

**FAR Case 2015-011  
Prohibition on Contracting with Corporations with Delinquent  
Taxes or a Felony Conviction  
Draft Interim Rule**

Baseline is FAC 2005-79  
Additions to the baseline are **[bolded and bracketed]**.  
Deletions from the baseline are ~~struck through~~.

*December 29, 2014*

**PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**

\* \* \* \* \*

**1.106 OMB Approval under the Paperwork Reduction Act**

\* \* \* \* \*

**FAR Segment            OMB Control Number**

\* \* \* \* \*

**[52.209-XX                    9000-0XXX**

**52.209-YY                    9000-0XXX]**

\* \* \* \* \*

**Part 4—ADMINISTRATIVE MATTERS**

\* \* \* \* \*

**SUBPART 4.12—REPRESENTATIONS AND CERTIFICATIONS**

\* \* \* \* \*

**4.1202 Solicitation provision and contract clause.**

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Except for commercial item solicitations issued under FAR part 12, insert in solicitations the provision at 52.204-8, Annual Representations and Certifications. The contracting officer shall check the applicable provisions at 52.204-8(c)(2). When the provision at 52.204-7, System for Award Management, is included in the solicitation, do not include the following representations and certifications:

\* \* \* \* \*

(a)\* \* \*

(7) 52.209-5, Certification Regarding Responsibility Matters.

**[(8) 52.209-XX, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.]**

***{Redesignate subsequent paragraphs (8) through (29) as (9) through (30), respectively.}***

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## **PART 9—CONTRACTOR QUALIFICATIONS**

\* \* \* \* \*

### **SUBPART 9.1—RESPONSIBLE PROSPECTIVE CONTRACTORS**

\* \* \* \* \*

#### **9.104 Standards.**

\* \* \* \* \*

**9.104-5 [Representation and] C[c]ertification[s] regarding responsibility matters.**

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(a) \* \* \*

[(b) The provision at [52.209-XX](#), Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law, implements sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) (and similar provisions in subsequent appropriations acts). When an offeror provides an affirmative response in paragraph (b)(1) or (2) of the provision at [52.209-XX](#) or paragraph (q)(2)(i) or (ii) of provision [52.212-3](#), the contracting officer shall—

(1) Promptly, upon receipt of offers, request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror's responsibility to the contracting officer (but see [9.405](#));

(2) Notify, in accordance with agency procedures (see [9.406-3\(a\)](#) and [9.407-3\(a\)](#)), the agency official responsible for initiating debarment or suspension action; and

(3) Not award to the corporation unless an agency suspending or debarring official has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

(c) If the provision at [52.209-YY](#), Certification Regarding Tax Matters, is applicable (see [9.104-7\(e\)](#)), then the contracting officer shall not award any contract in an amount greater than \$5,000,000, unless the offeror affirmatively certified in its offer, as required by paragraph (b)(1), (2), and (3) of the provision.]

(b[d]) Offerors who do not furnish the [representation or] certification[s] or such information as may be requested by the contracting officer shall be given an opportunity to remedy the deficiency. Failure to furnish the [representation or]

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certification[s] or such information may render the offeror nonresponsible.

\* \* \* \* \*

#### **9.104-7 Solicitation provisions and contract clauses.**

\* \* \* \* \*

[(d) The contracting officer shall insert the provision 52.209-XX, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law, in all solicitations.

(e) For agencies receiving funds from section 523 of Division B of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and similar provisions in subsequent appropriations acts, the contracting officer shall insert the provision 52.209-YY, Certification Regarding Tax Matters, in solicitations for which the resultant contract (including options) may have a value greater than \$5,000,000. Section 523 of the Appropriations Act, 2015 funds the following agencies: the Department of Commerce, the Department of Justice, the National Aeronautics and Space Administration, the Office of Science and Technology Policy, the National Science Foundation, the Commission on Civil Rights, the Equal Employment Opportunity Commission, the U.S. International Trade Commission, the Legal Services Corporation, the Marine Mammal Commission, the Office of the United States Trade Representative, and the State Justice Institute.]

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### **Part 12-ACQUISITION OF COMMERCIAL ITEMS**

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#### **Subpart 12.3-Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

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**12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

\* \* \* \* \*

**(d) *Other required provisions and clauses.***

\* \* \* \* \*

**[(4) Insert the provision at 52.209-YY, Certification Regarding Tax Matters, as prescribed at 9.104-7(e).**

**(5) [(4) Insert the provision at 52.222-56, Certification Regarding Trafficking in Persons Compliance Plan, in solicitations as prescribed at 22.1705(b).**

**[(6) [(5) Insert the clause at 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, as prescribed in 25.301-4.**

**[(7) [(6) Insert the clause at 52.232-40, Providing Accelerated Payments to Small Business Subcontractors, as prescribed in 32.009-2.**

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**PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION**

\* \* \* \* \*

**SUBPART 22.10—SERVICE CONTRACT LABOR STANDARDS**

\* \* \* \* \*

**22.1006 Solicitation provisions and contract clauses.<sup>1</sup>**

(a)(1) \* \* \*

(2) The contracting officer shall not insert the clause at [52.222-41](#) (or any of the associated Service Contract Act clauses as prescribed in this section for possible use when [52.222-41](#) applies) in the resultant contract if—

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<sup>1</sup> No changes will be required to this section, because the representations is now added to 52.204-8(c)(1) rather than (c)(2).

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(i) \* \* \*

(C) Either of the comparable certifications is checked as applicable in the provision at [52.204-8\(c\)\(2\)\(iii\)](#) or (iv) or [52.212-3\(k\)](#); and

\* \* \* \* \*

(e)(1) \* \* \*

(2) The contracting officer shall insert the clause at [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements—

(i) In solicitations that include the provision at [52.222-48](#), or the comparable provision is checked as applicable in the clause at [52.204-8\(c\)\(2\)\(iii\)](#) or [52.212-3\(k\)\(1\)](#); and

(ii) In resulting contracts in which the contracting officer has determined, in accordance with [22.1003-4\(c\)\(3\)](#), that the Service Contract Act does not apply.

\* \* \* \* \*

(4) The contracting officer shall insert the clause at [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements—

(i) In solicitations that include the provision at [52.222-52](#), or the comparable provision is checked as applicable in [52.204-8\(c\)\(2\)\(iv\)](#) or [52.212-3\(k\)\(2\)](#); and

\* \* \* \* \*

## **PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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\* \* \* \* \*

**SUBPART 52.2—TEXT OF PROVISIONS AND CLAUSES**

\* \* \* \* \*

**52.204-8 Annual Representations and Certifications**

As prescribed in 4.1202, insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS (~~DEC-2014~~[DATE])

\* \* \* \* \*

(b)(1) If the provision at 52.204-7, System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the provision at 52.204-7 is not included in this solicitation, and the offeror is currently registered in the System for Award Management (SAM), and has completed the Representations and Certifications section of SAM electronically, the offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The offeror shall indicate which option applies by checking one of the following boxes:

(i) Paragraph (d) applies.

(ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c)(1) The following representations or certifications in SAM are applicable to this solicitation as indicated:

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**[(vii) 52.209-XX, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This provision applies to all solicitations.]**

***{Redesignate existing paragraphs (vii) through (xxi) as paragraph ((viii) through (xxii), respectively}***

\* \* \* \* \*

**[52.209-XX, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law**

As prescribed in 9.104-7(d), insert the following provision:

**REPRESENTATION BY CORPORATIONS REGARDING DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW (DATE)**

**(a) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, the Government will not enter into a contract with any corporation that—**

**(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or**

**(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination**

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that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that—

(1) It is  is not  a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability,

(2) It is  is not  a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(End of provision)

#### 52.209-YY Certification Regarding Tax Matters

As prescribed in 9.104-7(e), insert the following provision:

#### CERTIFICATION REGARDING TAX MATTERS (DATE)

(a) This provision implements section 523 of Division B of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts.

(b) If the Offeror is proposing a total contract price that will exceed \$5,000,000 (including options), the Offeror shall certify that, to the best of its knowledge and belief, it—

(1) Has  filed all Federal tax returns required during the three years preceding the certification;

(2) Has not  been convicted of a criminal offense under the Internal Revenue Code of 1986; and

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(3) Has not [ ], more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

(End of provision)]

\* \* \* \* \*

### 52.212-3 Offeror Representations and Certifications—Commercial Items.

As prescribed in [12.301\(b\)\(2\)](#), insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (~~DEC~~  
2014[DATE])

An offeror shall complete only paragraph (b) of this provision if the offeror has completed the annual representations and certifications electronically via <http://www.acquisition.gov>. If an offeror has not completed the annual representations and certifications electronically at the System for Award Management (SAM) website, the offeror shall complete only paragraphs (c) through (p[q]) of this provision.

(a) *Definitions.* \* \* \*

(b)(1) *Annual Representations and Certifications.* Any changes provided by the offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications posted on the SAM website.

(2) The offeror has completed the annual representations and certifications electronically via the SAM website accessed through <http://www.acquisition.gov>. After reviewing the SAM database information, the offeror verifies by submission of this

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offer that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs \_\_\_\_\_.

*[Offeror to identify the applicable paragraphs at (c) through (p[q]) of this provision that the offeror has completed for the purposes of this solicitation only, if any.]*

*These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.*

*Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted electronically on SAM.]*

\* \* \* \* \*

**[(q) Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.**

**(1) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, The Government will not enter into a contract with any corporation that—**

**(i) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a**

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determination that suspension or debarment is not necessary to protect the interests of the Government; or

(ii) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(2) The Offeror represents that—

(i) It is  is not  a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability,

(ii) It is  is not  a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.]

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