



DEPARTMENT OF THE NAVY  
OFFICE OF THE ASSISTANT SECRETARY  
(RESEARCH, DEVELOPMENT AND ACQUISITION)  
1000 NAVY PENTAGON  
WASHINGTON DC 20350-1000

JAN 27 2010

MEMORANDUM FOR DISTRIBUTION

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

By attached memorandum dated November 12, 2009, the Director of Defense Procurement and Acquisition Policy authorized a class deviation to implement Section 801 of the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Pub.L. 111-084). Section 801 provides temporary authority to limit competition to, or provide a preference for products and services that are from, countries along the Northern Distribution Network in support of operations in Afghanistan when it is determined that it is in the national security interest of the United States. The deviation is effective until October 27, 2012, unless incorporated into the DFARS or otherwise rescinded. In addition, DFARS PGI 225.7703-4 provides the reporting periods and the information necessary to complete the report required by Section 801. The two remaining reporting periods are January 1, 2010 – December 30, 2010 and January 1, 2011 – December 30, 2011.

My point of contact for this matter is Mr. Clarence Belton,  
[clarence.belton@navy.mil](mailto:clarence.belton@navy.mil), (703) 693-4006.

*Elliott B. Branch*

Elliott B. Branch  
Executive Director  
DASN(A&LM)

Attachment:  
As stated

Distribution:  
See next page

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

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

NOV 12 2009

In reply refer to  
DARS Tracking Number: 2009-O0012

MEMORANDUM FOR COMMANDER UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY,  
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DEPUTY ASSISTANT SECRETARY OF THE NAVY  
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DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
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DIRECTORS, DEFENSE AGENCIES  
DIRECTORS, DoD FIELD ACTIVITIES

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

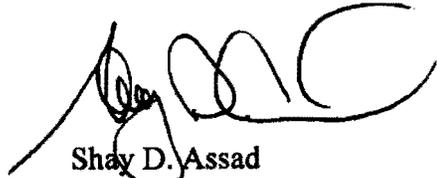
I hereby approve a class deviation to implement section 801 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-084). Section 801 provides temporary authority to limit competition to, or provide a preference for products and services that are from countries along the Northern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

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

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

- Evaluate offers in accordance with DFARS 225.7799-3 (DEVIATION).
- Include the new provision 252.225-7998, Preference for Products or Services from Central Asia, Pakistan, or the South Caucasus (November 2009) (DEVIATION) (attachment 1) in solicitations that provide a preference for products or services from Central Asia, Pakistan, or the South Caucasus in accordance with 225.7799-1(a)(1)(DEVIATION).
- Include the new clause 252.225-7999, Requirement for Products or Services from Central Asia, Pakistan, or the South Caucasus (November 2009) (DEVIATION) (attachment 1) in all solicitations and that include the provision at 252.225-7998, Preference for Products or Services from Central Asia, Pakistan, or the South Caucasus (DEVIATION), and in the resulting contract.
- When the Trade Agreements provision and clause apply (see 225.1101(5) and (6)), then class deviation 2009-O0007 also is applicable, until incorporated into the DFARS or rescinded.

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



Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

**Attachment 1 – Deviation 2009-O0012 (revised November 11, 2009)**

**Class Deviation to Implement Temporary Authority to  
Acquire Products and Services Produced in  
Countries along a Major Route of Supply to Afghanistan  
(Class Deviation 2009-00012)**

**PART 225--FOREIGN ACQUISITION**

\* \* \* \* \*

**SUBPART 225.75--BALANCE OF PAYMENTS PROGRAM**

\* \* \* \* \*

**225.7501 Policy. (DEVIATION)**

Acquire only domestic end products for use outside the United States, and use only domestic construction material for construction to be performed outside the United States, including end products and construction material for foreign military sales, unless--

(a) Before issuing the solicitation--

\* \* \* \* \*

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

\* \* \* \* \*

**SUBPART 225.77--ACQUISITIONS IN SUPPORT OF OPERATIONS IN IRAQ  
OR AFGHANISTAN**

**225.7700 Scope. (DEVIATION)**

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

**225.7701 Definitions. (DEVIATION)**

As used in this subpart--

\* \* \* \* \*

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

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

225.7799-1 Acquisition procedures.

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

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

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

(b) For acquisitions conducted using a procedure specified

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

**225.7799-2 Determination requirements.**

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

(a) The appropriate official specified in paragraph (b)(1) of this subsection must determine in writing that--

(1) The product or service concerned is to be used--  
(i) In the country that is the source of the product or service;

(ii) In the course of efforts by the United States and the NATO International Security Assistance Force to ship goods to Afghanistan in support of operations in Afghanistan; or

(iii) By the military forces, police, or other security personnel of Afghanistan; and

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

(i) The procedure is necessary to--

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

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

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

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

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

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

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

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

(A) Defense Logistics Agency Component Acquisition Executive.

(B) Army Acquisition Executive.

(C) Navy Acquisition Executive.

(D) Air Force Acquisition Executive.

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

(2) The contracting officer—

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

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

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

225.7799-3 Evaluating offers.

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

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

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

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

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

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

**225.7799-4 Reporting requirement.**

The following organizations shall submit periodic reports to the Deputy Director, Program Acquisition and Contingency Contracting, Defense Procurement and Acquisition Policy, in accordance with PGI 225.7703-4, to address the organization's use of the procedures authorized by this section:

- (a) The Joint Contracting Command (Iraq/Afghanistan).
- (b) The Department of the Army, except for contract actions reported by the Joint Contracting Command.
- (c) The Department of the Navy.
- (d) The Department of the Air Force.
- (e) The Defense Logistics Agency.
- (f) The other defense agencies and other DoD components that execute reportable contract actions.

**225.7799-5 Solicitation provisions and contract clauses.**

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

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

(c) When the Trade Agreements Act applies to the acquisition, use the appropriate clause and provision as prescribed at 225.1101 (5) and (6). {See deviation 2009-00007,

if still in effect)

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

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

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

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

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

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

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

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

\* \* \* \* \*

PART 252-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

\* \* \* \* \*

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

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

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

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

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

(Line Item Number)

(Country of Origin)

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

(End of provision)

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

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

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

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

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

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

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

(End of clause)

\* \* \* \* \*

reconstruction, and humanitarian relief activities.

The U.S. industrial base. [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.]

8A Description of efforts made to ensure offers are solicited from as many potential sources as is practicable

8B Provide the number of the exception in FAR 5.202(a) that applies

9A A description of the market research conducted IAW FAR Part 10 and the results; or a statement of the reason why market research was not conducted

9B Provide the names of the sources that expressed an interest in this acquisition

9C Provide rationale for the noncompetitive acquisition: either a description of the contractor's unique qualifications or other reasons why competition is not appropriate

#### **PGI 225.7703-4 Reporting requirement.**

(1) Reports for Class Deviation 2009-O0012 shall include—

(i) The number of occasions on which a determination under Deviation 2009-O0012 was made with respect to the exercise of the authority, regardless of whether or not the determination resulted in the exercise of such authority;

(ii) The total dollar amount of contracts issued pursuant to the exercise of such authority displayed—

(A) Separately for each country (Georgia, the Kyrgyz Republic, Pakistan, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan); and

(B) Combined total for all countries; and

(iii) A description and assessment of the extent to which procurements pursuant to the exercise of such authority furthered the national security interest of the United States to—

(A) Improve local market and transportation infrastructure in Central Asia, Pakistan, or the South Caucasus in order to reduce overall United States transportation costs and risks in shipping goods in support of operations in Afghanistan; or

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

(2) Reports shall be submitted in accordance with the following schedule:

Reportable Actions Occurring From - To	Submit Report No Later Than
September 15, 2009 – December 31, 2009	January 31, 2010
January 1, 2010 – December 30, 2010	January 31, 2011
January 1, 2011 – December 30, 2011	January 31, 2012