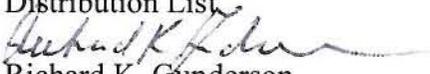




**Homeland
Security**

APR 28 2010

MEMORANDUM FOR: Distribution List
FROM: 
Richard K. Gundersen
Acting Chief Procurement Officer
SUBJECT: Prohibition on Contracting with Inverted Domestic Corporations;
Homeland Security Acquisition Regulation (HSAR) Class Deviation
(Number 09-02, Amendment 02)

Department of Homeland Security (DHS) HSAR Class Deviation 09-02 implemented the Federal Acquisition Regulation (FAR) interim rule published on July 1, 2009, consisting of a new section in Part 9, Prohibition on Contracting with Inverted Domestic Corporations. The deviation reserved obsolete content in HSAR 3009.104-70 to 3009.104-75 and 3052.209-70 and provided content necessary to implement the FAR coverage in DHS and retain consistency with the Homeland Security Act.

Amendment 01 re-designated the affected HSAR sections in HSAR Part 3009. Amendment 01 transmitted only the re-designated sections and did not re-transmit HSAR 3052.209-70, which remains reserved. This Amendment 02 contains all of the sections covered by the deviation in their entirety.

The Governmentwide prohibition on contracts with corporate expatriates remains in place. DHS Contracting Officers shall continue to use the provision at FAR 52.209-2 in lieu of HSAR 3052.209-70.

Questions regarding this class deviation should be directed to Gloria Sochon, gloria.sochon@dhs.gov or 202-447-5307.

Attachment
HSAR Class Deviation 09-02, Amendment 02

PART 3009 CONTRACTOR QUALIFICATIONS

Subpart 3009.1 Responsible Prospective Contractors

3009.108-70 Prohibitions on contracts with inverted domestic corporations. (DEVIATION)

- 3009.108-7001 General. (DEVIATION)
- 3009.108-7002 Definitions. (RESERVED)
- 3009.108-7003 Special rules. (RESERVED)
- 3009.108-7004 Waiver. (DEVIATION)
- 3009.108-7005 Clause. (DEVIATION)

3009.170 Reserved.

Subpart 3009.1 Responsible Prospective Contractors

3009.108-70 Prohibition on contracts with inverted domestic corporations. (DEVIATION)

3009.108-7001 General. (DEVIATION)

(a) Except as provided (HSAR) 48 CFR 3009.108-7004, DHS may not enter into any contract with a foreign incorporated entity, which is treated as an inverted domestic corporation under subsection (b) of Section 835 of the Homeland Security Act, 6 U.S.C. 395(b), or any subsidiary of such entity.

(b) Section 743 of Division D of the FY 2009 omnibus appropriations legislation (Pub. L. 111-8), prohibits the use of FY 2009 funds appropriated to DHS for contracting with any inverted domestic corporation. The same restriction is also contained in the FY 2008 omnibus appropriations legislation (Pub. L. 110-161, Section 745). The FAR implementation of Sections 743 and 745 will be relied upon instead of the HSAR implementation of 6 U.S.C. 395(b) for DHS contracts obligating funds available for FY 2008 and FY 2009, and for DHS contracts obligating future year funds, if the appropriations restriction is reenacted in the same form in subsequent fiscal years. DHS may not use any funds appropriated or otherwise made available FY 08 or FY 09 (or in a successor appropriation act, if the restriction is reenacted) for any Federal contract with a foreign incorporated entity, which is treated as an inverted domestic corporation under subsection (b) of Section 835 of the Homeland Security Act (6 U.S.C. 395(b)).

(c) When Section 743 or a subsequent successor appropriation act with the contracting prohibition is in effect and implemented by Federal Acquisition Regulation (FAR) 48 CFR 9.108, Prohibition on Contracting with Inverted Domestic Corporations and the provision at (FAR) 48 CFR 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations-Representation, the FAR prohibition and provision apply to DHS.

(d) In the event that successor legislation is not enacted, DHS will be bound by provisions of HSAR 3009.108-70, *et seq.* and HSAR Clause 3052.209-70 in effect on June 30, 2009.

3009.108-7002 Definitions. (RESERVED)

3009.108-7003 Special Rules. (RESERVED)

3009.108-7004 Waiver. (DEVIATION)

(a) The Secretary may waive the provisions of (FAR) 48 CFR 9.108-3 with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security. This waiver authority is not delegable.

(b) Contractors may submit waiver requests under (FAR) 48 CFR 9.108-4 to the CPO, through the contracting officials for the solicitation. A copy of the waiver request or the approved waiver shall be attached with the bid or proposal.

3009.108-7005 Clause. (DEVIATION)

(a) When Section 743 of Division D of Pub. L. 111-8, Section 743 of Division D of Pub. L. 110-161, or a subsequent appropriation act is in effect with the same contracting prohibition; insert the provision (FAR) 48 CFR 52.209-2.

(b) In the event that Section 743 of Division D of Pub. L. 111-8, Section 743 of Division D of Pub. L. 110-161, or successor legislation is no longer in effect with the contracting prohibition, insert the provision (HSAR) 48 CFR 3052.209-70, Prohibition on Contracts with Corporate Expatriates, in effect on June 30, 2009, in all solicitations and contracts.

Subpart 3009.170 Reserved.

PART 3052 Solicitations Provisions and Contract Clauses

Subpart 3052.209-70 (RESERVED)