



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

FEB 12 2014

In reply refer to
DARS Tracking Number: 2014-O0008

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 on Contracting with the Enemy

Effective immediately, contracting officers shall comply with the policy in this class deviation and incorporate the clause at Attachment 1 in solicitations and contracts awarded on or before December 31, 2018, with an estimated value in excess of \$50,000, that are being, or will be, performed in the U.S. Central Command (USCENTCOM), United States European Command (USEUCOM), United States Africa Command (USAFRICOM), United States Southern Command (USSOUTHCOM), or United States Pacific Command (USPACOM) theaters of operations. In addition, to the maximum extent practicable, existing contracts being performed in these theaters of operations shall be modified bilaterally, in accordance with FAR 1.108, to include the clause.

Contracting officers shall incorporate the clause at Attachment 2 in all solicitations and contracts awarded prior to December 31, 2014 that are to be performed in USCENTCOM.

This class deviation implements section 831 of the National Defense Authorization Act (NDAA) for FY 2014 (Public Law 113-66) and carries forward any applicable requirements of sections 841 and 842 of the NDAA for FY 2012 (Pub. L. 112-81), previously implemented under Class Deviations 2012-O0005 and 2013-O0020, which are superseded by this class deviation.

Section 831 requires USCENTCOM, USEUCOM, USAFRICOM, USSOUTHCOM, and USPACOM Commanders to identify persons or entities who are actively opposing United States or Coalition forces involved in a contingency operation in which members of the armed forces are actively engaged in hostilities. The combatant commanders may, in consultation with the Under Secretary of Defense for Policy, the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the appropriate Chief of Mission, notify the appropriate heads of

contracting activities (HCA), in writing, of such identification and request the HCA exercise the authority provided in this deviation.

Upon receipt of such notification, the HCA, without power of redelegation, will exercise this authority to determine in writing, whether to—

(1) Prohibit, limit, or otherwise place restrictions on the award of any DoD contracts to such identified persons or entities;

(2) Terminate for default any DoD contracts when the HCA determined that the contractor failed to exercise due diligence to ensure that none of the funds received under the contract are provided directly or indirectly to such identified person or entity; or

(3) Void, in whole or in part, any DoD contract that provided funds to such identified person or entity.


Upon the termination or voiding of a contract, the contracting officer shall treat such action as a default for purposes of reporting in the Federal Awardee Performance and Integrity Information System (FAPIIS) (see FAR 42.1503(f)(iii)).

The Special Inspector General for Afghanistan Reconstruction (SIGAR) recommendations in its April 2013 report (Audit 13-6) are implemented as follows:

- Senior Procurement Executives (SPEs) shall develop a standard process for distributing the combatant commander's section 841/section 831 notification memoranda to the HCAs and, in turn, have their HCAs develop similar mechanisms for providing section 841/section 831 notifications to prime contractors performing in their respective theater of operations.
- Prior to award of contracts that will be performed in the covered combatant commands (CENTCOM, EUCOM, SOUTHCOM, AFRICOM, and PACOM), and that will be awarded on or before December 31, 2018, contracting officers shall check the "NDAA FY2012 Section 841/FY2014 Section 831 Identified Entities" list posted on the DPAP website at <http://www.acq.osd.mil/dpap/pacc/cc/policy.html> and ensure that they do not award contracts to a person or entity on this list.
- Contracting officers shall also periodically check the DPAP website to ensure that none of the existing contracts being performed in the covered combatant commands is associated with persons or entities on the "NDAA FY2012 Section 841/FY2014 Section 831 Identified Entities" list posted at <http://www.acq.osd.mil/dpap/pacc/cc/policy.html>.
- Each HCA shall enforce inclusion of the attached clause 252.225-7993 (Attachment 1) in all contracts awarded in support of the covered combatant commands operations.

- Each covered combatant command shall track and provide, at a minimum, the following data to osd.pentagon.ousd-atl.mbx.contingency-contracting@mail.mil not later than January 15th of 2015, 2016, 2017, 2018, and 2019:
 1. Data requirements for section 841 (NDAA for FY 2012) and section 831 (NDAA for FY 2014) – all covered combatant commands:
 - The number of instances in which this authority was exercised to restrict, terminate, or void contracts, grants and cooperative agreements. Each such instance should include the contracting activity, contract number, contract value, requirement description, and contractor/subcontractor name at a minimum;
 - The basis for the actions taken for each instance;
 - A summary of the results of actions taken for each instance; and
 - The Commander’s notification letters to HCAs.
 2. Data requirements for section 842 (NDAA for FY 2012) - USCENTCOM only:
 - The number of instances in which this authority was exercised to examine contractor/subcontractor’s records. Each such instance should include the contracting activity, contract number, contract value, requirement description, and contractor/subcontractor name, at a minimum;
 - The basis for the action taken for each instance;
 - A summary of the results of any examination of records so undertaken for each instance; and
 - The Commander’s notification letters to HCAs.
- The DPAP memorandum, Reporting Requirements in Sections 841 and 842 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Public Law 112-81), dated May 14, 2012, is rescinded.

This class deviation remains in effect until incorporated in the DFARS or otherwise rescinded. My point of contact is Ms. Kyoung Lee, who may be reached at 571-256-2947, or at kyoung.w.lee.civ@mail.mil.


Richard Ginman
Director, Defense Procurement
and Acquisition Policy

Attachments:
As stated

252.225-7993 Prohibition on Contracting with the Enemy (DEVIATION 2014-O0008)

Incorporate the following clause in solicitations and contracts awarded on or before December 31, 2018, with an estimated value in excess of \$50,000, that are being, or will be, performed in the U.S. Central Command (USCENTCOM), United States European Command (USEUCOM), United States Africa Command (USAFRICOM), United States Southern Command (USSOUTHCOM), or United States Pacific Command (USPACOM) theaters of operations.

**PROHIBITION ON CONTRACTING WITH THE ENEMY
(DEVIATION2014-O0008)(FEB 2014)**

(a) The Contractor shall exercise due diligence to ensure that none of the funds received under this contract are provided directly or indirectly to a person or entity who is actively opposing United States or Coalition forces involved in a contingency operation in which members of the armed forces are actively engaged in hostilities.

(b) The Contractor shall exercise due diligence to ensure that none of their subcontracts are associated with a person or entities listed in “NDAA FY2012 Section 841/FY2014 Section 831 Identified Entities” list posted at <http://www.acq.osd.mil/dpap/pacc/cc/policy.html>.

(c) The Head of the Contracting Activity (HCA) has the authority to—

(1) Terminate this contract for default, in whole or in part, if the HCA determines in writing that the contractor failed to exercise due diligence as required by paragraph (a) and (b) of this clause; or

(2) Void this contract, in whole or in part, if the HCA determines in writing that any funds received under this contract have been provided directly or indirectly to a person or entity who is actively opposing or Coalition forces involved in a contingency operation in which members of the armed forces are actively engaged in hostilities.

(d) The substance of this clause, including this paragraph (d), is required to be included in subcontracts under this contract that have an estimated value over \$50,000.

(End of clause)

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**252.225-7994 Additional Access to Contractor and Subcontractor Records
in the United States Central Command Theater of Operations (DEVIATION
2014-O0008)**

Include the following clause in all solicitations and contracts awarded prior to December 31, 2014, valued at more than \$100,000, that are to be performed in USCENTCOM.

**ADDITIONAL ACCESS TO CONTRACTOR AND SUBCONTRACTOR RECORDS
IN THE UNITED STATES CENTRAL COMMAND THEATER OF OPERATIONS
(DEVIATION 2014-O0008)(FEB 2014)**

(a) In addition to any other existing examination-of-records authority, the Department of Defense is authorized to examine any records of the Contractor to the extent necessary to ensure that funds available under this Contract are not—

(1) Subject to extortion or corruption; or

(2) Provided, directly or indirectly, to persons or entities that are actively supporting an insurgency or otherwise actively opposing United States or coalition forces in a contingency operation.

(b) The substance of this clause, including this paragraph (b), is required to be included in subcontracts under this contract that have an estimated value over \$100,000.

(End of clause)