



U.S. Department of Justice
Justice Management Division

FEB 24 2012

Washington, D.C. 20530

MEMORANDUM FOR BUREAU PROCUREMENT CHIEFS

FROM: Michael H. Allen *MHA*
Senior Procurement Executive

SUBJECT: DOJ Procurement Guidance Document (PGD) 12-11
Class Deviation Related to Restrictions on Use of FY 2012 Funds

I. Introduction

Effective immediately, when using funds appropriated by the Department's fiscal year 2012 (FY 2012) appropriations act (Title II, Division B, Pub. Law 112-55), contracting officers (COs) shall not enter into a contract, memorandum of understanding, or cooperative agreement with a corporation –

- (1) convicted of a felony criminal violation under *any* Federal law within the preceding 24 months of award or issuance, or
- (2) with *any* unpaid Federal tax liability for which all judicial and administrative remedies have been exhausted or lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability,

unless the Department has considered debarment and suspension of the corporation and made a determination that such action is not necessary to protect the interests of the Government.¹

¹ The specific provisions of the statute are as follows:

SEC. 543. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that was convicted of a felony criminal violation under any Federal law within the preceding 24 months, unless an 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.

SEC. 544. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any 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, unless an 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.

II. Procedures to Ensure Compliance

A. Securing Contractor Representations

To ensure that the Department complies with these provisions, when procuring goods or services for which funds from FY 2012 appropriations will be used, COs are directed to follow the procedures described in this memorandum.

1. **Procurement for Which the CO Issues a Written Solicitation.** When issuing a written solicitation to acquire goods and/or services, COs shall include in the solicitation the provision in Attachment 1. COs shall also include in the subsequent awarding or ordering document (*e.g.*, SF 33, SF 26, SF 1442, SF 1449, and OF 347) the clause in Attachment 2.

2. **Procurement for Which the CO Does Not Issue a Written Solicitation.** When acquiring goods or services for which a written solicitation is not issued (*e.g.*, a review of catalogs or pricelists resulting in the placement of a task or delivery order against a General Services Administration (GSA) Federal Supply Schedule (FSS) contract or an order under an indefinite delivery vehicle (IDV), an open market order, the exercise of an option, or a modification to a contract or order adding new work), COs shall include in the awarding or ordering document the clause in Attachment 2.

B. Process for Handling Responses

If an offeror or contractor responds affirmatively to the provision in Attachment 1, or notifies the CO that it is unable to affirm the representation in Attachment 2, the CO may make an award to, or place an order with, the corporation *only* if the Department's Suspending and Debarring Official (SDO), has considered suspension and debarment of the corporation and made a written determination that suspension or debarment is not necessary to protect the interests of the Government. Therefore, upon receipt of an affirmative response to Attachment 1 or notice that the corporation is unable to affirm the representation in Attachment 2, COs shall consult with the SDO after bringing the matter to the attention to the contracting activity's Procurement Chief and/or individual responsible for initiating suspension and debarment within the contracting activity, including the activity's legal counsel.

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(continued)

This class deviation and policy are effective immediately, and all existing solicitations and prospective awards or orders to be funded with FY 2012 appropriations shall include the representation set forth in the applicable attachment(s). This policy does not apply to purchase card transactions.

If you have any questions about this PGD, contact Cleopatra Allen, Assistant Director, Procurement Policy and Review Group, 202-616-3758 or Barry Hansen, Attorney Advisor, Office of General Counsel, 202-514-3452.

Attachments

1. Representation Provision (Written Solicitation)
2. Representation Provision (Award or Order)
3. Civilian Acquisition Letter 2012-2, January 27, 2012
4. Class Deviation Findings and Determination, February 14, 2012

Representation Regarding Felony Conviction Under Any Federal law or Unpaid Delinquent Tax Liability (Deviation 2012-02) (January 2012)

(a) In accordance with sections 543 and 544 of Title V, Division B of the Further Continuing Appropriations Act, 2012 (Pub. L. 112-55), none of the funds made available by that Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with a corporation—

(1) convicted of a felony criminal violation of any Federal law within the preceding 24 months, unless an agency has considered suspension and debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government, or

(2) with 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,

unless an agency has considered suspension and 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, as of the date of this offer—

(1) the offeror is is not a corporation convicted of a felony criminal violation under any Federal law within the preceding 24 months;

(2) the offeror 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)

Representation Regarding Felony Conviction Under Any Federal law or Unpaid Delinquent Tax Liability (Deviation 2012-02) (January 2012)

(a) In accordance with sections 543 and 544 of Title V, Division B of the Further Continuing Appropriations Act, 2012 (Pub. L. 112-55), none of the funds made available by that Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with a corporation—

(1) convicted of a felony criminal violation of any Federal law within the preceding 24 months, unless an agency has considered suspension and debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government, or

(2) with an 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,

unless an agency has considered suspension and debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

(b) *By accepting this award or order, in writing or by performance*, the offeror/contractor represents that—

- (1) the offeror/contractor is not a corporation convicted of a felony criminal violation under any Federal law within the preceding 24 months; and
- (2) the offeror/contractor 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)



CIVILIAN AGENCY ACQUISITION LETTER 2012-02

January 27, 2012

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM:

for 
LAURA AULETTA
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 Debarment 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.

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. 0

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.

Class Deviation Findings and Determination
Certifications and Representations
FAR 52.209-5


Findings

Public Law 112-55, Consolidated and Further Continuing Appropriations Act, 2012 (Appropriations Act) requires that none of the funds made available by the Department of Justice's (Department's) fiscal year 2012 appropriation (FY 2012) shall be used to enter into a contract, memorandum of understanding, or cooperative agreement with, or make a grant or provide a loan or loan guarantee to, any corporation that was convicted of a felony criminal violation under any Federal law within the preceding 24 months 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, unless an 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.

Civilian Agency Acquisition Council (CAAC) Letter 2012-2 (Letter), dated January 27, 2012, encourages civilian agencies to approve a class deviation in order to implement the restrictions contained in Public Law 112-55. The CAAC Letter itself constitutes the agency's consultation with the Chair of the CAAC otherwise required for a class deviation by Federal Acquisition Regulation (FAR) 1.404(a)(1). The CAAC Letter also notes that the Department of Defense has approved a similar class deviation, which is available at http://www.acq.osd/mil/dpap/dars/class_deviations.html. This deviation and Procurement Guidance Document (PGD) 12-11 requiring contracting officers to place a provision in all written solicitations and to insert a clause in all contract awards and orders using FY 2012 funds shall implement the restrictions on contracting contained in the Department's 2012 Appropriations Act.

Determination

In accordance with FAR 1.404 and Justice Acquisition Regulation 2801.404, I hereby determine that a class deviation from FAR 52.209-5 is appropriate until such time as a new FAR clause is issued, which is expected to contain a clause(s) to implement the restrictions on contracting contained in the Department's 2012 Appropriations Act.



Lee J. Lofthus
Assistant Attorney General
For Administration

2-14-2014

Date