



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

APR 01 2019

In reply refer to
DARS Tracking Number: 2019-O0004, Revision 2

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)
INSPECTOR GENERAL OF THE DEPARTMENT OF
DEFENSE
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION & PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DEFENSE FIELD ACTIVITIES

SUBJECT: Class Deviation—Authority to Acquire Products and Services Produced in
Afghanistan or in Countries Along a Major Route of Supply to Afghanistan

This class deviation includes corrections to the class deviation issued on January 24, 2019, to add a reference to the “National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92)” in paragraph 225.7700(b)(2) on page 2; change the prescription reference for clause 252.225-7998 on page 8 to “225.7799-4(c)”; change the prescription reference for clause 252.225-7999 on page 9 to “225.7799-4(b)”; and make minor editorial changes. This class deviation rescinds and supersedes class deviation 2017-O0003. Effective immediately, to the extent feasible, contracting officers shall use the procedures and clauses provided in the attachment to this class deviation, in lieu of the procedures and clauses at Defense Federal Acquisition Regulation Supplement (DFARS) 225.7703, 252.225-7023, 252.225-7024, and 252.225-7026, when acquiring products or services in support of military or stability operations in Afghanistan. Specifically, if the acquisition is in support of operations in Afghanistan, unless an exception for AbilityOne products applies—

- Prepare and execute a written determination in accordance with DFARS 225.7799-1 and 225.7799-2 (DEVIATION 2019-O0004);
- Evaluate offers in accordance with DFARS 225.7799-3 (DEVIATION 2019-O0004); and
- Include the appropriate provision and/or clause in the solicitation and contract in accordance with DFARS 225.7799-4 (DEVIATION 2019-O0004).

DARS Tracking Number: 2019-O0004, Revision 2
Class Deviation—Authority to Acquire Products and Services Produced in Afghanistan or in
Countries Along a Major Route of Supply to Afghanistan

This class deviation implements section 801 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010 (Pub. L. 111-84), as amended by sections 886 of the NDAA for FY 2016 (Pub. L. 114-92) and 1214 of the NDAA for FY 2018 (Pub. L. 115-91), and section 886 of the NDAA for FY 2008 (Pub. L. 110-181), as amended by sections 842 of the NDAA for FY 2013 (Pub. L. 112-239) and 886 of the NDAA for FY 2016. These sections authorize DoD to provide a preference for or limit competition to products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus when acquiring products or services, other than small arms, in support of operations in Afghanistan.

This class deviation remains in effect until December 31, 2019, until incorporated in the DFARS or otherwise rescinded. My point of contact is Lt Col Tonya Bronson, Defense Pricing and Contracting/Contract Policy, at 703-692-5171 or tonya.j.bronson.mil@mail.mil.



Kim Herrington
Acting Principal Director,
Defense Pricing and Contracting

Attachment:
As stated

PART 225—FOREIGN ACQUISITION

**225.401-71 Products or services in support of operations in Afghanistan.
(DEVIATION 2019-O0004)**

When acquiring products or services, other than small arms, in support of operations in Afghanistan—

(a) If using the procedures specified in 225.7799-1(a)(1) (DEVIATION 2019-O0004), the purchase restriction at FAR 25.403(c) does not apply if products or services are from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus.

(b) If using a procedure specified in 225.7799-1(a)(2) (DEVIATION 2019-O0004) to acquire products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus, the procedures of FAR subpart 25.4 are not applicable (but see DFARS 225.7503(b)(3) and (b)(4)) for applicability of trade agreements to construction material under construction contracts in support of operations in Afghanistan).

SUBPART 225.75—BALANCE OF PAYMENTS PROGRAM

225.7501 Policy. (DEVIATION 2019-O0004)

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 225.7799-1(a) (DEVIATION 2019-O0004) is authorized for an acquisition of supplies in support of military or stability operations in Afghanistan;

**SUBPART 225.77—ACQUISITIONS IN SUPPORT OF OPERATIONS IN
AFGHANISTAN**

225.7700 Scope. (DEVIATION 2019-O0004)

This subpart implements—

* * * * *

(b)(1) Section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), as amended by section 842 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and section 886 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92); and

(2) Section 801 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84), as amended by section 886 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92) and section 1214 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91).

225.7701 Definitions. (DEVIATION 2019-O0004)

As used in this subpart—

“Central Asian state” means the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, Turkmenistan, or the Republic of Uzbekistan.

* * * * *

“Product from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus” means a product (including a commercial item) that is mined, produced, or manufactured in Afghanistan, a Central Asian state, Pakistan, or the South Caucasus. This term does not include construction material brought to the construction site by the contractor or subcontractor for incorporation into the building or work, but does cover material separately purchased by the Government to be incorporated into the building or work.

* * * * *

“Service from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus” means a service (including construction) that is performed in Afghanistan, a Central Asian state, Pakistan, or the South Caucasus by citizens or permanent resident aliens

of these countries.

* * * * *

“South Caucasus” means the Republic of Armenia, the Republic of Azerbaijan, or Georgia.

* * * * *

225.7799 Authority to acquire products and services (including construction) from Afghanistan or from countries along a major route of supply to Afghanistan. (DEVIATION 2019-O0004)

225.7799-1 Acquisition procedures.

(a) Subject to the requirements of 225.7799-2 and except as provided in paragraph (c) of this section, a product or a service (including construction) from Afghanistan or from a country along a major route of supply to Afghanistan, other than small arms, in support of operations in Afghanistan, may be acquired by—

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

(2) Limiting competition to products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus.

(b) For acquisitions conducted using a procedure specified in paragraph (a) of this section—

(1) The justification and approval addressed in FAR subpart 6.3 is not required; and

(2) The trade agreements purchase restrictions at FAR 25.403(c) and the Balance of Payments Program (see DFARS 225.7501) do not apply with regard to acquisition of products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus, but construction material brought to the construction site by the contractor or subcontractor for incorporation into the work may be subject to trade agreements and Balance of Payments Program (see DFARS 225.7503).

(c) The authority under paragraph (a) of this section is not available for the procurement of any product that is contained in the Procurement List described in 41 U.S.C. 8503(a) (see FAR subpart 8.7), if such product can be produced and delivered by a qualified nonprofit agency for the blind or a qualified nonprofit agency for other severely disabled in a timely fashion to support mission requirements.

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 authorized to make the determination, as specified in paragraph (b)(1) of this section, must determine in writing that—

(1) The product or service concerned is to be—

(i) Used or performed in the country that is the source of the product or service;

(ii) Used in the course of efforts by the United States and the North Atlantic Treaty Organization Forces to ship goods to or from Afghanistan in support of military or stability operations in Afghanistan;

(iii) Used by the military forces, police, or other security personnel of Afghanistan; or

(iv) Used by the United States or coalition forces in Afghanistan; and

(2)(i) For products or services from a Central Asian state, Pakistan, or the South Caucasus, it is in the national security interest of the United States to use a procedure specified in 225.7799-1(a), because—

(A) The procedure is necessary to—

(1) Reduce overall United States transportation costs and risks in shipping goods in support of operations in Afghanistan;

(2) Encourage Central Asian states, Pakistan, and the South Caucasus to cooperate in expanding supply routes through their territory in support of operations in Afghanistan; or

(3) Help develop more robust and enduring routes of supply to Afghanistan; and

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

(1) Operations in Afghanistan; or

(2) The U.S. industrial base.

(ii) 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).

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

(i) The contracting officer is authorized to make a determination that applies to an individual acquisition with a value of less than \$93 million.

(ii) The head of the contracting activity, without power of redelegation, is authorized to make a determination that applies to an individual acquisition with a value of \$93 million or more or to a class of acquisitions.

(2) The contracting officer shall—

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

(ii) Ensure that each contract action taken pursuant to the authority of a class determination is within the scope of the class determination and 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 section.

225.7799-3 Evaluating offers.

Evaluate offers submitted in response to solicitations that include the provision at 252.225-7998, Preference for Products or Services From Afghanistan, a Central Asian State, Pakistan, or the South Caucasus (DEVIATION 2019-O0004), as follows:

(a) For supplies, when comparing offers, consider the total price of the supplies, including any transportation costs that would be incurred if shipped via the Defense

Transportation System and compare this total price to the price of the local item plus any transportation costs, if separately broken out by contract line item.

(b)(1) If the solicitation specifies award on the basis of non-price factors in addition to cost or price, apply the evaluation percentage specified in the solicitation (see 252.225-7998(d) (DEVIATION 2019-O0004)) and use the evaluated cost or price in determining the offer that represents the best value to the Government.

(2) If the solicitation does not specify non-price factors in addition to cost or price, apply the evaluation percentage specified in the solicitation, if applicable, and then award to the lowest evaluated offer.

225.7799-4 Solicitation provisions and contract clauses.

Use the following provisions and clauses in solicitations that meet the specified criteria, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items:

(a) In solicitations and contracts that limit competition to products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus in accordance with 225.7799-1(a)(2), use the clause at 252.225-7996, Acquisition Restricted to Products or Services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus (DEVIATION 2019-O0004).

(b) In solicitations and contracts that provide a preference for products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus in accordance with 225.7799-1(a)(1), use the clause at 252.225-7999, Requirement for Products or Services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus (DEVIATION 2019-O0004).

(c) In solicitations that include the clause at 252.225-7999, Requirement for Products or Services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus (DEVIATION 2019-O0004) in accordance with 225.7799-1(a)(1), use the provision at 252.225-7998, Preference for Products or Services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus (DEVIATION 2019-O0004).

(d) When the Trade Agreements Act applies to the acquisition, use the appropriate clause and provision as prescribed at DFARS 225.1101(5) and (6) or DFARS 225.7503(b)(3) or (b)(4).

(e)(1) Do not use any of the following DFARS provisions or clauses in solicitations or contracts that include the provision at 252.225-7998 (DEVIATION 2019-O0004) or the

clauses at 252.225-7996 (DEVIATION 2019-O0004) or 252.225-7999 (DEVIATION 2019-O0004):

- (i) 252.225-7000, Buy American—Balance of Payments Program Certificate.
- (ii) 252.225-7001, Buy American and Balance of Payments Program.
- (iii) 252.225-7002, Qualifying Country Sources as Subcontractors.
- (iv) 252.225-7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate.
- (v) 252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program.

(2) Do not use the following DFARS provision and clause in solicitations or contracts for the acquisition of supplies that include the clause at 252.225-7996 (DEVIATION 2019-O0004):

- (i) 252.225-7020, Trade Agreements Certificate.
- (ii) 252.225-7021, Trade Agreements.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225-7996 Acquisition Restricted to Products or Services from Afghanistan, a Central Asian State, Pakistan, or the South Caucasus. (DEVIATION 2019-O0004)

As prescribed in 225.7799-4(a), use the following clause:

ACQUISITION RESTRICTED TO PRODUCTS OR SERVICES FROM
AFGHANISTAN, A CENTRAL ASIAN STATE, PAKISTAN, OR THE SOUTH
CAUCASUS (DEC 2018)(DEVIATION 2019-O0004)

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

“Central Asian state” means the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, Turkmenistan, or the Republic of Uzbekistan.

“Product from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus” means a product (including a commercial item) that is mined, produced, or manufactured in Afghanistan, a Central Asian state, Pakistan, or the South Caucasus. This term does not include construction material brought to the construction site by the contractor or subcontractor for incorporation into the building or work, but does cover material separately purchased by the Government to be incorporated into the building or work.

“Service from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus” means a service (including construction) that is performed in Afghanistan, a Central Asian state, Pakistan, or the South Caucasus by citizens or permanent resident aliens of these countries.

“South Caucasus” means the Republic of Armenia, the Republic of Azerbaijan, or Georgia.

(b) *Restrictions.*

(1) The Contractor shall provide only products from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus.

(2) For construction contracts, the Contractor is encouraged, but not required, to use construction material from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus. The use of construction material from other than Afghanistan, a Central Asian state, Pakistan, or the South Caucasus may also be subject to Balance of Payments Program or trade agreements restrictions, if the contract includes the clause 252.225-7044, Balance of Payments Program—Construction Material, used with its Alternate I; or 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, used with its Alternate II or Alternate III.

(End of clause)

252.225-7998 Preference for Products or Services from Afghanistan, a Central Asian State, Pakistan, or the South Caucasus. (DEVIATION 2019-O0004)

As prescribed in 225.7799-4(c), use the following provision:

PREFERENCE FOR PRODUCTS OR SERVICES FROM

AFGHANISTAN, A CENTRAL ASIAN STATE, PAKISTAN, OR THE SOUTH
CAUCASUS (DEC 2018)(DEVIATION 2019-O0004)

(a) *Definitions.* “Product from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus” and “service from Afghanistan, a Central Asian state, 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 Afghanistan, a Central Asian state, Pakistan, or the South Caucasus” (252.225-7999 (DEVIATION 2019-O0004)).

(b) *Other products or services.* Offerors that include products and services in their offer that are not products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus shall identify the solicitation line item number and the country of origin for the non-Afghanistan, a non-Central Asian state, non-Pakistan, or a non-South Caucasus product or service in the offer.

(c) *Representation.* By submission of its offer, the Offeror represents that the offer meets the criteria set forth in paragraph (a) of this provision and that all products or services to be delivered under a contract resulting from this solicitation are products or service from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus, unless, in its offer, the Offeror specified that it would provide products or services other than products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus.

(d) *Evaluation.* For the purpose of evaluating competitive offers, the Contracting Officer will increase by 100 percent the prices of offers of products or services that are not products from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus.

(End of provision)

**252.225-7999 Requirement for Products or Services from Afghanistan, a
Central Asian State, Pakistan, or the South Caucasus.**

As prescribed in 225.7799-4(b), use the following clause:

REQUIREMENT FOR PRODUCTS OR SERVICES FROM AFGHANISTAN, A
CENTRAL ASIAN STATE, PAKISTAN, OR THE SOUTH CAUCASUS
(DEC 2018)(DEVIATION 2019-O0004)

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

“Central Asian state” means the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, Turkmenistan, or the Republic of Uzbekistan.

“Product from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus” means a product (including a commercial item) that is mined, produced, or manufactured in Afghanistan, a Central Asian state, Pakistan, or the South Caucasus. This term does not include construction material brought to the construction site by the contractor or subcontractor for incorporation into the building or work, but does cover material separately purchased by the Government to be incorporated into the building or work.

“Service from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus” means a service (including construction) that is performed in Afghanistan, a Central Asian state, Pakistan, or the South Caucasus by citizens or permanent resident aliens of these countries.

“South Caucasus” means the Republic of Armenia, the Republic of Azerbaijan, or Georgia.

(b) *Requirements.*

(1) The Contractor shall provide only products from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus or services from Afghanistan, a Central Asian state, 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 Afghanistan, a Central Asian state, Pakistan, or the South Caucasus or services from Afghanistan a Central Asian state, Pakistan, or the South Caucasus.

(2) For construction contracts, the Contractor is encouraged, but not required, to use construction material from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus. The use of construction material from other than Afghanistan, a Central Asian state, Pakistan, or the South Caucasus may also be subject to Balance of Payments Program or trade agreements restrictions, if the contract includes the clause 252.225-7044, Balance of Payments Program—Construction Material, used with its Alternate I; or 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, used with its Alternate II or Alternate III.

(End of clause)

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