



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

1 8 APR 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 April 8, 2013, provides a class deviation for immediate implementation.

This prohibition applies to the use of any Fiscal Year 2013 funds made available by the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113-6). DPAP has directed the use of a new provision, as applicable, in all solicitations that will use funds made available by Public Law 113-6, including solicitations for the acquisition of commercial items. Additional guidance is contained in the attached memorandum.

Class Deviation 2013-O0006, dated January 22, 2013, forwarded by DASN (AP) memorandum dated February 7, 2013, remains in effect for funds appropriated by the Continuing Appropriations Resolution, 2013 (Public Law 112-175).

Activities should advise all contracting personnel of this class deviation and the prohibitions contained in the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113-6). The class deviation remains in effect until incorporated into the FAR or DFARS or otherwise rescinded.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

Distribution: Page 2

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

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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

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WASHINGTON, DC 20301-3000

APR - 8 2013

In reply refer to
DARS Tracking Number: 2013-O0010

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 Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113-6) 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.

These prohibitions apply to all Fiscal Year 2013 DoD funds appropriated by Pub. L. 113-6, including those for military construction. Class Deviation 2013-O0006, dated January 22, 2013, remains in effect for funds appropriated by the Continuing Appropriations Resolution,

2013 (Pub. L. 112-175), which made appropriations for Fiscal Year 2013 through March 27, 2013.

Contracting officers shall include the attached provision in all solicitations that will use funds made available by the Consolidated and Further Continuing Appropriations Act, 2013 (Pub. L. 113-6), 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 either of the representations in the provision at 252.209-7995 (Attachment) regarding any unpaid Federal tax liability or a 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 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 Meredith Murphy, who may be reached at 571-372-6098, or meredith.murphy@osd.mil.


Richard Ginman
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

Deviation 2013-00010

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

252.209-7995 Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law-Fiscal Year 2013 Appropriations.

REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW-FISCAL YEAR 2013 APPROPRIATIONS (DEVIATION 2013-00010) (April 2013)

(a) In accordance with sections 8112 and 8113 of Division C and sections 514 and 515 of Division E of the Consolidated and Further Continuing Appropriations Act, 2013, (Pub. L. 113-6), none of the funds made available by that Act for DoD (including Military Construction funds) 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,

(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)