



CIVILIAN AGENCY ACQUISITION COUNCIL LETTER 2014-01

November 21, 2013

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM: WILLIAM CLARK
ACTING CHAIR
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR) to Implement Appropriations Provisions Related to Suspension and Debarment and Tax Delinquencies

The Consolidated Appropriations Act, 2012 (Pub. L. 112-74), and the Consolidated Further Continuing Appropriations Act, 2012 (Pub. L. 112-55), prohibited covered agencies from using funds to enter into a contract with a corporation that has unpaid federal tax delinquencies or certain felony convictions unless the corporation has been considered for suspension or debarment and the agency determines that further action is unnecessary to protect the interests of the government. The prohibitions applied to many, but not all, federal agencies.

The prohibitions continued to be effective under the Continuing Appropriations Resolution, 2013. (Pub.L. 112-175, September 28, 2012, 126 Stat. 1313). On March 26, 2013, Congress enacted the Consolidated and Further Continuing Appropriations Act, 2013, which for many of the agencies contained similar or identical prohibitions to the Fiscal Year (FY) 2012 prohibitions concerning agreements with corporations with tax liabilities or criminal convictions. (Pub.L. 113-6, March 26, 2013, 127 Stat. 198).

The provisions are found in Sections 732 and 733 of division A, Sections 540 and 541 of division B, Sections 8112 and 8113 of division C, and Sections 514 and 515 of division E of the Consolidated and Further Continuing Appropriations Act, 2013. *Id.* However, the Consolidated and Further Continuing Appropriations Act, 2013 referred some agencies back to the conditions and authority provided by the FY 2012 Acts. *Id.*

Section 101 of the Continuing Appropriations Act, 2014 states that funds are available with the same authority and conditions as stated in the FY 2013 Acts, unless specifically stated otherwise therein. (Pub.L. 113-46, October 17, 2013, 127 Stat. 558). The Continuing Appropriations Act, 2014 did not provide otherwise for the above referenced prohibitions. Therefore, the FY 2013 prohibitions continue through FY 2014. If the FY 2013 Acts did not expressly include the prohibitions for an agency, but the FY 2012 Acts contained the prohibitions, then the FY 2012 prohibitions would continue through FY 2014 for that agency.

Under Civilian Agency Acquisition Council Letter 2012-02, dated January 27, 2012, covered agencies were encouraged to approve a class deviation from the FAR to implement their Fiscal Year appropriations statute. Some agencies issued "open-ended" deviations, i.e., the prohibitions would apply until further notice, covering similar prohibitions in subsequent appropriations acts.

Other deviations cited, and were limited to, a specific fiscal year appropriations act. If your agency's class deviation cited a specific fiscal year appropriations act, you are encouraged to approve a class deviation from the FAR to implement the prohibitions in the Continuing Appropriations Act, 2014. We would encourage you to use an open-ended deviation.

Unless necessary, we do not plan to issue further notifications on this matter. Therefore, each agency is cautioned to work closely with its Office of General Counsel and its Suspending and Debaring Official regarding the above referenced prohibitions provided by future appropriations and the need for class deviations.

This letter constitutes the consultation with the Chair of the CAAC required for a class deviation by FAR section 1.404(a)(1). Agencies are reminded that FAR section 1.404 requires agencies to furnish a copy of each approved class deviation to the FAR Secretariat, General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1800 F Street, NW, Washington, DC 20405 or by FAX: (202) 501-4067.

If you have questions or require additional information regarding this memorandum, please contact Patricia Corrigan at (202) 208-1963, or by email at patricia.corrigan@gsa.gov.