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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 212, 225, 232, and 252**

**RIN 0750-AH86**

**Defense Federal Acquisition Regulation Supplement;**

**Payment in Local Currency (Afghanistan) (DFARS Case 2013-D029)**

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

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to incorporate into the DFARS policies and procedures concerning payment for contracts for performance in Afghanistan.

**DATES:** Comment Date: Comments on the proposed rule should be submitted in writing to the address shown below on or before

**[Insert date 60 days after date of publication in the *FEDERAL REGISTER*],** to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments, identified by DFARS Case 2013-D029, using any of the following methods:

Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inserting "DFARS Case 2013-D029" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds

with "DFARS Case 2013-D029." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2013-D029" on your attached document. Follow the instructions for submitting comments.

E-mail: [dfars@mail.mil](mailto:dfars@mail.mil). Include DFARS Case 2013-D029 in the subject line of the message.

Fax: 571-372-6094.

Mail: Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gomersall, Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6099.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is proposing to amend the DFARS to provide policy and procedures at DFARS 212.301 and 232.72 on the use of a new solicitation provision at 252.232-7XXX, Notification of Payment in Local Currency (Afghanistan). This provision provides notification that the payment currency to be used for contracts for performance in Afghanistan shall be dependent on the nationality of the vendor. This rule implements the procedures concerning payment currency contained in the U.S. Central Command's Fragmentary Order (FRAGO) 09-1567 and FRAGO 10-143.

## **II. Discussion and Analysis**

The solicitation provision, 252.232-7XXX, provides that if the contract is awarded to a host nation vendor (Afghan), the contractor will receive payment in Afghani (local currency) via electronic funds transfer to a local (Afghan) banking institution. Contracts shall not be awarded to host nation vendors (Afghans) who do not bank locally. If awarded to other than a host nation vendor, the contract will be awarded in U.S. dollars.

Additionally, DFARS 225.7703-1 is added to provide direction to contracting officers to follow the procedures included at DFARS Procedures, Guidance, and Information (PGI) 225.7703-1(c) when issuing solicitations and contracts for performance in Afghanistan. The PGI reference provides a link to the U.S. Central Command's (CENTCOM) Operational Contract Support

Policies and Procedures, Theater Business Clearance process for clearing contracts to be performed in CENTCOM's area of responsibility.

### **III. Executive Orders 12866 and 13563**

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

### **IV. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule amends the DFARS by incorporating policies and procedures at DFARS 212.301 and 232.72 on the use of a new DFARS

solicitation provision 252.232-7XXX, Notification of Payment in Local Currency (Afghanistan). This rule proposes to implement the payment currency procedures contained in the U.S. Central Command's Fragmentary Orders 09-1567 and 10-143. The provision provides notification that the payment currency to be used for contracts for performance in Afghanistan shall be dependent on the nationality of the vendor. Additionally, DFARS 225.7703-1 provides direction to contracting officers to follow the procedures at DFARS Procedures, Guidance, and Information 225.7703-1(c) when issuing solicitations and contracts for performance in Afghanistan.

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities because this rule merely provides requirements for payments to host nation vendors for performance in Afghanistan.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

#### **V. Paperwork Reduction Act**

The rule does not contain information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of Subjects in 48 CFR Parts 212, 225, 232, and 252.**

Government procurement.

**Manuel Quinones,**

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 225, 232, and 252 are proposed to be amended as follows:

1. The authority citation for parts 212, 225, 232, and 252 continues to read as follows:

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

**PART 212-ACQUISITION OF COMMERCIAL ITEMS**

2. Section 212.301 is amended by-

a. Redesignating paragraphs (f)(lii) through (lxvii) as (f)(liii) through (lxviii); and

b. Adding a new paragraph (f)(lii) as follows:

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

(f) \* \* \*

(lii) Use the clause at 252.232-7XXX, Notification of Payment in Local Currency (Afghanistan), as prescribed in 237.7202.

\* \* \* \* \*

**PART 225-FOREIGN ACQUISITIONS**

3. Section 225.7703-1 is amended by adding paragraph (c) to read as follows:

**225.7703-1 Acquisition procedures.**

\* \* \* \* \*

(c) When issuing solicitations and contracts for performance in Afghanistan, follow the procedures at PGI 225.7703-1(c).

**PART 232-CONTRACT FINANCING**

4. Add subpart 232.72 to read as follows:

**Subpart 232.72-Payment in Local Currency (Afghanistan)**

232.7200 Scope of subpart.

232.7201 Policy and procedures.

232.7202 Solicitation provision.

**Subpart 232.72-Payment in Local Currency (Afghanistan)**

**232.7200 Scope of subpart.**

This subpart prescribes policies and procedures concerning the payment of contracts for performance in Afghanistan.

**232.7201 Policy and procedures.**

Payment currency used for contracts performed in Afghanistan shall be dependent on the nationality of the vendor pursuant to the authority of USCENTCOM Fragmentary Orders (FRAGOs) 09-1567 and 10-143. If the contract is awarded to a host nation vendor (Afghan), the contractor will be paid in Afghani (local currency) via electronic funds transfer to a local (Afghan) banking institution. Contracts shall not be awarded to host nation vendors who do not bank locally. If awarded to other

than a host nation vendor, the contract will be awarded in U.S. dollars.

**232.7202 Solicitation provision.**

Use the provision at 252.232-7XXX, Notification of Payment in Local Currency (Afghanistan), in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for performance in Afghanistan.

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

5. Section 252.232-7XXX is added as follows:

**252.232-7XXX Notification of Payment in Local Currency (Afghanistan).**

As prescribed in 232.7202, use the following provision:

NOTIFICATION OF PAYMENT IN LOCAL CURRENCY

(AFGHANISTAN) (Date)

(a) This contract will be paid in Afghani (local currency) if the contract is awarded to a host nation vendor (Afghan), pursuant to the authority of USCENTCOM Fragmentary Order (FRAGO) 09-1567 and FRAGO 10-143. Contract payment will be made in Afghani (local currency) via electronic funds transfer (EFT) to a local (Afghan) banking institution, unless an exception in paragraph (c) applies. Contracts shall not be awarded to host nation vendors who do not bank locally. If award is made to other than a host nation vendor, the contract will be awarded in U.S. dollars.

(b) Vendors shall submit quotations and offers in U.S. dollars. If the contract is awarded to an Afghan vendor, the quotation or offer will be converted to Afghani using a Government budget rate of [Insert current budget rate here] Afghani per U.S. dollar.

(c) By exception, the following forms of payment are acceptable, in the following order of priority, when the local finance office determines that EFT using ITS.gov is not available:

(1) EFT using Limited Depository Account (LDA).

(2) Check from the local finance office LDA.

(3) Local currency cash payments in Afghani (must be approved in writing by the local finance office and contracting office prior to contract award). Payments in cash are restricted to contracts when—

(i) The vendor provides proof via a letter from the host nation banking institution that it is not EFT capable; and

(ii) The local finance office validates that the vendor's banking institution is not EFT capable. Cash payments will be made in Afghani.

(End of provision)

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