



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

07 FEB 2013

MEMORANDUM FOR DISTRIBUTION

Subject: Class Deviation – Prohibition Against Using Fiscal Year 2013 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law

The attached Director, Defense Procurement and Acquisition Policy (DPAP) memorandum dated January 22, 2013, provides a class deviation for immediate implementation.

The prohibition applies to the use of any Fiscal Year 2013 funds made available by the Continuing Appropriations Resolution, 2013 (Public Law 112-175) using:

-Department of Defense general appropriations, when entering into a contract with any corporation that has any unpaid Federal tax liability 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 further action is not necessary to protect the interests of the Government.

-Military Construction (MILCON) funds, when entering into a contract with 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.

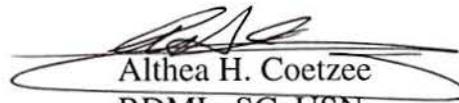
DPAP directed the use of one of two new provisions, as applicable, in all solicitations that will use funds made available by the Continuing Appropriations Resolution, 2013 (Public Law 112-175), including solicitations for the acquisition of commercial items. Contracting Officers shall not award a contract to any corporation that provides an affirmative response to the representation in either of the two provisions unless specified actions are taken by the agency debarring and suspension official.

Activities should advise all contracting personnel of this class deviation and the prohibitions contained in the Continuing Appropriations Resolution, 2013 (Public Law 112-175).

Subject: Class Deviation – Prohibition Against Using Fiscal Year 2013 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law

The class deviation remains in effect until incorporated into the FAR or DFARS or otherwise rescinded.

My point of contact is Molli Thacker who may be reached at 703-693-2936 or marlene.thacker@navy.mil.


Althea H. Coetzee
RDML, SC, USN
Executive Director
DASN (AP)

Attachment: As stated

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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JAN 22 2013

In reply refer to
DARS Tracking Number: 2013-O0006

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 Using Fiscal Year 2013 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law

Effective immediately, funds made available by the Continuing Appropriations Resolution, 2013 (Public Law 112-175) may not be used to enter into a contract with any corporation which—

- For general appropriations for the Department of Defense—
 - 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
 - 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.

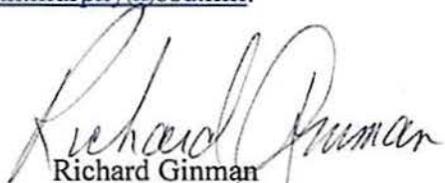
- For military construction funds, was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

Contracting officers shall include one of the attached provisions in all solicitations that will use funds made available by the Continuing Appropriations Resolution, 2013 (Pub. L. 112-175), including solicitations for the acquisition of commercial items under FAR part 12, and shall apply the following restrictions:

- The contracting officer shall not award a contract to any corporation that provides an affirmative response to the representation in the provision at 252.209-7997 (Attachment 1) regarding 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.
- The contracting officer shall not award a contract to any corporation that provides an affirmative response to the representation in the provision at 252.209-7996 (Attachment 2) regarding 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 debaring and suspending official has considered suspension or debarment of the corporation and has made a written determination that this further 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 debaring 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 Meredith Murphy, who may be reached at 571-372-6098, or meredith.murphy@osd.mil.


Richard Ginman
Director, Defense Procurement
and Acquisition Policy

Attachments:
As stated

Deviation 2013-00006

Class Deviation-Prohibition Against Using Fiscal Year 2013 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law

252.209-7997 Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law-DoD Appropriations.

REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW-DoD APPROPRIATIONS (DEVIATION 2013-00006) (DATE)

(a) In accordance with section 101(a)(3) of the Continuing Appropriations Resolution, 2013, (Pub. L. 112-175) none of the funds made available by that Act for general appropriations for DoD 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)

Deviation 2013-00006

Class Deviation-Prohibition Against Using Fiscal Year 2013 Funds to Contract with Corporations that have a Felony Conviction under Federal Law

252.209-7996 Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law-DoD Military Construction Appropriations.

REPRESENTATION BY CORPORATIONS REGARDING A FELONY CONVICTION UNDER ANY FEDERAL LAW-DoD MILITARY CONSTRUCTION APPROPRIATIONS (DEVIATION 2013-00006) (DATE)

(a) In accordance with section 101(a)(10) of the Continuing Appropriations Resolution, 2013, (Pub. L. 112-175) none of the funds made available by that Act for military construction may be used to enter into a contract with 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 action is not necessary to protect the interests of the Government.

(b) The Offeror represents that 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)