



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

JAN 27 2012

MEMORANDUM FOR DISTRIBUTION

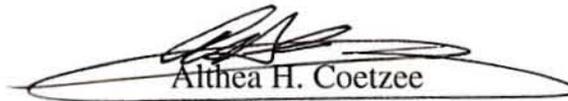
Subject: Class Deviation – Prohibition on Contracting with the Enemy and Access to Contractor and Subcontractor Records in the U.S. Central Command Theater of Operations

The attached Director, Defense Procurement and Acquisition Policy memorandum provides a class deviation and requires immediate implementation.

Effective immediately, contracting officers are to incorporate the attached two clauses in solicitations and contracts with an estimated value of more than \$100,000 that are being, or will be, performed in the U.S. Central Command theater of operations. This applies to all such contracts that will be awarded on or before December 31, 2014. Existing contracts shall be modified bilaterally, in accordance with FAR 1.108, to include the two clauses, when applicable.

Please note that this class deviation remains in effect until incorporated in the DFARS or otherwise rescinded.

My point of contact is Molli Thacker at marlene.thacker@navy.mil or 703-693-2939.


Althea H. Coetzee
RDML, SC, USN
Executive Director
DASN(AP)

Attachment: As stated

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Subject: Class Deviation – Prohibition on Contracting with the Enemy and Access to Contractor and Subcontractor Records in the U.S. Central Command Theater of Operations

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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JAN 26 2012

In reply refer to
DARS Tracking Number: 2012-O0005

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 and Access to
Contractor and Subcontractor Records in the U.S. Central Command Theater of
Operations

Effective immediately, contracting officers shall comply with the policy in this deviation and incorporate the attached clauses in solicitations and contracts with an estimated value of more than \$100,000 that are being, or will be, performed in the U.S. Central Command theater of operations.

This class deviation implements statutory provisions of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81) as follows:

- DFARS 252.225-7993, Prohibition on Contracting with the Enemy in the United States Central Command Theater of Operations (DEVIATION 2012-O0005)(JAN 2012).
- DFARS 252.225-7994, Additional Access to Contractor and Subcontractor Records in the United States Central Command Theater of Operations (DEVIATION 2012-O0005)(JAN 2012).

These requirements apply to all such contracts that will be awarded on or before December 31, 2014. In addition, to the maximum extent practicable, existing contracts being performed in the U.S. Central Command theater of operations shall be modified bilaterally, in accordance with FAR 1.108, to include the two clauses.

This class deviation implements sections 841 and 842 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA FY 2012)(Public Law 112-81).

Section 841 of the statute provides that the Commander of the U.S. Central Command (CENTCOM), without power of redelegation, authority to identify persons or entities who are actively supporting an insurgency or otherwise actively opposing U.S. or coalition forces in a contingency operation. The CENTCOM Commander may notify, in writing, the head of a contracting activity (HCA) of such identifications and request the HCA to exercise the authority provided in this deviation.

Upon receipt of such identifications and request, the HCA has the authority, without power of redelegation, to—

- (1) Restrict the award of contracts that the HCA determines in writing would provide funding, directly or indirectly, to such identified persons or entities;
- (2) Terminate for default any contracts when the HCA determines, in writing, 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 persons or entities; or
- (3) Void, in whole or in part, any contract that the HCA determines, in writing, provides funding, directly or indirectly, to such identified persons or entities.

Section 842 of the statute provides DoD with the legal authority to examine the records of the contractor, or any of its subcontractors. This additional examination of records authority is limited to the extent necessary to ensure that funds available under the 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.

This authority to examine records may be exercised only upon a written determination by the contracting officer, which is based on a finding by the CENTCOM Commander that there is reason to believe that funds available under the contract may have been subject to extortion or corruption or may have been 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.

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.Lee@osd.mil.


Richard Ginman
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

DARS Tracking Number 2012-00005
Class Deviation—Prohibition on Contracting with the Enemy in the U.S.
Central Command Theater of Operations

252.225-7993 Prohibition on Contracting with the Enemy in the United States
Central Command Theater of Operations

PROHIBITION ON CONTRACTING WITH THE ENEMY IN THE UNITED STATES CENTRAL COMMAND THEATER OF OPERATIONS (DEVIATION 2012-00005)(JAN 2012)

(a) The Contractor is required to 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 supporting an insurgency or otherwise actively opposing U.S. or coalition forces in a contingency operation.

(b) 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) 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 supporting an insurgency or otherwise actively opposing U.S. or coalition forces in a contingency operation.

(End of clause)

* * * * *

252.225-7994 Additional Access to Contractor and Subcontractor Records in the United States Central Command Theater of Operations

ADDITIONAL ACCESS TO CONTRACTOR AND SUBCONTRACTOR RECORDS IN THE UNITED STATES CENTRAL COMMAND THEATER OF OPERATIONS (DEVIATION 2012-00005)(JAN 2012)

(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—

DARS Tracking Number 2012-O0005
Class Deviation—Prohibition on Contracting with the Enemy in the U.S.
Central Command Theater of Operations

(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)