



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

OCT 19 2015

In reply refer to
DARS Tracking Number: 2016-00002

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 2016 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 Act, 2016 (Pub. L. 114-53) or any other Act that extends to FY 2016 funds the same prohibitions as contained in sections 744 and 745 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, may not be used to enter into a contract with any corporation that—

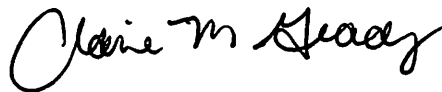
- Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding 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.

Contracting officers shall include the attached provision in all solicitations, including solicitations for the acquisition of commercial items under FAR part 12, when using funds made

available for regular appropriations for DoD or for military construction by the Continuing Appropriations Act, 2016 (Pub. L. 114-53) or any other Act that contains the same prohibitions as sections 744 and 745 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015.

In addition, contracting officers shall not award a contract to any corporation that provides an affirmative response to either of the representations in the provision at 252.209-7991 (Attachment) regarding any unpaid Federal tax liability or a conviction of a felony criminal violation of Federal law within the preceding 24 months, unless the agency debarring 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 debarring and suspending official.

This class deviation is effective upon signature, and 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

Class Deviation—Prohibition Against Using Fiscal Year 2016 Funds to Contract with Corporations that Have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law

252.209-7991 Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law—Fiscal Year 2016 Appropriations.

Include the attached 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 sections 744 and 745 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235),

**REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW—FISCAL YEAR 2016 APPROPRIATIONS
(DEVIATION 2016-00002) (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 sections 744 and 745 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), none of the funds made available by this or any other 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; or

(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,

**Class Deviation—Prohibition Against Using Fiscal Year 2016 Funds to Contract with Corporations
that Have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law**

(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)