



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

SEP 15 2017

In reply refer to
DARS Tracking Number: 2017-O0009

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)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION AND PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Products and Services from the African Host Nation—Djibouti

Effective immediately, contracting officers shall use the procedures and clauses provided in this class deviation when acquiring products or services from the African host nation—Djibouti in support of covered activities in Djibouti. This class deviation implements section 899A of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017. This enhanced authority is to limit competition to, or provide a preference for, products or services from the African host nation—Djibouti when in support of operations in Djibouti. Section 899A of the NDAA for FY 2017 repeals section 1263 of the NDAA for FY 2015; therefore, this class deviation rescinds and supersedes Class Deviation 2016-O0005, dated February 4, 2016.


Section 899A provides enhanced procurement authority to limit competition to, or provide a preference for, products and services from an African host nation or a covered African country other than the African host nation, for acquisitions in support of Department of Defense activities in a covered African country. Currently, Djibouti is the only African country that has adequate processes in place to function as an African host nation or covered African country, as those terms are defined in section 899A. As provided in section 899A, however, this authority is not available for the procurement of any product on the AbilityOne Procurement List, if such a product can be 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. When utilizing this authority, the contracting officer shall—

- Follow the procedures in attachment 1, which addresses the use of appropriate solicitation provisions, contract clauses, and evaluation of offers;

Class Deviation 2017-O0009
Products and Services from the Africa Host Nation-Djibouti

- Prepare a written individual or class determination, using a format substantially the same as provided at attachments 2 and 3 respectively, to be executed by the appropriate official;
- Report to DPAP/PACC, the following information within 10 calendar days of award when an individual or class determination is used during calendar year 2017:
 - a) Whether the acquisition procedure at 225.7798-3(a)(1) or (a)(2) was used.
 - b) A description of the products and services acquired.
 - c) The extent to which the use of the authority has met the one or more of the objectives of section 899A of the NDAA for FY 2017; and
- Submit all reports no later than 1 Nov 2017 to DPAP/PACC at contingencycontracting@osd.mil for required Secretary of Defense report to Congress.

This class deviation remains in effect until it is incorporated in the DFARS or otherwise rescinded. My point of contact is COL Ralph Borja, DPAP/PACC, at 703-697-9351 or ralph.t.borja.mil@mail.mil.



Shay D. Assad
Director, Defense Pricing

Attachments:
As stated

PART 206—COMPETITION REQUIREMENTS

SUBPART 206.3—OTHER THAN FULL AND OPEN COMPETITION

206.303 Justifications.

206.303-71 Acquisitions in support of operations in Africa. (DEVIATION 2017-O0009)

The justification and approval addressed in FAR 6.303 is not required for acquisitions conducted using a procedure specified in 225.7798-3(a) (DEVIATION 2017-O0009)

PART 225—FOREIGN ACQUISITION

SUBPART 225.4—TRADE AGREEMENTS

225.401 Exceptions. (DEVIATION 2017-O0009)

(a)(2)***

(S-70) If using a procedure specified in 225.7798-3(a)(1) (DEVIATION 2017-O0009) to acquire products or services in support of DoD activities in Djibouti, the procedures of FAR subpart 25.4 are not applicable.

SUBPART 225.5–EVALUATING FOREIGN OFFERS–SUPPLY CONTRACTS

225.502 Application. (DEVIATION 2017-00009)

(c) Use the following procedures instead of those in FAR 25.502(c) for acquisitions subject to the Buy American statute or the Balance of Payments Program:

(v) If the solicitation includes the provision at 252.225-7985, Preference for Products or Services from the African Host Nation–Djibouti (DEVIATION 2017-00009), use the evaluation procedures at 225.7798-5 (DEVIATION 2017-00009).

SUBPART 225.75—BALANCE OF PAYMENTS PROGRAM

225.7501 Policy. (DEVIATION 2017-00009)

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—

(8) Use of a procedure specified in 225.7798-3(a) (DEVIATION 2017-00009) is authorized for an acquisition in support of DoD activities in Djibouti.

**SUBPART 225.77–ACQUISITIONS IN SUPPORT OF OPERATIONS IN
AFGHANISTAN AND AFRICA (DEVIATION 2017-O0009)**

**225.7798 Enhanced authority to acquire products and services from Djibouti
in support of DoD activities in Djibouti. (DEVIATION 2017-O0009)**

225.7798-1 Scope.

This subpart implements section 899A of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328).

225.7798-2 Definitions.

As used in this subpart—

“African host nation” means the African nation in which there is a requirement for supplies or services in support of DoD activities in a covered African country, and which allows the Armed Forces and supplies of the United States to be located on, to operate in, or to be transported through its territory.

“Covered African country” means a country in Africa that has signed a long-term agreement with the United States related to the basing or operational needs of the United States Armed Forces. Djibouti is a covered African country.

“Product or service from the African host nation—Djibouti” means—

(1) A product from Djibouti that is wholly grown, mined, manufactured, or produced in Djibouti; or

(2) A service, including construction, from Djibouti that is performed by a person or entity that—

(i) Is properly licensed or registered by appropriate authorities of Djibouti; and

(ii) As determined by the Chief of Mission concerned—

(A) Is operating primarily in Djibouti; or

(B) Is making a significant contribution to the economy of Djibouti through payment of taxes or use of products, materials, or labor that are primarily grown, mined, manufactured, produced, or sourced from Djibouti.

225.7798-3 Acquisition procedures.

(a) Subject to the requirements of 225.7798-4 and except as provided in paragraph (c) of this section, a product or service to be acquired in support of DoD activities in a covered African country—Djibouti may be obtained by—

(1) Limiting competition to products or services from the African host nation—Djibouti; or

(2) Providing a preference for products or services from the African host nation—Djibouti, in accordance with the evaluation procedures at 225.7798-5.

(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 Balance of Payments Program (see 225.7501) does not apply when use of a procedure specified in paragraph (a) of this section is authorized for an acquisition in support of DoD activities in Djibouti.

(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 nonprofit agency for other severely disabled in a timely fashion to support mission requirements.

225.7798-4 Determination requirements.

Before use of a procedure specified in 225.7798-3(a), a written determination must be prepared and executed as provided in this section.

(a) The appropriate official authorized to make the determination, as specified in paragraph (b) of this section, shall determine in writing that—

(1) At least one of the following applies:

(i) The product or service concerned is to be used only in support of DoD activities in Djibouti.

(ii) It is in the national security interests of the United States to limit competition or provide a preference as described in paragraph (a) of this section because such limitation or preference is necessary to—

(A) Reduce overall United States transportation costs and risks in shipping products in support of operations, exercises, theater security cooperation activities, and other missions in the African region;

(B) Reduce delivery times in support of DoD activities in Djibouti; or

(C) Promote regional security and stability in Africa.

(iii) The product or service is of equivalent quality to a product or service that would have otherwise been acquired without such limitation or preference;

(2) In the case of air transportation, an air carrier holding a certificate under 49 U.S.C. 41102 is not reasonably available to provide the air transportation; and

(3) The limitation or preference will not adversely affect—

(i) United States military operations or stability operations in the African region; or

(ii) The United States industrial base. The approving official may contact the following officials in order to obtain factual information to meet this statutory element of the determination:

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

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

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

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

(E) For other Defense Agencies: Personnel at defense agencies without industrial base expertise on staff should contact the Office of the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, telephone 703-697-0051, or email osd.mibp.inquiries@mail.mil.

(b)(1) Determinations may be made for an individual acquisition or a class of acquisitions meeting the criteria in paragraph (a) of this subsection 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 re-delegation, 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.

225.7798-5 Evaluating offers.

Evaluate offers submitted in response to solicitations that include the provision at 252.225-7985, Preference for Products or Services from the African Host Nation–Djibouti (DEVIATION 2017-O0009) as follows:

(a) For supplies, when evaluating 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 items plus any transportation costs, if separately broken out by contract line item.

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

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

225.7798-6 Solicitation provisions and contract clauses.

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

(a)(1) Use the provision at 252.225-7985, Preference for Products or Services from the African Host Nation–Djibouti (DEVIATION 2017-O0009), in solicitations that include the clause at 252.225-7986, Requirement for Products or Services from the African Host Nation—Djibouti (DEVIATION 2017-O0009).

(2) Insert in paragraph (d) of the provision, in accordance with the USAFRICOM Commander's policy and contracting activity procedures, the price evaluation factor to be applied to offers of products or services that are not products or services from the African host nation—Djibouti.

(b) Use the clause at 252.225-7986, Requirement for Products or Services from the African Host Nation–Djibouti (DEVIATION 2017-O0009), in solicitations and contracts that provide a preference for products or services from the African host nation—Djibouti in accordance with 225.7798-3(a)(2) (DEVIATION 2017-O0009).

(c) Use the clause at 252.225-7977, Acquisition Restricted to Products or Services from the African Host Nation–Djibouti (DEVIATION 2017-O0009), in solicitations and contracts that limit competition to products or services from the African host nation—Djibouti in accordance with 225.7798-3(a)(1) (DEVIATION 2017-O0009).

(d) Except as provided in paragraph (e)(2) of this section, when the Trade Agreements Act applies to the acquisition, use the appropriate provision and clause as prescribed at 225.1101(5) and (6).

(e)(1) Do not use any of the following provisions or clauses in solicitations or contracts that include the provision at 252.225-7985 (DEVIATION 2017-O0009), the clause at 252.225-7986 (DEVIATION 2017-O0009), or the clause at 252.225-7977 (DEVIATION 2017-O0009):

- (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.
- (vi) [252.225-7044](#), Balance of Payments Program—Construction Material.
- (vii) [252.225-7045](#), Balance of Payments Program—Construction Material Under Trade Agreements.

(2) Do not use the following provision or clause in solicitations or contracts that include the clause at 252.225-7977 (DEVIATION 2017-O0009):

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

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225-7985 Preference for Products or Services from the African Host Nation–Djibouti. (DEVIATION 2017-00009)

As prescribed in 225.7798-6(a), use the following provision:

PREFERENCE FOR PRODUCTS OR SERVICES FROM THE AFRICAN HOST
NATION–DJIBOUTI (SEP 2017) (DEVIATION 2017-00009)

(a) *Definitions.* “African host nation” and “products or services from the African host nation—Djibouti,” as used in this provision, are defined in the clause of this solicitation entitled “Requirement for Products or Services from the African Host Nation—Djibouti” (252.225-7986) (DEVIATION 2017-00009).

(b) *Representation.* By submission of its offer, the Offeror represents that all products or services to be delivered under a contract resulting from this solicitation are products or services from the African host nation—Djibouti, unless, in its offer, the Offeror specifies that it will provide products or services other than products or services from the African host nation—Djibouti.

(c) *Other products or services.* Offerors that include products or services in their offer that are not products or services from the African host nation—Djibouti shall identify in the offer the solicitation line item number and the country of origin for the product or service that is not a product or service from the African host nation—Djibouti, unless the product is listed in paragraph (c)(2) of the provision entitled “Trade Agreements Certificate,” if included in this solicitation.

(d) *Evaluation.* For the purpose of evaluating competitive offers, the Contracting Officer will increase by [*Contracting Officer to specify percent in accordance with the USAFRICOM Commander’s policy and contracting activity procedures_____*] percent the prices of offers of products or services that are not products or services from the African host nation—Djibouti.

(End of provision)

252.225-7986 Requirement for Products or Services from the African Host Nation–Djibouti. (DEVIATION 2017-O0009)

As prescribed in 225.7798-6(b), use the following clause:

REQUIREMENT FOR PRODUCTS OR SERVICES FROM THE AFRICAN HOST
NATION–DJIBOUTI (SEP 2017) (DEVIATION 2017-O0009)

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

“African host nation” means the African nation in which there is a requirement for supplies or services in support of DoD activities in a covered African country, and which allows the Armed Forces and supplies of the United States to be located on, to operate in, or to be transported through its territory.

“Covered African country” means a country in Africa that has signed a long-term agreement with the United States related to the basing or operational needs of the United States Armed Forces. Djibouti is a covered African country.

“Product or service from the African host nation—Djibouti” means–

(1) A product from Djibouti that is wholly grown, mined, manufactured, or produced in Djibouti; or

(2) A service, including construction, from Djibouti that is performed by a person or entity that—

and (i) Is properly licensed or registered by appropriate authorities of Djibouti;

(ii) As determined by the Chief of Mission concerned—

(A) Is operating primarily in Djibouti; or

(B) Is making a significant contribution to the economy of Djibouti through payment of taxes or use of products, materials, or labor that are primarily grown, mined, manufactured, produced, or sourced from Djibouti.

(b)(1) The Contractor shall provide only products or services from the African host nation—Djibouti, unless, in its offer, it specified that it would provide products or services other than products or services from the African host nation—Djibouti.

(2) For construction contracts, the Contractor is encouraged, but not required, to use construction material from the African host nation—Djibouti).

(End of clause)

252.225-7977 Acquisition Restricted to Products or Services from the African Host Nation–Djibouti. (DEVIATION 2017-O0009)

As prescribed in 225.7798-6(c), use the following clause:

ACQUISITION RESTRICTED TO PRODUCTS OR SERVICES FROM THE AFRICAN HOST NATION–DJIBOUTI (SEP 2017) (DEVIATION 2017-O0009)

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

“African host nation” means the African nation in which there is a requirement for supplies or services in support of DoD activities in a covered African country, and which allows the Armed Forces and supplies of the United States to be located on, to operate in, or to be transported through its territory.

“Product or service from the African host nation—Djibouti” means—

(1) A product from Djibouti that is wholly grown, mined, manufactured, or produced in Djibouti; or

(2) A service, including construction, from Djibouti that is performed by a person or entity that—

(i) Is properly licensed or registered by appropriate authorities of Djibouti;
and

(ii) As determined by the Chief of Mission concerned—

(A) Is operating primarily in Djibouti; or

(B) Is making a significant contribution to the economy of Djibouti through payment of taxes or use of products, materials, or labor that are primarily grown, mined, manufactured, produced, or sourced from Djibouti.

(b)(1) The Contractor shall provide only products or services from the African host nation—Djibouti.

(2) For construction contracts, the Contractor is encouraged, but not required, to use construction material from the African host nation—Djibouti.

(End of clause)

DEPARTMENT OR AGENCY

Authority to Acquire Products or Services from the African Host Nation— Djibouti

Individual Determination and Findings

Upon the basis of the following findings and determination, which I hereby make in accordance with the provisions of DFARS 225.7798-4 (DEVIATION 2017-O0009), the acquisition of products or services from the African host nation—Djibouti) may be made as follows:

1. The ***[contracting office]*** proposes to award under solicitation/contract number ***[provide solicitation/contract number]***, ***[describe the types of products or services]***. The total estimated cost of this acquisition is ***[provide total estimated value]***.

2. The product or service is to be used in support of the following DoD activity(ies) in Djibouti: ***[Describe the DoD activities being supported]***. The products or services to be acquired under this solicitation/contract are to be used by ***[describe the entity(ies) intended to use the products or services]***.

3. The contracting officer recommends conducting the acquisition using the following procedure, which, given this determination, is authorized by section 899A of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328): ***[Select one of the following:]***

[] Limit competition to products or services from the African host nation—Djibouti; or

[] Provide a preference for products or services from the African host nation—Djibouti.

4. To implement the recommended procedure, the solicitation will contain ***[title and number of the applicable provision and/or clause prescribed at DFARS 225.7798-6 (DEVIATION 2017-O0009)]***.

5. The limitation or preference under paragraph 3 above will not adversely affect United States military operations or stability operations in Africa or the United States industrial base. ***[If this acquisition involves air transportation, include the following:]*** An air carrier holding a certificate under 49 U.S.C. 41102 is not reasonably available to provide the air transportation. ***[For this paragraph, also select at least one of the following:]***

The product or service to be acquired is to be used or performed only in support of the covered activities.

OR

Use of this procedure to limit competition to, or provide a preference for, products or services from the African host nation–Djibouti is—

Vital to the national security interests of the United States, because use of the procedure ***[Select at least one of the following:]***

(a) Reduces overall United States transportation costs and/or risks in shipping products in support of operations, exercises, theater security cooperate activities and other missions in the African region;

(b) Reduces delivery times in support of covered activities; or

(c) Promotes regional security and stability in Africa.

OR

The product or service to be acquired is of equivalent quality of a product or service that would have otherwise been acquired. ***[Provide a description of market research.]***

6. Acquisitions conducted using the procedures specified in DFARS 225.7798-3(a) (DEVIATION 2017-O0009) (see paragraph 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. ***[Include a description of efforts made to ensure offers are solicited from as many potential sources as is practicable.]***

7. ***[Identify 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.]***

DETERMINATION

In accordance with the authorization outlined in DFARS 225.7798-3 (DEVIATION 2017-O0009) and under the authority of section 899A of the National Defense Authorization Act for Fiscal Year 2017, I have hereby determined that limiting competition to, or providing procurement preference for, goods or services from the African host nation—Djibouti is necessary to support the USAFRICOM mission in the region and is in the best interest of the United States.

Date: _____

CONTRACTING OFFICER (*Individual acquisitions valued at less than \$93M*)
Name: _____
Office Symbol: _____

Date: _____

HEAD OF CONTRACTING ACTIVITY (*Individual acquisitions valued at \$93M or more*)
Name: _____
Contracting Activity: _____

DEPARTMENT OR AGENCY

**Authority to Acquire Products or Services from the African Host Nation—
Djibouti**

Class Determination and Findings

Upon the basis of the following findings and determination, which I hereby make in accordance with the provisions of DFARS 225.7798-4 (DEVIATION 2017-O0009), the acquisition of products or services from the African host nation (Djibouti) may be made as follows:

1. The ***[contracting office]*** proposes to award under solicitation/contract number ***[provide solicitation/contract number]***, ***[describe the types of products or services]***. The total estimated cost of this acquisition is ***[provide total estimated value]***.

2. The product or service is to be used in support of the following DoD activity(ies) in Djibouti: ***[Describe the DoD activities being supported]***. The products or services to be acquired under this solicitation/contract are to be used by ***[describe the entity(ies) intended to use the products or services]***.

3. The contracting officer recommends conducting the acquisition using the following procedure, which, given this determination, is authorized by section 899A of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328): ***[Select one of the following:]***

[] Limit competition to products or services from the African host nation (Djibouti); or

[] Provide a preference for products or services from the African host nation country (Djibouti).

4. To implement the recommended procedure, the solicitation will contain ***[title and number of the applicable provision and/or clause prescribed at DFARS 225.7798-6 (DEVIATION 2017-O0009)]***.

5. The limitation or preference under paragraph 3 above will not adversely affect United States military operations or stability operations in Africa or the United States industrial base. ***[If this acquisition involves air transportation, include the following:]*** An air carrier holding a certificate under 49 U.S.C. 41102 is not reasonably available to provide the air transportation. ***[For this paragraph, select at least one of the following:]***

The product or service to be acquired is to be used or performed only in support of the covered activities.

OR

Use of this procedure to limit competition to, or provide a preference for, products or services from the African host nation—Djibouti is—

Vital to the national security interests of the United States, because use of the procedure ***[Select at least one of the following:]***

(a) Reduces overall United States transportation costs and/or risks in shipping products in support of operations, exercises, theater security cooperate activities and other missions in the African region; or

(b) Reduces delivery times in support of covered activities; or

(c) Promotes regional security and stability in Africa.

OR

The product or service to be acquired is of equivalent quality of a product or service that would have otherwise been acquired. ***[Provide a description of market research.]***

6. Acquisitions conducted using the procedures specified in DFARS 225.7798-3(a) (DEVIATION 2017-O0009) (see paragraph 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. ***[Include a description of efforts made to ensure offers are solicited from as many potential sources as is practicable.]***

7. ***[Identify 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.]***

DETERMINATION

In accordance with the authorization outlined in DFARS 225.7798-3 (DEVIATION 2017-O0009) and under the authority of section 899A of the National Defense Authorization Act for Fiscal Year 2017, I have hereby determined that limiting competition to, or providing procurement preference for, goods or services of an African host nation is necessary to support the USAFRICOM mission in the region and is in the best interest of the United States.

HEAD OF CONTRACTING ACTIVITY

Name: _____

Contracting Activity: _____

Date: _____