



RESEARCH
AND ENGINEERING

ASSISTANT SECRETARY OF DEFENSE

3030 DEFENSE PENTAGON
WASHINGTON, DC 20301-3030

MAR 22 2013

MEMORANDUM FOR SECRETARY OF THE ARMY

ATTN: DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)

ATTN: DEPUTY ASSISTANT SECRETARY OF THE ARMY
(RESEARCH & TECHNOLOGY)

SECRETARY OF THE NAVY

ATTN: CHIEF OF NAVAL RESEARCH

SECRETARY OF THE AIR FORCE

ATTN: DEPUTY ASSISTANT SECRETARY OF THE AIR
FORCE (CONTRACTING)

ATTN: DEPUTY ASSISTANT SECRETARY OF THE AIR
FORCE (SCIENCE, TECHNOLOGY & ENGINEERING)

CHAIRMAN, JOINT CHIEFS OF STAFF

ATTN: COMMANDER, U.S. SPECIAL OPERATIONS
COMMAND

DIRECTORS OF THE DEFENSE AGENCIES

DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Restrictions on Grants and Cooperative Agreements

As summarized in Attachment 2 of this memorandum, three FY 2012 appropriations laws restrict award of grants and cooperative agreements to corporations with recent felony convictions or unpaid Federal tax liabilities. DoD Components must follow these laws in accordance with the guidance in Attachment 1. The guidance also provides an approach that DoD Components may tailor to implement the same or similar provisions if, as anticipated, they are included in subsequent appropriations acts. These provisions are relevant to DoD because many universities, university-affiliated research foundations, and other nonprofit entities to which DoD awards grants and agreements are corporations.

DoD Components must disseminate this guidance to all offices that make grant or cooperative agreement awards, including Technology Investment Agreements. They also must distribute it to offices with programs under which those awards are made. Please refer any questions about this matter to Dr. Mark Herbst (mark.herbst@osd.mil, 571-372-6547).

Alan R. Shaffer
Principal Deputy

Attachments: As stated

**FY 2012 Appropriations Provisions on Tax Delinquency and Felony
Convictions: Implementation for DoD Grants and Cooperative Agreements**

I. GUIDANCE

A. Scope. This guidance specifies actions DoD Components must take to implement provisions in three FY 2012 appropriations acts that make funds available directly to DoD (Attachment 2). As this guidance does not address related provisions in other FY 2012 appropriations acts, a DoD Component that obligates funds appropriated to another Federal agency should consult with that agency if it is unsure about requirements that apply to those funds.

B. Applicability. This guidance applies to:

1. DoD Component awards of grants and cooperative agreements, including Technology Investment Agreements (TIAs). This guidance uses the term “awarding offices” to refer to DoD Component organizations that make those awards.

2. Program funds transferred to other organizations for obligation with the expectation that the other organization may use transferred funds to make awards to non-Federal entities. This guidance uses the term “program offices” to refer to DoD Component organizations authorized to carry out such transfers.

C. Effective date. The requirements in this guidance are effective 30 days after the signature date of the cover memorandum.

D. Statutory restrictions. A DoD grants or agreements officer may award a grant or cooperative agreement, including a TIA, to a corporation using funding made available to DoD by the:

1. Department of Defense Appropriations Act, 2012, only in conformance with the requirements of sections 8124 and 8125 of that act (see Attachment 2).

2. Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2012, only in conformance with the requirements of section 514 of that act (see Attachment 2).

3. Energy and Water Development Appropriations Act, 2012, only in conformance with the requirements of sections 504 and 505 of that act (see Attachment 2).

E. Definition of “corporation”. “Corporation” means any entity, including any institution of higher education, other nonprofit organization, or for-profit entity that has filed articles of incorporation.

F. Procedures.

1. For any program under which awards to incorporated entities are possible, an awarding office must obtain the appropriate representation from each intended recipient prior to award (see Part II of this attachment). It is important to do this as early as possible in the award

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process, in case consultations with the DoD Component's suspension and debarment official (SDO) are required prior to award. For a program that has an application process, the awarding office must do this by including a statement in each program announcement under which it will receive applications after the effective date of this guidance, to require submission of the representation with each such application.

2. With one exception, if a grants or agreements officer receives a representation with an affirmative response from an entity—or if he or she has other knowledge of a felony conviction or tax delinquency that would make the entity ineligible to receive an award under the applicable appropriations act provisions—the grants or agreements officer may make an award to the entity only if he or she has a written notification from the DoD Component's suspending and debarring official (SDO) that the SDO considered suspension or debarment of the entity and determined that further action is not required to protect the Government's interests.* The one exception to this requirement is when the grants or agreements officer is certain that the entity is not incorporated.

3. For each program under which program officials receive applications for merit review and subsequently send the grants or agreements officers those recommended for funding, program officials should be advised to notify the grants or agreements officers as early as possible about any applications received without the required representations and deemed likely to be recommended for funding.

4. If a program office transfers to another organization FY 2012 appropriations made available to DoD by any of the three acts listed in section I.D of this guidance, and expects that the other organization may use the funds to make an award to a non-Federal entity, the program office must include a statement in the funding document to inform the agency about the restrictions listed in section I.D for those appropriations. In a funding document transferring appropriations to a non-DoD organization for obligation, the statement also must require that organization to refer to the DoD program office any case in which it is aware that a potential recipient entity has a felony conviction or tax delinquency that would make the entity ineligible under an applicable restriction listed in section I.D. The appropriations provisions in that case require that suspension or debarment be considered by the DoD Component's SDO, rather than by the SDO of the organization to which the funds were transferred.

5. Because it is currently anticipated that subsequent appropriations acts may include provisions that are identical or nearly identical to those shown in Attachment 2 for the FY 2012 appropriations acts, program and awarding offices should:

- a. Carefully review the provisions of subsequent appropriations acts, as well as continuing resolutions that make funds available for obligation; and
- b. Continue to follow the procedures specified in this guidance, with appropriate adjustments in wording of representations and assurances to reflect any differences in the applicable statutory wording, until this guidance is superseded by future guidance.

* If the funds that will be obligated are the appropriations of another Federal agency, refer the matter to that agency because its SDO will need to make the determination.

II. REPRESENTATIONS

A. Department of Defense Appropriations Act, 2012. Use the following representations if the funding to be obligated was made available to DoD by the Department of Defense Appropriations Act, 2012:

(1) The applicant represents that 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) The applicant represents that it is ___ is not ___ a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

NOTE: If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the agency suspension and debarment official (SDO) has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore should provide information about its tax liability or conviction to the agency's SDO as soon as it can do so, to facilitate completion of the required consideration before award decisions are made.

B. Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2012. Use the following representation if the funding to be obligated was made available to DoD by the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2012:

The applicant represents that it is ___ is not ___ a corporation that was convicted of a criminal violation under any Federal or State law within the preceding 24 months.

NOTE: If an applicant responds in the affirmative to the above representation, the applicant is ineligible to receive an award unless the agency suspension and debarment official (SDO) has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore should provide information about its conviction to the agency's SDO as soon as it can do so, to facilitate completion of the required consideration before award decisions are made.

C. Energy and Water Development Appropriations Act, 2012. Use the following representations if the funding to be obligated was made available to DoD by the Energy and Water Development Appropriations Act, 2012:

(1) The applicant represents that 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) The applicant represents that it is ___ is not ___ a corporation that was convicted (or had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal law within the preceding 24 months.

NOTE: If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the agency suspension and debarment official (SDO) has considered suspension or debarment and determined that further action is not required

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to protect the Government's interests. The applicant therefore should provide information about its tax liability or conviction to the agency's SDO as soon as it can do so, to facilitate completion of the required consideration before award decisions are made.

Attachment 2

FY 2012 APPROPRIATIONS ACT PROVISIONS ON TAX DELINQUENCY AND FELONY CONVICTIONS

STATUTE	TAX DELINQUENCY PROVISION	FELONY PROVISION
<p>Department of Defense Appropriations Act, 2012 Division A of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74)</p>	<p><i>SEC. 8124. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation 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 the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.</i></p>	<p><i>SEC. 8125. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that 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 the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.</i></p>
<p>Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2012 Division H of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74)</p>		<p><i>SEC. 514. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, or to make a grant to, any corporation that was convicted of a felony criminal violation under any Federal or State law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government</i></p>
<p>Energy and Water Development Appropriations Act, 2012 Division B of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74)</p>	<p><i>SEC. 505. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any 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, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.</i></p>	<p><i>SEC. 504. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to any corporation that was convicted (or had an officer or agent 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 the agency has considered suspension or debarment of the corporation, or such officer or agent, and made a determination that this further action is not necessary to protect the interests of the Government.</i></p>