updated the policy at 235.006 to address requirements for other than MDAPs.

Two sources submitted comments on the interim rule. DoD's single response to both comments is provided following the comments.

1. *Comment:* One respondent suggested that the interim rule appears to be requiring written determinations on MDAPs and non-MDAPs that are exactly the opposite of one another. For MDAPS, 234.004(iii) requires a written determination by the MDA at the time of Milestone B approval if a fixed-price contract is not selected, and for non-MDAPs, 235.006(b)(i)(A)(3) requires a written determination if a fixed-price contract is selected for a developmental program. The respondent indicated that it is hard for him to understand the logic that would discourage the use of fixed-price development contracts for non-major programs, but would encourage their use for major programs. Moreover, he suggested that fixed-price development contracts are likely to be a source of numerous requests for equitable adjustments or claims, and concluded that instituting such a policy would be challenging and ill-timed even for a robust, experienced, and disciplined workforce.

2. *Comment:* The respondent stated that the interim rule appears to introduce additional burdens on DoD program managers and contracting personnel to justify the decision to issue a shipbuilding contract on a cost-type basis. The respondent believes that, when selecting a contract type for any program, DoD's focus should be on "whether a product, system, or item is still developing or has reached maturity." Further, although they are MDAPs, the respondent believes that the first several ships of a new class should be viewed as developmental products that are procured most efficiently through cost-type contracts because of the inherently high level of risk and uncertainty associated with them. Therefore, for the first several ships of a class, the burden placed upon the MDA should most often be to explain why a fixed-price contract type is selected rather than why a cost-type contract is selected. For this reason, the respondent believes that the interim rule is flawed since the requirements should be in reverse order when applied to shipbuilding contracts.

DoD Response: For MDAPs, the procedures in DFARS 234.004 are mandated by section 818 of the FY07 NDAA. For other than MDAPs, DoD determined that it would be in the best interest of the Government to retain the policy in DFARS 235.006 for a written determination if a fixed-price contract is selected for a development program. Therefore, DoD has made no change to the language set forth in the interim rule, and is adopting the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule relates to internal DoD considerations and documentation requirements relating to the selection of contract type for development programs. No comments were received in response to publication of the interim rule with respect to any impact on small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 234 and 235

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 234 and 235, which was published at 73 FR 4117 on January 24, 2008, is adopted as a final rule without change.

[FR Doc. 2010–7259 Filed 4–7–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 206, 225, and 252

RIN 0750–AG02

Defense Federal Acquisition Regulation Supplement; Acquisitions in Support of Operations in Iraq or Afghanistan (DFARS Case 2008–D002)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting as final, with minor changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008. Section 886 provides authority for DoD to limit competition when acquiring products or services in support of operations in Iraq or Afghanistan. Section 892 addresses competition requirements for the procurement of small arms for assistance to Iraq or Afghanistan.

DATES: *Effective Date:* April 8, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 73 FR 53151 on September 15, 2008, to implement sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008. The comment period closed on November 14, 2008. Four respondents provided comments. In consideration of the public comments received, several changes were made in developing the final rule.

The final rule:

• Clarifies applicability of the trade agreements (*see* response to comment 3.a.)

• Includes a modified definition of "service from Iraq or Afghanistan" in the prescribed clauses, so that it reads "a service (including construction) that is performed in Iraq or Afghanistan. * * *". (*See* the DoD response to comment 4.c.)

• Adds the Commander of the Joint Contracting Command—Iraq/Afghanistan as an official 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.

DoD received comments from four persons or organizations in response to the interim rule (available on the Web at regulations.gov). The comments are grouped into the following categories:

1. Concern for U.S. industrial base.

2. Concern for industrial base of Iraq and Afghanistan.

3. Applicability of trade agreements.

4. Definitions relating to sources, products, and services from Iraq or Afghanistan.

5. Clarification of contracting officer flexibility with regard to the evaluation factor.

6. Decision authority no higher than head of the contracting activity.

7. Justification for issuing an interim rule.

The following is a discussion of the comments and the changes included in this final rule as a result of the public comments:

1. Concern for the U.S. Industrial Base

a. Two respondents disagreed with the proposed DFARS statement in 225.7703–2(b)(1)(ii)(B) that the authorizing official may generally presume that there will not be an adverse effect on the U.S. industrial base as a result of using one of the procedures authorized by section 886. They advocated a change that would require that the effect on the U.S. industrial base should be considered in each contracting action, and should be presumed adverse unless otherwise documented.

Response: The industrial base supporting defense is a vehicle for achieving the ultimate objective of the Department of Defense—the development, production, and support of defense materiel necessary to provide for the nation's defense. Accordingly, DoD's overarching objective is to ensure it has access to reliable and cost-effective industrial capabilities sufficient to meet current and projected military requirements. When considering a contract's potential impact on the U.S. industrial and technological base, DoD focuses on ensuring that the contract does not result in the loss of industrial or technological capabilities essential for the nation's defense. It is extremely unlikely—because of both the relatively small size of such U.S.-funded procurements and the specific products/services associated with such U.S.-funded procurements—that any contracts issued for products or services to be used for the military forces, police, or other security personnel of Iraq or Afghanistan would result in the loss of industrial or technological capabilities essential for the nation's defense.

Additionally, utilization of non-U.S. sources for the products or services likely to be acquired for the military/security forces of Iraq and Afghanistan with U.S. funds will generally not impact the economic viability of individual elements of the U.S. national technology and industrial base because of the relatively small values of such acquisitions. To demonstrate, the first quarterly report to Congress in response to section 886 of the Fiscal Year 2008 NDAA reported 91 percent of actions (there were 22 total actions with 11 different contractors) using section 886 authority were for construction/repair or services. The two supply items were for billboards for a total of $73 million. DoD has a relatively small role in the overall U.S. economy. In 2008, the total of all DoD budget authority represented only about 4 percent of the gross domestic product. Especially in dual-use market segments, DoD's influence is very small. Additionally, DoD purchases non-U.S. materiel very judiciously; and the transactions contemplated here likely will be even smaller in value. For example—

- As reported to Congress in its September 2008 report "Foreign Sources of Supply," in Fiscal Year 2007, DoD awarded contracts to foreign suppliers for defense items and components totaling approximately $1.57 billion, less than one-half of one percent of all DoD contracts; and only about 1.5 percent of all DoD contracts for defense items and components. The remaining 99.5 percent of all DoD contracts and 98.5 percent of all DoD contracts for defense items and components were awarded to U.S. prime contractors.
- As reported to Congress in its July 2008 report "Department of Defense Fiscal Year 2007 Purchases of Supplies Manufactured Outside the United States," DoD procurement actions in Fiscal Year 2007 totaled approximately $316 billion. Of that amount, approximately $18.9 billion (5.9 percent) was expended on purchases from foreign entities. "Weapons" purchases totaled $106.13 million (0.57 percent) and "subsistence" purchases totaled $84.95 million (0.46 percent).

Finally, DoD notes that both respondents supply rations or other shelf-stable meals. Title 10 United States Code, section 2533a(d) *Exception for Certain Procurements* provides that requirements to buy food from U.S. suppliers are excepted for procurements outside the United States in support of combat operations. The Congress has recognized that even food for U.S. Service members need not be procured from U.S. sources when the procurements take place outside the United States and are in support of combat operations.

Therefore, an authorizing official's presumption of no adverse impact on the U.S. industrial base is an appropriate posture. In the event of uncertainty, DFARS 225.7703–2(b)(1)(ii)(B) would require that the authorizing official coordinate with the applicable subject matter expert. This is reasonable and would protect industrial and technological capabilities essential for U.S. defense in those rare cases where contemplated procurements could have a negative impact.

b. *Comment:* Two respondents believed that DoD should require evaluation of the impact on the U.S. industrial base for each acquisition, whether or not the products or services being acquired are to be used only by the military forces, police, or other security personnel of Iraq or Afghanistan.

Response: According to subsection (b)(1) of section 886, a determination that the products or services being acquired are to be used only by the military forces, police, or other security personnel of Iraq or Afghanistan is adequate to support use of the procedures authorized by subsection (a). The interim rule at DFARS 225.7703–2(a) implements the law appropriately by not requiring an assessment of the impact on the industrial base in such cases.

c. *Comment:* Two respondents requested that DoD define "U.S. industrial base" for the purpose of this DFARS rule narrowly enough for the impact analysis to be meaningful (*e.g.,* as all potential U.S. contractors and subcontractors of the same or similar end product).

Response: DoD does not consider it necessary for DFARS subpart 225.77 to define "U.S. industrial base", nor does DoD agree that the suggested definition would be appropriate. As indicated in the response to comment 1.a., when considering a contract's potential impact on the U.S. industrial and technological base, DoD focuses on ensuring that the contract does not result in the loss of industrial or technological capabilities essential for the nation's defense. For this purpose, the term "U.S. industrial base" is sufficiently clear without being defined. Also, for this purpose, "U.S. industrial base" has a broad meaning and not the narrow meaning suggested by the respondents. U.S.-funded procurements of products or services in support of military or stability operations in Iraq or Afghanistan are not likely to result in the loss of industrial or technological capabilities essential for the nation's defense.

d. *Comment:* Two respondents requested that DoD define "adversely affected" for the purpose of the industrial base evaluation required by this DFARS rule. According to these respondents, the definition should include loss of volume for prime contractors and their supplier networks and loss of key suppliers due to reduced volume of purchases.

Response: "Adversely affected," the terminology used in section 886, is sufficiently clear to enable the type of assessment required by section 886. The term does not need to be defined in DFARS subpart 225.77.

e. *Comment:* Two respondents recommended that DoD should not

allow performance requirements to be reduced to match the potential (local) bidders' capabilities.

Response: The interim rule does not regulate the development of performance requirements. Operational users and program managers are responsible for defining requirements, and contracting officers are responsible for awarding and managing contracts that will satisfy those requirements.

f. *Comment:* Two respondents stated that U.S. competitors should not be excluded from any contracting action, i.e., should be allowed to participate in every procurement conducted using a procedure authorized by section 886.

Response: If the DFARS were changed as suggested, it would not include two procedures specifically authorized by section 886, and, therefore, would deprive DoD contracting officers of the flexibility provided and intended by the law. Section 886(a) authorizes two procedures that, if used, preclude U.S. firms from competing: Competition limited to products or services that are from Iraq or Afghanistan (subsection (a)(1)), and a procedure other than a competitive procedure used to award to a particular source or sources from Iraq or Afghanistan (subsection (a)(2)). Conference Report 110–477 explains that the legislation's purpose is to provide a stable source of jobs and employment in Iraq and Afghanistan in cases where the preference will not have an adverse effect on U.S. military operations or the U.S. industrial base. The interim rule, as written, appropriately implements the law and facilitates achievement of the law's intended purpose.

g. *Comment:* One respondent recommended that DoD should not apply the 50 percent penalty in 225.7703–1(a) to offers of U.S. products. In the respondent's view, this aspect of the DFARS rule is not stated or inferred in section 886.

Response: Section 886 is specifically intended to provide a stable source of jobs and employment in Iraq and Afghanistan. To that end, it authorizes a preference for, and only for, products or services that are from Iraq or Afghanistan. The 50 percent mark-up applied to offers of products or services that are NOT from Iraq or Afghanistan is the mechanism that provides the intended preference by putting offers of products from other countries, including the U.S., at a competitive disadvantage. If the DFARS were changed so that the mark-up was never applied to offers of U.S. products, the preference intended for Iraqi and Afghani products would also be applied to U.S. products. That would not be consistent with section 886 and would negate significantly the intended boost to the Iraqi and Afghani industrial base.

2. Concern for the Industrial Base of Iraq and Afghanistan

a. *Comment:* Two respondents recommended changing the interim rule to compel local bidders to work toward creation of a supplier network within Iraq and Afghanistan in order to achieve the goal of section 886. The respondents stated that this could be done by—

(1) Requiring 100 percent of the product to be from Iraq or Afghanistan, without allowances to use non-Iraqi or non-Afghani components (*see* 252.225–7021(a)(14)(ii)); or

(2) Specifically prohibiting award of contracts to brokers, distributors, and middlemen such that contracts must be awarded to Iraqi/Afghani producers that are part of a true Iraqi or Afghani national industrial base.

Response: The interim rule encourages rather than compels achievement of the goal of section 886, consistent with the authorities provided by section 886. Regarding 2.a.(1), even the Buy American Act allows 50 percent of the value of components of a domestic end product to be of foreign origin. *See also* the response regarding substantial transformation at paragraph 3.b., below. Regarding 2.a.(2), the interim rule appropriately implements the section 886 focus on products and services from Iraq or Afghanistan rather than on the national affiliation of the entity receiving the contract award. The rule has its intended effect without prohibiting award to brokers, distributors, or middlemen. If a distributor from the U.S. or a third country offers and delivers a "product from Iraq or Afghanistan," as defined in section 886 and the interim rule, the procurement facilitates the development of the industrial base of Iraq or Afghanistan. On the other hand, if a distributor in Iraq or Afghanistan offered and delivered a product from other than Iraq or Afghanistan, the procurement would not strengthen the Iraqi or Afghani industrial base.

b. *Comment:* Two respondents recommended limiting the percentage of non-Iraqi/non-Afghani components or, alternatively, when evaluating competitive offers of products or services that are not products or services of Iraq or Afghanistan, increasing by 50 percent the prices of all non-Iraqi or non-Afghani raw materials, ingredients, components, and/or items that are part of the end product offered.

Response: Section 886 authorizes a procedure in which a preference is provided for "products or services" that are from Iraq or Afghanistan, and goes on to define those terms. The provision at 252.225–7023 and the clause at 252.225–7024 state that the contracting officer will increase by 50 percent the prices of offers of "products or services" that are not products or services from Iraq or Afghanistan. (The definition of "product from Iraq or Afghanistan" is identical to that in section 886, and the definition of "service from Iraq or Afghanistan" adds only the word "predominantly" to the definition from section 886.) The comment suggests that the preference be applied not only at the level of products, but also at the level of the raw materials, ingredients, components, and/or items that are part of the end product offered. DoD understands that this would create a greater competitive advantage for products with a higher proportion of Iraqi or Afghani content. However, it would also complicate significantly the rule and the submission and evaluation of offers and probably contribute to lengthening solicitation and evaluation periods. Therefore, DoD has not changed the final rule in response to this comment.

3. Applicability of Trade Agreements

a. *Comment:* One respondent suggested that the rule should emphasize that acquisitions under the authority of section 886 are exempt from application of the trade agreements.

Response:

i. Acquisitions with a preference for Iraqi or Afghani products. The Trade Agreements Act applies to those acquisitions in which only a preference for Iraqi or Afghani products is imposed, as authorized by 225.7703–1(a)(1). However, based on consultation with legal counsel prior to publishing the interim rule, DoD concluded that when using this new authority to provide a preference for Iraqi products, the Trade Agreements Act purchasing prohibition does not apply with regard to purchases of products or services from Iraq. Afghani end products are already acceptable in any covered procurement because Afghanistan is a "designated country," as that term is defined in FAR 25.003. Therefore, the interim rule provided an Alternate I to the Trade Agreements clause at FAR 52.225–7021, and a new certification to replace the FAR Trade Agreements Certification at 52.225–7020, unless the preference applies only to the products of Afghanistan.

ii. Acquisitions that are limited to products or services from Iraq or Afghanistan. FAR 25.401(a)(5) provides that the trade agreements do not apply to acquisitions not using full and open

competition, if authorized by subpart 6.2 or 6.3, when the limitation of competition would preclude use of the procedures of subpart 25.4. Although the procedures at 225.7703–1(a)(2) and (a)(3) are not authorized by subpart 6.2 or 6.3, section 886 has provided comparable separate statutory authorization, which precludes the use of the procedures of subpart 25.4, since such application would be inconsistent with implementation of section 886. This principle is implemented at 225.1101(6)(iii)(B), which prohibits use of any Trade Agreements provision or clause, if the clause at 252.225–7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan, is included in the solicitation and contract. However, DoD has further clarified the application of trade agreements in the final rule (*see* 225.401–71 and 225.7703–5(f)).

b. *Comment:* Two respondents recommended that DoD should not allow the "substantial transformation" test in 252.225–7021(a)(14)(ii) to be applied to contracting actions made under the authority of this DFARS rule.

Response: According to 225.7703–5(d) of the interim rule, contracting officers are to use the appropriate provision and clause when the Trade Agreements Act applies to the acquisition. The "substantial transformation" test applies in procurements covered by the Trade Agreements Act. The objective of Alternate I to 252.225–7021 is to enable the purchase of Iraqi (or Afghani) end products in such procurements, not to change the rules, such as the "substantial transformation" test, that otherwise apply to such procurements.

4. Definitions Relating to Sources, Products, and Services From Iraq or Afghanistan

a. *Comment:* One respondent recommended that DoD define or clarify "located in Iraq or Afghanistan" as the term is used in the DFARS 225.7701 definition of "source from Iraq or Afghanistan."

Response: "Located in Iraq or Afghanistan" is self-explanatory and does not require definition or clarification.

b. *Comment:* One respondent requested that DoD add "predominantly" to the definition of "product from Iraq or Afghanistan."

Response: The DFARS definition of "product from Iraq or Afghanistan," taken directly from section 886, is "a product that is mined, produced, or manufactured in Iraq or Afghanistan." Without a modifier, the implication is that the end product is entirely mined, produced, or manufactured in Iraq or Afghanistan. A change to "predominantly mined, produced, or manufactured" would reduce the standard from the implied "entirely" to "predominantly." This would weaken rather than strengthen the effectiveness of the rule in facilitating development of the industrial base of Iraq and Afghanistan. This does not mean that all the components must be from Iraq or Afghanistan. Unlike the Buy American Act definition of "domestic end product," there is no component test in the statutory definition of "product from Iraq or Afghanistan." However, if the Trade Agreements Act applies, the item must be substantially transformed in Iraq or Afghanistan.

c. *Comment:* One respondent requested that DoD add "construction" as a stand-alone type of acquisition, since it does not appropriately fit in either the "products" or "services" category.

Response: The interim rule makes clear that construction is included in the meaning of "service." *See* DFARS 225.7703–1(a). However, while this is clear in the DFARS text, it is not stated in the clauses. Accordingly, the final rule includes a modified definition of "service from Iraq or Afghanistan" in the prescribed clauses, so that it reads "a service (including construction) that is performed in Iraq or Afghanistan. * * *". DoD cannot make "construction" a stand-alone category because the law provides these special authorizations only for the acquisition of products and services from Iraq or Afghanistan.

5. Clarify Contracting Officer Flexibility With Regard to the Evaluation Factor

Comment: One respondent requested clarification that contracting officers are allowed to determine the percentage evaluation factor to apply to non-local/national products and services and eliminate the 50 percent factor (225.7703–5; 252.225–7023).

Response: The interim rule at 225.7703–5(a)(2) clearly establishes that the contracting officer may modify the 50 percent evaluation factor in accordance with contracting office procedures. This approach is consistent with DFARS writing standards. The provision (252.225–7023) includes a default percentage, and the prescription (225.7703–5(a)) for using the provision enables the contracting officer to modify that percentage. Contracting offices are responsible for establishing procedures to be used for this purpose, and for ensuring contracting officers are aware of the discretion provided by the DFARS and how it can be applied.

6. Decision Authority No Higher Than Head of the Contracting Activity

Comment: One respondent requested that DoD add language to allow the head of the contracting agency, rather than acquisition executives, to make class determinations (225.7703–2).

Response: Although DoD is unwilling to provide this authority to all heads of contracting activities, the draft final rule adds the Commander of the Joint Contracting Command—Iraq/Afghanistan to the list of officials at 225.7703–2(b)(2)(ii) who are authorized, without power of redelegation, to make a determination in accordance with section 886 that applies to an individual acquisition of $78.5 million or more or to a class determination.

Decision To Issue an Interim Rule

Comment: One respondent requested explanation of the "urgent and compelling" reasons that supported DoD's determination to publish an interim rule rather than a proposed rule.

Response: First, this is a statutory requirement which became effective upon enactment. Further, there was and is an urgent and compelling need to achieve stability in Iraq and Afghanistan. Section 886 authorized the use of procurement procedures that could help provide a stable source of jobs and employment in those countries and as such, the Joint Contracting Command—Iraq/Afghanistan specifically requested immediate guidance on how to implement this section. DoD had an urgent and compelling need to implement section 886 in a way that would enable contracting officers to use the new procedures as soon as possible, and thus facilitate the creation of stable jobs and employment sooner rather than later.

B. Other Changes in the Final Rule

In addition to the written responses posted on regulations.gov, DoD was informed by a telephone caller that Alternate I to DFARS clause 252.225–7021, Trade Agreements, added in the interim rule, was erroneously not added to the listing of that same clause in the commercial items clause at DFARS 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items. DoD has corrected this oversight in the final rule.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

C. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose any requirements on small businesses and only impacts acquisitions in Iraq and Afghanistan. There were no comments received on regulatory flexibility in response to the interim rule.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 206, 225, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 206, 225, and 252, which was published at 73 FR 53151, September 15, 2008, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Section 225.401–71 is revised to read as follows:

225.401–71 Products or services in support of operations in Iraq or Afghanistan.

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

(a) If using the procedure specified in 225.7703–1(a)(1), the purchase restriction at FAR 25.403(c) does not apply with regard to products or services from Iraq.

(b) If using a procedure specified in 225.7703–1(a)(2) or (3), the procedures of subpart 25.4 are not applicable.

■ 3. Section 225.7701 is amended by revising the definition of "service from Iraq or Afghanistan" to read as follows:

225.7701 Definitions.

* * * * *

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

* * * * *

■ 4. Section 225.7703–2 is amended by revising paragraph (b)(2)(ii) introductory text and adding new paragraph (b)(2)(ii)(E) to read as follows:

225.7703–2 Determination requirements.

* * * * *

(b) * * *

(2) * * *

(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:

* * * * *

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

* * * * *

■ 5. Section 225.7703–4 is amended by revising the introductory text to read as follows:

225.7703–4 Reporting requirement.

The following organizations shall submit periodic reports to the Deputy Director, Contingency Contracting & Acquisition Policy, 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:

* * * * *

■ 6. Section 225.7703–5 is amended by revising paragraph (d); removing paragraph (e)(4); redesignating existing paragraphs (e)(5) through (e)(8) as paragraphs (e)(4) through (e)(7), respectively; and adding paragraph (f) to read as follows:

225.7703–5 Solicitation provisions and contract clauses.

* * * * *

(d) When the Trade Agreements Act applies to the acquisition, use the appropriate clause and provision as prescribed at 225.1101 (5), (6), or (7).

(f) 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.

(3) 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Section 252.212–7001 is amended by revising the clause date and revising paragraph (b)(11) to read as follows:

252.212–7001 Contract terms and conditions required to implement statutes or Executive orders applicable to Defense acquisitions of commercial items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (APR 2010)

* * * * *

(b) * * *

(11)(i)____ 252.225–7021, Trade Agreements (NOV 2009) (19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note).

(ii) Alternate I (SEP 2008).

* * * * *

■ 9. Section 252.225–7023 is amended by revising the clause date and revising paragraph (b)(2) to read as follows:

252.225–7023 Preference for products or services from Iraq or Afghanistan.

* * * * *

PREFERENCE FOR PRODUCTS OR SERVICES FROM IRAQ OR AFGHANISTAN (APR 2010)

* * * * *

(b) * * *

(2) Paragraph (c)(2) of the provision entitled Trade Agreements Certificate," or "Trade Agreements Certificate—Inclusion of Iraqi End Products," if included in this solicitation.

* * * * *

■ 10. Section 252.225–7024 is amended by revising the clause date and revising paragraph (a)(2) to read as follows:

252.225–7024 Requirement for products or services from Iraq or Afghanistan.

* * * * *

REQUIREMENT FOR PRODUCTS OR SERVICES FROM IRAQ OR AFGHANISTAN (APR 2010)

(a) * * *

(2) *Service from Iraq or Afghanistan* means a service (including construction) that is performed in Iraq or Afghanistan predominantly by citizens or permanent resident aliens of Iraq or Afghanistan.

* * * * *

■ 11. Section 252.225–7026 is amended by revising the clause date and revising paragraph (a)(2) to read as follows:

252.225–7026 Acquisition restricted to products or services from Iraq or Afghanistan.

* * * * *

ACQUISITION RESTRICTED TO PRODUCTS OR SERVICES FROM IRAQ OR AFGHANISTAN (APR 2010)

(a) * * *

(2) *Service from Iraq or Afghanistan* means a service (including construction) that is performed in Iraq or Afghanistan predominantly by citizens or permanent resident aliens of Iraq or Afghanistan.

* * * * *

[FR Doc. 2010–7261 Filed 4–7–10; 8:45 am]

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