

Department of the Interior Acquisition, Assistance, and Asset Policy (DOI-AAAP)

Title	Class Deviation - Contractor Employee Confidentiality Agreements and the Reporting of Fraud, Waste, or Abuse
Reference Number	0021
Version Number	01
Function(s)	Acquisition
Author	Curit, Scott
Source of this Requirement	Civilian Agency Acquisition Council Letter 2015-02, Class Deviation from the Federal Acquisition Regulation (FAR) to Implement an Appropriations Provision Related to Internal Confidentiality Agreements and the Reporting of Fraud, Waste, or Abuse, February 27, 2015 CAAC Letter 2015-02
Regulatory and Statutory Reference	FAR 1.404; Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235)

Version Detail

This section is completed in the following situations: (1) policies issued with versions greater than 01 or (2) the initial use of the DOI-AAAP to convert previous DOI Acquisition Policy Releases (DIAPR), DOI Property Policy Releases (DIPPR), or DOI Guidance (DIG) Releases.

Version Number	Date	Author	Description of update

Purpose:

This policy issues a class deviation, in accordance with Federal Acquisition Regulation (FAR) 1.404, for contracting officers to insert the attached provision and clause in solicitations and contracts, to implement a section of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) pending the completion of rulemaking to amend the FAR.

Scope:

This policy is applicable to solicitations that will use Federal funds, including solicitations for the acquisition of commercial items under FAR Part 12, and in all resultant contracts or existing contracts when obligating Federal funds.

Effective date:

This policy is effective upon signature. This class deviation will remain in effect until the FAR is amended to provide for inclusion of a provision and contract clause in solicitations and contracts or is otherwise rescinded.

Background:

On December 16, 2014, the President signed into law the Consolidated and Further Continuing Appropriations Act of 2015 (Pub. L. 113-235). Section 743 of Division E, Title VII, of the Act prohibits the use of funds appropriated or otherwise made available by Division E or any other Act for a contract, grant, or cooperative agreement with an entity that requires employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting employees or subcontractors from lawfully reporting fraud, waste, or abuse to a designated investigative or law enforcement representatives of a Federal department or agency authorized to receive such information.

FAR case 2015-012, Contractor Employee Confidentiality and Nondisclosure Agreements, has been opened to implement section 743 of the Act. A class deviation from the FAR is needed to immediately implement section 743. Consultation with the Chair of the Civilian Agency Acquisition Council has been accomplished as required by FAR 1.404(a)(1).

Action:

Contracting officers shall insert the attached provision, 52.203-98, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements—Representation, in all solicitations that will use Federal funds, including solicitations for the acquisition of commercial items under FAR Part 12; and insert the attached clause, 52.203-99, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements, in all solicitations and contracts that will use Federal funds, including solicitations and contracts for the acquisition of commercial items under FAR Part 12, or when obligating Federal funds on existing contracts.

Attachments:

The following attachments apply to this policy:

- [Attachment 1 – Provision 52.203-98, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements—Representation \(DEVIATION 2015-02\)](#)
- [Attachment 2 – Clause 52.203-99 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements](#)

Approval Signature

The signature provided in the table below serves as the digital signature for this document. By replacing the Block 1 and 2 with a name and date, the Deputy Director, Office of Acquisition and Property Management approves the policy described in this document. (Use the following method to check signature authentication via revision history: on keyboard, press and hold Ctrl+Alt+Shift+G)

James McCaffery	3/23/2015
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Deputy Director, Office of Acquisition and Property Management	Date
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Attachment 1 – Provision

52.203-98, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements—Representation (DEVIATION 2015-02)

Insert the following provision in all solicitations that will use Federal funds, including solicitations for the acquisition of commercial items under FAR Part 12.

Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements—Representation (FEB 2015)

(a) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Resolution Appropriations Act, 2015 (Pub. L. 113-235), Government agencies are not permitted to use funds appropriated (or otherwise made available) under that or any other Act for contracts with an entity that requires employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such fraud, waste, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The prohibition in paragraph (a) of this provision does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(c) *Representation.* By submission of its offer, the Offeror represents that it does not require employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(End of provision)

Attachment 2 – Clause

52.203-99, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements (DEVIATION 2015-02)

Insert the following clause in all solicitations and contracts that will use Federal funds, including solicitations and contracts for the acquisition of commercial items under FAR Part 12, or when obligating Federal funds on existing contracts.

Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements (FEB 2015)

(a) The contractor shall not require employees or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such fraud, waste, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The contractor shall notify employees that the prohibition and restrictions of any internal confidentiality agreements covered by this clause are no longer in effect.

(c) The prohibition in paragraph (a) of this clause does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(d)(1) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Resolution Appropriations Act, 2015 (Pub. L. 113-235), use of funds appropriated (or otherwise made available) under that or any other Act may be prohibited, if the Government determines that the contractor is not in compliance with the provisions of this clause.

(2) The Government may seek any available remedies in the event the contractor fails to comply with the provisions of this clause.

(End of clause)