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JUL 30 2009

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Class Deviation to the Department of Defense Federal Acquisition Regulation Supplement (DFARS) to Implement Deputy Secretary of Defense Determinations and Findings (D&Fs) regarding Foreign Participation in DoD Acquisitions in Support of Operations in Afghanistan

The attached Director, Defense Procurement and Acquisition Policy memorandum of July 15, 2009 is forwarded for your information and action, as appropriate. This memorandum informs the DoD contracting community of a class deviation from three DFARS provisions and five DFARS clauses. This class deviation implements the two D&Fs signed by the Deputy Secretary of Defense on July 9, 2009. Under these waivers, acquisition from the nine South Caucasus/Central and South Asian (SC/CASA) states to support operations in Afghanistan is now allowed. These states are Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan.

Contracting Officers shall use the solicitation provisions and contract clauses in Attachment 1 in solicitations and contracts for acquisitions in support of operations in Afghanistan in accordance with the criteria in the clause prescriptions at 225.1101 and 225.7503.

This class deviation became effective July 15, 2009 and will remain in effect until incorporated in the DFARS or until otherwise rescinded. It is requested that this guidance be forwarded to all appropriate contracting personnel.

Seán F. Crean
RDML, SC, USN
DASN (A&LM)

Attachment:
As stated

Distribution:
See next page

SUBJECT: Class Deviation to the Department of Defense Federal Acquisition Regulation Supplement (DFARS) to Implement Deputy Secretary of Defense Determinations and Findings (D&Fs) regarding Foreign Participation in DoD Acquisitions in Support of Operations in Afghanistan

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ACQUISITION,
TECHNOLOGY
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JUL 15 2009

In reply refer to
DARS Tracking Number: 2009-O0007

MEMORANDUM FOR COMMANDER UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT), ASA (ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION & LOGISITICS MANAGEMENT), ASN (RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY
EXECUTIVE DIRECTOR, ACQUISITION, TECHNOLOGY AND SUPPLY DIRECTORATE (DLA)
DIRECTORS OF DEFENSE AGENCIES
DIRECTORS, DoD FIELD ACTIVITIES

SUBJECT: Class Deviation to the Department of Defense Federal Acquisition Regulation Supplement (DFARS) to Implement Deputy Secretary of Defense Determinations and Findings (D&Fs) regarding Foreign Participation in DoD Acquisitions in Support of Operations in Afghanistan

Attached is a class deviation from three DFARS provisions and five DFARS clauses (Attachment 1) to implement determinations made by the Deputy Secretary of Defense (Attachments 2 and 3) regarding foreign participation in future DoD acquisitions in support of operations in Afghanistan.

The Deputy Secretary has waived the World Trade Organization Government Procurement Agreement prohibition on acquisitions from non-designated countries in order to allow acquisition from the nine South Caucasus/Central and South Asian states (SC/CASA): Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan.

The Deputy Secretary also has waived the Balance of Payments Program in order to eliminate the 50 percent evaluation factor that would otherwise be applied to offers of products from the SC/CASA states to support operations in Afghanistan.

As provided in the Deputy Secretary's determinations dated July 9, 2009, the waivers apply to a DoD acquisition of end products, construction materials, or services when the primary purpose of the acquisition is to support operations in Afghanistan. This memorandum establishes procedures to be followed by all DoD contracting officers when conducting such acquisitions or by GSA contracting officers when acting on behalf of DoD and using funds appropriated for DoD.

Contracting officers shall use the solicitation provisions and contract clauses in Attachment 1 in solicitations and contracts for acquisitions in support of operations in Afghanistan in accordance with the criteria in the clause prescriptions at 225.1101 and 225.75.

This class deviation is effective upon signature, and remains in effect until incorporated in the DFARS or until otherwise rescinded. My point of contact is Patricia Foley, who may be reached at 703-693-1145, or patricia.foley@osd.mil.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Attachments:
As stated

Attachment 1 – Deviation 2009-O0007

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

Use the following provision in solicitations that meet the criteria in DFARS 225.1101(1) and are for acquisitions of supplies (other than arms, ammunition, or war materials) in support of operations in Afghanistan:

BUY AMERICAN ACT--BALANCE OF PAYMENTS PROGRAM CERTIFICATE
(DEVIATION)(DATE)

(a) *Definitions.* "Commercially available off-the-shelf (COTS) item," "domestic end product," "foreign end product," "qualifying country," "qualifying country end product," **"South Caucasus/South and Central Asia (SC/CASA) state," "SC/CASA state end product,"** and "United States" have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement**, except that SC/CASA end products will be treated the same as qualifying country end products**; and

(2) Will evaluate offers of qualifying country end products **or SC/CASA state end products** without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American Act and Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except those listed in paragraphs (c)(2) or (3) of this provision, is a domestic end product; and

(ii) For end products other than COTS items, components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror certifies that the following end products are qualifying country end products **or SC/CASA state end products"**:

Line Item Number	Country of Origin

(3) The following end products are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of "domestic end product":

Line Item Number	Country of Origin (If known)

(End of provision)

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

Use the following clause in solicitations and contracts that meet the criteria in DFARS 225.1101(2) and are for acquisitions of supplies (other than arms, ammunition, or war materials) in support of operations in Afghanistan:

BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM
(DEVIATION)(DATE)

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

(1) "Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

(2) "Component" means an article, material, or supply incorporated directly into an end product.

(3) "Domestic end product" means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American Act; or

(B) The end product is a COTS item.

(4) "End product" means those articles, materials, and supplies to be acquired under this contract for public use.

(5) "Foreign end product" means an end product other than a domestic end product.

(6) "Qualifying country" means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement (DFARS).

(7) "Qualifying country component" means a component mined, produced, or manufactured in a qualifying country.

(8) "Qualifying**252.225-7001 Buy American Act and Balance of Payments Program (DEVIATION).**

Use the following clause in solicitations and contracts that meet the criteria in DFARS 225.1101(2) and are for acquisitions of supplies (other than arms, ammunition, or war materials) in support of operations in Afghanistan:

country end product" means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States.

(9) "South Caucasus/Central and South Asian (SC/CASA) state" means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(10) "SC/CASA state end product" means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(11) "United States" means the 50 States, the District of Columbia, and outlying areas.

(b) This clause implements the Buy American Act (41 U.S.C. Section 10a-d). In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for an end product that is a COTS item (see section 12.505(a)(1) of the Federal Acquisition Regulation). Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product **or an SC/CASA state end product**, the Contractor shall deliver a qualifying country end product **an SC/CASA state end product** or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

252.225-7020 Trade Agreements Certificate (DEVIATION).

Use the following provision in solicitations that meet the criteria in DFARS 225.1101(5) and are for acquisitions in support of operations in Afghanistan:

TRADE AGREEMENTS CERTIFICATE **(DEVIATION)(DATE)**

(a) *Definitions.* "Designated country end product," "nondesignated country end product," "qualifying country end product," **"SC/CASA state," "SC/CASA state end product,"** and "U.S.-made end product" have the meanings given in the Trade Agreements clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement, **except that SC/CASA state end products will be treated the same as qualifying country end products**; and

(2) Will consider only offers of end products that are U.S.-made, qualifying country, **SC/CASA state**, or designated country end products unless—

(i) There are no offers of such end products;

(ii) The offers of such end products are insufficient to fulfill the Government's requirements; or

(iii) A national interest waiver has been granted.

(c) *Certification and identification of country of origin.*

(1) For all line items subject to the Trade Agreements clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2)**(ii)** of this provision, is a U.S.-made, qualifying country, **SC/CASA state,** or designated country end product.

(2)(i) The following supplies are SC/CASA state end products:

(Line Item Number) (Country of Origin)

_____

(ii) The following are other nondesignated country end products:

(Line Item Number) (Country of Origin)

(End of provision)

252.225-7021 Trade Agreements. (DEVIATION)

Use the following clause in solicitations and contracts that meet the criteria in DFARS 225.1101(6) and are for acquisitions in support of operations in Afghanistan:

TRADE AGREEMENTS **(DEVIATION)(DATE)**

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

(1) "Caribbean Basin country end product"—

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself; and

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of—

(A) Textiles, apparel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and handloomed, handmade, or folklore articles that are not granted duty-free status in the Harmonized Tariff Schedule of the United States (HTSUS);

(B) Tuna, prepared or preserved in any manner in airtight containers; and

(C) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if

such watches or watch parts contain any material that is the product of any country to which the HTSUS column 2 rates of duty (HTSUS General Note 3(b)) apply.

(2) "Component" means an article, material, or supply incorporated directly into an end product.

(3) "Designated country" means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

(4) "Designated country end product" means a WTO GPA country end product, a Free Trade Agreement country end product, a least developed country end product, or a Caribbean Basin country end product.

(5) "End product" means those articles, materials, and supplies to be acquired under this contract for public use.

(6) "Free Trade Agreement country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a

new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(7) "Least developed country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(8) "Nondesignated country end product" means any end product that is not a U.S.-made end product or a designated country end product.

(9) "Qualifying country" means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(10) "Qualifying country end product" means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States.

(11) "South Caucasus and Central and South Asian (SC/CASA) state" means Azerbaijan, Armenia, Georgia, Pakistan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

(12) "SC/CASA state end product" means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(13) "United States" means the 50 States, the District of Columbia, and outlying areas.

(14) "U.S.-made end product" means an article that—

(i) Is mined, produced, or manufactured in the United States; or

(ii) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

(15) "WTO GPA country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, **SC/CASA state**, or designated country end products unless—

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2)(i) Offers of U.S.-made, qualifying country, **SC/CASA state**, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(e) The HTSUS is available on the Internet at http://www.usitc.gov/tata/hts/bychapter/index.htm. The following sections of the HTSUS provide information regarding duty-free status of articles specified in paragraph (a)(2)(ii)(A) of this clause:

(1) General Note 3(c), Products Eligible for Special Tariff Treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries Under the United States--Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits Under the United States--Caribbean Basin Trade Partnership Act.

(End of clause)

* * * * *

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

Use the following provision in solicitations that meet the criteria in DFARS 225.1101(10) and are for acquisitions of supplies (other than arms, ammunition, or war materials) in support of operations in Afghanistan:

BUY AMERICAN ACT--FREE TRADE AGREEMENTS--BALANCE OF PAYMENTS PROGRAM CERTIFICATE **(DEVIATION)(DATE)**

(a) *Definitions.* "Bahrainian end product," "commercially available off-the-shelf (COTS) item," "domestic end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "foreign end product," "Moroccan end product," "qualifying country end product," **"South Caucasus/Central and South Asian (SC/CASA) state," "SC/CASA state end product,"** and "United States" have the meanings given in the Buy American Act--Free Trade Agreements--Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement, **except that SC/CASA state end products will be treated the same as qualifying country end products"**; and

(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) *Certifications and identification of country of origin*(1) For all line items subject to the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) end products:

(Line Item Number) (Country of Origin)

_____ _____

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products:

(Line Item Number) (Country of Origin)

_____ _____

(iii) **The offeror certifies that the following supplies are SC/CASA state end products:**

(Line Item Number) (Country of Origin)

_____ _____

(iv) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of "domestic end product":

(Line Item Number) (Country of Origin (If known))

_____ _____

(End of provision)

ALTERNATE I **(DEVIATION)(DATE)**

As prescribed in 225.1101(10), substitute the phrase "Canadian end product" for the phrases "Bahrainian end product," "Free Trade Agreement country," "Free Trade Agreement country end product," and "Moroccan end product" in paragraph (a) of the basic provision; and substitute the phrase "Canadian end products" for the phrase "Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products" in paragraphs (b)(2) and (c)(2)(ii) of the basic provision.

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

Use the following clause in solicitations and contracts that meet the criteria in DFARS 225.1101(11)(i) and are for acquisitions **of supplies (other than arms, ammunition, or war materials)** in support of operations in Afghanistan:

BUY AMERICAN ACT--FREE TRADE AGREEMENTS--BALANCE OF PAYMENTS PROGRAM **(DEVIATION)(DATE)**

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

(1) "Bahrainian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(2) "Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

(3) "Component" means an article, material, or supply incorporated directly into an end product.

(4) "Domestic end product" means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American Act; or

(B) The end product is a COTS item.

(5) "End product" means those articles, materials, and supplies to be acquired under this contract for public use.

(6) "Foreign end product" means an end product other than a domestic end product.

(7) "Free Trade Agreement country" means Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore;

(8) "Free Trade Agreement country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(9) "Moroccan end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(10) "Qualifying country" means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(11) "Qualifying country component" means a component mined, produced, or manufactured in a qualifying country.

(12) "Qualifying country end product" means

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States.

(13) "South Caucasus and Central and South Asian (SC/CASA) state" means Azerbaijan, Armenia, Georgia, Pakistan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

(14) "SC/CASA state end product" means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(15) "United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, **SC/CASA state end products,** Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products, or other foreign end products in the Buy American Act--Free Trade Agreements--Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, **an SC/CASA state end product,** or a Free Trade Agreement country end product other than a Bahrainian end product or a Moroccan end product, the Contractor shall deliver a qualifying country end product, **an SC/CASA state end product,** a Free Trade Agreement country end product other than a Bahrainian end product or a Moroccan end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

ALTERNATE I (DEVIATION)(DEVIATION)

As prescribed in 225.1101(11)(i)(B), substitute the following paragraphs (a)(4) and (c) for paragraphs (a)(4) and (c) of the basic clause:

(a)(4) "Canadian end product," means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, **SC/CASA state,** Canadian, or other foreign end products in the Buy American Act--Free Trade Agreements--Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, **an SC/CASA state end product,** or a Canadian end product, the Contractor shall deliver a qualifying country end product, **an SC/CASA state end product,** a Canadian end product, or, at the Contractor's option, a domestic end product.

* * * * *

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

Use the following clause in contracts that meet the criteria at DFARS 225.7503(a) and are for acquisitions in support of operations in Afghanistan:

BALANCE OF PAYMENTS PROGRAM--CONSTRUCTION MATERIAL
(DEVIATION)(DATE)

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

"Commercially available off-the-shelf (COTS) item"--

(1) Means any item of supply (including construction material) that is--

(i) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

"Component" means any article, material, or supply incorporated directly into construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Domestic construction material" means--

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if--

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

"South Caucasus/Central and South Asian (SC/CASA) state" means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

"SC/CASA state construction material" means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in as SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

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

(b) *Domestic preference.* This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material **or SC/CASA construction material** in performing this contract, except for--

(1) Construction material valued at or below the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; or

(2) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate "none"]

(End of clause)

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

Use the following clause in solicitations and contracts that meet the criteria in DFARS 225.7503(b) and are for acquisitions in support of operations in Afghanistan:

BALANCE OF PAYMENTS PROGRAM--CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS **(DEVIATION)(DATE)**

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

"Caribbean Basin country construction material" means a construction material that--

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

"Commercially available off-the-shelf (COTS) item"--

(1) Means any item of supply (including construction material) that is--

(i) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

"Component" means any article, material, or supply incorporated directly into construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Designated country" means--

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

"Designated country construction material" means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

"Domestic construction material" means--

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if--

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

"Free Trade Agreement country construction material" means a construction material that--

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

"Least developed country construction material" means a construction material that--

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

"South Caucasus/Central and South Asian (SC/CASA) state" means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

"SC/CASA state construction material" means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in as SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

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

"WTO GPA country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements **and other waivers relating to acquisitions in support of operations in Afghanistan** apply to this acquisition.

Therefore, the Balance of Payments Program restrictions are waived for **SC/CASA state and** designated country construction materials.

(c) The Contractor shall use only domestic, **SC/CASA state,** or designated country construction material in performing this contract, except for--

(1) Construction material valued at or below the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; or

(2) The construction material or components listed by the Government as follows:

_____

_____

[Contracting Officer to list applicable excepted materials or indicate "none"]

(End of clause)

ALTERNATE I **(DEVIATION)(DATE)**. As prescribed in 225.7503(b), add the following definition of "Bahrainian or Mexican construction material" to paragraph (a) of the basic clause, and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

"Bahrainian or Mexican construction material" means a construction material that--

(1) Is wholly the growth, product, or manufacture of Bahrain or Mexico; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain or Mexico into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except NAFTA **and other waivers relating to acquisitions in support of operations in Afghanistan** apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for **SC/CASA state and** designated country construction material other than Bahrainian or Mexican construction material.

(c) The Contractor shall use only domestic, **SC/CASA state,** or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for--

(1) Construction material valued at or below the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; or

(2) The construction material or components listed by the Government as follows:

_____

Findings and Determination
Waiver of the Procurement Prohibition of Section 302(a) of the Trade Agreements Act of 1979, as Amended

I hereby make the following findings and determination regarding the application of the procurement prohibition of section 302(a) of the Trade Agreements Act of 1979, as amended (TAA) (19 U.S.C. § 2512(a)), to acquisitions by the Department of Defense (DoD) and the General Service Administration (GSA), on behalf of DoD, of products and services in direct support of operations in Afghanistan from the following South Caucasus and Central and South Asian (SC/CASA) states: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan. This determination is necessary to allow the acquisition of products, including construction material, and services from those SC/CASA states that otherwise are not eligible for acquisitions in support of operations in Afghanistan. This will improve local market and transportation infrastructure in the region in order to reduce overall U.S. transportation costs and risks and help facilitate the free flow of regular, reliable, large-scale shipments of products and services through the region in support of operations in Afghanistan; it will encourage countries in the region to cooperate in expanding supply routes through their territory in support of operations in Afghanistan; and it will help develop a more robust and enduring commercial and transportation network in the region that will connect Afghanistan to its neighbors, promote regional commerce, diversify existing infrastructure, and bolster stability and prosperity.

Findings

1. For acquisitions covered by the World Trade Organization Government Procurement Agreement (WTO GPA), section 302(a) of the TAA prohibits the acquisition of products and services from any country that is not a "designated" country or an otherwise eligible country for purposes of the TAA (i.e., a qualifying country).

2. Many countries, including SC/CASA states are not "designated" countries or otherwise eligible countries, and products and services from those countries may not be provided under DoD and GSA acquisitions covered by the WTO GPA.

3. Pursuant to section 302(b)(2) of the TAA (19 U.S.C. § 2512(b)), the President may authorize agency heads to waive, subject to interagency review and general policy guidance by the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. § 1872(a)), the procurement prohibition in section 302(a) on a case-by-case basis when in the national interest. The President delegated this authority to the United States Trade Representative in Executive Order 12260 of December 31, 1980.

4. Currently, most supplies for Afghanistan are transported via the Pakistan ground lines of communication (PakGLOC). Insurgent, terrorist and criminal elements

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have attacked the PakGLOC. These attacks, throughout Pakistan, in addition to existing physical and bureaucratic limitations to these routes, highlight the need to improve the diversity and expand the capacity of logistic routes. To that end, the Northern Distribution Network (NDN) has been established and will reduce reliance on the PakGLOC to support operations in Afghanistan. It is expected that a sizable, sustained force level in Afghanistan will be in place through the next several years, and maintaining a viable NDN is in the national security interest of the United States. In order for the NDN to succeed, it is imperative that DoD be authorized to purchase products and services locally from the SC/CASA states through which the NDN runs. This authority will allow the United States to provide the host nations with some economic benefit and will reduce overall U.S. transportation costs and risks. Failure to provide this authority may lead to disruption of the NDN and would complicate DoD's ability to reduce logistical risks. DoD acquisition of products and services from the SC/CASA states will contribute toward developing a responsible, stable, and cooperative coalition of national partners to facilitate the movement of supplies through the NDN in support of operations in Afghanistan. It is also important to enable DoD contracting officers to be able to satisfy mission needs in the most efficient, rapid, low-risk, and cost-effective way, which often means relying on local or regional sources. Buying local products and services will demonstrate that the United States values the support of countries in the region with which the United States intends to develop a lasting partnership to stabilize Afghanistan. A waiver of the section 302(a) prohibition will provide opportunities for companies in these countries to secure contracts and subcontracts to provide products and services in support of a robust supply route into Afghanistan. By allowing for their participation in these efforts, a waiver will serve the national interest.

5. DoD will require contractors from the SC/CASA states to inform their governments of their participation in DoD acquisitions. In addition, DoD will require that such contractors advise their governments that they generally will not have such opportunities in the future unless their governments provide reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services. This will further the objective of the waiver authority to encourage the provision of reciprocal government procurement opportunities to U.S. products and services and suppliers of such products and services and to encourage the SC/CASA states to eventually become parties to the WTO GPA.

6. By letter of June 2, 2009, the United States Trade Representative has authorized the Secretary of Defense to waive the prohibition in section 302(a) for DoD and GSA, for acquisitions on behalf of DoD, for acquisitions of products, including construction materials and services from the SC/CASA states, in direct support of operations in Afghanistan, in accordance with DoD's request of May 21, 2009.

Determination

I hereby waive the procurement prohibition of section 302(a) of the TAA with respect to acquisitions by DoD and by GSA on behalf of DoD, in direct support of operations in Afghanistan, to the extent that it prohibits acquisitions of products and services from the SC/CASA states. Waiver of the procurement prohibition of section 302(a) is in the national interest. This waiver will apply to DoD and GSA acquisitions of products and services in direct support of operations in Afghanistan.

William J. Lynn III
Deputy Secretary of Defense

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Findings and Determination
Exemption from the Balance of Payments Program

I hereby make the following findings and determination regarding the application of the Balance of Payments Program (BOPP) to acquisitions by Department of Defense (DoD) of products (except arms, ammunition and war materials) in direct support of operations in Afghanistan within the following South Caucasus and Central and South Asian (SC/CASA) states: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan. The purpose of this determination is to waive application of the BOPP to bids or offers of products of the SC/CASA states so as to compete on an equal basis for DoD contracts.

Findings

1. The BOPP was established by Secretary of Defense McNamara in July 1962, when he directed the Secretaries of the Military Departments to limit expenditures of appropriated funds outside the United States to a minimum. With limited exceptions, the BOPP policy is to acquire only domestic end products and domestic construction materials for use outside the United States. Its restrictions are similar to those of the Buy American Act (BAA).

2. The Secretary of Defense has, at various times, determined that the application of BOPP to products of certain foreign countries is not in the public interest. As an example, the BOPP has been waived for purchases of items of supply from the 21 countries (NATO and other friendly countries) with which the Department has reciprocal defense procurement Memoranda of Understanding (MOU) (i.e., qualifying countries). This allows the acquisition of supplies and defense equipment from these countries for use outside the United States without application of the 50 percent evaluation factor.

3. The free flow of regular, reliable, large-scale shipments of products through Afghanistan's regional neighbors is critical to the stabilization of the region and to U.S. national security interests. Currently, the overwhelming majority of products that support operations in Afghanistan are transported via Pakistan ground lines of communication (PakGLOC). Insurgent, terrorist, and criminal elements have shown an ability to attack the PakGLOC, which, in addition to existing physical and bureaucratic limitations to these routes, highlight the need to improve the diversity and expand the capacity of logistic routes. To this end, a Northern Distribution Network (NDN) has been established. Waiver of the BOPP will allow the United States to provide the host nations with some economic benefit and will reduce overall U.S. transportation costs and risks. Failure to provide this authority may lead to disruption of the NDN and would complicate DoD's ability to reduce logistic risks. Such economic benefit will demonstrate that the United States values the support of these countries, and that we intend to develop a lasting partnership. Requiring BOPP application to the SC/CASA would seriously endanger the support of the SC/CASA countries vital to the success of the NDN.

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4. It is important to the national security interests of the United States to maintain diverse and high-capacity supply routes in direct support of operations in Afghanistan. The ability to establish and maintain diverse and high-capacity GLOCs is critical to the sustainment of operations. This determination will assist in ensuring regular, reliable, large-scale shipments of goods and supplies through Afghanistan's regional countries.

Determination

Because of the importance to national security and national defense, I hereby determine that it would be inconsistent with the public interest to apply the provisions of the Balance of Payments Program to bids or offers of products and construction materials from Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan to facilitate the movement of supplies through the NDN in direct support of operations in Afghanistan. This waiver will not apply to DoD acquisitions of arms, ammunition, and war materials.

William J. Lynn III
Deputy Secretary of Defense

JUL 9 2009