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

SEP 25 2012

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Class Deviation – Revise Implementation of Temporary Authority to Acquire Products and Services from Countries along a Major Supply Route to Afghanistan

The attached Director, Defense Procurement and Acquisition Policy memorandum of September 5, 2012 is forwarded for your information and action, as appropriate. It informs the Department of Defense (DOD) contracting community that effective immediately, Class Deviation 2009-O0012 for acquiring products and services in support of Operation ENDURING FREEDOM (OEF) is rescinded.

In lieu of Class Deviation 2009-O0012, the attached procedures and Class Deviation 2012-O0009 will be used when acquiring products and services in support of OEF. Class Deviation 2012-O0009 remains in effect until October 27, 2012, unless incorporated in the DFARS or otherwise rescinded.

Please ensure all appropriate contracting personnel are made aware of this class deviation. My point of contact is CAPT S. E. Armstrong at 703-614-9598 or stephen.e.armstrong3@navy.mil.

Althea H. Coetzee
RDML, SC, USN
Executive Director
DASN (AP)

Attachment:
As stated

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See next page

SUBJECT: Class Deviation - Revise Implementation of Temporary Authority to Acquire Products and Services from Countries along a Major Supply Route to Afghanistan

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ACQUISITION,
TECHNOLOGY
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SEP -5 2012

In reply refer to
DARS Tracking Number: 2012-O0009

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

SUBJECT: Class Deviation – Revise Implementation of Temporary Authority to Acquire Products and Services from Countries along a Major Supply Route to Afghanistan

Effective immediately, contracting officers shall use the following procedures and the attached class deviation when acquiring products or services in support of Operation ENDURING FREEDOM, in lieu of the procedures provided in Class Deviation 2009-O0012, which is hereby rescinded. Pursuant to the Under Secretary of Defense for Acquisition, Technology and Logistics Class Determination and Findings Regarding the Application of Section 801 of the National Defense Authorization Act for Fiscal Year 2010, Temporary Authority to Acquire Products and Services along a Major Route of Supply to Afghanistan, dated September 4, 2012, contracting officers shall limit competition to, or provide a preference for products and services that are from countries along the Northern Distribution Network (i.e., from the Central Asian states of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan (the Central Asian State Procurement Program)) before considering other sourcing options that include Pakistan and the South Caucasus.

- Prepare and execute a written determination if the procurement is an acquisition in support of operations in Afghanistan in accordance with DFARS 225.7799-2 (DEVIATION 2012-O0009).

- Evaluate offers in accordance with DFARS 225.7799-3 (DEVIATION 2012-O0009).

- Include the appropriate provision and/or clause in the solicitation and contract in accordance with DFARS 225.7799-5 (DEVIATION 2012-O0009)

This class deviation remains in effect until October 27, 2012, unless incorporated in the DFARS or otherwise rescinded. My point of contact is Ms. Kyoung Lee, DPAP/CC, at 571-256-2947 or Kyoung.Lee@osd.mil.

Richard Ginman
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

**Attachment 1 – Class Deviation 2012-O0009**

**Revise Implementation of Temporary Authority to Acquire Products and Services (Including Construction) from Countries Along a Major Route of Supply to Afghanistan (Class Deviation 2012-O0009)**

**PART 225—FOREIGN ACQUISITION**

* * * * *

**225.401-71 Products or services in support of operations in Iraq or Afghanistan. (DEVIATION 2012-O0009)**

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

* * * * *

**(c)(1) If using the procedures specified in 225.7799-1(a)(1)(i) or (a)(2)(i), the purchase restriction at FAR 25.403(c) does not apply with regard to products or services from Central Asia, Pakistan, or the South Caucasus.**

**(2) If using a procedure specified in 225.7799-1(a)(1)(ii) or (a)(2)(ii) to acquire products or services from Central Asia, Pakistan, or the South Caucasus, the procedures of subpart 25.4 are not applicable (but see 225.7503(b)(3) and (b)(4)) for applicability of Trade Agreements to construction material under construction contracts in support of operations in Afghanistan).**

* * * * *

**SUBPART 225.75—BALANCE OF PAYMENTS PROGRAM**

* * * * *

**225.7501 Policy. (DEVIATION 2012-O0009)**

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

(a) Before issuing the solicitation—

* * * * *

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

**(ii) Use of a procedure specified in 225.7799-1(a) (DEVIATION 2012-O0009) is authorized for an acquisition in support of Operation Enduring Freedom;**

* * * * *

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

**225.7700 Scope. (DEVIATION 2012-O0009)**
This subpart implements—

**(a)** Section 886 and Section 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181); **and**

**(b)(1) Section 801 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-084); and**

**(2) The Under Secretary of Defense for Acquisition, Technology, and Logistics Class Determination and Findings Regarding the Application of Section 801 of the National Defense Authorization Act for Fiscal Year 2010, Temporary Authority to Acquire Products and Services Produced in Countries along a Major Route of Supply to Afghanistan, dated September 4, 2012.**

**225.7701 Definitions. (DEVIATION 2012-O0009)**
As used in this subpart—

* * * * *

**"Product from a Central Asian state" means a product that is mined, produced, or manufactured in the Kyrgyz Republic, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan. This term does not include construction material brought to the construction site by the contractor or subcontractor for incorporation into the building or work, but does cover material separately purchased by the Government to be incorporated into the building or work.**

**"Product from Central Asia, Pakistan, or the South Caucasus" means a product that is mined, produced, or manufactured in Georgia, the Kyrgyz Republic, Pakistan, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan. This term does not include construction material brought to the construction site by**

the contractor or subcontractor for incorporation into the building or work, but does cover material separately purchased by the Government to be incorporated into the building or work.

* * * * *

"Service from a Central Asian state" means a service (including construction) that is performed in the Kyrgyz Republic, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan by citizens or permanent resident aliens of these countries.

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

* * * * *

225.7799 Temporary authority to acquire products and services (including construction) from countries along a major route of supply to Afghanistan. (DEVIATION 2012-O0009)

225.7799-1 Acquisition procedures.

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

(1)(i) Providing a preference for products or services from a Central Asian state, in accordance with the evaluation procedures at 225.7799-3; or

(ii) Limiting competition to products or services from a Central Asian state; or

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

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

(b) Pursuant to the Class Determination and Findings executed by the Under Secretary of Defense for Acquisition, Technology, and Logistics, dated September 4, 2012, consider use of the procedures in paragraph (a)(1) of this section before considering the use of the procedures in paragraph (a)(2) of this section.

(c) For acquisitions conducted using a procedure specified in paragraph (a) of this subsection—

(1) The justification and approval addressed in FAR Subpart 6.3 is not required; and

(2) The Trade Agreements purchase restrictions at FAR 25.403(c) and the Balance of Payments Program (see 225.7501) do not apply with regard to acquisition of products or services from a Central Asian state, Pakistan, or the South Caucasus, but construction material brought to the construction site by the contractor or subcontractor for incorporation into the work may be subject to trade agreements and Balance of Payments Program (see 225.7503).

225.7799-2 Determination requirements.

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

(a) The appropriate official authorized to make the determination, as specified in paragraph (b)(1) of this subsection, must determine in writing that—

(1) The product or service concerned is to be—

(i) Used or performed in the country that is the source of the product or service;

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

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

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

(i) The procedure is necessary to—

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

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

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

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

(A) Operations in Afghanistan; or

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

(b)(1) Determinations may be made for an individual acquisition or a class of acquisitions meeting the criteria in paragraph (a) of this subsection as follows:

(i) The contracting officer is authorized to make a determination that applies to an individual acquisition with a value of less than $85.5 million.

(ii) The head of the contracting activity, without power of redelegation, is authorized to make a determination that applies to an individual acquisition with a value of $85.5 million or more or to a class of acquisitions.

(2) The contracting officer shall—

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

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

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

225.7799-3 Evaluating offers.

Evaluate offers submitted in response to solicitations that include the provision at 252.225-7990, Preference for Products or Services from a Central Asian State (DEVIATION 2012-O0009), or 252.225-7998, Preference for products or Services From Central Asia, Pakistan, or the South Caucasus (DEVIATION 2012-O0009), as follows:

(a) For supplies, when comparing offers, consider the total price of the supplies, including any transportation costs that would be incurred if shipped via the Defense Transportation System and compare this total price to the price of the local item plus any transportation costs, if separately broken out by contract line item.

(b) If the solicitation specifies award on the basis of non-price factors in addition to cost or price, apply the evaluation percentage specified in the solicitation (252.225-7990(d) or

252.225-7998(d)) and use the evaluated cost or price in determining the offer that represents the best value to the Government.

(c)(1) If the solicitation does not specify non-price factors in addition to cost or price, apply the evaluation percentage specified in the solicitation, if applicable, and then award to the lowest evaluated offer.

225.7799-4 Reporting requirement.

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

(a) The United States Central Command Joint Theater Support Contracting Command (C-JTSCC).

(b) The Department of the Army, except for contract actions reported by the C-JTSCC.

(c) The Department of the Navy.

(d) The Department of the Air Force.

(e) The Defense Logistics Agency.

(f) The other defense agencies and other DoD components that execute reportable contract actions.

225.7799-5 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225-7990, Preference for Products or Services from a Central Asian State (DEVIATION 2012-O0009), in solicitations that provide a preference for products or services from a Central Asia state in accordance with 225.7799-1(a)(1)(i). The contracting officer shall specify the evaluation factor percent in accordance with the established contracting activity procedures.

(b) Use the clause at 252.225-7991, Requirement for Products or Services from a Central Asian State (DEVIATION 2012-O0009 in solicitations that include the provision at 252.225-7990, Preference for Products or Services from a Central Asian State (DEVIATION 2012-O0009).

(c) Use the clause at 252.225-7992, Acquisition Restricted to Products or Services from a Central Asian State (DEVIATION 2012-O0009) in solicitations and contracts that limit competition to products or services from a Central Asian state in accordance with 225.7799-1(a)(1)(ii).

(d) Use the provision at 252.225-7998, Preference for Products

or Services from Central Asia, Pakistan, or the South Caucasus (DEVIATION 2012-O0009), in solicitations that provide a preference for products or services from Central Asia, Pakistan, or the South Caucasus in accordance with 225.7799-1(a)(2)(i). The contracting officer shall specify the evaluation factor percent in accordance with the established contracting activity procedures.

(e) Use the clause at 252.225-7999, Requirement for Products or Services from Central Asia, Pakistan, or the South Caucasus (DEVIATION 2012-O0009) in solicitations that include the provision at 252.225-7998, Preference for Products or Services from Central Asia, Pakistan, or the South Caucasus (DEVIATION 2012-O0009).

(f) Use the clause at 252.225-7996, Acquisition Restricted to Products or Services from Central Asia, Pakistan, or the South Caucasus (DEVIATION 2012-O0009) in solicitations and contracts that limit competition to products or services from Central Asia, Pakistan, or the South Caucasus in accordance with 225.7799-1(a)(2)(ii).

(g) When the Trade Agreements Act applies to the acquisition, use the appropriate clause and provision as prescribed at 225.1101 (5) and (6) or 225.7503(b)(3) or (b)(4).

(h)(1) Do not use any of the following provisions or clauses in solicitations or contracts that include the provision at 252.225-7992 or 252.225-7998 (DEVIATION 2012-O0009) or the clauses at 252.225-7990, 252.225-7991, 252.225-7996, or 252.225-7999 (DEVIATION 2012-O0009):

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

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

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

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

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

(2) Do not use any of the following provisions or clauses in solicitations or contracts for the acquisition of supplies that include the clause at 252.225-7992 or 252.225-7996:

(i) 252.225-7020, Trade Agreement Certificate.

(ii) 252.225-7021, Trade Agreements.

(iii) 252.225-7022, Trade Agreements Certificate—

Inclusion of Iraqi End Products.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

252.225-7990 Preference for Products or Services from *a Central Asian State.* (DEVIATION 2012-O0009)
As prescribed in 225.7799-5(a), use the following provision:

PREFERENCE FOR PRODUCTS OR SERVICES FROM *A CENTRAL ASIAN STATE*
(SEP 2012)(DEVIATION 2012-O0009)

(a) *Definitions.* "Product from a *Central Asian state*" and "service from a *Central Asian state,*" as used in this provision, are defined in the clause of this solicitation entitled "Requirement for Products or Services from a *Central Asian State*" (252.225-7991 (DEVIATION 2012-O0009)).

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

(c) *Other products or services.* The following offered products or services are not products from a *Central Asian state* or services from a *Central Asian state*:

| (Line Item Number) | (Country of Origin) |
|---|---|
| _____ | _____ |

(d) *Evaluation.* For the purpose of evaluating competitive offers, the Contracting Officer will increase by ____ (specify the percent in accordance with contracting activity procedures) percent the prices of offers of products or services that are not products or services from a *Central Asian state.*

(End of provision)

252.225-7991 Requirement for Products or Services from a *Central Asian State.* (DEVIATION 2012-O0009)
As prescribed in 225.7799-5(b), use the following clause:

REQUIREMENT FOR PRODUCTS OR SERVICES FROM A *CENTRAL ASIAN STATE* (SEP 2012)(DEVIATION 2012-O0009)

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

(1) "Product from a Central Asian state" means a product that is mined, produced, or manufactured in the Kyrgyz Republic, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan. This term does not include construction material brought to the construction site by the contractor or subcontractor for incorporation into the building or work, but does cover material separately purchased by the Government to be incorporated into the building or work.

(2) "Service from a Central Asian state" means a service (including construction) that is performed in the Kyrgyz Republic, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan, by citizens or permanent resident aliens of these countries.

(b)(1) The Contractor shall provide only products from a Central Asian state or services from a Central Asian state, unless, in its offer, it specified that it would provide products or services other than products from a Central Asian state or services from a Central Asian state.

(2) For construction contracts, the Contractor is encouraged, but not required, to use construction material from a Central Asian state. (The use of construction material from other than Central Asian states may also be subject to Balance of Payments Program or trade agreements restrictions, if the contract includes the clause 252.225-7044, Balance of Payments Program—Construction Material, used with its Alternate I; or 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, used with its Alternate II or Alternate III.)

(End of clause)

252.225-7992 Acquisition Restricted to Products or Services from a *Central Asian State*. (DEVIATION 2012-O0009)
As prescribed in 225.7799-5(c), use the following clause:

ACQUISITION RESTRICTED TO PRODUCTS OR SERVICES FROM A *CENTRAL ASIAN STATE* (SEP 2012)(DEVIATION 2012-O0009)

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

(1) "Product from a Central Asian state" means a product that is mined, produced, or manufactured in the Kyrgyz Republic, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan. This term does not include construction material brought to the construction site by the contractor or subcontractor for incorporation into the building or work, but does cover material separately purchased by the Government to be incorporated into the building or work.

(2) "Service from a Central Asian state" means a service (including construction) that is performed in the Kyrgyz Republic, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan, by citizens or permanent resident aliens of these countries.

(b)(1) The Contractor shall provide only products from a Central Asian state or services from a Central Asian state.

(2) For construction contracts, the Contractor is encouraged, but not required, to use construction material from a Central Asian state. (The use of construction material from other than Central Asia, Pakistan, or the South Caucasus may also be subject to Balance of Payments Program or trade agreements or restrictions, if the contract includes the clause 252.225-7044, Balance of Payments Program—Construction Material, used with its Alternate I; or 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, used with its Alternate II or Alternate III.)

(End of clause)

252.225-7996 Acquisition Restricted to Products or Services from *Central Asia, Pakistan, or the South Caucasus*. (DEVIATION 2012-O0009)
As prescribed in 225.7799-5(c), use the following clause:

ACQUISITION RESTRICTED TO PRODUCTS OR SERVICES FROM *CENTRAL ASIA, PAKISTAN, OR THE SOUTH CAUCASUS* (SEP 2012)(DEVIATION 2012-O0009)

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

(1) "Product from Central Asia, Pakistan, or the South Caucasus" means a product that is mined, produced, or manufactured in Georgia, the Kyrgyz Republic, Pakistan, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan. This term does not include construction material

brought to the construction site by the contractor or subcontractor for incorporation into the building or work, but does cover material separately purchased by the Government to be incorporated into the building or work.

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

(b)(1) The Contractor shall provide only products from Central Asia, Pakistan, or the South Caucasus or services from Central Asia, Pakistan, or the South Caucasus.

(2) For construction contracts, the Contractor is encouraged, but not required, to use construction material from Central Asia, Pakistan, or the South Caucasus. (The use of construction material from other than Central Asia, Pakistan, or the South Caucasus may also be subject to Balance of Payments Program or trade agreements restrictions, if the contract includes the clause 252.225-7044, Balance of Payments Program—Construction Material, used with its Alternate I; or 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, used with its Alternate II or Alternate III.)

(End of clause)

252.225-7998 Preference for Products or Services from *Central Asia, Pakistan, or the South Caucasus*. (DEVIATION 2012-O0009) As prescribed in 225.7799-5(d), use the following provision:

PREFERENCE FOR PRODUCTS OR SERVICES FROM *CENTRAL ASIA, PAKISTAN, OR THE SOUTH CAUCASUS*
(SEP 2012)(DEVIATION 2012-O0009)

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

(b) *Representation*. The offeror represents that all products or services to be delivered under a contract resulting from this

solicitation are products from Central Asia, Pakistan, or the South Caucasus or services from Central Asia, Pakistan, or the South Caucasus, except those listed in paragraph (c) of this provision;

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

| (Line Item Number) | (Country of Origin) |
|---|---|
| _____ | _____ |

(d) *Evaluation*. For the purpose of evaluating competitive offers, the Contracting Officer will increase by ____ *(specify the percent in accordance with agency contracting activity procedures)* percent the prices of offers of products or services that are not products or services from Central Asia, Pakistan, or the South Caucasus.

(End of provision)

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

REQUIREMENT FOR PRODUCTS OR SERVICES FROM *CENTRAL ASIA, PAKISTAN, OR THE SOUTH CAUCASUS*
(SEP 2012)(DEVIATION 2012-O0009)

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

(1) "Product from Central Asia, Pakistan, or the South Caucasus" means a product that is mined, produced, or manufactured in Georgia, the Kyrgyz Republic, Pakistan, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan. This term does not include construction material brought to the construction site by the contractor or subcontractor for incorporation into the building or work, but does cover material separately purchased by the Government to be incorporated into the building or work.

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

of Armenia, the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, or Turkmenistan by citizens or permanent resident aliens of these countries.

(b)(1) The Contractor shall provide only products from Central Asia, Pakistan, or the South Caucasus or services from Central Asia, Pakistan, or the South Caucasus under this contract, unless, in its offer, it specified that it would provide products or services other than products from Central Asia, Pakistan, or the South Caucasus or services from Central Asia, Pakistan, or the South Caucasus.

(2) For construction contracts, the Contractor is encouraged, but not required, to use construction material from Central Asia, Pakistan, or the South Caucasus. (The use of construction material from other than Central Asia, Pakistan, or the South Caucasus may also be subject to Balance of Payments Program or trade agreements restrictions, if the contract includes the clause 252.225-7044, Balance of Payments Program—Construction Material, used with its Alternate I; or 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, used with its Alternate II or Alternate III.)

(End of clause)

* * * * *

SEP 0 4 2012

**Class Determination and Findings**

I hereby make the following class findings and determination regarding the application of section 801 of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111-84 (hereinafter "section 801"), "Temporary Authority to Acquire Products and Services Produced in Countries Along a Major Route of Supply to Afghanistan."

**Findings**

1. Section 801 authorizes the Secretary of Defense to limit competition to or provide a preference for products and services that are from one or more of nine countries along a major route of supply to Afghanistan in support of military or stability operations in Afghanistan. The nine countries are Georgia, Kyrgyzstan, Pakistan, Armenia, Azerbaijan, Kazakhstan, Tajikistan, Uzbekistan, and Turkmenistan.

2. The United States and its North Atlantic Treaty Organization partners have begun retrograde operations that will result in a substantial reduction of troops and equipment from Afghanistan. The Northern Distribution Network (NDN) provides critical flexibility required for both sustainment and retrograde operations. The preponderance of cargo moving on the NDN transits territory in five of the countries identified in section 801, namely the Central Asian States (CAS) of Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan, and Turkmenistan.

3. The Commander, United States Central Command (USCENTCOM) has advised that procuring products or services from the CAS to meet Operation ENDURING FREEDOM (OEF) 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 CAS 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.

4. Each of the CAS mines, produces, or manufactures items of supply or provides services performed by its citizens or permanent resident aliens that would be of potential value to the United States in the country that is the source of the product or service, in the course of efforts by the United States and NATO to ship goods to and from Afghanistan in support of military or stability operations in Afghanistan, or by the military forces, police, or other security personnel in Afghanistan.

5. Increasing the amount of supplies, services, and construction material procured from the CAS will provide economic opportunities to their citizenry, thereby bolstering regional stability and enhancing goodwill to the United States.

6. United States Forces – Afghanistan estimates that the U.S. Government's total procurements in support of OEF are valued at approximately $10 billion. FY 2012 projected procurements from the CAS is approximately $120 million, excluding fuel

purchases, which are only 1.2 percent of the total U.S. Government procurement for OEF and is presumed not to affect the industrial base of the United States.

7. Buying locally from the CAS will decrease the time, complexity, risk, and cost involved in shipping products to and from Afghanistan.

**Determination**

Based upon the findings set forth above, I hereby determine that in order to support military and stability operations in Afghanistan under the authority of section 801, a contracting officer shall first consider limiting the solicitation to or providing a preference for products or services from one or more of the CAS, subject to the contracting officer making and documenting the determinations required by section 801. If market research indicates that products or services from one or more of the CAS may be unavailable or do not satisfy the requirement, a contracting officer may solicit or provide a preference for products or services from all nine countries named in section 801, subject again to making and documenting the determinations required by section 801.

This Class Determination and Findings is effective until October 27, 2012.

Frank Kendall
Under Secretary of Defense for
Acquisition, Technology and Logistics