



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

In reply refer to
DARS Tracking Number: 2020-O0005

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
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
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DEFENSE FIELD ACTIVITIES

SUBJECT: Class Deviation—Prohibition on Contracting with Persons that have Business Operations with the Maduro Regime

Effective immediately, contracting officers shall include the attached provision 252.225-7974, Representation Regarding Persons that have Business Operations with the Maduro Regime, in all solicitations, including solicitations using Federal Acquisition Regulation part 12 procedures for the acquisition of commercial items, except for contracts that are—

- Jointly determined by the Secretary of Defense and Secretary of State to be—
 - Necessary for purposes of—
 - Providing humanitarian assistance to the people of Venezuela;
 - Disaster relief and other urgent lifesaving measures; or
 - Carrying out noncombatant evacuations; or
 - Vital to the national security interests of the United States; or
- Related to the operation and maintenance of the United States Government's consular offices and diplomatic posts in Venezuela.

This class deviation implements section 890 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116-92). Section 890 prohibits entering into a contract for the procurement of products or services with any person that has business operations

with an authority of the government of Venezuela that is not recognized as the legitimate government of Venezuela by the United States Government, unless an exception applies.

Contracting officers shall notify Contract Policy, Defense Pricing and Contracting, via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil, upon entering into a contract on the basis of an exception. The notification shall include a copy of the joint determination made by the Secretary of Defense and the Secretary of State. A copy of the joint determination shall be included in the contract file.

This class deviation remains in effect until it is incorporated in the Defense Federal Acquisition Regulation Supplement, or is otherwise rescinded. My point of contact is Mr. Jeff Grover, who is available at 703-697-9352 or jeffrey.c.grover.civ@mail.mil.

Kim Herrington
Acting Principal Director,
Defense Pricing and Contracting

Attachment:
As stated

Prohibition on Contracting with Persons that have Business Operations with the Maduro Regime

252.225-7974 Representation Regarding Business Operations with the Maduro Regime. (Deviation 2020-O0005)

Use the following provision in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, unless the solicitation is—

(a) Jointly determined by the Secretary of Defense and the Secretary of State to be—

(1) Necessary for purposes of—

(i) Providing humanitarian assistance to the people of Venezuela;

(ii) Disaster relief and other urgent lifesaving measures; or

(iii) Carrying out noncombatant evacuations; or

(2) Vital to the national security interests of the United States; or

(b) Related to the operation and maintenance of the United States Government's consular offices and diplomatic posts in Venezuela.

REPRESENTATION REGARDING BUSINESS OPERATIONS WITH THE MADURO REGIME (DEVIATION 2020-O0005) (FEB 2020)

(a) *Definitions.* As used in this provision—

“Agency or instrumentality of the government of Venezuela” means an agency or instrumentality of a foreign state as defined in section 28 U.S.C. 1603(b), with each reference in such section to “a foreign state” deemed to be a reference to “Venezuela.”

“Business operations” means engaging in commerce in any form, including acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

“Government of Venezuela” means the government of any political subdivision of Venezuela, and any agency or instrumentality of the government of Venezuela.

“Person” means—

(1) A natural person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group;

Prohibition on Contracting with Persons that have Business Operations with the Maduro Regime

(2) Any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3)); and

(3) Any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in paragraphs (1) or (2) of this definition.

(b) *Prohibition.* In accordance with section 890 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), contracting officers are prohibited from entering into a contract for the procurement of products or services with any person that has business operations with an authority of the government of Venezuela that is not recognized as the legitimate government of Venezuela by the United States Government, unless the person has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

(c) *Representation.* By submission of its offer, the Offeror represents that the Offeror—

(1) Does not have any business operations with an authority of the Maduro regime or the government of Venezuela that is not recognized as the legitimate government of Venezuela by the United States Government; or

(2) Has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

(End of provision)

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