



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JUL 17 2013


In reply refer to
DARS Tracking Number: 2013-O0016

MEMORANDUM FOR COMMANDER, UNITED STATES CENTRAL COMMAND (ATTN:
JOINT THEATER SUPPORT CONTRACTING COMMAND)
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 2013-O0016, Taxes—Foreign Contracts in Afghanistan

Effective immediately, contracting officers shall use one of the two attached clauses in all solicitations and contracts for performance in Afghanistan. Attachment 1, DFARS 252.229-7998, Taxes – Foreign Contracts in Afghanistan (Military Technical Agreement) (DEVIATION 2013-O0016) requires Director, Defense Procurement and Acquisition Policy approval prior to each use.

This class deviation remains in effect until it is incorporated in the DFARS or is otherwise rescinded. My point of contact is Ms. Barbara J. Trujillo, who may be reached at 571-256-7010, or at barbara.trujillo@osd.mil.


Richard Ginman
Director, Defense Procurement
and Acquisition Policy

Attachments:
As stated

Attachment 1, Class Deviation 2013-00016
Taxes—Foreign Contracts in Afghanistan (Military Technical Agreement)

252.229-7998 Taxes – Foreign Contracts in Afghanistan (Military Technical Agreement). (DEVIATION 2013-O0016) After obtaining approval from the Director, Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense for Acquisitions, Technology, and Logistics, prior to each use, insert the following clause in all solicitations and resulting contracts with performance in Afghanistan awarded on behalf of NATO, which are governed by the Military Technical Agreement.

**TAXES- FOREIGN CONTRACTS IN AFGHANISTAN
(MILITARY TECHNICAL AGREEMENT)
(DATE) (DEVIATION 2013-O0016) (JULY 2013)**

(a) This acquisition is covered by the Military Technical Agreement (MTA) entered into between the International Security Assistance Forces (ISAF) and Interim Administration of Afghanistan in April 2002 and the 2011 Letter of Interpretation issued on March 9, 2011.

(b) The Military Technical Agreement establishes the basic rules and exempts NATO/ISAF and its contractors and subcontractors from paying any tax or similar charge assessed within Afghanistan. The MTA also exempts the acquisition, importation, exportation and use of supplies and services in Afghanistan from all Afghan taxes, fees, duties or other form of revenue generation.

(c) The Contractors shall exclude any Afghan taxes, customs duties or similar charges from its contract price, except as modified in paragraph (d) below.

(d) The ISAF 2011 Letter of Interpretation (LOI) modified the MTA's tax exemption effective March 21, 2011—

(1) “Local contractors” are subject to tax “for profits earned” from NATO/ISAF contracts or subcontract and may include that tax in its contract price. The goods, materials and supplies acquired and the services provided by local contractors for the use of NATO/ISAF, NATO member states, and non-NATO member states participating in the ISAF remain exempt from all taxes, duties, sales or other taxes, import fees, or fees of any kind. A contractor or subcontractor may include the tax on profits in its contract price.

(2) Afghan citizens employed by NATO/ISAF contractors and subcontractors are subject to Afghan tax laws. To the extent required by Afghan law, contractors and subcontractors are required to withhold tax from the wages of these employees and

**Attachment 1, Class Deviation 2013-O0016
Taxes—Foreign Contracts in Afghanistan (Military Technical Agreement)**

to remit those withholdings to the Afghanistan Revenue Department. These withholdings are an individual's liability, not a tax against the contractor or subcontractor.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.

(End of clause)

252.229-7999 Taxes – Foreign Contracts in Afghanistan. (DEVIATION 2013-00016) Insert the following clause in all solicitations and resulting contracts with performance in Afghanistan unless the clause at 252.229-7998 is used.

**TAXES – FOREIGN CONTRACTS IN AFGHANISTAN
(DATE) (DEVIATION 2013-00016) (JULY 2013)**

(a) This acquisition is covered by the Agreement regarding the Status of United States Military and Civilian Personnel of the U.S. Department of Defense Present in Afghanistan with Cooperative Efforts in Response to Terrorism, Humanitarian and Civic Assistance, Military Training and Exercises, and other Activities, entered into between the United States and Afghanistan which was concluded by an exchange of diplomatic notes (U.S. Embassy Kabul note No. 202, dated September 26, 2002; Afghan Ministry of Foreign Affairs notes 791 and 93, dated December 12, 2002, and May 28, 2003, respectively), and entered into force on May 28, 2003.

(b) The Agreement exempts the Government of the United States of America and its contractors, subcontractors and contractor personnel from paying any tax or similar charge assessed within Afghanistan. The Agreement also exempts the acquisition, importation, exportation and use of articles and services in the Republic of Afghanistan by or on behalf of the Government of the United States of America in implementing this agreement from any taxes, customs duties or similar charges in Afghanistan.

(c) The Contractor shall exclude any Afghan taxes, customs duties or similar charges from its contract price.

(d) The Agreement does not exempt Afghan employees of DoD contractors and subcontractors from Afghan tax laws. To the extent required by Afghanistan law, contractors and subcontractors are required to withhold tax from the wages of these employees and to remit those payments to the appropriate Afghanistan taxing authority. These withholdings are an individual's liability, not a tax against the Contractor or subcontractor.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.

(End of clause)