



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

Acquisition Bulletin No. 15-03  
March 18, 2015  
Deviation No. 2015-00003

**MEMORANDUM FOR BUREAU CHIEF PROCUREMENT OFFICERS**

*IRIS B. COOPER*

**FROM:** IRIS B. COOPER,  
SENIOR PROCUREMENT EXECUTIVE, OFFICE OF  
THE PROCUREMENT EXECUTIVE

**SUBJECT: Class Deviation—Implementation of an Appropriations Provision Related to Internal Confidentiality Agreements and the Reporting of Fraud, Waste, or Abuse.**

**Purpose:** This class deviation is issued in accordance with FAR 1.404 to implement provisions from Section 743 of Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113-235) and any other Act, which includes such prohibition.

**Effective Date:** Upon issuance

**Expiration Date:** Until superseded, incorporated in the FAR or DTAR or otherwise rescinded.

**Background:** Within Public Law 113-235, Section 743 prohibits the use of funds 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 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 (see below excerpt of Section 743).

“Sec. 743. (a) None of the funds appropriated or otherwise made available by this or any other Act may be available 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 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 limitation in subsection (a) shall 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.”



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The Chair of the Civilian Agency Acquisition Council (CAAC) issued a [memorandum](#) dated February 27, 2015 (i.e. CAAC Letter 2015-02 which is available at <https://acquisition.gov/comp/caac/caacletters.html>), recommending that each affected agency by this prohibition, including Treasury, issue a class deviation pending the issuance of this rule via incorporation into the FAR (reference FAR Case 2015-012). An important highlight of this appropriation prohibition is that it applies to both new and existing contracts whereas typically appropriation prohibitions apply only to new contacts (e.g. AB No. 15-02 which deals with Sections 744 and 745 of Public Law 113-235). The issuance of this memorandum constitutes the consultation with the CAAC Chair required by FAR 1.404(a)(1). Overall, the Senior Procurement Executive has determined that the issuance of this class deviation is authorized and necessary to implement the provisions of Section 743 of Public Law 113-235 and any other Act that includes such prohibition.

**Required Bureau Action:**

1. **Applicability.** This class deviation applies to any contract that will use Federal funds, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items. Federal funds as used herein covers all funds under the control of a Treasury organization.
2. **New Contracts.** Contracting officers shall—
  - Include the provision at 1052.203-98 (see Attachment A) in all solicitations that will use Federal funds, including solicitations for the acquisition of commercial items under FAR part 12; and
  - Include the clause at 1052.203-99 (see Continuation -Attachment A) in all solicitations and contracts that will use Federal funds, including solicitations and contracts for the acquisition of commercial items under FAR part 12.
3. **Contracts awarded before the effective date of this AB (i.e. existing contracts).**
  - a. **Existing contracts that are not Indefinite-Delivery contracts.** Contracting officers shall include the clause at 1052.203-99 (see Continuation -Attachment A) when obligating Federal funds, e.g. when exercising an option or modifying the contract to add Federal funds related to a change order, on existing contracts.
    - a.1 As a good business practice, OPE suggests BCPOs consider have contracting officers include information on this new requirement in the Government's notification of its intent to exercise the next option period. This type of advance communication could avoid potential delays, if this new requirement is not conveyed in a timely fashion prior to the exercise of the option.



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- b. Existing Indefinite-Delivery contracts and Agreements.** Existing Indefinite-Delivery contracts and Agreements (e.g. Blanket Purchase Agreement and Blanket Ordering Agreement) shall be modified to include the clause at 1052.203-99 (see Continuation - Attachment A) prior to issuance of the next order or call.
  - b.1** BCPOs shall develop a list of all existing Indefinite-Delivery contracts and Agreements and then make a determination as to whether or not additional orders or calls are anticipated to be placed against them. If the determination is yes, then the contracting officer shall execute the modification accordingly.
- 4. Contract actions against contracts or agreements intended for use by multiple agencies, including Federal Supply Schedule (FSS) contracts, Governmentwide acquisition contracts (GWAC), and a multi-agency contracts (MAC).** Contracting Officers shall—
  - a.** Determine whether or not the provision provided in Attachment A and the clause provided in Continuation -Attachment A have been included in the contract or agreement; and
  - b.** If not, follow the steps outlined in 2 above.
- 5. Bureau Chief Procurement Officers (BCPO) Responsibilities.** BCPOs shall
  - a.** Ensure dissemination of this AB to all impacted personnel and
  - b.** Update any related Bureau policies and procedures impacted by this AB.

**Additional Information:** My point of contact for this AB is Mr. Thomas O'Linn, who may be reached at [thomas.olinn@treasury.gov](mailto:thomas.olinn@treasury.gov) or [OfficeoftheProcurementExecutive@treasury.gov](mailto:OfficeoftheProcurementExecutive@treasury.gov).



**Attachment A –  
Acquisition Bulletin No. 15-03  
Class Deviation (Deviation No. 2015-00003)**

**52.203-98 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements—Representation. (DEVIATION 2015-00003)**

As prescribed in Treasury Acquisition Bulletin No. 15-03 - Class Deviation, 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 (MAR2015) (DEVIATION 2015-00003)**

(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)



**Continuation - Attachment A -  
Acquisition Bulletin No. 15-03  
Class Deviation (Deviation No. 2015-00003)**

**52.203-99 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements. (DEVIATION 2015-00003)**

As prescribed in Treasury Acquisition Bulletin No. 15-03 - Class Deviation, 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  
(MAR2015) (DEVIATION 2015-00003)**

(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)