



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

OCT 29 2015

In reply refer to
DARS Tracking Number: 2016-O0003

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 on Contracting with Entities that Require Certain
Internal Confidentiality Agreements

Effective immediately, none of the funds appropriated (or otherwise made available) by the Continuing Appropriations Act, 2016 (Pub. L. 114-53) or any other Act that extends to FY 2016 funds the same prohibitions as contained in section 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, may be made available for a contract with an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

When using funds made available by the Continuing Appropriations Act, 2016 (Pub. L. 114-53) or any other Act that extends to FY 2016 funds the same prohibitions as contained in section 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, contracting officers shall—

- Include the attached provision at 252.203-7996, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements—Representation (DEVIATION 2016-O0003)(OCT 2015), in all solicitations, including solicitations for the acquisition of commercial items under FAR part 12;
- Include the attached clause at 252.203-7997, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements (DEVIATION 2016-O0003)(OCT 2015), in all solicitations and contracts, including solicitations and contracts for the acquisition of commercial items under FAR part 12; and
- Modify existing contracts awarded on or after October 1, 2015, to the maximum extent practicable, to include the attached clause at 252.203-7997.

This class deviation remains in effect until incorporated in the FAR or otherwise rescinded. My point of contact is Ms. Sandra Ross, who may be reached at 703-695-9774, or Sandra.k.ross28.civ@mail.mil.



Claire M. Grady
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

**252.203-7996 Prohibition on Contracting with Entities that Require
Certain Internal Confidentiality Agreements—Representation.**

Include the following provision in all solicitations, including solicitations for the acquisition of commercial items under FAR part 12, that will use funds made available by the Continuing Appropriations Act, 2016 (Pub. L. 114-53) or any other FY 2016 appropriations act that extends to FY 2016 funds the same prohibitions as contained in section 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235).

**PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN
INTERNAL CONFIDENTIALITY AGREEMENTS—REPRESENTATION
(DEVIATION 2016-00003)(OCT 2015)**

(a) In accordance with section 101(a) of the Continuing Appropriations Act, 2016 (Pub. L. 114-53) and any subsequent FY 2016 appropriations act that extends to FY 2016 funds the same restrictions as are contained in section 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), none of the funds appropriated (or otherwise made available) by this or any other Act may be used for a contract with an entity that requires employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The prohibition in paragraph (a) of this provision does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(c) *Representation.* By submission of its offer, the Offeror represents that it does not require employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(End of provision)

252.203-7997 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements.

Include the following clause in all solicitations and contracts, including solicitations and contracts for the acquisition of commercial items under FAR part 12, that will use funds made available by the Continuing Appropriations Act, 2016 (Pub. L. 114-53) or any other FY 2016 appropriations act that extends to FY 2016 funds the same prohibitions as contained in section 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235).

**PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE
CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS
(DEVIATION 2016-00003)(OCT 2015)**

(a) The Contractor shall not require employees or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The Contractor shall notify employees that the prohibitions and restrictions of any internal confidentiality agreements covered by this clause are no longer in effect.

(c) The prohibition in paragraph (a) of this clause does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(d)(1) Use of funds appropriated (or otherwise made available) by the Continuing Appropriations Act, 2016 (Pub. L. 114-53) or any other FY 2016 appropriations act that extends to FY 2016 funds the same prohibitions as contained in sections 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) may be prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(2) The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(End of clause)