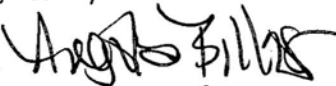




MAR 27 2012

ATTACHMENT D

TO: Heads of Contracting Activity

FROM: Angela Billups, Ph.D.   
Associate Deputy Assistant Secretary for Acquisition  
Senior Procurement Executive

SUBJECT: Class Deviation – Prohibition Against Contracting with Corporations with a  
Felony Criminal Conviction Under Federal or State Law or an Unpaid Federal Tax Liability

Purpose: Approve Class Deviation to implement the provisions from Sections 738 and 739 of Public Law 112-55 for the United States Department of Agriculture, and Related Agencies (FDA) and Sections 433 and 434 of Public Law 112-74, for the Departments of Labor, Health and Human Services, and Education and the Department of Interior and Related Agencies (IHS) which restrict using Fiscal Year 2012 appropriated funds to contract with corporations who have: 1) been convicted of a felony criminal violation within the preceding 24 months or 2) have an unpaid Federal tax liability.

Guidance: Although FDA and IHS are the only HHS agencies covered by these Appropriations Acts, as a matter of policy, all HHS Contracting Officers shall include the attached Alternate provision in all solicitations that will use FY 2012 funds, including solicitations for acquisition of commercial items under FAR Part 12. The Contracting Officer shall use this Alternate provision as an addition to the provisions at FAR 52.209-5 and 52.212-3, subject to the following guidance:

Except as provided in the following paragraph of this memorandum, IHS and FDA Contracting Officers shall not award a contract to any corporation that provides an affirmative response to any representation in the Alternate provision (Attachment 1) provided in this deviation, with regard to: 1) 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; or 2) with regard to conviction of a felony criminal violation of Federal or State law within preceding 24 months.

However, IHS and FDA Contracting Officers may make an award despite these restrictions if the agency debaring and suspending 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, contracting officers shall promptly alert the agency debaring and suspending official through their Head of Contracting Activity. The HHS debaring and suspending official is the Deputy Assistant Secretary for Grants and Acquisition Policy and Accountability.

In addition, for all other HHS Contracting Officers, in the event that an offeror is unable to provide a negative certification under (a)(1) or (a)(2) of the clause, the cognizant contracting officer shall refer the matter to the HHS Suspension and Debarment official for action prior to award.

Effective Date: Immediately. This deviation is approved for immediate use and shall remain in effect until the FAR or HHSAR is amended to include a similar provision or this deviation is otherwise rescinded.

Civilian Agency Acquisition (CAAC) Consultation: The attached CAAC Letter 2012-02 (Attachment 2) meets the requirements of FAR 1.404 for a CAAC consultation for class deviations.

If you have any questions regarding this class deviation please contact Cheryl Howe, at 202-690-5552 or [cheryl.howe@hhs.gov](mailto:cheryl.howe@hhs.gov)

Attachments

cc: FAR Secretariat

ALTERNATE - REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW

The Consolidated Appropriations Act, 2012 Pub. L 112-74 and the Consolidated and Further Continuing Appropriations Act, Pub. L 112-55 prohibit covered agencies from using funds to enter into contracts with corporations with have unpaid federal tax delinquencies or certain felony convictions unless certain conditions are met.

(a) The Offeror represents that –

- (1) It is  is not  a corporation that was convicted of a felony criminal violation under a 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.

(End of provision)



GSA Office of Governmentwide  
Acquisition Policy

CIVILIAN AGENCY ACQUISITION LETTER 2012-02

January 27, 2012

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM: LAURA AULETTA /s/  
CHAIR  
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR) to  
Implement Appropriations Provisions Related to Suspension and  
Debarment

The Consolidated Appropriations Act, 2012 (Pub. L. 112-74), and the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-55), prohibit covered agencies from using funds to enter into a contract with a corporation that has unpaid federal tax delinquencies or certain felony convictions unless the corporation has been considered for suspension or debarment and the agency determines that further action is unnecessary to protect the interests of the government. The prohibition applies to many, but not all, federal agencies.

Covered agencies are encouraged to approve a class deviation from the Federal Acquisition Regulation (FAR) to implement their appropriations statute. Each agency is cautioned to work closely with its Office of General Counsel and its Suspending and Debarring Official as the statutory requirements vary by agency. The Department of Defense has approved a class deviation, which is available at [http://www.acq.osd.mil/dpap/dars/class\\_deviations.html](http://www.acq.osd.mil/dpap/dars/class_deviations.html).

This letter constitutes the consultation with the Chair of the CAAC required for a class deviation by FAR section 1.404(a)(1). Agencies are reminded that FAR section 1.404 requires agencies to furnish a copy of each approved class deviation to the FAR Secretariat, General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417 or by FAX: (202) 501-4067.

If you have questions or require additional information regarding this memorandum, please contact Patricia Corrigan at (202) 208-1963, or by email at [patricia.corrigan@gsa.gov](mailto:patricia.corrigan@gsa.gov).

U.S. General Services Administration  
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