a product that is mined, produced, or manufactured in Georgia, the Kyrgyz Republic, Pakistan, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan.

* * * * *

"Service from Central Asia, Pakistan, or the South Caucasus" means a service (including construction) that is performed in Georgia, the Kyrgyz Republic, Pakistan, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan] predominantly by citizens or permanent resident aliens of these countries.

* * * * *

"Source from Central Asia, Pakistan, or the South Caucasus" means a source that--

(1) Is located in Georgia, the Kyrgyz Republic, Pakistan, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan; and

(2) Offers products or services that are from Georgia, the Kyrgyz Republic, Pakistan, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan.

* * * * *

225.7799 Temporary authority to acquire products and services produced in countries along a major supply route to Afghanistan. (DEVIATION)

225.7799-1 Acquisition procedures.

(a) Subject to the requirements of 225.7799-2, a product or service produced in a country along a major supply route to Afghanistan (including construction), other than small arms, in support of operations in Afghanistan, may be acquired by—

(1) Providing a preference for products or services from Central Asia, Pakistan, or the South Caucasus, in accordance with the evaluation procedures at 225.7799-3; or

(2) Limiting competition to products or services from Central Asia, Pakistan, or the South Caucasus.

(b) For acquisitions conducted using a procedure specified

in paragraph (a) of this subsection, the justification and approval addressed in FAR Subpart 6.3 is not required.

225.7799-2 Determination requirements.
Before use of a procedure specified in 225.7799-1(a), a written determination must be prepared and executed as follows:

(a) The appropriate official specified in paragraph (b)(2) of this subsection must determine in writing that—

(1) The product or service concerned is to be used—
(i) In the country that is the source of the product or service;
(ii) In the course of efforts by the United States and the NATO International Security Assistance Force to ship goods to Afghanistan in support of operations in Afghanistan; or
(iii) By the military forces, police, or other security personnel of Afghanistan; and

(2) It is in the national security interest of the United States to use a procedure specified in 225.7799-1(a), because—

(i) The procedure is necessary to--

(A) Reduce overall United States transportation costs and risks in shipping goods in support of operations in Afghanistan
(B) Encourage states of Central Asia, Pakistan, or the South Caucasus to cooperate in expanding supply routes through their territory in support of operations in Afghanistan; or
(C) Help develop more robust and enduring routes of supply to Afghanistan; and

(ii) Use of the procedure will not adversely affect—

(A) Operations in Afghanistan (including security, transition, reconstruction, and humanitarian relief activities); or

(B) The U.S. industrial base. The authorizing official generally may presume that there will not be an adverse effect on the U.S. industrial base. However, when in doubt, the authorizing official should coordinate with the applicable subject matter expert specified in PGI 225.7703-2(b).

(2) Determinations may be made for an individual acquisition or a class of acquisitions meeting the criteria in paragraph (b)(1) of this subsection as follows:

(i) The head of the contacting activity is authorized to make a determination that applies to an individual acquisition with a value of less than $78.5 million.

(ii) The Director, Defense Procurement and Acquisition Policy, and the following officials, without power of redelegation, are authorized to make a determination that applies to an individual acquisition with a value of $78.5 million or more or to a class of acquisitions:

(A) Defense Logistics Agency Component Acquisition Executive.

(B) Army Acquisition Executive.

(C) Navy Acquisition Executive.

(D) Air Force Acquisition Executive.

(E) Commander of the Joint Contracting Command-Iraq/Afghanistan (JCC-I/A).

(3) The contracting officer—

(i) Shall include the applicable written determination in the contract file; and

(ii) Shall ensure that each contract action taken pursuant to the authority of a class determination is within the scope of the class determination, and shall document the contract file for each action accordingly.

(c) See PGI 225.7703-2(c) for formats for use in preparation of the determinations required by this subsection.

225.7799-3 Evaluating offers.

(a) Evaluate offers submitted in response to solicitations that include the provision at 252.225-7998, Preference for Products or Services from Central Asia, Pakistan, or the South Caucasus (DEVIATION), as follows:

(1) If the low offer is an offer of a product or service from Central Asia, Pakistan, or the South Caucasus, award on that offer.

(2) If there are no offers of a product or service from Central Asia, Pakistan, or the South Caucasus, award on the low offer.

(3) Otherwise, apply the evaluation factor specified in the solicitation to the low offer as follows:

(i) If the price of the low offer of a product or service from Central Asia, Pakistan, or the South Caucasus is less than the evaluated price of the low offer, award on the low offer of a product or service from Central Asia, Pakistan, or the South Caucasus.

(ii) If the evaluated price of the low offer remains less than the low offer of a product or service from Central Asia, Pakistan, or the South Caucasus, award on the low offer.

225.7799-4 Reporting requirement.
The following organizations shall submit periodic reports to the Deputy Director, Program Acquisition and Contingency Contracting, Defense Procurement and Acquisition Policy, in accordance with PGI 225.7799-4, to address the organization's use of the procedures authorized by this section:

(a) The Joint Contracting Command (Iraq/Afghanistan).

(b) The Department of the Army, except for contract actions reported by the Joint Contracting Command.

(c) The Department of the Navy.

(d) The Department of the Air Force.

(e) The Defense Logistics Agency.

(f) The other defense agencies and other DoD components that execute reportable contract actions.

225.7799-5 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225-7998, Preference for Products or Services from Central Asia, Pakistan, or the South Caucasus (DEVIATION), in solicitations that provide a preference for products or services from Central Asia, Pakistan, or the South Caucasus in accordance with 225.7799-1(a)(1). The contracting officer may modify the 50 percent evaluation factor in accordance with contracting office procedures.

(b) Use the clause at 252.225-7999, Requirement for Products or Services from Central Asia, Pakistan, or the South Caucasus (DEVIATION), in solicitations that include the provision at 252.225-7998, Preference for Products or Services from Central Asia, Pakistan, or the South Caucasus (DEVIATION), and in the resulting contract.

(c) When the Trade Agreements Act applies to the acquisition, use the appropriate clause and provision as prescribed at 225.1101 (5) and (6). *{See deviation 2009-O0007,*

if still in effect}

(e) Do not use any of the following provisions or clauses in solicitations or contracts that include the provision at 252.225-7998 (DEVIATION) or the clause at 252.225-7999 (DEVIATION:

(1) 252.225-7000, Buy American Act—Balance of Payments Program Certificate.

(2) 252.225-7001, Buy American Act and Balance of Payments Program.

(3) 252.225-7002, Qualifying Country Sources as Subcontractors.

(4) 252.225-7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

(5) 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

(6) 252.225-7044, Balance of Payments Program—Construction Material.

(7) 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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252.225-7998 Preference for Products or Services from Central Asia, Pakistan, or the South Caucasus. (DEVIATION)
As prescribed in 225.7799-5(a), use the following provision:

PREFERENCE FOR PRODUCTS OR SERVICES FROM
CENTRAL ASIA, PAKISTAN, OR THE SOUTH CAUCASUS
(DATE)(DEVIATION)

(a) *Definitions.* "Product from Central Asia, Pakistan, or the South Caucasus" and "service from Central Asia, Pakistan, or the South Caucasus," as used in this provision, are defined in the clause of this solicitation entitled "Requirement for Products or Services from Central Asia, Pakistan, or the South Caucasus" (DFARS 252.225-7999 (DEVIATION)).

(b) *Representation*. The offeror represents that all products or services to be delivered under a contract resulting from this solicitation are products from Central Asia, Pakistan, or the South Caucasus or services from Central Asia, Pakistan, or the South Caucasus, except those listed in paragraph (c) of this provision~~;~~

(c) *Other products or services*. The following offered products or services are not products from Central Asia, Pakistan, or the South Caucasus or services from Central Asia, Pakistan, or the South Caucasus:

(Line Item Number)	(Country of Origin)
_____	_____

(d) *Evaluation*. For the purpose of evaluating competitive offers, the Contracting Officer will increase by 50 percent the prices of offers of products or services that are not products or services from Central Asia, Pakistan, or the South Caucasus.

(End of provision)

252.225-7999 Requirement for Products or Services from Central Asia, Pakistan, or the South Caucasus.
As prescribed in 225.7799-5(b), use the following clause:

REQUIREMENT FOR PRODUCTS OR SERVICES FROM CENTRAL ASIA, PAKISTAN, OR THE SOUTH CAUCASUS
(DATE)(DEVIATION)

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

(1) "Product from Central Asia, Pakistan, or the South Caucasus" means a product that is mined, produced, or manufactured in Georgia, the Kyrgyz Republic, Pakistan, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan.

(2) "Service from Central Asia, Pakistan, or the South Caucasus" means a service (including construction) that is

performed in Georgia, the Kyrgyz Republic, Pakistan, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan predominantly by citizens or permanent resident aliens of these countries.

(b) The Contractor shall provide only products from Central Asia, Pakistan, or the South Caucasus or services from Central Asia, Pakistan, or the South Caucasus under this contract, unless, in its offer, it specified that it would provide products or services other than products from Central Asia, Pakistan, or the South Caucasus or services from Central Asia, Pakistan, or the South Caucasus.

(End of clause)

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