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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, 232, and 252

RIN 0750-AI14

Defense Federal Acquisition Regulation Supplement; Payment in Local Currency (Afghanistan) (DFARS Case 2013-D029)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to incorporate into the DFARS policies and procedures concerning payment for contracts for performance in Afghanistan.

DATES: Effective [Insert date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hawes, telephone 571-372-6115.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 79 FR 4647 on January 29, 2014, 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 252.232-7014, 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. Two respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in development of the final rule. One minor change is made to the final rule as a result of one of the comments. A discussion of the comments is provided below.

Comment: The respondent stated that if the U.S. Government solicited the use of security forces in Afghanistan, any resulting contract would be required to be awarded to the Afghan Public Protection Force (APPF) and use APPF procurement terms.

Response: This comment is outside the scope of this final rule. The rule only addresses contracts awarded to vendors and not state-owned Afghani governmental entities for the provision of security services.

Comment: The respondent noted that section 212.301(f)(lii) referred to 252.232-70XX as a clause rather than a provision.

Response: The final rule correctly refers to 252.232-7014 as a provision.

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

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., and is summarized as follows:

This final 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 252.232-7014, Notification of Payment in Local Currency (Afghanistan). This rule implements 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.

No comments were received from the public in response to the initial regulatory flexibility analysis. DoD does not expect this rule to have an 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.

This rule does not add any new information collection, reporting, or record keeping requirements. No alternatives were identified that will accomplish the objectives of the rule.

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 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. Amend section 212.301 by redesignating paragraphs (f)(lviii) through (lxxiii) as (f)(lix) through (lxxiv) and adding a new paragraph (f)(lviii) to read as follows:

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

(f) * * *

(lviii) Use the provision at 252.232-7014, Notification of Payment in Local Currency (Afghanistan), as prescribed in 232.7202.

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PART 225—FOREIGN ACQUISITIONS

3. Amend section 225.7703-1 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)

Sec.

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 252.232-7014, 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. Add section 252.232-7014 to read as follows:

**252.232-7014 Notification of Payment in Local Currency
(Afghanistan).**

As prescribed in 232.7202, use the following provision:

NOTIFICATION OF PAYMENT IN LOCAL CURRENCY (AFGHANISTAN) (SEP 2014)

(a) The contract resulting from this solicitation 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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