

203.905 Procedures for investigating complaints.

(1) Unless the DoD Inspector General makes a determination that the complaint is frivolous, fails to allege a violation of the prohibition in 203.903, or has been previously addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the DoD Inspector General will investigate the complaint.

* * * * *

(3) Upon completion of the investigation, the DoD Inspector General—

(i) Either will determine that the complaint is frivolous, fails to allege a violation of the prohibition in 203.903, or has been previously addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, or will submit the report addressed in paragraph (2) of this section within 180 days after receiving the complaint; and

(ii) If unable to submit a report within 180 days, will submit the report within the additional time period, up to 180 days, as agreed to by the person submitting the complaint.

(4) The DoD Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is—

(i) Made with the consent of the person alleging reprisal;

(ii) Made in accordance with 5 U.S.C. 552a (the Freedom of Information Act) or as required by any other applicable Federal law; or

(iii) Necessary to conduct an investigation of the alleged reprisal.

(5) The legal burden of proof specified at paragraph (e) of 5 U.S.C. 1221 (Individual Right of Action in Certain Reprisal Cases) shall be controlling for the purposes of an investigation conducted by the DoD Inspector General, decision by the head of an agency, or judicial or administrative proceeding to determine whether prohibited discrimination has occurred.

- 7. Section 203.906 is amended by—
- a. Revising paragraph (1);
- b. Amending paragraph (2)(ii) by adding a sentence at the end of the paragraph; and
- c. By adding paragraphs (4), (5), and (6).

The revision and additions read as follows:

203.906 Remedies.

(1) Not later than 30 days after receiving a DoD Inspector General report in accordance with 203.905, the

head of the agency shall determine whether sufficient basis exists to conclude that the contractor has subjected the complainant to a reprisal as prohibited by 203.903; and shall either issue an order denying relief or shall take one or more of the following actions:

(i) Order the contractor to take affirmative action to abate the reprisal.

(ii) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(iii) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

(2) * * *

(ii) * * * An action under this authority may not be brought more than two years after the date on which remedies are deemed to have been exhausted.

* * * * *

(4) Whenever a contractor fails to comply with an order issued by the head of agency in accordance with 10 U.S.C. 2409, the head of the agency or designee shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and reasonable attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.

(5) Any person adversely affected or aggrieved by an order issued by the head of the agency in accordance with 10 U.S.C. 2409 may obtain judicial review of the order's conformance with the law, and the implementing regulation, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency or designee. Review shall conform to Chapter 7 of Title 5, Unites States Code. Filing such an appeal shall

not act to stay the enforcement of the order by the head of an agency, unless a stay is specifically entered by the court.

(6) The rights and remedies provided for in this subpart may not be waived by any agreement, policy, form, or condition of employment.

■ 8. Section 203.907 is added to read as follows.

203.907 Classified information.

As provided in section 827(h) of the National Defense Authorization Act for Fiscal Year 2013, nothing in this coverage provides any rights to disclose classified information not otherwise provided by law.

252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Section 252.203–7002 is amended by—

■ a. Amending the clause date by removing “(JAN 2009)” and adding in its place “(SEP 2013)”;

■ b. Designating the clause text as paragraph (a);

■ c. Revising the newly designated paragraph (a); and

■ d. Adding a new paragraph (b).

The revision and addition read as follows:

252.203–7002 Requirement to Inform Employees of Whistleblower Rights.

* * * * *

(a) The Contractor shall inform its employees in writing, in the predominant native language of the workforce, of contractor employee whistleblower rights and protections under 10 U.S.C. 2409, as described in subpart 203.9 of the Defense Federal Acquisition Regulation Supplement.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 206, 212, 225, and 252

RIN 0750–AH98

Defense Federal Acquisition Regulation Supplement: Acquisitions in Support of Operations in Afghanistan (DFARS Case 2013–D009)

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

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement two sections of the National Defense Authorization Act for Fiscal Year 2013 that require compliance with domestic source restrictions in the case of any textile components supplied by DoD to the Afghan National Army or the Afghan National Police for purposes of production of uniforms, and eliminate the application of the enhanced authority to acquire products and services from Iraq.

DATES: *Effective Date:* September 30, 2013.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before November 29, 2013, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2013–D009, using any of the following methods:

○ *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “DFARS Case 2013–D009” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2013–D009.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2013–D009” on your attached document.

○ *Email:* dfars@osd.mil. Include DFARS Case 2013–D009 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6106; facsimile 571–372–6089.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises the DFARS to implement sections 826 and 842 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239).

Section 826 requires compliance with 10 U.S.C. 2533a (the Berry Amendment) in the case of any textile components supplied by DoD to the Afghan National Army or the Afghan National Police for purposes of production of uniforms. The law further states that no exception or exemptions under that section shall apply.

Section 842 modifies section 886 of the NDAA for FY 2008 (Pub. L. 110–181), which provided enhanced authority to acquire products and services from Iraq and Afghanistan in support of operations in Iraq or Afghanistan. Section 842 eliminates application of the enhanced authority to acquisition of products and services from Iraq.

II. Discussion and Analysis

A. Revisions to DFARS Subpart 225.77 and Associated Provisions and Clauses

This interim rule amends the scope of subpart 225.77 to reflect implementation of sections 826 and 842 of the National Defense Authorization Act for FY 2013 (Pub. L. 112–239).

1. Section 842

This interim rule amends the title of subpart 225.77 to apply only to operations in Afghanistan, and deletes application of the policies and procedures of that subpart to products and services from Iraq.

At 225.7702 (now redesignated 225.7702–1), DoD has deleted the references to the Army of Iraq, the Iraqi Police Forces, and other Iraqi security organizations. Although there was no change to section 892 of the NDAA for FY 2008, Competition for Procurement of Small Arms Supplied to Iraq and Afghanistan, there is no longer a need for this coverage relating to Iraq in the DFARS. DoD does not buy small arms for any of these Iraqi organizations and the enhanced authority to buy items in support of operations in Iraq no longer exists.

This interim rule deletes the reporting requirements at section 225.7703–4 (and redesignates 225.7703–5 as 225.7703–4). The statutory requirement to report on acquisitions using the methods in this section expired at the end of FY 2009.

With regard to associated provisions and clauses, DoD has deleted Alternate I of DFARS 252.225–7021, Trade Agreements; and DFARS 252.225–7022, Trade Agreements Certificate—

Inclusion of Iraqi End Products, because this clause and provision were only necessary to allow the acquisition of Iraqi end products when trade agreements applied to the acquisition.

DFARS 252.225–7023, Preference for Products or Services from Iraq or Afghanistan; DFARS 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan; and DFARS 252.225–7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan, have been modified to delete enhanced authority relating to acquisitions of products or services from of Iraq.

2. Section 826

This interim rule adds a new section at 225.7702–2 to state the requirement that 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.

DFARS 225.7703–4(d) prescribes the use of a new clause at DFARS 252.225–7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police, in solicitations and contracts 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.

The new clause at DFARS 252.225–7029 defines “textile component” to mean any item consisting of fibers, yarns, or fabric, supplied for incorporation into a uniform or a component of a uniform. It does not include items that do not contain fibers, yarns, or fabric, such as the metallic or plastic elements of buttons, zippers, or other clothing fasteners. There is a cross-reference to this definition added at DFARS 225.7701.

The clause also states that there are no exceptions or waivers to the requirement that the contractor shall deliver under this contract only textile components that have been produced in the United States.

B. Other Conforming Changes

In addition to the changes in DFARS subpart 225.77 and the associated provisions and clauses, conforming changes were also required at DFARS 206.303–70, 212.301, 225.401, 225.502, 225.1101, 225.7501, and the clause prefaces of 252.225–7032, 252.225–7033, 252.225–7035, and 252.225–7036.

III. Applicability to Acquisition of Commercial Items and Acquisitions Not Greater Than the Simplified Acquisition Threshold

Section 826 states that 10 U.S.C. 2533a shall apply, and no exceptions or exemptions under that section shall apply. 10 U.S.C. 2533a (the Berry Amendment) specifically states in paragraph (i) that the statute is applicable to contracts and subcontracts for the procurement of commercial items, notwithstanding section 1906 of title 41. It does not specifically mention 41 U.S.C. 1907, which addresses applicability to commercially available off-the-shelf (COTS) items. However, most of the items restricted by the Berry Amendment are COTS items, and the application of the Berry Amendment in the DFARS has not included any exception for COTS items. Although paragraph (h) of the Berry Amendment provides an exception for purchases in amounts not greater than the simplified acquisition threshold, section 826 requires application to acquisitions not greater than the simplified acquisition threshold, because it states that none of the Berry Amendment exceptions apply.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD does not expect this rule to 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.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This initial regulatory flexibility analysis has been prepared consistent with 5 U.S.C. 603. This rule implements sections 826 and 842 of the National Defense Authorization Act for FY 2013 (Pub. L. 112-239).

The objective of the rule is to (1) require compliance with domestic source restrictions in the case of any textile components supplied by DoD to the Afghan National Army or the Afghan National Police for purposes of production of uniforms, and (2) eliminate the application of the enhanced authority to acquire products and services from Iraq. The legal basis is the above-cited statutes.

The number of small entities to be affected by the rule is not known. The rule has the potential to impact entities that manufacture textile components, if purchased by DoD to supply to the Afghan National Army or the Afghan National Police for purposes of production of uniforms. Any impact is expected to be beneficial, because it will require purchase from a domestic source.

There are no projected reporting, recordkeeping, or other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD was unable to identify any significant alternatives consistent with the stated objectives of the statute. DoD does not anticipate any significant economic impact on small entities. Any impact is expected to be beneficial.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2013-D009), in correspondence.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35); however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0229, entitled Defense Federal Acquisition Regulation Supplement; Part 225 and Related Clauses (Total approved burden hours—57,135).

VI. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment.

This action is necessary because sections 826 and 842 of the NDAA for FY 2013 were effective upon enactment (January 2, 2013). If implementation is delayed—

- Contracting officers may be unaware that the existing exceptions to the Berry Amendment no longer apply in the case of DoD purchase of textile components to be supplied to the Afghan National Army or the Afghan National Police for purpose of production of uniforms. This may result in purchases of foreign textile components in violation of the law.

- Contracting officers may erroneously provide a preference for the products or services of Iraq, without statutory authority. This will detract from the efforts to appropriately use the enhanced authority to acquire products and services from Afghanistan and the Central Asian states in support of operations in Afghanistan.

The Commander, United States Central Command (USCENTCOM), has advised that procuring products or services from the Central Asian states to meet Operation ENDURING FREEDOM requirements is critical to U.S. efforts to gain access and permissions for supporting current and future operations in, to, and from Afghanistan. USCENTCOM also advises that procurements in the Central Asian states support the USCENTCOM Theater Campaign Plan and International Security Assistance Force Civil Military Campaign Plan, as well as long-term economic development and stability in the region.

However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 206, 212, 225, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 206, 212, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 206, 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR Chapter 1.

PART 206—COMPETITION REQUIREMENTS

■ 2. Section 206.303-70 is amended by revising the section heading the section heading to read as follows:

206.303-70 Acquisitions in support of operations in Afghanistan.

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

- 3. Section 212.301 is amended by—
- a. Revising paragraph (f)(xxvi);
- b. Removing paragraph (f)(xxvii) and redesignating paragraphs (f)(xxviii) through (xxxii) as paragraphs (xxvii) through (xxxi);
- c. Revising newly redesignated paragraphs (f)(xxvii) through (xxix);
- d. Adding a new paragraph (f)(xxxii); and
- e. Revising paragraphs (f)(xxxiv) and (xxxv).

The revisions and addition are as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *
(xxvi) Use the clause at 252.225-7021, Trade Agreements to comply with 19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note.

(A) Use the basic clause as prescribed in 225.1101(6)(i).

(B) Use the clause with its Alternate II as prescribed in 225.1101(6)(ii).

(xxvii) Use the provision at 252.225-7023, Preference for Products or Services from Afghanistan, as prescribed in 225.7703-4(a), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(xxviii) Use the clause at 252.225-7024, Requirement for Products or Services from Afghanistan, as prescribed in 225.7703-4(b), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(xxix) Use the clause at 252.225-7026, Acquisition Restricted to Products or Services from Afghanistan, as prescribed in 225.7703-4(c), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

* * * * *

(xxxii) Use the clause at 252.225-7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police, as prescribed in 225.7703-4(d).

* * * * *

(xxxiv) Use the provision at 252.225-7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Alternates II, III, and V also implement section 886 of the National

Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(A) Use the basic provision as prescribed in 225.1101(9)(i).

(B) Use the provision with its Alternate I as prescribed in 225.1101(9)(ii).

(C) Use the provision with its Alternate II as prescribed in 225.1101(9)(iii).

(D) Use the provision with its Alternate III as prescribed in 225.1101(9)(iv).

(E) Use the provision with its Alternate IV as prescribed in 225.1101(9)(v).

(F) Use the provision with its Alternate V as prescribed in 225.1101(9)(vi).

(xxxv) Use the clause at 252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Alternates II, III, and V also implement section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(A) Use the basic clause as prescribed in 225.1101(10)(i)(A).

(B) Use the clause with its Alternate I as prescribed in 225.1101(10)(i)(B).

(C) Use the clause with its Alternate II as prescribed in 225.1101(10)(i)(A).

(D) Use the clause with its Alternate III as prescribed in 225.1101(10)(i)(B).

(E) Use the clause with its Alternate IV as prescribed in 225.1101(10)(i)(C).

(F) Use the clause with its Alternate V as prescribed in 225.1101(10)(i)(C).

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PART 225—FOREIGN ACQUISITION

- 4. Section 225.401-71 is revised as follows:

225.401-71 Products or services in support of operations in Afghanistan.

When acquiring products or services, other than small arms, in support of operations in Afghanistan, if using a procedure specified in 225.7703-1(a)(2) or (3), the procedures of subpart 25.4 are not applicable.

225.502 [Amended]

- 5. Section 225.502(c)(iv) is amended by removing the words “Iraq or”.

225.1101 [Amended]

- 6. Section 225.1101 is amended by—
- a. Removing in paragraph (5)(i) the phrase “Except as provided in paragraph (7) of this section, use” and adding in its place “Use”;
- b. Removing paragraph (6)(ii) and redesignating paragraphs (6) (iii) through (v) as paragraphs (6)(ii) through (iv);

- c. In redesignated paragraph (6)(ii), removing the phrase “and Alternate I is not applicable”;
- d. In redesignated paragraph (6)(iii)(B), removing the words “Iraq or”;
- e. Removing paragraph (7) and redesignating paragraphs (8) through (11) as paragraphs (7) through (10).
- f. In redesignated paragraph (10)(i), removing the phrase “paragraph (11)(ii)” and adding in its place “paragraph (10)(ii)”.

225.7501 [Amended]

- 6. Section 225.7501(a)(5) is amended by removing the words “Iraq or”.

Subpart 225.77 Acquisitions in Support of Operations in Afghanistan

- 7. Subpart 225.77 heading is revised to read as set forth above.

- 8. Section 225.7700 is revised to read as follows:

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.

- 9. Section 225.7701 is revised to read as follows:

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 [Redesignated as 225.7702-1]

- 10a. Redesignate section 225.7702 as 225.7702-1.
- 10b. Add a new section 225.7702 heading to read as follows:

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

225.7702-1 [Amended]

- 10c. In redesignated section 225.7702-1(a), remove the phrases “the Army of Iraq,” “the Iraqi Police Forces,” and “Iraqi or”.
- 10d. Add a new section 225.7702-2 to read as follows:

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.

- 11. Section 225.7703 heading is revised to read as follows:

225.7703 Enhanced authority to acquire products or services from Afghanistan.

225.7703-1 [Amended]

- 12. Section 225.7703-1 is amended—
- a. In paragraph (a) introductory text by adding the phrase “except as provided in 225.7702,” after “225.7703-2,” removing the phrases “, other than small arms,” and “Iraq or”, and removing the comma after “Afghanistan”;
- b. In paragraph (a)(1) by removing the words “Iraq or”;
- c. In paragraph (a)(2) by removing the words “Iraq or”; and
- d. In paragraph (a)(3) by removing the words “Iraq or”.

225.7703-2 [Amended]

- 13. Section 225.7703-2 is amended—
- a. In paragraph (a) introductory text by removing the words “Iraq or”;
- b. In paragraph (a)(1) by removing the words “Iraq or”;
- c. In paragraph (b) introductory text by removing the words “Iraq or”;
- d. In paragraph (b)(1)(i) by removing the words “Iraq or”;
- e. In paragraph (b)(1)(ii)(A) by removing the words “Iraq or”; and
- f. By revising paragraph (b)(2)(ii)(E) to read as follows:

225.7703-2 Determination requirements.

- * * * * *
- (b) * * *
 - (2) * * *
 - (ii) * * *

(E) Commander of the United States Central Command Joint Theater Support Contracting Command (C-JTSCC).

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- 14. Section 225.7703-3 is revised as follows:

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 USCENCOM, see PGI 225.7703-3.

225.7703-4 [Removed]

- 15a. Section 225.7703-4 is removed.
- 15b. Section 225.7703-5 is redesignated as 225.7703-4 and revised as follows:

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 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.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225-7021 [Amended]

- 16. Section 252.225-7021 is amended—
- a. By removing and reserving Alternate I; and
- b. In Alternate II, by removing in the introductory text “225.1101(6)(iii)” and adding in its place “225.1101(6)(ii)”.

252.225–7022 [Removed and Reserved]

■ 17. Section 252.225–7022 is removed and reserved.

■ 18. Section 252.225–7023 is revised to read as follows:

252.225–7023 Preference for Products or Services from Afghanistan.

As prescribed in 225.7703-4(a), use the following provision:

Preference for Products or Services From Afghanistan (SEP 2013)

(a) *Definitions.* “Product from Afghanistan” and “service from Afghanistan,” as used in this provision, are defined in the clause of this solicitation entitled “Requirement for Products or Services from Afghanistan” (DFARS 252.225–7024).

(b) *Representation.* The offeror represents that all products or services to be delivered under a contract resulting from this solicitation are products from Afghanistan or services from Afghanistan, except those listed in—

(1) Paragraph (c) of this provision; or

(2) Paragraph (c)(2) of the provision entitled “Trade Agreements Certificate,” if included in this solicitation.

(c) *Other products or services.* The following offered products or services are not products from Afghanistan or services from Afghanistan:

(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 Afghanistan. (End of provision)

■ 19. Section 252.225–7024 is revised to read as follows:

252.225–7024 Requirement for Products or Services from Afghanistan.

As prescribed in 225.7703-4(b), use the following clause:

Requirement for Products or Services From Afghanistan (SEP 2013)

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

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

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

(b) The Contractor shall provide only products from Afghanistan or services from Afghanistan under this contract, unless, in its offer, it specified that it would provide products or services other than products from Afghanistan or services from Afghanistan. (End of clause)

■ 20. Section 252.225–7026 is revised to read as follows:

252.225–7026 Acquisition Restricted to Products or Services from Afghanistan.

As prescribed in 225.7703-4(c), use the following clause:

Acquisition Restricted to Products or Services From Afghanistan (SEP 2013)

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

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

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

(b) The Contractor shall provide only products from Afghanistan or services from Afghanistan under this contract. (End of clause)

■ 21. Section 252.225–7029 is added to read as follows:

252.225–7029 Acquisition of Uniform Components for Afghan Military or Afghan National Police.

As prescribed in 225.7703–4(d), use the following clause:

Acquisition of Uniform Components for the Afghan Military or the Afghan National Police (SEP 2013)

(a) *Definitions.* As used in this clause—
“Textile component” means any item consisting of fibers, yarns, or fabric, supplied for incorporation into a uniform or a component of a uniform. It does not include items that do not contain fibers, yarns, or fabric, such as the metallic or plastic elements of buttons, zippers, or other clothing fasteners.

“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) As required by section 826 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), the Contractor shall deliver under this contract only textile components that have been produced in the United States.

(c) There are no exceptions or waivers to this requirement.

(End of clause)

252.225–7032 [Amended]

■ 22. In section 252.225–7032, the introductory text is amended by removing “225.1101(8)” and adding in its place “225.1101(7)”.

252.225–7033 [Amended]

■ 23. In section 252.225–7033, the introductory text is amended by removing “225.1101(9)” and adding in its place “225.1101(8)”.

252.225–7035 [Amended]

■ 24. Section 252.225–7035 is amended by—

■ a. Removing “225.1101(10)(i)” in the introductory text and adding in its place “225.1101(9)(i)”;

■ b. In Alternate I, removing “225.1101(10)(ii)” in the introductory text and adding in its place “225.1101(9)(ii)”;

■ c. In Alternate II, removing “225.1101(10)(iii)” in the introductory text and adding in its place “225.1101(9)(iii)”;

■ d. In Alternate III, removing “225.1101(10)(iv)” in the introductory text and adding in its place “225.1101(9)(iv)”;

■ e. In Alternate IV, removing “225.1101(10)(v)” in the introductory text and adding in its place “225.1101(9)(v)”;

■ f. In Alternate V, removing “225.1101(10)(vi)” in the introductory text and adding in its place “225.1101(9)(vi)”.

252.225–7036 [Amended]

■ 25. Section 252.225–7036 is amended by—

■ a. Removing “225.1101(11)(i)(A)” in the introductory text and adding in its place “225.1101(10)(i)(A)”;

■ b. In Alternate I, removing “225.1101(11)(i)(B)” in the introductory text and adding in its place “225.1101(10)(i)(B)”;

■ c. In Alternate II, removing “225.1101(11)(i)(A)” in the introductory text and adding in its place “225.1101(10)(i)(A)”;

■ d. In Alternate III, removing “225.1101(11)(i)(B)” in the introductory text and adding in its place “225.1101(10)(i)(B)”;

■ e. In Alternate IV, removing “225.1101(11)(i)(C)” in the introductory text and adding in its place “225.1101(10)(i)(C)”;

■ f. In Alternate V, removing “225.1101(11)(i)(C)” in the introductory text and adding in its place “225.1101(10)(i)(C)”.

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 216 and 252**

RIN 0750–A104

Defense Federal Acquisition Regulation Supplement: Allowability of Legal Costs for Whistleblower Proceedings (DFARS Case 2013–D022)

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

ACTION: Interim rule.