



APR 24 2015

GSA Office of Governmentwide Policy

MEMORANDUM FOR ALL GSA CONTRACTING ACTIVITIES

FROM: JEFFREY A. KOSES *Jeffrey A. Koses*
SENIOR PROCUREMENT EXECUTIVE (MV)

SUBJECT: Class Deviation -- Internal Confidentiality Agreements and the Reporting of Fraud, Waste, or Abuse

1. What is the Purpose of this memorandum?

This memo implements Section 743 of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) for GSA contracting activities. Section 743 prohibits us from obligating funds to entities that require their employees (or subcontractors) to sign internal confidentiality agreements (or similar documents) that restrict them from lawfully reporting waste, fraud, or abuse.

2. What actions should I take?

- Include the attached provision and clause in all solicitations that will use Federal funds; and
- Include the clause in all resultant contracts or in existing contracts when obligating new Federal funds.

3. Do I incorporate the attached clause and provision into Federal Supply Schedule (FSS) contracts, Governmentwide Acquisition Contracts (GWACs), and other IDIQ contracts? Yes, a modification should be issued for all existing IDIQ contracts to include clause 52.203-99, including FSS and GWACs so that task orders issued against these contracts in the future are covered. In addition, an amendment should be issued for any existing solicitations to incorporate 52.203-98.

4. When is this policy effective? This policy is effective immediately. Continue to include the attached 52.203-98 and 52.203-99 deviations in all solicitations until the FAR has been updated to include these requirements.

5. References.

- a) CAAC 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, (<https://acquisition.gov/comp/caac/caacletters.html>)

6. Point of Contact. Any questions regarding this memo should be directed to Kevin Funk, Program Analyst, General Services Acquisition Policy Division at (215) 446-4860 or via email to kevin.funk@gsa.gov.

Attachments

- 52.203-98, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements—Representation (DEVIATION 2015-02)
- 52.203-99, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements (DEVIATION 2015-02)

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.

**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 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)

52.203-99, 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, or when obligating new 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 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)



FEB 27 2015

GSA Office of Governmentwide Policy

CAAC LETTER 2015-02

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM:

WILLIAM CLARK

CHAIR

CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT:

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

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 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 contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representatives of a Federal department or agency authorized to receive such information.

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; and,
- Include the clause in all resultant contracts or in existing contracts when obligating Federal funds.

FAR case 2015-012, Contractor Employee Confidentiality and Non-disclosure Agreements, has been opened and is being processed to implement section 743. Pending issuance of this rule, agencies may authorize a class deviation. This CAAC letter constitutes consultation with the Chair of the CAAC required by FAR 1.404(a)(1). Effective immediately, agencies may authorize a class deviation, in accordance with FAR 1.404. Agencies are reminded that FAR 1.404 requires agencies to furnish a copy

of each approved class deviation to the FAR Secretariat, General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW, 2nd Floor, Attn: Ms. Hada Flowers, Washington, DC 20405. Agencies may also email the deviation to Ms. Flowers at hada.flowers@gsa.gov or send by fax to (202) 501-4067.

If you have any questions or require additional information, please contact Ms. Cecelia L. Davis on (202) 219-0202 or at cecilia.davis@gsa.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 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 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)

52.203-99, 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 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)