

SUBPART 225.77—ACQUISITIONS IN SUPPORT OF OPERATIONS IN AFGHANISTAN

(Revised October 30, 2015)

225.7700 Scope.

This subpart implements—

(a) Section 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181);

(b) 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);

(c) Section 826 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239); and

(d) The determinations by the Deputy Secretary of Defense regarding participation of the countries of the South Caucasus or Central and South Asia in acquisitions in support of operations in Afghanistan.

225.7701 Definitions.

As used in this subpart—

“Product from Afghanistan” means a product that is mined, produced, or manufactured in Afghanistan.

“Service from Afghanistan” means a service including construction that is performed in Afghanistan predominantly by citizens or permanent resident aliens of Afghanistan.

“Small arms” means pistols and other weapons less than 0.50 caliber.

“Source from Afghanistan” means a source that—

- (1) Is located in Afghanistan; and
- (2) Offers products or services from Afghanistan.

“Textile component” is defined in the clause at [252.225-7029](#), Acquisition of Uniform Components for Afghan Military or Afghan National Police.

225.7702 Acquisitions not subject to the enhanced authority to acquire products or services from Afghanistan.

225.7702-1 Acquisition of small arms.

(a) Except as provided in paragraph (b) of this section, when acquiring small arms for assistance to the Army of Afghanistan, the Afghani Police Forces, or other Afghani security organizations—

Part 225—Foreign Acquisition

(1) Use full and open competition to the maximum extent practicable, consistent with the provisions of 10 U.S.C. 2304;

(2) If use of other than full and open competition is justified in accordance with FAR Subpart 6.3, ensure that—

(i) No responsible U.S. manufacturer is excluded from competing for the acquisition; and

(ii) Products manufactured in the United States are not excluded from the competition; and

(3) If the exception at FAR 6.302-2 (unusual and compelling urgency) applies, do not exclude responsible U.S. manufacturers or products manufactured in the United States from the competition for the purpose of administrative expediency. However, such an offer may be rejected if it does not meet delivery schedule requirements.

(b) Paragraph (a)(2) of this section does not apply when—

(1) The exception at FAR 6.302-1 (only one or a limited number of responsible sources) applies, and the only responsible source or sources are not U.S. manufacturers or are not offering products manufactured in the United States; or

(2) The exception at FAR 6.302-4 (international agreement) applies, and United States manufacturers or products manufactured in the United States are not the source(s) specified in the written directions of the foreign government reimbursing the agency for the cost of the acquisition of the property or services for such government.

225.7702-2 Acquisition of uniform components for the Afghan military or the Afghan police.

Any textile components supplied by DoD to the Afghan National Army or the Afghan National Police for purpose of production of uniforms shall be produced in the United States.

225.7703 Enhanced authority to acquire products or services from Afghanistan.

225.7703-1 Acquisition procedures.

(a) Subject to the requirements of [225.7703-2](#), except as provided in [225.7702](#), a product or service (including construction), in support of operations in Afghanistan, may be acquired by—

(1) Providing a preference for products or services from Afghanistan in accordance with the evaluation procedures at [225.7703-3](#);

(2) Limiting competition to products or services from Afghanistan; or

(3) Using procedures other than competitive procedures to award a contract to a particular source or sources from Afghanistan. When other than competitive procedures are used, the contracting officer shall document the contract file with the

rationale for selecting the particular source(s).

(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.

(c) When issuing solicitations and contracts for performance in Afghanistan, follow the procedures at [PGI 225.7703-1](#)(c).

225.7703-2 Determination requirements.

Before use of a procedure specified in [225.7703-1](#)(a), a written determination must be prepared and executed as follows:

(a) For products or services to be used only by the military forces, police, or other security personnel of Afghanistan, the contracting officer shall—

(1) Determine in writing that the product or service is to be used only by the military forces, police, or other security personnel of Afghanistan; and

(2) Include the written determination in the contract file.

(b) For products or services not limited to use by the military forces, police, or other security personnel of Afghanistan, the following requirements apply:

(1) The appropriate official specified in paragraph (b)(2) of this subsection must determine in writing that it is in the national security interest of the United States to use a procedure specified in [225.7703-1](#)(a), because—

(i) The procedure is necessary to provide a stable source of jobs in 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 \$93 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 \$93 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 United States Central Command Joint Theater Support Contracting Command (C–JTSCC).

(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.

225.7703-3 Evaluating offers.

Evaluate offers submitted in response to solicitations that include the provision at [252.225-7023](#), Preference for Products or Services from Afghanistan, as follows:

(a) If the low offer is an offer of a product or service from Afghanistan, award on that offer.

(b) If there are no offers of a product or service from Afghanistan, award on the low offer.

(c) Otherwise, apply the evaluation factor specified in the solicitation to the low offer.

(1) If the price of the low offer of a product or service from Afghanistan is less than the evaluated price of the low offer, award on the low offer of a product or service from Afghanistan.

(2) If the evaluated price of the low offer remains less than the low offer of a product or service from Afghanistan, award on the low offer.

(d) For acquisitions in support of the United States Central Command (USCENTCOM), United States European Command (USEUCOM), United States Africa Command (USAFRICOM), United States Southern Command (USSOUTHCOM), or United States Pacific Command (USPACOM) theater of operations, see [PGI 225.7703-3](#).

225.7703-4 Solicitation provisions and contract clauses.

(a) Use the provision at [252.225-7023](#), Preference for Products or Services from Afghanistan, in solicitations, including solicitations using FAR part 12 procedures for

Part 225—Foreign Acquisition

the acquisition of commercial items, that provide a preference for products or services from Afghanistan in accordance with [225.7703-1\(a\)\(1\)](#). The contracting officer may modify the 50 percent evaluation factor in accordance with contracting office procedures.

(b) Use the clause at [252.225-7024](#), Requirement for Products or Services from Afghanistan, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that include the provision at [252.225-7023](#), Preference for Products or Services from Afghanistan, and in the resulting contract.

(c) Use the clause at [252.225-7026](#), Acquisition Restricted to Products or Services from Afghanistan, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—

(1) Are restricted to the acquisition of products or services from Afghanistan in accordance with [225.7703-1\(a\)\(2\)](#); or

(2) Will be directed to a particular source or sources from Afghanistan in accordance with [225.7703-1\(a\)\(3\)](#).

(d) Use the clause at [252.225-7029](#), Acquisition of Uniform Components for Afghan Military or Afghan National Police, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the acquisition of any textile components that DoD intends to supply to the Afghan National Army or the Afghan National Police for purposes of production of uniforms.

(e) When the Trade Agreements Act applies to the acquisition, use the appropriate clause and provision as prescribed at [225.1101](#) (5), and (6).

(f) Do not use any of the following provisions or clauses in solicitations or contracts that include the provision at [252.225-7023](#), the clause at [252.225-7024](#), or the clause at [252.225-7026](#):

(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.

(g) Do not use the following clause or provision in solicitations or contracts that include the clause at [252.225-7026](#):

- (1) [252.225-7020](#), Trade Agreements Certificate.
- (2) [252.225-7021](#), Trade Agreements.

225.7704 Acquisitions of products and services from South Caucasus/Central and South Asian (SC/CASA) state in support of operations in Afghanistan.

225.7704-1 Applicability of trade agreements.

As authorized by the United States Trade Representative, the Secretary of Defense has waived the prohibition in section 302(a) of the Trade Agreements Act (see subpart [225.4](#)) for acquisitions by DoD, and by GSA on behalf of DoD, of products and services from SC/CASA states in direct support of operations in Afghanistan.

225.7704-2 Applicability of Balance of Payments Program.

The Deputy Secretary of Defense has determined, because of importance to national security, that it would be inconsistent with the public interest to apply the provisions of the Balance of Payments Program (see subpart [225.75](#)) to offers of end products other than arms, ammunition, and war materials (i.e., end products listed in [225.401-70](#)) and construction materials from the SC/CASA states that are being acquired by or on behalf of DoD in direct support of operations in Afghanistan.

225.7704-3 Solicitation provisions and contract clauses.

Appropriate solicitation provisions and contract clauses are prescribed as alternates to the Buy American-Trade Agreements-Balance of Payments Program solicitation provisions and contract clauses prescribed at [225.1101](#) and [225.7503](#).

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

See [Class Deviation 2014-O00014](#), dated April 4, 2014, implementing section 801 of the FY 2010 National Defense Authorization Act (NDAA), as most recently amended by section 832 of the FY 2014 NDAA and section 886 of the FY 2008 NDAA, as amended by section 842 of the FY 2013 NDAA. Contracting officers shall limit competition to, or provide a preference for products mined, produced, or manufactured in, or services from the Central Asian states of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, or Uzbekistan or from Afghanistan before considering other sourcing options that include Pakistan and the South Caucasus.

See DoD [Class Deviation 2014-O0020](#), Class Deviation-Prohibition on Contracting with the Enemy. This deviation is applicable to solicitations and contracts awarded on or before December 31, 2018, with an estimated value in excess of \$50,000 that are being, or will be performed, in the U.S. Central Command, U.S. European Command, U.S. Africa Command, U.S. Southern Command, or U.S. Pacific Command theaters of operation.