

DFARS Procedures, Guidance, and Information

PGI 225—Foreign Acquisition

(Revised November 20, 2015)

PGI 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION

PGI 225.7002 Restrictions on food, clothing, fabrics, and hand or measuring tools.

PGI 225.7002-1 Restrictions.

(a)(1)(ii)(1) The following are examples, not all-inclusive, of Product and Service Codes (PSCs) that contain items of clothing:

(i) Clothing apparel (such as outerwear, headwear, underwear, nightwear, footwear, hosiery, or handwear) listed in PSC 8405, 8410, 8415, 8420, 8425, 8450, or 8475.

(ii) Footwear listed in PSC 8430 or 8435.

(iii) Hosiery, handwear, or other items of clothing apparel, such as belts and suspenders, listed in PSC 8440 or 8445.

(iv) Badges or insignia listed in PSC 8455.

(2) The PSCs listed in paragraph (a)(1)(ii)(1) of this section also contain items that are not clothing, such as—

(i) Visors;

(ii) Kevlar helmets;

(iii) Handbags; and

(iv) Plastic identification tags.

(3) Each item should be individually analyzed to determine if it is clothing, rather than relying on the PSC alone to make that determination.

(4) The fact that an item is excluded from the foreign source restriction of the Berry Amendment applicable to clothing does not preclude application of another Berry Amendment restriction in DFARS [225.7002-1](#) to the components of the item.

(5) Small arms protective inserts (SAPI plates) are an example of items added to, and not normally associated with, clothing. Therefore, SAPI plates are not covered under the Berry Amendment as clothing. However, fabrics used in the SAPI plate are still subject to the foreign source restrictions of the Berry Amendment. If the fabric used in the SAPI plate is a synthetic fabric or a coated synthetic fabric, the fibers and yarns used in the fabric are not covered by the Berry Amendment, because the fabric is a component of an end product that is not a textile product (see DFARS [225.7002-2](#)(m)).

Example: A SAPI plate is compliant with the Berry Amendment if the synthetic fiber or yarn is obtained from foreign country X and woven into synthetic fabric in the United States, which is then incorporated into a SAPI plate manufactured in foreign country Y.

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(2) *Hand or measuring tools.*

(A) As applied to hand or measuring tools, “produced in the United States” means that the hand or measuring tool was assembled in the United States out of components, or otherwise made from raw materials into the finished product that is to be provided to the Government.

(B) If a hand or measuring tool was assembled in a country other than the United States, then disassembled and reassembled in the United States, the hand or measuring tool was not produced in the United States.

(C) The requirement to buy hand or measuring tools produced in the United States does not impose any restriction on the source of the components of the hand or measuring tools. This is unlike the Berry Amendment restriction on clothing (see [225.7002-1\(a\)\(1\)\(ii\)](#)), which explicitly requires domestic source for the materials and components of clothing (other than unusual components such as sensors or electronics), as well as the additional separate restrictions on various types of fibers and fabrics that might be components of the clothing.

(D) If the acquisition of the hand or measuring tools is also subject to the Buy American statute (see FAR subpart 25.1), then in order to qualify as a domestic end product, the cost of the components mined, produced, or manufactured in the United States or a qualifying country, must exceed 50 percent of the cost of all the components of the hand or measuring tool.

PGI 225.7002-2 Exceptions.

(b) *Domestic nonavailability determinations.*

(3) *Defense agencies other than the Defense Logistics Agency.*

(A) A defense agency requesting a domestic nonavailability determination must submit the request, including the proposed determination, to—

Director, Defense Procurement and Acquisition Policy
ATTN: OUSD(AT&L) DPAP/CPIC
3060 Defense Pentagon
Washington, DC 20301-3060.

(B) The Director, Defense Procurement and Acquisition Policy, will forward the request to the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) as appropriate.

PGI 225.7003 Restrictions on acquisition of specialty metals.

PGI 225.7003-2 Restrictions.

(a)(i) This restriction applies to the item containing the specialty metal, not just the specialty metal, as was true when the restriction was part of 10 U.S.C. 2533a. The previous practice of withholding payment while conditionally accepting noncompliant items is not

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permissible for—

(A) Contracts entered into on or after November 16, 2006; or

(B) New procurements or out-of-scope changes accomplished on or after November 16, 2006, through the use of bilateral modifications to contracts originally awarded prior to November 16, 2006.

(ii) Consistent with the definition of “component” in the clause at DFARS [252.225-7009](#), a component is any item supplied to the Government as part of an end item or of another component. Items that are not incorporated into any of the items listed in DFARS [225.7003-2\(a\)](#) are not components of those items. For example, test equipment, ground support equipment, or shipping containers are not components of the missile system.

PGI 225.7003-3 Exceptions.

(b)(2) *Report of COTS items.*

If a department or agency uses the exception at DFARS [225.7003-3\(b\)\(2\)](#) for an acquisition of COTS end items valued at \$5 million or more per item, the department or agency shall address use of the exception in a year-end report, to be prepared and submitted as follows:

(A) Entitle the report “COTS Specialty Metal Exceptions Granted During Fiscal Year _____.”

(B) For each excepted COTS item purchased during the fiscal year, include in the report, at a minimum, the applicable—

- (1) Contract number and any applicable delivery order number;
- (2) Dollar value; and
- (3) Item description.

(C) Submit the report by October 31 of each year to:

Director, Defense Procurement and Acquisition Policy
ATTN: OUSD(AT&L) DPAP/CPIC
3060 Defense Pentagon
Washington, DC 20301-3060.

(b)(5) Domestic specialty metals nonavailable as and when needed.

(A) Determining availability.

(1) FAR 15.402 requires that contracting officers purchase supplies and services at fair and reasonable prices. Thus, contracting officers must determine whether any increase in contract price that results from providing compliant specialty metal is fair and reasonable, given the circumstances of the particular situation. In those cases where

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the contracting officer determines that the price would not be fair and reasonable, the Secretary of the military department concerned may use that information in determining whether the unreasonable price causes the compliant metal to be effectively “nonavailable.” Where these “reasonableness” limits should be drawn is a case-by-case decision.

(2) A similar approach may be used to determine whether delays associated with incorporating compliant specialty metals into items being acquired results in the metals being effectively nonavailable.

(C)(1) A department or agency requesting a determination or approval from USD(AT&L) in accordance with DFARS [225.7003-3\(b\)\(5\)](#) shall submit the request, including the proposed determination, to—

Director, Defense Procurement and Acquisition Policy
ATTN: OUSD(AT&L) DPAP/CPIC
3060 Defense Pentagon
Washington, DC 20301-3060.

(2) The Director, Defense Procurement and Acquisition Policy, will forward the request to USD(AT&L) as appropriate.

(b)(6) *Application of specialty metals restrictions to magnets.*

HPM = High performance magnet
COTS = Commercially available off-the-shelf

Magnet made of specialty metal is:	Commercially available, HPM	NOT Commercially available, HPM	COTS, NOT HPM	NOT COTS, NOT HPM
Incorporated into COTS assembly or COTS end item	NOT restricted	*	NOT restricted	*
NOT incorporated into COTS assembly or COTS end item	Restricted	Restricted	NOT restricted	Restricted
Included in 2 percent minimum content?	Cannot be included in 2 percent minimum content	Cannot be included in 2 percent minimum content	NOT restricted	Can be included in 2 percent minimum content

* By definition, COTS assemblies and COTS end items will not include a HPM that is not commercially available or any other magnet that is not COTS.

(c) Compliance for commercial derivative military articles.

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(i) A department or agency requesting a determination or approval from USD(AT&L) in accordance with DFARS [225.7003-3](#)(c) shall submit the request, including the proposed determination, to—

Director, Defense Procurement and Acquisition Policy
ATTN: OUSD(AT&L) DPAP/CPIC
3060 Defense Pentagon
Washington, DC 20301-3060.

(ii) The Director, Defense Procurement and Acquisition Policy, will forward the request to USD(AT&L) as appropriate.

(d) National security waiver.

(i) A department or agency shall request a national security waiver from USD(AT&L) in accordance with DFARS [225.7003-3](#)(d) in a timely manner after discovering or being informed of a specialty metals noncompliance in an item, or component thereof, listed at [225.7003-2](#)(a). The department or agency shall submit the request, via the chain of command, including the draft determination and draft letters of notification to the congressional defense committees, as follows:

Director, Defense Procurement and Acquisition Policy
ATTN: OUSD(AT&L) DPAP/CPIC
3060 Defense Pentagon
Washington, DC 20301-3060

(ii) The request shall include—

(A) The quantity of end items to which the waiver would apply;

(B) The time period that the waiver will cover;

(C) How and when the noncompliance was discovered—

(1) By the subcontractor(s);

(2) By the contractor; and

(3) By the department or agency;

(D) A complete description of all of the items or systems containing noncompliant specialty metals;

(E) The contract number(s), date(s), duration, and subcontractor(s) associated with the noncompliance;

(F) The manufacturer and country of origin of the noncompliant material, if known;

(G) Whether the contractor flowed down the DFARS clause to the subcontractors and in what format (e.g., exact quote or substantially the same?);

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(H) A technical description of the affected parts, their role in the larger assembly, and their function in the end item;

(I) Estimated cost and schedule to replace noncompliant parts if a national security waiver is not granted;

(J) Operational and safety implications;

(K) Other national security considerations (such as how the requested waiver will contribute to national security policy or operational security);

(L) A description of the contractor's efforts to develop and implement a corrective plan to ensure future compliance; and

(M) Information helpful to a determination as to whether any noncompliance was knowing and willful.

(iii) The Director, Defense Procurement and Acquisition Policy, will forward the request to USD(AT&L) as appropriate.

PGI 225.7017 Utilization of domestic photovoltaic devices.

PGI 225.7017-4 Waiver.

The following templates are provided as examples, and may be modified as appropriate for a particular acquisition.

(a) *Inconsistent with the public interest.*

(1) Utilization of U.S.-made photovoltaic devices in procurements covered by the World Trade Organization Government Procurement Agreement.

SAMPLE D&F: SERVICE OR AGENCY

Waiver of Section 858 of the National Defense Authorization Act (NDAA)
for Fiscal Year (FY) 2015

Determination and Findings of Inconsistency with the Public interest

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of DFARS [225.7017-4\(a\)\(1\)](#), U.S.-made photovoltaic devices may be utilized as follows:

Findings

1. The (*contracting office*) proposes to award a contract under contract number _____ that provides for photovoltaic devices manufactured or substantially transformed in the United States to be—

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- a. Installed inside the United States on DoD property or in a facility owned by DoD; or
 - b. Reserved for the exclusive use of DoD in the United States for the full economic life of the device.
2. The total estimated cost of these photovoltaic devices is \$_____.
3. Section 858 of the NDAA for FY 2015 requires that any photovoltaic device installed under a covered contract be manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States (i.e., a domestic photovoltaic device), unless waived on a case-by case basis because the inclusion of such requirement is inconsistent with the public interest or involves unreasonable costs, subject to exceptions provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) or otherwise provided by law.
4. Pursuant to the Trade Agreements Act of 1979 and the World Trade Organization Government Procurement Agreement, the President has authority to waive, in whole or in part, with respect to eligible products of any foreign country or instrumentality designated under subsection (b) of this section, and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded to—
- a. United States products and suppliers of such products; or
 - b. Eligible products of another foreign country or instrumentality, which is a party to the Agreement and suppliers of such products.

The President has delegated this authority to the United States Trade Representative, who has waived application of the Buy American Act and other discriminatory provisions for eligible products from certain designated countries. Therefore, the restrictions of section 858 also do not apply to eligible products from certain designated countries (i.e., designated country photovoltaic devices). The country of origin for an eligible product that consists in whole or in part of materials from another country, is the country in which the article has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. Since the Trade Agreements Act applies only to products of foreign countries, section 858 is not automatically waived for products substantially transformed in the United States, i.e., U.S.-made photovoltaic devices.

These different rules of origin result in less favorable treatment for U.S.-made photovoltaic devices. Manufacturers of photovoltaic devices commonly use worldwide sources for components. Unless waived on a case-by-case basis, section 858 does not even allow the utilization of a U.S.-made photovoltaic device with a predominance of foreign components (i.e., not a domestic photovoltaic device). There is also a disproportionately burdensome recordkeeping requirement on firms offering domestic photovoltaic devices in acquisitions subject to Trade Agreements, in order to demonstrate that the photovoltaic device meets the 50 percent domestic component test. Because of the component requirement, such offerors of domestic photovoltaic devices must determine, control, and track the source of components. In today's global economy, this has become an extremely difficult, if not impossible task. On the other hand, this burden does not apply to designated

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country photovoltaic devices, because the substantial transformation rule of origin for designated country photovoltaic devices does not limit similarly the country of origin of components. This may encourage a company to manufacture the photovoltaic device in a designated foreign country rather than in the United States.

5. The solicitation contained the clause at DFARS [252.225-7017](#), Photovoltaic Devices, and the provision at DFARS [252.225-7018](#), Photovoltaic Devices—Certification. The offeror has certified that the photovoltaic devices to be utilized under this contract are U.S.-made photovoltaic devices. Offers were solicited from other sources and the offer received from (*offeror*) is found to be otherwise eligible for award.

Determination

I hereby determine that it is inconsistent with the public interest to apply the restrictions of section 858 of the NDAA for FY 2015 to the offer described in this determination and findings.

(Date)

(2) Utilization of photovoltaic devices from a qualifying country.

SAMPLE D&F: SERVICE OR AGENCY

Waiver of Section 858 of the National Defense Authorization Act (NDAA)
for Fiscal Year (FY) 2015

Determination and Findings of Inconsistency with the Public Interest

Upon the basis of the following findings and determination which I hereby make in accordance with DFARS [225.7017-4\(a\)\(2\)](#), a qualifying country photovoltaic device may be utilized as follows:

Findings

1. The (*contracting office*) proposes to award a contract under contract number _____ that provides for photovoltaic devices manufactured in (*qualifying country of origin*) to be—
 - a. Installed inside the United States on DoD property or in a facility owned by DoD; or
 - b. Reserved for the exclusive use of DoD in the United States for the full economic life of the device.
2. The total aggregate cost of these photovoltaic devices is \$_____.
3. Section 858 of the NDAA for FY 2015 requires that any photovoltaic device installed under a covered contract be manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States (i.e., a domestic photovoltaic device), unless waived on a case-by-case basis because the inclusion of such requirement is inconsistent with the public interest or involves

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unreasonable costs, subject to exceptions provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) or otherwise provided by law.

4. The United States Government and the Government of _____ have signed a memorandum of understanding, in which the Governments have agreed that, in relation to defense procurement, each country will accord to the industries of the other country treatment no less favorable than that accorded to its own industries insofar as laws and regulations permit. The reciprocal opportunities that the memorandum of understanding affords to the Governments and their defense industries enhances our mutual military readiness and promotes standardization and interoperability of equipment between the armed forces of the two nations. These factors contribute considerably to the security of the United States.

5. The Agreement stipulates that utilization of such items shall fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment.

6. The solicitation contained the clause at DFARS [252.225-7017](#), Photovoltaic Devices, and the provision at DFARS [252.225-7018](#), Photovoltaic Devices—Certification. The offeror has certified that the photovoltaic devices to be utilized under this contract are qualifying country photovoltaic devices. Offers were solicited from other sources and the offer received from (offeror) is found to be otherwise eligible for award.

Determination

I hereby determine that it is inconsistent with the public interest to apply the restrictions of section 858 of the NDAA for FY 2015 to the offer described in this determination and findings.

(Date)

(b) *Unreasonable cost.*

SAMPLE D&F: SERVICE OR AGENCY

Waiver of Section 858 of the National Defense Authorization Act (NDAA)
for Fiscal Year (FY) 2015

Determination and Findings of Unreasonable Cost of Domestic Photovoltaic Devices

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of DFARS [225.7017-4](#)(b), foreign photovoltaic devices may be utilized as follows:

Findings

1. The (contracting office) proposes to award a contract under contract number _____, that provides for photovoltaic devices manufactured in (country of origin) to be—

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- a. Installed inside the United States on DoD property or in a facility owned by DoD; or
 - b. Reserved for the exclusive use of DoD in the United States for the full economic life of the device.
2. The total aggregate cost of these photovoltaic devices is \$_____.
3. Section 858 of the NDAA for FY 2015 requires that any photovoltaic device installed under a covered contract be manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States (i.e., a domestic photovoltaic device), unless waived on a case-by case basis because the inclusion of such requirement is inconsistent with the public interest or involves unreasonable costs, subject to exceptions provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) or otherwise provided by law.
4. The solicitation contained the clause at DFARS [252.225-7017](#), Photovoltaic Devices, and the provision at DFARS [252.225-7018](#), Photovoltaic Devices—Certification. The offeror has provided documentation in accordance with the provision DFARS [252.225-7018](#) that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e., that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.

Determination

I hereby determine that the cost of utilizing domestic photovoltaic devices would be unreasonable, and therefore waive application of the restrictions of section 858 of the NDAA for FY 2015 to the offer described in this determination and findings.

(Date)

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(Revised November 20, 2015)

PGI 225.77—ACQUISITIONS IN SUPPORT OF OPERATIONS IN AFGHANISTAN

PGI 225.7703 Enhanced authority to acquire products or services from Afghanistan.

PGI 225.7703-1 Acquisition procedures.

(c) When issuing solicitations and contracts for performance in Afghanistan, follow the guidance for CENTCOM Operational Contract Support Policies and Procedures, Theater Business Clearance, at <https://www2.centcom.mil/sites/contracts/Pages/GCO.aspx>, and use the applicable solicitation provisions and contract clauses:

(1) The provision at DFARS [252.232-7014](#), Notification of Payment in Local Currency (Afghanistan), as prescribed at DFARS [232.7202](#).

PGI 225.7703-2 Determination requirements.

(b) Subject matter experts for defense industrial base matters are as follows:

For Army: SAAL-PA, Army Industrial Base Policy, telephone 703-695-2488.

For DLA: DLA J-74, Acquisition Programs and Industrial Capabilities Division, telephone 703-767-1427.

For Navy: Ship Programs, DASN Ships, telephone 703-697-1710.

For Air Force: Air Force Research Laboratory, Materials Manufacturing Directorate, telephone 703-588-7777.

For Other Defense Agencies: Personnel at defense agencies without industrial base expertise on staff should contact the Office of the Deputy Under Secretary of Defense for Industrial Policy (Acquisition, Technology, and Logistics), telephone 703-697-0051.

(c) Determination formats.

(i) Prepare an individual determination and findings substantially as follows:

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DEPARTMENT OR AGENCY

Authority to Acquire Products or Services from Afghanistan

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of DFARS [225.7703-2](#), the acquisition of a product or service, other than small arms, in support of operations in Afghanistan may be made as follows:

Findings

1. The [contracting office] proposes to purchase under contract number _____, [describe item]. The total estimated cost of this acquisition is _____.
2. The product or service is to be used by [describe the entity(ies) that are the intended user(s) of the product or service].
3. The contracting officer recommends conducting the acquisition using the following procedure, which, given this determination, is authorized by Section 886 of Public Law 110-181:

[Select one of the following:]

Provide a preference for products or services from Afghanistan.

Limit competition to products or services from Afghanistan.

Use procedures other than competitive procedures to award a contract to a particular source or sources from Afghanistan.

4. To implement the recommended procedure, the solicitation will contain [title and number of the applicable provision and/or clause prescribed at DFARS [225.7703-4](#)].
5. The proposed acquisition will provide a stable source of jobs in Afghanistan because _____.
6. The proposed use of other than full and open competition is necessary to provide this stable source of jobs in Afghanistan.

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7. The proposed use of other than full and open competition will not adversely affect military operations or stability operations in Afghanistan, because _____. This is the opinion of the *[title of the official responsible for operations in the area involved]*.
8. The proposed use of other than full and open competition will not adversely affect the United States industrial base.
9. *[If a preference will be provided for products or services from Afghanistan, or if competition will be limited to products or services from Afghanistan, include—*
 - (1) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable; and*
 - (2) Whether a notice was or will be publicized as required by FAR Subpart 5.2 and, if not, which exception in FAR 5.202 applies.]*

- or -

[If procedures other than competitive procedures will be used to award a contract to a particular source or sources from Afghanistan, include—

- (1) A description of the market research conducted in accordance with FAR Part 10 and the results; or a statement of the reason market research was not conducted;*
- (2) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition;*
- (3) A demonstration that the proposed contractor's unique qualifications require the use of a noncompetitive acquisition, or an explanation of the other reasons for use of a noncompetitive acquisition; and*
- (4) A certification by the contracting officer that the information in paragraphs (1) through (3) above is accurate and complete to the best of the contracting officer's knowledge and belief.]*

Determination

I hereby determine that it is in the national security interest of the United States to use the acquisition procedure described above, because the procedure is necessary to provide a stable source of jobs in Afghanistan and it will not adversely affect (1) Operations in Afghanistan or (2) the United States

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industrial base.

(Date)

(ii) Prepare a determination and findings for a class of acquisitions substantially as follows:

DEPARTMENT OR AGENCY

Authority to Acquire Products or Services from Afghanistan

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of DFARS [225.7703-2](#), the acquisition of products or services, other than small arms, in support of operations in Afghanistan may be made as follows:

Findings

1. It is anticipated that [applicable departments/agencies/components] will need to award contracts during the period from _____ to _____ in order to acquire [describe the type(s) of products or services] for [describe the purpose, if the purpose for which the items will be acquired is a defining characteristic of the class of acquisitions to be covered by the class determination].
2. The products or services to be acquired under the contemplated contracts are to be used by [describe the entity(ies) intended to use the products or services].
3. This class of acquisitions should be conducted using the following procedure, which, given this determination, is authorized by Section 886 of Public Law 110-181, as amended by section 842 of Pub. L. 112-239:

[Select one of the following:]

Provide a preference for products or services from Afghanistan.

Limit competition to products or services from Afghanistan.

Use procedures other than competitive procedures to award a contract to

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a particular source or sources from Afghanistan.

4. To implement the recommended procedure, solicitations will contain *[title and number of the applicable provision and/or clause prescribed at [DFARS 225.7703-4](#)]*.
5. Each of the contemplated contracts will provide a stable source of jobs in Afghanistan, because _____.
6. The proposed use of other than full and open competition for this class of acquisitions is necessary to provide this stable source of jobs in Afghanistan.
7. The proposed use of other than full and open competition for this class of acquisitions will not adversely affect operations in Afghanistan, because _____. This is the opinion of the *[title of the official responsible for operations in the area involved]*.
8. The proposed use of other than full and open competition for this class of acquisitions will not adversely affect the United States industrial base.
9. *[If a preference will be provided for products or services from Afghanistan, or if competition will be limited to products or services from Afghanistan, include—*

(1) A description of the efforts that will be made to ensure that offers are solicited from as many potential sources as is practicable; and

(2) Whether a notice will be publicized as required by FAR Subpart 5.2 and, if not, which exception in FAR 5.202 applies.]

- or -

[If procedures other than competitive procedures will be used to award contracts to a particular source or sources from Afghanistan, include—

(1) A description of the market research conducted in accordance with FAR Part 10 and the results; or a statement of the reason market research was not conducted;

(2) A listing of the sources, if any, that expressed, in writing, an interest in this class of acquisitions;

(3) A demonstration that the proposed contractor's unique qualifications

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require the use of a noncompetitive acquisition, or an explanation of the other reasons for use of a noncompetitive acquisition; and

(4) A certification by the contracting officer that the information in paragraphs (1) through (3) above is accurate and complete to the best of the contracting officer's knowledge and belief.]

Determination

I hereby determine that it is in the national security interest of the United States to use the acquisition procedure described above for [description of the class of acquisitions to which this determination is intended to apply], because the procedure is necessary to provide a stable source of jobs Afghanistan and it will not adversely affect (1) Operations in Afghanistan or (2) the United States industrial base.

(Date)

(iii) Prepare a determination and findings for acquisitions issued pursuant to [Class Deviation 2014-O0014](#), to Acquire Products and Services Produced in Countries along a Major Route of Supply to Afghanistan or in Afghanistan, substantially as follows:

DEPARTMENT OR AGENCY

AUTHORITY TO ACQUIRE PRODUCTS OR SERVICES FROM

_____1_____

Determination and Findings

Upon the basis of the following findings and determination, which I hereby make in accordance with the provisions of DFARS 225.7799-2 (DEVIATION [2014-O0014](#)), the acquisition of a product or service, other than small arms, in support of operations in Afghanistan may be made as follows:

FINDINGS

1. The _____ 1A _____ proposes to purchase under solicitation number _____ 1B _____, _____ 1C _____.

The total estimated cost of this acquisition is _____ 1D _____.

2. The product or service is to be used by _____ 2 _____

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3. The contracting officer recommends conducting the acquisition using the following procedure, which, given this determination, is authorized by section 801 of Public Law 111-084 and section 886 of Pub. L. 110-181:

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4. To implement the recommended procedure, the solicitation will contain:

a. DFARS 252.225-7990, Preference for Products or Services from a Central Asian State or Afghanistan (APR 2014)(DEVIATION [2014-O0014](#)) and 252.225-7991, Requirement for Products or Services from a Central Asian State or Afghanistan (APR 2014)(DEVIATION [2014-O0014](#));

b. DFARS 252.225-7992, Acquisition Restricted to Products or Services from a Central Asian State or Afghanistan (APR 2014) (DEVIATION [2014-O0014](#));

c. DFARS 252.225-7998, Preference for Products or Services from Central Asia, Pakistan, the South Caucasus, or Afghanistan (APR 2014) (DEVIATION [2014-O0014](#)), and DFARS 252.225-7999, Requirement for Products or Services from Central Asia, Pakistan, the South Caucasus, or Afghanistan (APR 2014) (DEVIATION [2014-O0014](#));
or

d. DFARS 252.225-7996, Acquisition Restricted to Products or Services from Central Asia, Pakistan, the South Caucasus, or Afghanistan (APR 2014)(DEVIATION [2014-O0014](#)).

5. The proposed acquisition will provide a product or service that is to be used

5

6.a. For products or services from Central Asia, 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)(DEVIATION [2014-O0014](#)) because the procedure is necessary to

6A

Use of the procedure for acquisition of products or services from Central Asia, Pakistan, or the South Caucasus will not adversely affect military or stability operations in Afghanistan or the United States industrial base (see [6B](#)).

b. For products or services from Afghanistan, it is in the national security interest of the United States to use a procedure specified in 225.7799-1(a)(DEVIATION [2014-O0014](#)) because the procedure is necessary to provide a stable source of jobs in Afghanistan.

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Use of the procedure for acquisition of products or services from Afghanistan will not adversely affect military or stability operations in Afghanistan or the United States industrial base (see 6B). (see 6C)

7. Acquisitions conducted using the procedures specified in DFARS 225.7799-1(a) (DEVIATION [2014-O0014](#)), (see para. 3. above), are authorized to use other than full and open competition procedures and do not require the justification and approval addressed in FAR Subpart 6.3.

8. Requirement will be/was synopsisized: YES NO If not synopsisized, exception at FAR 5.202(a) applies.

_____ Date: _____

CONTRACTING OFFICER

Name: _____

Office Symbol: _____

DETERMINATION

In accordance with the authorization outlined in DFARS 225.7799-2(b)(1)(i)(DEVIATION [2014-O0014](#)) and under the authority of section 801 if the National Defense Authorization Act for Fiscal Year 2013, I hereby determine that it is in the national security interest of the United States to use the acquisition procedure described above because the procedure is necessary to encourage countries along a major route of supply in support of military and stability operations in Afghanistan. This procedure will not adversely affect military or stability operations in Afghanistan; or the United States industrial base.

_____ Date: _____

INSTRUCTIONS FOR COMPLETING DETERMINATION

- 1 "A Central Asian State or Afghanistan"; or "A Central Asian State, Pakistan, the South Caucasus, or Afghanistan"
- 1A Office symbol of your contracting office
- 1B RFP/RFQ/IFB number
- 1C Description of the items to be purchased
- 1D Estimated amount of the requirement (in USD)
- 2 Describe the entity(ies) that are the intended user(s) of the product or service
- 3 *Select and include one of the following:*
 - a. Provide a preference for products or services from the five Central Asian

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states or Afghanistan IAW the evaluation procedures at 225.7799-3 (DEVIATION [2014-O0014](#)).

b. Limit competition to products or services from the five Central Asian states listed in DEVIATION [2014-O0014](#)).

c. Provide a preference for products or services from Central Asia, Pakistan, the South Caucasus, or Afghanistan IAW the evaluation procedures at 225.7799-3 (DEVIATION [2014-O0014](#)).

d. Limit competition to products or services from Central Asia, Pakistan, the South Caucasus, or Afghanistan (DEVIATION [2014-O0014](#)).

5 *Select and include one of the following:*

In the country that is the source of the product or service.

In the course of efforts by the United States and the Forces to ship goods to or from Afghanistan in support of operations in Afghanistan.

By the military forces, police, or other security personnel of Afghanistan.

By the United States or coalition forces in Afghanistan.

6Ai Paragraph (6.a. may be deleted if the product or service is for use by the military forces, police, or other security personnel of Afghanistan.

6Aii *Select and include one of the following:*

Reduce the overall United States transportation costs and risks in shipping goods in support of operations in Afghanistan.

Encourage states of Central Asia, Pakistan, and the South Caucasus to cooperate in expanding supply routes through their territory in support of operations in Afghanistan.

Help develop more robust and enduring routes of supply to Afghanistan.

6B The contracting officer generally may presume that there will not be an adverse effect on the U.S. industrial base. However, when in doubt the contracting officer should coordinate with the applicable subject matter experts.

6C Delete paragraph 6.b. if the product or service concerned is to be used only by the military forces, police, or other security personnel of Afghanistan.

7 Include a description of efforts made to ensure offers are solicited from as many potential sources as is practicable.