

FEB 20 2014



Homeland
Security

MEMORANDUM FOR: Department of Homeland Security
Head of the Contracting Activities

FROM: Daniel L. Clever 
Deputy Chief Procurement Officer

SUBJECT: Federal Acquisition Regulation Class Deviation (Number 14-02) –
Prohibition Against Using Fiscal Year 2014 Funds to Contract
with Corporations that have a Felony Criminal Violation or an
Unpaid Federal Tax Liability

Purpose: This class deviation is issued in accordance with Federal Acquisition Regulation (FAR) 1.404 to implement provisions from Sections 561 and 562 of Division F, Title V of the Consolidated Appropriations Act, 2014, Public Law 113-76. The statute prohibits the Department of Homeland Security (DHS) from entering into a contract with any corporation that was convicted (or had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation or has any Federal tax liability. The only exception to these prohibitions is if the DHS Suspension and Debarment Official (SDO) has considered suspension and debarment of the corporation and made a determination that further action is not necessary to protect the interests of the Government.

Effective Date: Immediately.

Background: Sections 561 and 562 of Division F, Title V of the Consolidated Appropriations Act, 2014, Public Law 113-76, prohibit the use of any of the funds made available by the Act to enter into a contract with any corporation that:

- Was convicted (or had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal or State law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation, or such officer or agent, and made a determination that this further action is not necessary to protect the interests of the Government; or
- 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 the 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.

The Chair of the Civilian Agency Acquisition Council issued a memorandum dated November 21, 2013 (available at: <https://acquisition.gov/comp/caac/caacletters/CAAC%20letter%202014-01.pdf>), recommending that each affected agency, including DHS, issue a Class Deviation from the FAR to implement their fiscal year appropriations statute.

Guidance: Contracting officers shall include the attached provision 3052.209-79 in all solicitations that will use funds made available by the Consolidated Appropriations Act, 2014, Public Law 113-76, including solicitations for acquisition of commercial items under FAR Part 12.

- In accordance with sections 561 and 562 of Division F, Title V of the Consolidated Appropriations Act, 2014, Public Law 113-46, except as provided in the following paragraph of this memorandum, contracting officers shall not award a contract to any corporation that provides an affirmative response to the representation in the provision at 3052.209-79 at Attachment 1 of this memorandum, regarding a felony criminal violation under any Federal or State law within the preceding 24 months, or regarding any unpaid Federal tax liability that has been assessed.
- However, contracting officers may make an award despite these restrictions if the agency suspension and debarment official has considered suspension or debarment of the corporation and has made a written determination that this action is not necessary to protect the interests of the Government. Upon receipt of an affirmative response to the representation at 3052.209-79, contracting officers shall contact the Office of the Inspector General to request and create a referral in accordance with DHS Management Directive (MD) 146-01 and DHS Instruction Number 146-01-001.

Applicability: This class deviation is applicable to all new contracts, Blanket Purchase Agreements, Blanket Ordering Agreements, purchase orders, task orders and delivery orders that may use Fiscal Year 2014 funds.

Expiration Date: This class deviation will remain in effect until it is incorporated in the FAR or Homeland Security Acquisition Regulation or is otherwise rescinded.

Attachments: Attachment 1, solicitation provision “Representation by Corporations Regarding a Felony Criminal Violation under any Federal or State Law or Unpaid Federal Tax Liability”

Additional Information: The enterprise-wide PRISM instance will be updated by the OCPO-Acquisition Systems Branch to include the Attachment 1 provision. DHS Component contracting activities not utilizing the enterprise-wide PRISM instance should coordinate with appropriate personnel to update their contract writing systems with the Attachment 1 provision.

Questions or comments about this class deviation may be directed to Linda Stivaletti-Petty at (202) 447-5639, or by email at Linda.Stivaletti-Petty@hq.dhs.gov.

3052.209-79 Representation by Corporations Regarding a Felony Criminal Violation under any Federal or State Law or Unpaid Federal Tax Liability.

As prescribed in DHS FAR Class Deviation Number 14-02, insert the following provision:

REPRESENTATION BY CORPORATIONS REGARDING A FELONY CRIMINAL VIOLATION UNDER ANY FEDERAL OR STATE LAW OR UNPAID FEDERAL TAX LIABILITY (FEB 2014) (DHS FAR CLASS DEVIATION 14-02)

(a) In accordance with sections 561 and 562 of Division F, Title V of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76), none of the funds made available by that Act may be used to enter into a contract with any corporation that:

- (1) Was convicted (or had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal or State law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation, or such officer or agency, and made a determination that this further action is not necessary to protect the interests of the Government.
- (2) 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 the 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.

(b) The Offeror represents that:

- (1) It is ☐ is not ☐ a corporation that was convicted (or had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal or State law within the preceding 24 months.
- (2) It is ☐ is not ☐ a 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.

(c) If the offeror represents in (b) above that it is a corporation that was convicted (or had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal or State law within the preceding 24 months, or that it is a corporation that has unpaid Federal tax liability that has been assessed, the offeror shall provide all information related to the felony or tax liability within 3 business days of the Government's request.

(End of provision)