

05/21/12

POLICY ALERT
No. 12-32
Prohibition on Contracting With Inverted Domestic Corporations

REFERENCES: Federal Register: May 10, 2012 (Volume 77, Number 91)
Federal Acquisition Circular 2005-59, Federal Acquisition Regulation
[Case 2012-013](#), Prohibition on Contracting With Inverted Domestic Corporations

TYPE OF ACTION: Interim Rule

EFFECTIVE DATE: May 10, 2012

SUMMARY: An interim rule has been issued amending the Federal Acquisition Regulation (FAR) to implement a section of the Consolidated Appropriations Act, 2012, that prohibits the award of contracts using appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such entity.

An inverted domestic corporation is one that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country. See FAR Subpart 9.108-1 for the definition of inverted domestic corporation.

As in past consolidated appropriations acts that prohibited contracting with inverted domestic corporations, the prohibition does not apply when using Fiscal Year 2012 funds for a contract entered into before the date the funds were appropriated (December 23, 2011), or for any order issued pursuant to such contract. A paragraph has been added to FAR 52.209-10, Prohibition on Contracting with Inverted Domestic Corporation (MAY 2012) addressing this. Refer to FAR Subpart 9.108-2 for exceptions to the prohibition.

ACTION REQUIRED: Contracting Offices (COs) shall follow FAR Subpart 9.108 regarding prohibition on contracting with invert domestic corporations. When using funds appropriated in Fiscal Year 2012, unless waived in accordance with FAR Subpart 9.108-4, COs shall include the

provision at 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations—Representation, in each solicitation for the acquisition of products or services and the clause at 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations, in each solicitation and contract for the acquisition of products or services. An offeror must represent that it is not an inverted domestic corporation or subsidiary. Any offeror that cannot so represent is ineligible for award of a contract using such appropriated funds.

This Policy Alert is effective on the date indicated above, and remains in effect until incorporated into the acquisition policy, as appropriate, or until otherwise rescinded.

You may direct comments/questions on this Policy Alert to the Contract Policy and Pricing Branch at 303-676-3985.

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