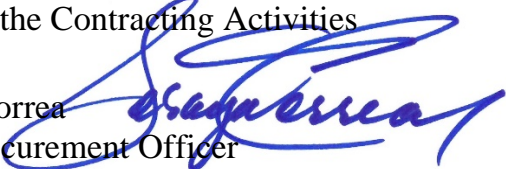




Homeland
Security

August 31, 2016

MEMORANDUM FOR: Heads of the Contracting Activities

FROM: Soraya Correa
Chief Procurement Officer 

SUBJECT: Homeland Security Acquisition Regulation Class Deviation
(Number 16-02) - Prohibition against Contracting with
Inverted Domestic Corporations

Summary: This class deviation requires Contracting Officers to include the provision at Federal Acquisition Regulation (FAR) 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations – Representation, and the clause at FAR 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations, as required by FAR 9.108-5. This class deviation applies to all contracts awarded on or after the date of this deviation and that obligate funds appropriated in fiscal year (FY) 2008 and later. The coverage at Homeland Security Acquisition Regulation (HSAR) 3009.108-70 and 3052.209-70, Prohibition on Contracts with Corporate Expatriates, is suspended.

Cancellation: DHS FAR Class Deviation 12-02, Prohibition on Contracting with Inverted Domestic Corporations, is cancelled.

Purpose: To authorize an HSAR class deviation that suspends the effectiveness of HSAR 3009.108-70, Prohibition on Contracts [with] Corporate Expatriates, including the clause at 3052.209-70, Prohibition on Contracts with Corporate Expatriates, and adopt the coverage at Federal Acquisition Regulation (FAR) 9.108, Prohibition on Contracting with Inverted Domestic Corporations, for all contracts awarded on or after the date of this deviation and that obligate funds appropriated in FY 2008 and later.

Effective Date: Immediately.

Background: Section 835 of the Department of Homeland Security Act (HSA) of 2002, Public Law (PL) 107-296, prohibits DHS from contracting with expatriate corporations, also known as Inverted Domestic Corporations (IDCs). This is a permanent prohibition for DHS. This prohibition applied only to DHS until FY 2008 when Section 745 of Division D of the Consolidated Appropriations Act, PL 110-161, made the prohibition applicable to all federal contracts. However, this government-wide prohibition is not permanent and is made effective every fiscal year by enactment of an appropriations act.

HSAR 3009.108-70, finalized on May 1, 2006, implemented Section 835 of the HSA for

DHS. On July 1, 2009, the FAR implemented the government wide prohibition on contracting with IDCs at FAR 9.108. Upon implementation in the FAR, the Chief Procurement Officer (CPO) suspended the HSAR coverage and adopted the FAR coverage (see HSAR Class Deviation 09-02). However, when it appeared that the government-wide prohibition had been omitted from the Appropriations Act of FY 2011, the CPO issued FAR Class Deviation 12-02 to revert to the HSAR coverage that prohibited contracts with IDCs. Since the issuance of FAR Class Deviation 12-02, FAR coverage has been revised to better clarify the applicability of the IDC prohibition. Given the FAR revision and that the FAR provides more comprehensive coverage concerning the prohibition on contracting with IDCs, I have determined that it is more efficient for DHS to rescind FAR Class Deviation 12-02 and adopt the coverage at FAR 9.108.

HSAR Class Deviation: This HSAR class deviation suspends use of HSAR 3009.108-70, Prohibition on Contracts [with] Corporate Expatriates, including HSAR Clause 3052.209-70, and adopts the coverage at FAR 9.108, Prohibition on Contracting with Inverted Domestic Corporations for all contracts awarded on or after the date of this deviation and that obligate funds appropriated in FY 2008 and later.

Expiration: HSAR Class Deviation 16-02 will remain in effect until rescinded.

Questions or comments about this class deviation may be directed to Ellen Murray at (202) 447-5311, or by email at Ellen.Murray@hq.dhs.gov.

PART 3009 CONTRACTOR QUALIFICATIONS

Subpart	3009.1	Responsible Prospective Contractors
	3009.108-70	Prohibition on contracts with corporate expatriates. (Deviation-Suspended)
	3009.108-7001	General.
	3009.108-7002	Definitions.
	3009.108-7003	Special rules.
	3009.108-7004	Waiver.
	3009.108-7005	Clause

Subpart 3009.1 Responsible Prospective Contractors

3009.108-70 Prohibition on contracts with corporate expatriates. (DEVIATION)

This section is suspended for all contracts awarded on or after the date of this deviation and that obligate funds that were appropriated in fiscal year 2008 and later. DHS has adopted the FAR coverage at 9.108, Prohibition on Contracting with Inverted Domestic Corporations.

3009.108-7001 General. (DEVIATION – Suspended)

DHS has adopted the FAR coverage at 9.108, Prohibition on Contracting with Inverted Domestic Corporations, for all contracts awarded on or after the date of this deviation and that obligate funds that were appropriated in fiscal year 2008 and later.

3009.108-7002 Definitions. (DEVIATION – Suspended)

DHS has adopted the FAR coverage at 9.108, Prohibition on Contracting with Inverted Domestic Corporations, for all contracts awarded on or after the date of this deviation and that obligate funds that were appropriated in fiscal year 2008 and later.

3009.108-7003 Special Rules. (DEVIATION – Suspended)

DHS has adopted the FAR coverage at 9.108, Prohibition on Contracting with Inverted Domestic Corporations, for all contracts awarded on or after the date of this deviation and that obligate funds that were appropriated in fiscal year 2008 and later.

3009.108-7004 Waivers. (DEVIATION - Suspended)

DHS has adopted the FAR coverage at 9.108, Prohibition on Contracting with Inverted Domestic Corporations, for all contracts awarded on or after the date of this deviation and that obligate funds that were appropriated in fiscal year 2008 and later.

3009.108-7005 Clause. (DEVIATION – Suspended)

DHS has adopted the FAR coverage at 9.108, Prohibition on Contracting with Inverted Domestic Corporations, for all contracts awarded on or after the date of this deviation and that obligate funds that were appropriated in fiscal year 2008 and later.

3052.209-70 - Prohibition on contracts with corporate expatriates. (DEVIATION – Suspended)

DHS has adopted the FAR coverage at 9.108, Prohibition on Contracting with Inverted Domestic Corporations for all contracts awarded on or after the date of this deviation and that obligate funds that were appropriated in fiscal year 2008 and later.