

**PART 3009 CONTRACTOR QUALIFICATIONS**

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**Subpart 3009.1 Responsible Prospective Contractors****3009.104-70 Prohibition on contracts with inverted domestic corporations. (DEVIATION)****3009.104-71 General. (DEVIATION)**

(a) Except as provided (HSAR) 48 CFR 3009.104-74, 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 3009.104-70, *et seq.* and HSAR Clause 3052.209-70 in effect on June 30, 2009.

**3009.104-72 Definitions. (RESERVED)**

**3009.104-73 Special Rules. (RESERVED)**

**3009.104-74 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.

**3009.104-75 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.

**PART 3052 Solicitations Provisions and Contract Clauses**

**Subpart 3052.209-70 (RESERVED)**

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