



APR 02 2012

MEMORANDUM FOR ALL GSA CONTRACTING ACTIVITIES

FROM: JOSEPH A. NEURAUTER   
SENIOR PROCUREMENT EXECUTIVE (MV)

SUBJECT: Federal Acquisition Regulation (FAR) Class Deviation –  
Prohibition Against Contracting with Corporations that have an  
Unpaid Federal Tax Liability or a Felony Conviction Under  
Federal Law

1. Purpose.

- (a) This Acquisition Letter provides guidance on prohibitions established by the Consolidated Appropriations Act, 2012 (Act) (Pub. L. 112-74). These prohibitions affect the ability of GSA, when using funds made available by the Act in Fiscal Year (FY) 2012, to contract with corporations that have an unpaid Federal tax liability or have a felony conviction under Federal law. Non-compliance with the Act could result in a misappropriation of funds.
- (b) The Civilian Agency Acquisition Council (CAAC) has recommended that each affected agency, including GSA, issue a Class Deviation to the FAR (see CAAC Letter 2012-02, dated January 27, 2012)<sup>1</sup>. The Deviations require a representation by the contractor on each affected contract action.

2. Applicability.

- (a) The prohibitions apply to contract actions covered by the Act, including GSA actions (Division C), and those of certain customer agencies (Divisions A, B, E and H) utilizing a GSA contract to meet their needs. The Act does not affect every agency. The Federal Acquisition Service (FAS) has created a website at <http://www.gsa.gov/portal/content/128467>, which currently contains Class Deviations from other agencies. The site will be updated as more Deviations are received. Acquisition teams should check with their customer agencies to determine if the Act is applicable to customer funds.

<sup>1</sup> CAAC Letter 2012-02 can be found at <https://www.acquisition.gov/comp/caac/caacletters.html>.

(b) The prohibitions apply only to the prime contractor, and only to corporations.

(c) The prohibitions do not apply to:

(i) Non-appropriated funds in the Administrative Services Fund (ASF).

(ii) Funds in the Federal Building Fund which are not derived from the Act for FY 2012.

(iii) Micro-purchases as defined by Federal Acquisition Regulation (FAR) 2.101.

3. Instructions for Obtaining a Contractor Representation. Procedures differ depending on whether the contract is GSA-funded or customer agency-funded. The guiding principle of this Acquisition Letter is to “follow the money.”

(a) Base awards of Multiple Award Schedule (MAS) contracts, Governmentwide Acquisition Contracts (GWACs), and Blanket Purchase Agreements (BPAs): No contractor representations are required at this level.

(b) Base awards of GSA Indefinite Delivery/Indefinite Quantity (IDIQ) contracts (either Requirements type, or Minimum/Maximum type): No contractor representations are required at this level.

(c) GSA Orders and Bilateral Modifications under 3(a) and 3(b), when covered by the Act: Insert the attached “Representation by Corporations Regarding an Unpaid Delinquent Federal Tax Liability or a Felony Conviction under Any Federal Law (DEVIATION) (APR 2012)” in GSA-funded actions on each Order. In addition, obtain an updated representation on each bilateral modification authorizing a change in scope (see FAR Part 6.3, “Other than Full and Open Competition”).

(d) GSA Stand-Alone contracts covered by the Act:

(i) Existing Contracts. Insert the attached GSA representation when executing bilateral modifications authorizing a change in scope.

(ii) New Contracts. Place the attached GSA representation in new solicitations/contracts. In addition, obtain an updated representation when executing bilateral modifications authorizing a change in scope.

(e) The GSA representation is not applicable to unilateral modifications (including the exercise of Options).

(f) Customer Agency actions covered by the Act:

- (i) Customer agencies covered by the Act and placing orders under MAS contracts and GWACs will have an agency-unique representation and will insert it in affected actions.
- (ii) Customer agencies covered by the Act and utilizing GSA's assisted acquisitions procedure will have an agency-unique representation. Customer agencies providing GSA with an Interagency Agreement (IAA) for assisted acquisitions should ensure that this requirement is addressed in the IAA itself, and provide the necessary representation form to the GSA Contracting Officer (CO). The GSA CO must require the contractor to complete the representation and must insert it in the contract action.
- (iii) Customer agencies covered by the Act and providing the Public Buildings Service (PBS) with a Reimbursable Work Authorization (RWA) will have an agency-Unique representation. Customer agencies providing an RWA as the single source of funding for the action should ensure that this requirement is addressed in the RWA itself and provide the necessary representation form to the GSA CO. The GSA CO must require the contractor to complete the representation and must insert it in the contract action.

(g) PBS Leasehold Interests:

- (i) Insert the attached representation in new lease procurements conducted competitively or awarded under a Justification for Other than Full and Open competition, with the exception of lease extensions. This would include New, New/Replacing, Succeeding and Superseding Leases. Do not add the representation to existing leases.
- (ii) The attached representation is not applicable to Supplemental Lease Agreements (including renewal options, lease extensions, lease expansions, alterations and overtime utilities).

4. Instructions for contractor representations that disclose an unpaid Federal tax liability or a felony conviction under Federal law.

- (a) Except as provided in paragraph 4(b), below, the Contracting Officer shall not make an award to any corporation that provides an affirmative response or refuses to complete "Representation by Corporations Regarding an Unpaid Delinquent Federal Tax Liability or a Felony Conviction under Any Federal Law (DEVIATION) (APR 2012)," or the necessary representation of any other customer agency.

- (b) Upon receipt of an affirmative response to a representation (or a refusal to complete it), Contracting Officers shall consult with the Agency Suspension and Debarment Official (SDO) and the Office of General Counsel. COs may make an award despite the prohibitions if the Agency SDO has considered suspension or debarment of the corporation and has determined that such actions are not necessary in order to protect the government's interests.
- (c) The SDO may also consult with the SDOs of other Federal agencies in making such a decision, with respect to suspension and debarment. Furthermore, suspension and debarment by another agency, or consideration of suspension and debarment (with a determination that award may be made), may be treated with reciprocity for efficiency and convenience.

5. Further Information.

- (a) Specific details on the nature of the prohibitions regarding Federal tax liabilities and felony convictions under Federal law, can be found in the attached GSA Class Deviation. The Deviation explains at what point a tax liability becomes reportable, or the period covered when reporting a Federal felony conviction.
- (b) FAS and PBS Guidance. FAS and PBS may issue Service-unique guidance on the enforcement of the Act, contained within a FAS Instructional Letter (IL) or PBS Procurement Instructional Bulletin (PIB).

6. Effective Date. This Class Deviation is effective upon signature and remains in effect until incorporated into the FAR or GSAM, or is otherwise rescinded.

7. Points of Contact. Please contact Ms. Deborah Eble of the General Services Acquisition Policy Division at (215) 446-5823, or at [deborah.eble@gsa.gov](mailto:deborah.eble@gsa.gov) for acquisition policy issues. You may also contact Ms. Maria Swaby of the Suspension and Debarment Division, at (202) 208-0291, or at [maria.swaby@gsa.gov](mailto:maria.swaby@gsa.gov), for suspension and debarment issues.

Attachment

**GSA Class Deviation – Prohibition Against Contracting with Corporations that have an Unpaid Delinquent Federal Tax Liability or a Felony Conviction Under Federal Law**

As required by this Acquisition Letter, insert the following representation:

**552.203-72** Representation by Corporations Regarding an Unpaid Delinquent Federal Tax Liability or a Felony Conviction under any Federal Law (DEVIATION) (APR 2012)

(a) In accordance with Sections 630 and 631 of Division of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), none of the funds made available by that Act may be used to enter into a contract action 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 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, or

(2) 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 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 action is not necessary to protect the interests of the Government.

(b) The Contractor represents that---

(1) 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.

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

(End of Provision)