



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

JAN 23 2012

In reply refer to
DARS Tracking Number: 2012-O0004

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION AND PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation– Prohibition Against Contracting With Corporations That Have An
Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law

Effective immediately, none of the funds made available by Division A of the
Consolidated Appropriations Act, 2012 (Pub. L. 112-74) may be used to enter into a contract
with any corporation which –

- 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 action is not necessary to protect the interests of the Government; or
- Was 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 and made a determination that this action is not necessary to protect the interests of the Government.

Contracting officers shall include the attached provision 252.209-7999 in all solicitations that will use funds made available by Division A of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), including solicitations for acquisition of commercial items under FAR part 12, and shall apply the following restrictions:

In accordance with sections 8124 and 8125 of Division A of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), except as provided in the following paragraph of this memorandum, the contracting officer shall not award a contract to any corporation that provides an affirmative response to the representation in the provision at 252.209-7999 at Attachment 1 of this deviation, with regard to 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 with regard to conviction of a felony criminal violation of Federal law within the preceding 24 months.

However, contracting officers may make an award despite these restrictions if the agency debarring 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 consult with the agency debarring and suspending official.

This class deviation is effective upon signature, and remains in effect until incorporated in the FAR or DFARS or otherwise rescinded. My point of contact is Ms. Amy Williams, who may be reached at 703-602-0328, or amy.williams@osd.mil.



Richard Ginman
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

Deviation 2012-00004

Class Deviation— Prohibition Against Contracting With Corporations That Have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law

252.209-7999 Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law.

REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW
(DEVIATION 2012-00004) (JAN 2012)

(a) In accordance with sections 8124 and 8125 of Division A 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 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.

(2) Was 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 and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror 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 of a felony criminal violation under a Federal law within the preceding 24 months.

(End of provision)