



GSA Federal Acquisition Service

April 4 , 2012

**FAS INSTRUCTIONAL LETTER 2012-07**

## MEMORANDUM FOR ALL FAS and VA ACQUISITION ACTIVITIES

FROM: HOUSTON W. TAYLOR   
ASSISTANT COMMISSIONER  
OFFICE OF ACQUISITION MANAGEMENT (QV)

SUBJECT: Prohibition Against Contracting with Corporations that  
have an Unpaid Federal Tax Liability or a Felony  
Conviction Under Federal Law

1. **Purpose:** The purpose of this Instructional Letter (IL) is to provide guidance on prohibitions established by the [Consolidated Appropriations Act, 2012](#) (Public Law 112-74). These prohibitions affect FAS' ability to contract with corporations that have an unpaid federal tax liability or have a felony conviction under Federal law, when using funds made available by the Act in Fiscal Year 2012 (FY12).
2. **Background:** The Consolidated Appropriations Act, 2012 (Public Law 112-74) prohibits covered agencies from using appropriated 2012 funds to enter into a contract, memorandum of understanding, or cooperative agreement with a corporation that has qualifying unpaid federal tax delinquencies or, within the preceding 24 months, has a felony criminal conviction under any federal law (or state law in some circumstances). No award is permitted under these circumstances, unless the corporation has been considered for suspension or debarment and the agency determines that further action is unnecessary to protect the interests of the government. The prohibition applies to many, but not all, federal agencies. One of the affected agencies is GSA. Non-compliance with the Act could result in a misappropriation of funds.

On April 2, 2012, the GSA Office of Acquisition Policy issued Acquisition Letter (AL) MV-2012-06 which stated that all GSA contract actions that use appropriated FY12 funds must include new GSAM provision 552.203-72. The provision requires offerors to represent whether or not they have any unpaid tax liability or a felony conviction under any federal law within the preceding 24 months.

Since most Federal Acquisition Service (FAS) contract vehicles are funded through the Acquisition Service Fund (ASF), which is a revolving, non-appropriated fund, the prohibition does not apply to FAS Contracting Officers awarding and administering these contracts. Similarly, the Department of Veteran Affairs (VA) also uses non-appropriated funds for the Federal Supply Schedule (FSS) contracts that are awarded and administered by that agency. Instead, only those FAS contract actions that use FY2012 appropriated funds are affected.

However, the IL is meant to make all FAS Contracting Officers – and VA FSS Contracting Officers – aware of the prohibition so that they can advise affected customer agencies appropriately.

3. Effective Date: Date of signature.
4. Termination Date: This IL remains effective until it is cancelled.
5. Applicability. This IL applies to all acquisitions awarded and administered by GSA/FAS acquisition activities. The IL also applies to Department of Veterans Affairs (VA) acquisition activities awarding and administering Federal Supply Schedule contracts.
6. Reference Regulations. Division C of [Consolidated Appropriations Act, 2012](#) (Pub. L. 112-74); AL MV-2012-06; GSAM provision 552.203-72, Representation by Corporations Regarding an Unpaid Delinquent Federal Tax Liability or a Felony Conviction under any Federal Law (DEVIATION)(MAR 2012) is prescribed.
7. Instructions/Procedures.

I. Federal Supply Schedules:

No action is required of FAS or VA Contracting Officers.

- II. Other FAS contracts (i.e. Government-wide Acquisition Contracts (GWACs), Multi-Agency Contracts (MACs), Indefinite Delivery/Indefinite Quantity (IDIQs), other open market contracts, under FAR Parts 12, 13, 14, and 15) that use **non-appropriated funds**:

No action is required of FAS Contracting Officers.

III. Any contract actions that use appropriated FY2012 funds (and not the ASF)

A. Direct Acquisitions:

i Preaward:

- a. Incorporate GSAM provision 552.203-72 into the Request for Quote (RFQ).
- b. Upon receipt of an affirmative response to the contractor's representation in 552.203-72, the Contracting Officer shall consult with GSA's Suspension and Debarment Official and the Office of General Counsel.
- c. Contracting Officers shall not make award unless GSA's Suspension and Debarment Official has considered suspension or debarment of the contractor and has made a written determination that this action (i.e. suspension or debarment) is not necessary to protect the interests of the Government.

ii Postaward:

- a. Prior to executing a modification that obligates appropriated FY12 funds, the Contracting Officer shall require the contractor to represent in accordance with 552. 203-72.
- b. Upon receipt of an affirmative response to the contractor's representation in 552. 203-72, the Contracting Officer shall consult with GSA's Suspension and Debarment Official and the Office of General Counsel.
- c. Contracting Officers shall not execute the modification unless GSA's Suspension and Debarment Official has considered suspension or debarment of the contractor and has made a written determination that this action (i.e. suspension or debarment) is not necessary to protect the interests of the Government.

B. Assisted Acquisitions for affected agencies:

i Preaward:

- a. FAS acquisition activities shall ensure the Interagency Agreement (IA) clearly addresses whether appropriated FY12 funds are to be used and address funding agency's responsibility to provide FAS with the funding agency's deviated provision.
- b. The Contracting Officer shall incorporate funding agency's deviated provision into the Request for Quote (RFQ)/Request for Proposal (RFP).
- c. Upon receipt of an affirmative response to the contractor's representation in the provision specified in paragraph "b" above, the Contracting Officer shall consult with GSA's Suspension and Debarment Official (unless the Interagency Agreement requires coordination with funding agency's Suspension and Debarment Official).
- d. Contracting Officers shall not make award unless GSA's Suspension and Debarment Official (or the funding agency's Suspension and Debarment Official, if applicable) has considered suspension or debarment of the contractor and has made a written determination that this action (i.e. suspension or debarment) is not necessary to protect the interests of the Government.

ii Postaward:

- a. Prior to executing a modification that obligates appropriated FY12 funds, the Contracting Officer shall require the contractor to represent in accordance with the funding agency's deviated provision.
- b. Upon receipt of an affirmative response to the contractor's

representation in the provision specified in paragraph a above, the Contracting Officer shall consult with GSA's Suspension and Debarment Official (unless the Interagency Agreement requires coordination with funding agency's Suspension and Debarment Official).

- c. Contracting Officers shall not execute the modification unless GSA's Suspension and Debarment Official (or the funding agency's Suspension and Debarment Official, if applicable) has considered suspension or debarment of the contractor and has made a written determination that this action (i.e. suspension or debarment) is not necessary to protect the interests of the Government.

#### IV. Revisions to Customer-Facing Acquisition Policy Guidance.

A. FAS acquisition activities facilitating direct acquisitions through the administration of FAS contract vehicles (e.g., Schedules, GWACs and other MACs) are responsible for updating acquisition guidance (ordering guides, websites, etc.) to reflect prohibitions regarding FY2012 appropriated funds of affected agencies. The following are examples of materials that may require updating:

- i Ordering guides for GSA GWACs and MACs should be updated by the office(s) responsible for maintaining and administering these contracts. Ordering guides should be updated to ensure they inform affect customer agencies of the prohibitions associated with using appropriated FY2012 funds.
- ii The MAS Program Office will update the acquisition policy guidance on [www.gsa.gov/schedules](http://www.gsa.gov/schedules) to reflect the prohibition.

#### 8. Questions & Answers.

##### Q1. **What agencies are affected by these prohibitions in their appropriation laws?**

A1. The following table includes a list of affected agencies and the prohibitions listed in their FY2012 appropriation bills:

Agency	New Provision Covering Criminal Violations (CVP)		New Provision Covering Tax Liabilities (TLP)
	Details	Citation	Citation
<b>Agriculture &amp; Related Agencies</b>	Agent/officer/corporation conviction of federal <u>or</u> state law	Section 738 of P.L. 112-55	Section 739 of P.L. 112-55
<b>Commerce</b>	Corporation conviction of federal law only	Section 543 of P.L. 112-55	Section 544 of P.L. 112-55
<b>Justice</b>	Corporation conviction of federal law only	Section 543 of P.L. 112-55	Section 544 of P.L. 112-55

<b>Defense</b>	Corporation conviction of federal law only	Section 8125 of P.L. 112-74	Section 8124 of P.L. 112-74
<b>Energy</b>	Agent/officer/corporation conviction of federal law only	Section 504 of P.L. 112-74	Section 505 of P.L. 112-74
<b>Treasury</b>	Agent/officer/corporation conviction of federal law only	Section 631 of P.L. 112-74	Section 630 of P.L. 112-74
<b>General Government</b> (see statute for specifics)	Agent/officer/corporation conviction of federal law only	Section 631 of P.L. 112-74	Section 630 of P.L. 112-74
<b>Interior &amp; Related Agencies</b>	Agent/officer/corporation conviction of federal law only	Section 433 of P.L. 112-74	Section 434 of P.L. 112-74
<b>Veterans Affairs</b>	Corporation conviction of federal <u>or</u> state law	Section 514 of P.L. 112-74	N/A (no prohibition)

## Q2. What do we tell customer agencies that use our contract vehicles

A2. Affected customer agencies (see table above for list of affected agencies) are advised to look at their agency's guidance on this issue prior to placing orders against any of the FAS contract vehicles. Each affected agency should have their own provision to use in order to comply with the prohibitions in their appropriation bill; their agency procedure should also specify what steps to take if a contractor is found to have unpaid tax liability or felony convictions. FAS has also posted an [article](#) to Interact on this topic for customers and industry alike.

## Q3. Who is GSA's Suspension and Debarment Official and how does a CO get in touch with them?

A3. GSA's Suspension and Debarment Official (SDO) is Joseph Neurauter. However, all suspension and debarment-related issues should be forwarded to Maria Swaby, Director of the Suspension & Debarment Division (office code MVAB) within the GSA Office of Acquisition Policy.

## Q4. Does the FAS CO have to do anything if they are modifying an existing contract/order?

A4. This depends on whether or not the modification is using appropriated FY12 funds. If a FAS CO is modifying an existing order and the modification obligates appropriated FY2012 funds, the CO must follow the instructions in section 7.III.A.ii above.

## Q5. How can I tell whether my contract action is using the ASF or appropriated FY12 funds?

A5. All Schedules contracts, GWACs, and MACs are funded by ASF. For all other contract actions, the Contracting Officers should ask their budget official to verify whether their contract action uses appropriated FY12 funds.

