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

ACQUISITION, TECHNOLOGY AND LOGISTICS

FEB 0 4 2016

In reply refer to
DARS Tracking Number: 2016-O0005

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)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION AND PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING)
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Enhanced Authority to Acquire Products and Services of Djibouti

Effective immediately, contracting officers shall use the attached deviation to limit competition to, or provide a preference for, products or services of Djibouti for procurements in support of DoD operations in the Republic of Djibouti (Djibouti). This class deviation supersedes class deviation 2015-O0012. This class deviation implements section 1263 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113-291), as amended by section 886(c) of the NDAA for FY 2016 (Pub. L. 114-92).

The Under Secretary of Defense for Acquisition, Technology, and Logistics (USD (AT&L)) signed a Class Determination and Findings on February 19, 2015, authorizing use of the enhanced authority provided in section 1263 when acquiring products and services in support of DoD operations in Djibouti. As provided in section 886(c), however, this authority is not available for the procurement of any product on the AbilityOne Procurement List, if such a product can be delivered by a qualified nonprofit agency in a timely fashion to support mission requirements. When utilizing this authority, the contracting officer shall—

- Ensure a written determination is properly executed in accordance with DFARS 225.7798-3 and 225.7798-4 (DEVIATION 2016-O0005), using a format substantially the same as those provided at attachments 2 and 3 to this deviation;
- Evaluate offers in accordance with DFARS 225.7798-5 (DEVIATION 2016-O0005); and
- Include the appropriate provision and/or clause in the solicitation and contract in accordance with DFARS 225.7798-6 (DEVIATION 2016-O0005).

This class deviation remains in effect until September 30, 2018, unless incorporated in the DFARS or otherwise rescinded. My point of contact is

Claire M. Grady
Director, Defense Procurement
and Acquisition Policy

Attachments:
As stated

PART 206—COMPETITION REQUIREMENTS

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SUBPART 206.3–OTHER THAN FULL AND OPEN COMPETITION

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206.303 Justifications.

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206.303-71 Acquisitions in support of operations in Djibouti. (DEVIATION 2016-O0005)

The justification and approval addressed in FAR 6.303 is not required for acquisitions conducted using a procedure specified in 225.7798-3(a) (DEVIATION 2016-O0005).

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PART 225—FOREIGN ACQUISITION

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SUBPART 225.4–TRADE AGREEMENTS

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225.401 Exceptions. (DEVIATION 2016-O0005)

(a)(2) ***

(S-70) If using a procedure specified in 225.7798-3(a)(2) (DEVIATION 2016-O0005) to acquire products or services of Djibouti in support of DoD operations in the Republic of Djibouti, the procedures of FAR subpart 25.4 are not applicable.

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SUBPART 225.5–EVALUATING FOREIGN OFFERS–SUPPLY CONTRACTS

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225.502 Application. (DEVIATION 2016-O0005)

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(c) Use the following procedures instead of those in FAR 25.502(c) for acquisitions subject to the Buy American statute or the Balance of Payments Program:

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(v) If the solicitation includes the provision at 252.225-7982, Preference for Products or Services of Djibouti (DEVIATION 2016-O0005), use the evaluation procedures at 225.7798-5 (DEVIATION 2016-O0005).

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SUBPART 225.75—BALANCE OF PAYMENTS PROGRAM

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225.7501 Policy. (DEVIATION 2016-O0005)
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—

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(8) Use of a procedure specified in 225.7798-3(a) (DEVIATION 2016-O0005) is authorized for an acquisition in support of DoD operations in Djibouti.

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SUBPART 225.77– ACQUISITIONS IN SUPPORT OF OPERATIONS IN AFGHANISTAN OR DJIBOUTI (DEVIATION 2016-O0005)

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225.7798 Enhanced authority to acquire products or services of Djibouti in support of DoD operations in Djibouti. (DEVIATION 2016-O0005)

225.7798-1 Scope.

This subpart implements—

(a) Section 1263 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291), Enhanced Authority to Acquire Goods and Services of Djibouti in Support of DoD Activities in the United States Africa Command Area of Responsibility, as amended by section 886(c) of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92); and

(b) The Under Secretary of Defense for Acquisition, Technology, and Logistics Class Determination and Findings regarding the application of section 1263 of the National Defense Authorization Act for Fiscal Year 2015, dated February 19, 2015.

225.7798-2 Definitions.

As used in this subpart—

"Product of Djibouti" means a product (including a commercial item) that is wholly grown, produced or manufactured in Djibouti. This term does not include construction

material brought to a construction site by a 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 of Djibouti" means a service (including construction) that is performed by a person that is—

(a) Operating primarily in Djibouti or is making a significant contribution to the economy of Djibouti through payment of taxes or use of products, materials, or labor of Djibouti, as determined by the Secretary of State; and

(b) Properly licensed or registered by authorities of the Government of Djibouti, as determined by the Secretary of State.

225.7798-3 Acquisition procedures.

(a) Subject to the requirements of 225.7798-4 and except as provided in paragraph (c) of this section, a product or service of Djibouti may be acquired in support of DoD operations in Djibouti by—

(1) Providing a preference for products or services of Djibouti, in accordance with the evaluation procedures at 225.7798-5; or

(2) Limiting competition to products or services of Djibouti.

(b) 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 Balance of Payments Program (see 225.7501) does not apply with regard to acquisition of products or services of Djibouti, 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).

(c) The authority under paragraph (a) of this section is not available for the procurement of any product that is contained in the Procurement List described in 41 U.S.C. 8503(a) (see FAR subpart 8.7), if such product can be produced and delivered by a qualified nonprofit agency for the blind or a nonprofit agency for other severely disabled in a timely fashion to support mission requirements.

225.7798-4 Determination requirements.

Before using a procedure specified in 225.7798-3(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 of Djibouti is to be used or performed only in support of DoD operations in Djibouti;

(2) The product or service of Djibouti is of equivalent quality of a product or service that would have otherwise been acquired; or

(3) It is vital to the national security interests of the United States to provide a preference or limit competition as described in 225.7798-3(a), because—

(i) The procedure is necessary to—

(A) Reduce United States transportation costs;

(B) Reduce delivery times in support of DoD operations in Djibouti; or

(C) Promote the regional security, stability, and economic prosperity of Africa; and

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

(A) United States military operations or stability operations in Djibouti; or

(B) The United States industrial base. The approving official may contact the following officials in order to obtain factual information to meet this statutory element of the determination:

(*1*) For Army: SAAL-PA, Army Industrial Base Policy, telephone 703-695-2488.

(*2*) For DLA: DLA J-74, Acquisition Programs and Industrial Capabilities Division, telephone 703-767-1427.

(*3*) For Navy: Ship Programs, DASN Ships, telephone 703-697-1710.

(*4*) For Air Force: Air Force Research Laboratory, Materials Manufacturing Directorate, telephone 703-588-7777.

(*5*) For Other Defense Agencies: Personnel at defense agencies without industrial base expertise on staff should contact the Office of the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, telephone 703-697-0051, or email osd.mibp.inquiries@mail.mil.

(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 $93 million.

(ii) The head of the contracting activity, without power of re-delegation, is authorized to make a determination that applies to an individual acquisition with a value of $93 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.

225.7798-5 Evaluating offers.

Evaluate offers submitted in response to solicitations that include the provision at 252.225-7982, Preference for Products or Services of Djibouti (DEVIATION 2016-O0005) as follows:

(a) For supplies, when comparing offers, consider the total price of the products, 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 items 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 (see 252.225-7982(d)(DEVIATION 2016-O0005)) and use the evaluated cost or price in determining the offer that represents the best value to the Government.

(c) 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.

225.7798-6 Solicitation provisions and contract clauses.

Use the following provisions and clauses in solicitations and contracts that meet the specified criteria, including solicitations and contracts for the acquisition of commercial items using FAR Part 12 procedures:

(a) Use the provision at 252.225-7982, Preference for Products or Services of Djibouti (DEVIATION 2016-O0005), in solicitations that include the clause at 252.225-7983, Requirement for Products or Services of Djibouti (DEVIATION 2016-O0005).

(b) Use the clause at 252.225-7983, Requirement for Products or Services of Djibouti (DEVIATION 2016-O0005) in solicitations and contracts that provide a preference for products or services of Djibouti in accordance with 225.7798-3(a)(1).

(c) Use the clause at 252.225-7984, Acquisition Restricted to Products or Services of Djibouti (DEVIATION 2016-O0005) in solicitations and contracts that limit competition to products or services of Djibouti in accordance with 225.7798-3(a)(2).

(d) Except as provided in paragraph (e)(2) of this section, 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).

(e)(1) Do not use any of the following provisions or clauses in solicitations or contracts that include the provision at 252.225-7982 (DEVIATION 2016-O0005) or the clause at 252.225-7983 (DEVIATION 2016-O0005) or 252.225-7984 (DEVIATION 2016-O0005):

(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 252.225-7984 (DEVIATION 2016-O0005):

(i) 252.225-7020, Trade Agreement Certificate.

(ii) 252.225-7021, Trade Agreements.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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252.225-7982 Preference for Products or Services of Djibouti. (DEVIATION 2016-O0005)
As prescribed in 225.7798-6(a), use the following provision:

PREFERENCE FOR PRODUCTS OR SERVICES OF DJIBOUTI (FEB 2016)
(DEVIATION 2016-O0005)

(a) *Definitions.* "Product of Djibouti" and "service of Djibouti" as used in this provision, are defined in the clause of this solicitation entitled "Requirement for Products or Services of Djibouti" (252.225-7983 (DEVIATION 2016-O0005)).

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

(c) *Other products or services.* The following offered products or services are not products of Djibouti or services of Djibouti:

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

(d) *Evaluation.* For the purpose of evaluating competitive offers, the Contracting Officer will increase by *[Contracting Officer to specify percent in accordance with the USAFRICOM Commander's policy and contracting activity procedures__]* percent the

prices of offers of products or services that are not products of Djibouti or services of Djibouti.

(End of provision)

252.225-7983 Requirement for Products or Services of Djibouti. (DEVIATION 2016-O0005)
As prescribed in 225.7798-6(b), use the following clause:

REQUIREMENT FOR PRODUCTS OR SERVICES OF DJIBOUTI (FEB 2016) (DEVIATION 2016-O0005)

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

(1) "Product of Djibouti" means a product (including a commercial item) that is wholly grown, produced or manufactured in Djibouti. This term does not include construction material brought to a construction site by a 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 of Djibouti" means a service (including construction) that is performed by a person that is—

(i) Operating primarily in Djibouti or is making a significant contribution to the economy of Djibouti through payment of taxes or use of products, materials, or labor of Djibouti, as determined by the Secretary of State; and

(ii) Is properly licensed or registered by authorities of the Government of Djibouti, as determined by the Secretary of State.

(b) The Contractor shall provide only products of Djibouti or services of Djibouti, unless, in its offer, it specified that it would provide products or services other than products of Djibouti or services of Djibouti.

(End of clause)

252.225-7984 Acquisition Restricted to Products or Services of Djibouti. (DEVIATION 2016-O0005)
As prescribed in 225.7798-6(c), use the following clause:

ACQUISITION RESTRICTED TO PRODUCTS OR SERVICES OF DJIBOUTI (FEB 2016) (DEVIATION 2016-O0005)

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

(1) "Product of Djibouti" means a product (including a commercial item) that is wholly grown, produced or manufactured in Djibouti. This term does not include construction material brought to a construction site by a 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 of Djibouti" means a service (including construction) that is performed by a person that is—

(i) Operating primarily in Djibouti or is making a significant contribution to the economy of Djibouti through payment of taxes or use of products, materials, or labor of Djibouti, as determined by the Secretary of State; and

(ii) Properly licensed or registered by authorities of the Government of Djibouti, as determined by the Secretary of State.

(b) The Contractor shall provide only products of Djibouti or services of Djibouti.

(End of clause)

* * * * *

DEPARTMENT OR AGENCY

Authority to Acquire Products or Services of Djibouti
Individual Determination and Findings

Upon the basis of the following findings and determination, which I hereby make in accordance with the provisions of DFARS 225.7798 (DEVIATION 2016-O0005), the acquisition of products or services of Djibouti in support of DoD operations in Djibouti may be made as follows:

FINDINGS

1. The [*contracting office*] proposes to purchase under solicitation number [*provide solicitation number*], [*describe the types of products or services*]. The total estimated cost of this acquisition is *[provide total estimated value]*.

2. The product or service is to be used in support of the following DoD operations in Djibouti: [*Describe the DoD activities being supported.*] The products or services to be acquired under the contemplated contracts are to be used by [*describe the entity(ies) intended to use the products or services*].

3. The contracting officer recommends conducting the acquisition using the following procedure, which, given this determination, is authorized by section 1263 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291), as amended by section 886 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92): [*Select one of the following: Provide a preference for products or services of Djibouti OR Limit competition to products or services of Djibouti*].

4. To implement the recommended procedure, the solicitation will contain: [*Select one of the following: DFARS 252.225-7982, Preference for Products or Services of Djibouti (DEVIATION 2016-O0005) and 252.225-7983, Requirement for Products or Services of Djibouti (DEVIATION 2016-O0005) OR DFARS 252.225-7984, Acquisition Restricted to Products or Services of Djibouti (DEVIATION 2016-O0005)*].

5. [*For paragraph 5, select one of the following:*

   The product or service to be acquired is to be used or performed only in support of the DoD operations identified in paragraph 2.

   OR

   The product or service to be acquired is of equivalent quality of a product or service that would have otherwise been acquired. (Provide a description of market research.)

   OR

   Use of this procedure is—

   a. *Vital to the national security interests of the United States, because use of the procedure (Select one of the following: reduces United States transportation costs and/or reduces delivery times in*

support of DoD operations in Djibouti OR promotes the regional security, stability, and economic prosperity of Africa); and

b. ***Will not adversely affect United States military operations or stability operations in Djibouti or the United States industrial base.***]

6. Acquisitions conducted using the procedures specified in DFARS 225.7798-3(a) (DEVIATION 2016-O0005) (see paragraph 3 above) are authorized to use other than full and open competition procedures and do not require the justification and approval addressed in FAR Subpart 6.3. [***Include a description of efforts made to ensure offers are solicited from as many potential sources as is practicable.***]

7. [***Identify whether a notice was or will be publicized as required by FAR subpart 5.2 and, if not, which exception in FAR 5.202 applies.***]

_____ Date: _____
CONTRACTING OFFICER
Name: _____
Office Symbol: _____

DETERMINATION

In accordance with the authorization outlined in DFARS 225.7798-3(b)(1)[(i) or (ii)] (DEVIATION 2016-O0005) and under the authority of section 1263 if the National Defense Authorization Act for Fiscal Year 2015, as amended by section 886 of the National Defense Authorization Act for Fiscal Year 2016, I hereby determine [***Select one of the following:***

The product or service to be acquired is to be used or performed only in support of DoD operations in Djibouti.

OR

The product or service to be acquired is of equivalent quality of the product or service that would have otherwise been acquired.

OR

Use of the acquisition procedure described above to acquire product or services of Djibouti is vital to the national security interests of the United States. This procedure will not adversely affect military or stability operations in Djibouti or the United States industrial base.]

_____ Date: _____
CONTRACTING OFFICER (***For individual acquisitions valued at less than $93 million***)
Name: _____
Office Symbol: _____

_____ Date: _____
HEAD OF CONTRACTING ACTIVITY (***For individual acquisitions valued at $93 million or more***)
Name: _____
Contracting Activity: _____

DEPARTMENT OR AGENCY

Authority to Acquire Products or Services of Djibouti
Class Determination and Findings

Upon the basis of the following findings and determination, which I hereby make in accordance with the provisions of DFARS 225.7798 (DEVIATION 2016-O0005), the acquisition of products or services of Djibouti in support of DoD operations in Djibouti may be made as follows:

FINDINGS

1. It is anticipated that [*applicable departments/agencies/components*] will need to award contracts during the period from [*start date*] to [*end date*] in order to acquire [*describe the types of products or services*].

2. The products or services to be acquired under the contemplated contracts are to be used in support of the following DoD operations in Djibouti: [*Describe the DoD activities being supported.*] The products or services to be acquired under the contemplated contracts are to be used by [*describe the entity(ies) intended to use the products or services*].

3. This class of acquisition should be conducted using the following procedure, which, given this determination, is authorized by section 1263 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291), as amended by section 886 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92): [*Select one of the following: Provide a preference for products or services of Djibouti OR Limit competition to products or services of Djibouti*].

4. To implement the recommended procedure, solicitations will contain: [*Select one of the following: DFARS 252.225-7982, Preference for Products or Services of Djibouti (DEVIATION 2016-O0005) and 252.225-7983, Requirement for Products or Services of Djibouti (DEVIATION 2016-O0005) OR DFARS 252.225-7984, Acquisition Restricted to Products or Services of Djibouti (DEVIATION 2016-O0005)*].

5. [*For paragraph 5, select one of the following:*

   The products or services to be acquired are to be used or performed only in support of the DoD activities identified in paragraph 2.

   OR

   The product or service to be acquired is of equivalent quality of a product or service that would have otherwise been acquired. (Provide a description of market research.)

   OR

   Use of this procedure is—

   a. *Vital to the national security interests of the United States, because use of the procedure (Select one of the following: will reduce United States transportation costs and/or reduce delivery times*

in support of operations in Djibouti OR will promote the regional security, stability, and economic prosperity of Africa); and

b. Will not adversely affect United States military operations or stability operations in Djibouti or the United States industrial base.]

6. Acquisitions conducted using the procedures specified in DFARS 225.7798-3(a) (DEVIATION 2016-O0005) (see paragraph 3 above) are authorized to use other than full and open competition procedures and do not require the justification and approval addressed in FAR Subpart 6.3. [***Include a description of efforts made to ensure offers are solicited from as many potential sources as is practicable.***]

7. [***Identify whether a notice was or will be publicized as required by FAR subpart 5.2 and, if not, which exception in FAR 5.202 applies.***]

_____ Date: _____
CONTRACTING OFFICER
Name: _____
Office Symbol: _____

DETERMINATION

In accordance with the authorization outlined in DFARS 225.7798-3(b)(1)(ii) (DEVIATION 2016-OZZZZ) and under the authority of section 1263 if the National Defense Authorization Act for Fiscal Year 2015, as amended by section 886 of the National Defense Authorization Act for Fiscal Year 2016, I hereby determine [***Select one of the following:***

The products or services to be acquired are to be used or performed only in support of DoD operations in Djibouti.

OR

The product or service to be acquired is of equivalent quality of the product or service that would have otherwise been acquired.

OR

Use of the acquisition procedure described above to acquire product or services of Djibouti is vital to the national security interests of the United States. This procedure will not adversely affect military or stability operations in Djibouti or the United States industrial base.]

_____ Date: _____
HEAD OF CONTRACTING ACTIVITY
Name: _____
Contracting Activity: _____