



Homeland
Security

July 13, 2016

MEMORANDUM FOR: Heads of the Contracting Activities

FROM: Soraya Correa
Chief Procurement Officer

A handwritten signature in blue ink, appearing to read "Soraya Correa", written over the printed name and title.

SUBJECT: Federal Acquisition Regulation Class Deviation
(Number 16-03) – Prohibition Against Using Fiscal Year
2015 and 2016 Funds to Contract with Corporations that
Have a Delinquent Tax Liability or a Felony Conviction
under Federal Law

Summary: This class deviation requires Department of Homeland Security (DHS) contracting officers and the DHS Office of the Chief Procurement Officer (OCPO) to take the actions identified below to ensure compliance with sections of the Consolidated and Further Continuing Appropriations Act, 2015, that prohibit the Federal Government from entering into a contract with any corporation having a delinquent Federal tax liability or a felony conviction under any Federal law, unless the agency has considered suspension or debarment of the corporation and has determined that suspension and debarment is not necessary to protect the interests of the Government.

1. For existing solicitations issued from December 16, 2014 to February 25, 2016:
 - a. Contracting officers shall amend solicitations and incorporate the Federal Acquisition Regulation (FAR) provision at 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law, or, for commercial acquisitions under FAR Part 12, incorporate the new paragraph (q) of provision 52.212-3;
 - b. If a contracting officer receives an affirmative response from an offeror to either representation at 52.209-11 or at paragraph (q) of 52.212-3, the contracting officer shall follow the procedures at FAR Part 9.104-5(b); and
 - c. If an offeror fails to furnish a representation or such information requested by the contracting officer, the contracting officer shall follow the procedures at FAR Part 9.104-5(d).
2. For active contracts, blanket purchase agreements, purchase orders, and GSA Federal Supply Schedule orders awarded from December 16, 2014 to February 25, 2016:
 - a. The DHS OCPO (Acquisition Policy and Legislation (APL)) will take the following actions:

- Transmit to the contractor the provision in Attachment (1) of this deviation;
- DHS OCPO/APL will place completed contractor provisions in a central repository that will be accessible to Component contracting offices; and
- If a Contractor responds affirmatively to the representation, DHS OCPO/APL, in coordination with the affected Components, will follow the procedures at FAR Part 9.104-5(b), as applicable.

b. Contracting Officers shall:

- Obtain copies of completed representations and place them in the contract file; and
- In coordination with the DHS OCPO, follow the procedures at FAR Part 9.104-5(b), as applicable, in the event a Contractor responds affirmatively to the representation.

Effective Date: Immediately.

Background: Since Fiscal Year (FY) 2014, annual appropriations acts have included government-wide general provisions that prohibit using funds made available by annual appropriations or any other act to enter into a contract with any corporation that:

1. Has a delinquent tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the delinquent tax liability, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that further action is not necessary to protect the interests of the Government; or
2. Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that further action is not necessary to protect the interests of the Government.

In FY 2014, DHS FAR Deviation 14-02 was issued to implement the above prohibitions and was effective through December 15, 2014. Because the above prohibitions were not effective in the Federal Acquisition Regulation (FAR) until February 26, 2016, procedures are needed to address the period from December 16, 2014 to February 25, 2016.

Deviation: This FAR class deviation provides the procedures for implementing Sections 744 and 745 of Division E of the Consolidated Appropriations Act, 2015 for active contract actions awarded from December 16, 2014 to February 25, 2016.

1. Awarded Contracts. For active contracts, blanket purchase agreements, purchase orders, and GSA Federal Supply Schedule orders, the DHS OCPO/APL will transmit to the contractor the provision in Attachment (1). The contractor shall return the completed provision to the DHS OCPO/APL. Completed contractor provisions will be made available to Component contracting offices for incorporation into the contract file via a central repository. If a Contractor responds affirmatively to the representation, DHS OCPO/APL, in coordination with the affected Components, will follow the procedures at FAR Part 9.104-5(b), as applicable. Contractors who fail to furnish the representation or the information required by FAR 9.104-(b)(1) shall be given an opportunity to remedy the deficiency. Failure of a contractor to furnish the representation or the additional information may be cause for termination.
2. Solicitations. For existing solicitations that were issued from December 16, 2014 to February 25, 2016 and that do not contain a similar provision (e.g., provision 3052.209-79 in DHS FAR Class Deviation 14-02), contracting officers shall amend the solicitation to incorporate the provision at 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law or, for commercial acquisitions under FAR Part 12, amend the solicitation to incorporate the new paragraph (q) of provision 52.212-3. If a contracting officer receives an affirmative response from an offeror to either representation at 52.209-11 or at paragraph (q) of 52.212-3, the contracting officer shall follow the procedures at FAR Part 9.104-5(b), and if an offeror fails to furnish a representation or such information requested by the contracting officer, the contracting officer shall follow the procedures at FAR Part 9.104-5(d).

Applicability: This class deviation applies to existing solicitations issued from December 16, 2014 to February 25, 2016 and to active contracts, blanket purchase agreements, purchase orders, and GSA Federal Supply Schedule orders awarded from December 16, 2014 to February 25, 2016, that were funded by the Act (or any other act), and do not contain a similar provision.

Expiration: This class deviation will remain in effect until rescinded.

Attachment: Attachment 1, solicitation provision “Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law”

Questions or comments about this class deviation may be directed to Ellen Murray at (202) 447-5311, or by email at Ellen.Murray@hq.dhs.gov.

REPRESENTATION BY CORPORATIONS REGARDING DELIQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW (JUNE 2016) (DHS FAR CLASS DEVIATION 16-03)

(a) As required by sections 744 and 745 of Division E of the Consolidated Appropriations Act, 2015 (Public Law 113-235), and similar provisions, if contained in subsequent appropriations acts, the Government will not enter into a contract with any corporation that:

- (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or
- (2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this action is not necessary to protect the interests of the Government.

(b) The Contractor represents that on the date of contract award:

- (1) It was [] was not [] a corporation that had any unpaid Federal tax liability that had been assessed, for which all judicial and administrative remedies had been exhausted or had lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- (2) It was [] was not [] a corporation that was convicted of a felony criminal violation under any Federal law within the preceding 24 months.

(c) If the contractor represents in (b) above that it was a corporation that had an unpaid Federal tax liability that had been assessed or that was it convicted of a felony criminal

violation under any Federal law within the preceding 24 months of contract award, the contractor shall provide all information related to the tax liability or felony within three business days of the Government's request.

(End of provision)

Print Name and Title of Person Authorized to Sign:

Print Name and Address of Contractor

DUNS: _____

Signature of Person Authorized to Sign:

Name

Date

**Federal Acquisition Regulation Class Deviation (Number 16-03) – Prohibition
Against Using Fiscal Year 2015 and 2016 Funds to Contract with Corporations that
Have a Delinquent Tax Liability or a Felony Conviction under Federal Law**

Findings

On December 16, 2014, the Consolidated Appropriations Act, 2015 (the Act) was enacted. Sections 744 and 745 of Division E, Title VII of the Act prohibit using the funds made available by the Act or any other act to enter into a contract with any corporation that:

- Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.
- Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

On December 4, 2015, the Department of Defense, General Services Administration, and National Aeronautics and Space Administration issued an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Sections 744 and 745 of Division E, Title VII of the Act. The interim rule became effective February 26, 2016.


Determination

In accordance with FAR Part 1.404, I hereby issue a class deviation to implement procedures of the interim rule that address the prohibitions stipulated in Sections 744 and 745 of Division E, Title VII of the Act (and to implement similar provisions in subsequent appropriations acts). This deviation applies to existing solicitations issued from December 16, 2014 to February 25, 2016 and active contracts, purchase orders, blanket purchase agreements, and GSA federal supply orders that:

- Were awarded from December 16, 2014 to February 25, 2016;
- Funded by the Act (or any other act); and
- Did not contain solicitation provisions addressing the prohibitions in Sections 744 and 745 of Division E, Title VII of the Act (or similar

prohibitions in other appropriations acts (e.g., provision 3052.209-79 in DHS FAR Class Deviation 14-02).

The Chair of the Civilian Agency Acquisition Council issued a memorandum dated November 21, 2013 that satisfies the consultation requirements of FAR Part 1.404 (see attached). This deviation is in effect until rescinded.



Soraya Correa
Chief Procurement Officer
Department of Homeland Security

July 13, 2016

Date