



MAR 27 2015

MEMORANDUM FOR CONTRACTING OFFICERS

FROM:


EDWARD C. HUGLER
Deputy Assistant Secretary for Operations

SUBJECT:

Class Deviation – Implementation of Appropriations Provision Related to Internal Confidentiality Agreements and the Reporting of Fraud, Waste, or Abuse

On December 16, 2014, the President signed into law the Consolidated and Further Continuing Appropriations Act, 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 its employees or subcontractors to sign internal confidentiality agreements or statements prohibiting or restricting them from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

Effective immediately, contracting officers shall include the attached provision and clause in all solicitations that will use Federal funds, including solicitations for the acquisition of commercial items under FAR part 12. Furthermore, the clause shall also be included in all resultant contracts or in existing contracts when obligating Federal funds.

This deviation remains in effect until it is incorporated into the FAR or is otherwise rescinded. Questions regarding this memorandum should be directed to Carl V. Campbell at (202) 693-7246 or Campbell.carl.v@dol.gov.

Attachments

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 item under FAR part 12.

PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS – REPRESENTATION (MARCH 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 waste, fraud, 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)

52.203-9 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 item under FAR part 12, or when obligating Federal funds on existing contracts.

PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS (MARCH 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 waste, fraud, 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 prohibitions 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)