

Date: April 9, 2015

From: Associate Deputy Assistant Secretary for Procurement Policy, Systems, and Oversight (003A2) and Deputy Senior Procurement Executive

Subj: Class Deviation – Implement an Appropriations Provision Related to Internal Confidentiality Agreements and the Reporting of Fraud, Waste, or Abuse

To: Head of the Contracting Activities (HCAs)

1. **Purpose:** This deviation is being processed 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.

2. **FAR Parts Impacted:** FAR part 12, Acquisition of Commercial Items, contracts, grants, and cooperative agreements.

3. **Effective Date:** Immediately.

4. **Expiration Date:** Effective until incorporated in the FAR, VAAR, or is otherwise rescinded.

5. **Background:**

a. **Civilian Agency Acquisition Council (CAAC) Guidance:**

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 VIII, 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 contractors 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.

b. **Current Policy:** N/A

c. **Need for Deviation:**

Pending issuance of the final FAR rule, this deviation, in accordance with FAR 1.404, will include Provision 52.203-98, Prohibition on Contracting with Entities that

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Require Certain Internal Confidentiality Agreements-Representation and Clause 52.203-99, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements 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.

**d. New Policy:**

This deviation will authorize contracting officers to include 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 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 new and existing contracts.

**e. Applicability:**

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

**6. Attachment:**

Civilian Agency Acquisition 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.

**7. Additional Information:** Questions or comments regarding this class deviation may be directed to Procurement Policy Service, at (202) 632-5288 or [VA.Procurement.Policy@va.gov](mailto:VA.Procurement.Policy@va.gov).

/s/

C. Ford Heard III



## Attachment

### Class Deviation

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

##### **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 contractors 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)**

**PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS (FEB 2015)**

(a) The Contractor shall not require employees or contractors 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)