UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

PROCUREMENT MEMORANDUM 2015-03

ACTION

MEMORANDUM FOR: **HEADS OF CONTRACTING OFFICES**

FROM: Barry E. Berkowitz
Senior Procurement Executive and
Director, Office of Acquisition Management

SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR) to Implement an Appropriations Provision Related to Internal Confidentiality Agreements and the Reporting of Fraud, Waste, or Abuse

Purpose
The purpose of this Procurement Memorandum is to issue a class deviation in accordance with FAR 1.404. This class deviation prohibits contractors from requiring its employees or subcontractors to sign internal confidentiality agreements or statements that preclude or otherwise restrict the lawful reporting of waste, fraud, or abuse.

Background
On December 16, 2014, the President signed into law the Consolidated and Further Continuing Appropriations Act, 2015, (the Act), (Pub. L. 113-235). Section 743 of Division E, Title VII, of the Act prohibits the use of funds appropriated or otherwise made available by Division E or any other Act for a contract, grant, or cooperative agreement with an entity that requires employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements that preclude or otherwise restrict the lawful reporting of waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information. FAR Case 2015-012, Contractor Employee Confidentially and Non-Disclosure Agreements is being vetted by the Civilian Agency Acquisition Council (CAAC) to implement Section 743 of the Act. As a result, pending the issuance of a Final Rule this class deviation establishes the legal basis for Contracting Officers within the Department of Commerce to take the actions provided herein, specifically, the insertion of terms and conditions in solicitations and contract awards that prohibit contractors from requiring its employees and subcontractors to sign internal confidentiality agreements or statements that preclude or otherwise restrict the lawful reporting of waste, fraud, or abuse.

Actions Required
Where applicable, Contracting Officers shall take the following actions:

- Include the attached provision and clause in all solicitations that will use Federal funds, including solicitations for the acquisition of commercial items under FAR Part 12; and,

- Include the clause in all resultant contracts, and existing contracts, when obligating Federal funds.

Effective Date
This class deviation is effective until it is incorporated in the FAR or is otherwise rescinded.

Please direct any questions regarding this Procurement Memorandum to Michael Bolden at: mbolden@doc.gov or 202-482-3248 or Nancy Barrere at nbarrere@doc.gov or 202-482-5519.

Attachments:

A. 52.203-98, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements – Representation (DEVIATION 2015-02)

B. 52.203-99, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements (DEVIATION 2015-02)

cc: Acquisition Community