

Date: 9/27/2012

From: Director, Procurement Policy and Warrant Management Service (003A2A)

Class Deviation, Federal Acquisition Regulation (FAR) 52.209-5, Certification Regarding
Subj: Responsibility Matters

Associate Deputy Assistant Secretary for Procurement Policy, Systems, and Oversight
To: (003A2) and Deputy Senior Procurement Executive

1. **Purpose:** This class deviation establishes a deviation from the FAR to comply with sections 8124 and 8125 of the Consolidated Appropriations Act, 2012 (P.L. 112-74) and Sections 738 and 739 of the Consolidated and Further Continuing Appropriations Act, 2012 (P.L. 112-55). P.L. 112-74 and P.L. 112-55 prohibit covered agencies from using appropriated funds to enter into a contract, with a corporation that has a felony criminal violation under Federal or State law within the preceding 24 months or has an unpaid Federal tax liability, unless suspension or debarment has been considered and a determination has been made that such action is not necessary to protect the interests of the Government.
2. **FAR Section Impacted:** 52.209-5
3. **Effective Date:** October 22, 2012
4. **Expiration Date:** When cancelled or rescinded
5. **Background:** Division H, sections 8124 and 8125 of P. L. 112-74 and sections 738 and 739 of P.L. 112-55 contain the following provisions:

PL 112-74

SEC. 8124. 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 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.

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SEC. 8125. 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, 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 further action is not necessary to protect the interests of the Government.

PL 112-55

SEC. 738. 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 (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.

SEC. 739. 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 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.

Current FAR Policy: FAR 52.209-5, Certification Regarding Responsibility Matters, currently requires offerors to make representations related only to delinquent Federal taxes in an amount that exceeds \$3,000 within the past three years or an identified set of felony convictions within the past three years.

Need for Deviation: A deviation is required to comply with the appropriation provisions of Division H, sections 8124 and 8125 of P.L. 112-74 and sections 738 and 739 of P.L. 112-55.

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New Policy: VA Contracting Officers (COs) shall not use appropriated funds to enter into a contract, with a corporation that has a felony criminal violation of Federal or State law within the preceding 24 months or has an unpaid federal tax liability, unless suspension or debarment has been considered and the Suspension and Debarment Official has determined that additional action is not necessary to protect the interests of the Government.

Required Action: VA COs shall include the attached provision in all solicitations that will use appropriated funds.

In addition, VA COs that receive information indicating the existence of an unpaid Federal tax liability or existence of a felony criminal violation under Federal or State law within the preceding 24 months shall consult with the agency debarment and suspending official. No award shall be made or agreement entered into unless the suspension and debarment official makes a determination in writing that further action is not necessary to protect the interests of the government.

6. Attachment:

- VA Class Deviation from FAR 52.209-5, Certifications Regarding Responsibility Matters

7. Additional Information: Questions or concerns about this class deviation may be directed to Ms. Eyvonne Mallett, Senior Procurement Analyst, at (202) 461-5101.

/s/Sheila P. Darrell
for Marilyn Harris

Attachment

Approved/~~Disapproved~~

/s/C. Ford Heard III
ADAS for Procurement, Policy,
Systems and Oversight

9/28/12
Date

**Class Deviation from Federal Acquisition Regulation Provision
52.209-5 Certification Regarding Responsibility Matters (APR 2010)**

Class Deviation:

Contracting officers (CO) shall include the following provision in all solicitations that will use funds made available by Division H, sections 8124 and 8125 of P.L. 112-74 and sections 738 and 739 of P.L. 112-55, including solicitations for acquisition of commercial items under FAR Part 12.

**REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID TAX LIABILITY
OR A FELONY CONVICTION UNDER ANY FEDERAL LAW (DEVIATION) (MARCH 2012)**

(a) In accordance with Division H, sections 8124 and 8125 of P.L. 112-74 and sections 738 and 739 of P.L. 112-55 none of the funds made available by either Act may be used to enter into a contract with any corporation that—

(1) Has an unpaid federal tax liability, unless the agency has considered suspension or debarment of the corporation and the Suspension and Debarment Official has made a determination that this action is not necessary to protect the interests of the Government.

(2) Has a felony criminal violation under any Federal or State law within the preceding 24 months, unless the agency has considered suspension or debarment of the corporation and Suspension and Debarment Official has made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that—

(1) The offeror does does not have any unpaid Federal tax liability that has been assessed and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(2) The offeror, its officers or agents acting on its behalf have have not been convicted of a felony criminal violation under a Federal or State law within the preceding 24 months.

(End of provision)