**PART 206—COMPETITION REQUIREMENTS**

**\* \* \* \* \***

**SUBPART 206.3--OTHER THAN FULL AND OPEN COMPETITION**

**\* \* \* \* \***

**206.303 Justifications.**

**\* \* \* \* \***

**206.303-71 Acquisitions in support of operations in Africa. (DEVIATION 2017-O0009)**

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 2017-O0009)

**\* \* \* \* \***

**PART 225—FOREIGN ACQUISITION**

**\* \* \* \* \***

**SUBPART 225.4--TRADE AGREEMENTS**

**\* \* \* \* \***

**225.401 Exceptions. (DEVIATION 2017-O0009)**

(a)(2)\*\*\*

(S-70) If using a procedure specified in 225.7798-3(a)(1) (DEVIATION 2017-O0009) to acquire products or services in support of DoD activities in Djibouti, the procedures of FAR subpart 25.4 are not applicable.

**\* \* \* \* \***

**SUBPART 225.5--EVALUATING FOREIGN OFFERS--SUPPLY CONTRACTS**

**\* \* \* \* \***

**225.502 Application. (DEVIATION 2017-O0009)**

**\* \* \* \* \***

 (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:

**\* \* \* \* \***

 (v) If the solicitation includes the provision at 252.225-7985, Preference for Products or Services from the African Host Nation–Djibouti (DEVIATION 2017-O0009), use the evaluation procedures at 225.7798-5 (DEVIATION 2017-O0009).

**\* \* \* \* \***

**SUBPART 225.75—BALANCE OF PAYMENTS PROGRAM**

**\* \* \* \* \***

**225.7501 Policy. (DEVIATION 2017-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—

 **\* \* \* \* \***

 (8) Use of a procedure specified in 225.7798-3(a) (DEVIATION 2017-O0009) is authorized for an acquisition in support of DoD activities in Djibouti.

**\* \* \* \* \***

**SUBPART 225.77--ACQUISITIONS IN SUPPORT OF OPERATIONS IN AFGHANISTAN AND AFRICA (DEVIATION 2017-O0009)**

**\* \* \* \* \***

**225.7798 Enhanced authority to acquire products and services from Djibouti in support of DoD activities in Djibouti. (DEVIATION 2017-O0009)**

**225.7798-1 Scope.**

This subpart implements section 899A of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328).

**225.7798-2 Definitions.**

As used in this subpart—

“African host nation’’ means the African nation in which there is a requirement for supplies or services in support of DoD activities in a covered African country, and which allows the Armed Forces and supplies of the United States to be located on, to operate in, or to be transported through its territory.

 “Covered African country’’ means a country in Africa that has signed a long-term agreement with the United States related to the basing or operational needs of the United States Armed Forces. Djibouti is a covered African country.

‘‘Product or service from the African host nation—Djibouti’’ means–

 (1) A product from Djibouti that is wholly grown, mined, manufactured, or produced in Djibouti; or

 (2) A service, including construction, from Djibouti that is performed by a person or entity that—

 (i) Is properly licensed or registered by appropriate authorities of Djibouti; and

 (ii) As determined by the Chief of Mission concerned—

 (A) Is operating primarily in Djibouti; or

 (B) Is making a significant contribution to the economy of Djibouti through payment of taxes or use of products, materials, or labor that are primarily grown, mined, manufactured, produced, or sourced from Djibouti.

**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 to be acquired in support of DoD activities in a covered African country—Djibouti may be obtained by–

 (1) Limiting competition to products or services from the African host nation—Djibouti; or

 (2) Providing a preference for products or services from the African host nation—Djibouti, in accordance with the evaluation procedures at 225.7798-5.

 (b) For acquisitions conducted using a procedure specified in paragraph (a) of this section—

(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 when use of a procedure specified in paragraph (a) of this section is authorized for an acquisition in support of DoD activities in Djibouti.

(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 use of a procedure specified in 225.7798-3(a), a written determination must be prepared and executed as provided in this section.

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

 (1) At least one of the following applies:

 (i) The product or service concerned is to be used only in support of DoD activities in Djibouti.

 (ii) It is in the national security interests of the United States to limit competition or provide a preference as described in paragraph (a) of this section because such limitation or preference is necessary to—

 (A) Reduce overall United States transportation costs and risks in shipping products in support of operations, exercises, theater security cooperation activities, and other missions in the African region;

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

 (C) Promote regional security and stability in Africa.

 (iii) The product or service is of equivalent quality to a product or service that would have otherwise been acquired without such limitation or preference;

 (2) In the case of air transportation, an air carrier holding a certificate under 49 U.S.C. 41102 is not reasonably available to provide the air transportation; and

 (3) The limitation or preference will not adversely affect—

 (i) United States military operations or stability operations in the African region; or

 (ii) 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:

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

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

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

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

 (E) 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 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 252.225-7985, Preference for Products or Services from the African Host Nation–Djibouti (DEVIATION 2017-O0009) as follows:

 (a) For supplies, when evaluating 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 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 as specified in the solicitation 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 as 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)(1) Use the provision at 252.225-7985, Preference for Products or Services from the African Host Nation–Djibouti (DEVIATION 2017-O0009), in solicitations that include the clause at 252.225-7986, Requirement for Products or Services from the African Host Nation—Djibouti (DEVIATION 2017-O0009).

 (2) Insert in paragraph (d) of the provision, in accordance with the USAFRICOM Commander’s policy and contracting activity procedures, the price evaluation factor to be applied to offers of products or services that are not products or services from the African host nation—Djibouti.

 (b) Use the clause at 252.225-7986, Requirement for Products or Services from the African Host Nation–Djibouti (DEVIATION 2017-O0009), in solicitations and contracts that provide a preference for products or services from the African host nation—Djibouti in accordance with 225.7798-3(a)(2) (DEVIATION 2017-O0009).

(c) Use the clause at 252.225-7977, Acquisition Restricted to Products or Services from the African Host Nation–Djibouti (DEVIATION 2017-O0009), in solicitations and contracts that limit competition to products or services from the African host nation—Djibouti in accordance with 225.7798-3(a)(1) (DEVIATION 2017-O0009).

 (d) Except as provided in paragraph (e)(2) of this section, when the Trade Agreements Act applies to the acquisition, use the appropriate provision and clause as prescribed at 225.1101(5) and (6).

 (e)(1) Do not use any of the following provisions or clauses in solicitations or contracts that include the provision at 252.225-7985 (DEVIATION 2017-O0009), the clause at 252.225-7986 (DEVIATION 2017-O0009), or the clause at 252.225-7977 (DEVIATION 2017-O0009):

 (i) [252.225-7000](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7000), Buy American—Balance of Payments Program Certificate.

 (ii) [252.225-7001](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7001), Buy American and Balance of Payments Program.

 (iii) [252.225-7002](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7002), Qualifying Country Sources as Subcontractors.

 (iv) [252.225-7035](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7035), Buy American—Free Trade Agreements—Balance of Payments Program Certificate.

 (v) [252.225-7036](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7036), Buy American—Free Trade Agreements—Balance of Payments Program.

 (vi) [252.225-7044](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7044), Balance of Payments Program—Construction Material.

 (vii) [252.225-7045](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7045), Balance of Payments Program—Construction Material Under Trade Agreements.

 (2) Do not use the following provision or clause in solicitations or contracts that include the clause at 252.225-7977 (DEVIATION 2017-O0009):

 (i) [252.225-7020](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7020), Trade Agreements Certificate.

 (ii) [252.225-7021](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7021), Trade Agreements.

**\* \* \* \* \***

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**\* \* \* \* \***

**252.225-7985 Preference for Products or Services from the African Host Nation–Djibouti. (DEVIATION 2017-O0009)**

As prescribed in 225.7798-6(a), use the following provision:

PREFERENCE FOR PRODUCTS OR SERVICES FROM THE AFRICAN HOST NATION–DJIBOUTI (SEP 2017) (DEVIATION 2017-O0009)

(a) *Definitions.*  “African host nation” and “products or services from the African host nation—Djibouti,” as used in this provision, are defined in the clause of this solicitation entitled “Requirement for Products or Services from the African Host Nation—Djibouti” (252.225-7986)(DEVIATION 2017-O0009).

(b) *Representation*. By submission of its offer, the Offeror represents that all products or services to be delivered under a contract resulting from this solicitation are products or services from the African host nation—Djibouti, unless, in its offer, the Offeror specifies that it will provide products or services other than products or services from the African host nation—Djibouti.

 (c) *Other products or services.* Offerors that include products or services in their offer that are not products or services from the African host nation—Djibouti shall identify in the offer the solicitation line item number and the country of origin for the product or service that is not a product or service from the African host nation—Djibouti, unless the product is listed in paragraph (c)(2) of the provision entitled “Trade Agreements Certificate,” if included in this solicitation.

 (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 or services from the African host nation—Djibouti.

(End of provision)

**252.225-7986 Requirement for Products or Services from the African Host Nation–Djibouti. (DEVIATION 2017-O0009)**

As prescribed in 225.7798-6(b), use the following clause:

REQUIREMENT FOR PRODUCTS OR SERVICES FROM THE AFRICAN HOST NATION–DJIBOUTI (SEP 2017) (DEVIATION 2017-O0009)

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

 “African host nation’’ means the African nation in which there is a requirement for supplies or services in support of DoD activities in a covered African country, and which allows the Armed Forces and supplies of the United States to be located on, to operate in, or to be transported through its territory.

 “Covered African country’’ means a country in Africa that has signed a long-term agreement with the United States related to the basing or operational needs of the United States Armed Forces. Djibouti is a covered African country.

 ‘‘Product or service from the African host nation—Djibouti’’ means–

 (1) A product from Djibouti that is wholly grown, mined, manufactured, or produced in Djibouti; or

 (2) A service, including construction, from Djibouti that is performed by a person or entity that—

 (i) Is properly licensed or registered by appropriate authorities of Djibouti; and

 (ii) As determined by the Chief of Mission concerned—

 (A) Is operating primarily in Djibouti; or

 (B) Is making a significant contribution to the economy of Djibouti through payment of taxes or use of products, materials, or labor that are primarily grown, mined, manufactured, produced, or sourced from Djibouti.

 (b)(1) The Contractor shall provide only products or services from the African host nation—Djibouti, unless, in its offer, it specified that it would provide products or services other than products or services from the African host nation—Djibouti.

 (2) For construction contracts, the Contractor is encouraged, but not required, to use construction material from the African host nation—Djibouti).

 (End of clause)

**252.225-7977 Acquisition Restricted to Products or Services from the African Host Nation–Djibouti. (DEVIATION 2017-O0009)**

As prescribed in 225.7798-6(c), use the following clause:

ACQUISITION RESTRICTED TO PRODUCTS OR SERVICES FROM THE AFRICAN HOST NATION–DJIBOUTI (SEP 2017) (DEVIATION 2017-O0009)

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

“African host nation’’ means the African nation in which there is a requirement for supplies or services in support of DoD activities in a covered African country, and which allows the Armed Forces and supplies of the United States to be located on, to operate in, or to be transported through its territory.

‘‘Product or service from the African host nation—Djibouti’’ means–

 (1) A product from Djibouti that is wholly grown, mined, manufactured, or produced in Djibouti; or

 (2) A service, including construction, from Djibouti that is performed by a person or entity that—

 (i) Is properly licensed or registered by appropriate authorities of Djibouti; and

 (ii) As determined by the Chief of Mission concerned—

 (A) Is operating primarily in Djibouti; or

 (B) Is making a significant contribution to the economy of Djibouiti through payment of taxes or use of products, materials, or labor that are primarily grown, mined, manufactured, produced, or sourced from Djibouti.

 (b)(1) The Contractor shall provide only products or services from the African host nation—Djibouti.

 (2) For construction contracts, the Contractor is encouraged, but not required, to use construction material from the African host nation—Djibouti.

(End of clause)