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

MAR 30 2012

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Class Deviation – Prohibition Against Contracting With Corporations That Have a Felony Conviction under Federal or State Law

By the attached memorandum dated March 9, 2012, the Director of Defense Procurement and Acquisition Policy (DPAP) issued a class deviation to prohibit the use of any funds made available by section 514 of Division H of the Consolidated Appropriations Act for Fiscal Year 2012 (Pub. L.112-74) to enter into a contract with certain corporations. The prohibition applies to any corporation that has been 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 and made a determination that this further action is not necessary to protect the interests of the Government. DPAP directed the use of a new provision, and specific language addressing the restrictions, in all solicitations that will use funds made available by section 514 of Division H, including solicitations for acquisition of commercial items. An exception to the restrictions is authorized based on specified actions by the agency debarring and suspension official.

The class deviation is effective immediately and remains in effect until incorporated into the FAR or DFARS or otherwise rescinded. Accordingly, I am requesting that you advise contracting personnel under your cognizance of this class deviation and the prohibitions contained in section 514 of Division H of the Act.

My point of contact for this matter is Mr. Clarence Belton. He can be reached at clarence.belton@navy.mil or (703) 693-4006.

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

Attachment:
As stated

Distribution
See next page

SUBJECT: Class Deviation – Prohibition Against Contracting With Corporations That Have a Felony Conviction under Federal or State Law

Distribution:
CMC (LB)
MARCORSYSCOM (CT)
MSC (N10)
NAVAIRSYSCOM (2.0)
NAVFACENGCOM (ACQ)
NAVSEASYSCOM (02)
NAVSUPSYSCOM (02)
ONR (02)
SPAWARSYSCOM (2.0)
DIRSSP (SPN)

Copy to:
AGC(RD&A)

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

MAR - 9 2012

In reply refer to
DARS Tracking Number: 2012-O0007

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 Contracting With Corporations That Have a Felony Conviction under Federal or State Law

Effective immediately, none of the funds made available by section 514 of Division H of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74) may be used to enter into a contract with any corporation that was 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 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 252.209-7998 in all solicitations that will use funds made available by Division H of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), including solicitations for acquisition of commercial items under FAR part 12, and shall apply the following restrictions:

In accordance with section 514 of Division H of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), except as provided in the following paragraph of this memorandum, the contracting officer shall not award a contract to any corporation that provides an affirmative response to the representation in the provision at 252.209-7998 (attached) with regard to any felony criminal violation of Federal or State law within the preceding 24 months.

However, contracting officers may make an award despite these restrictions if 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 DFARS or otherwise rescinded. My point of contact is Amy Williams, who may be reached at 703-602-0328, or amy.williams@osd.mil.

Richard Ginman
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

Deviation 2012-O0007
Class Deviation-Additional Responsibility Matters When Using Fiscal Year 2012 Funds.

**252.209-7998 Representation Regarding Conviction of a Felony Criminal Violation under any Federal or State Law.**

REPRESENTATION REGARDING CONVICTION OF A FELONY CRIMINAL VIOLATION UNDER ANY FEDERAL OR STATE LAW (DEVIATION 2012-O0007) (MAR 2012)

(a) In accordance with section 514 of Division H of the Consolidated Appropriations Act, 2012, none of the funds made available by that Act may be used to enter into a contract with any corporation that was 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 and made a determination that this further 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 or State law within the preceding 24 months.

(End of provision)



Attachment 1