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Memorandum

To: Agency Finance Directors, Procurement Directors, Facility Managers, and
Procurement Staff

From: John St.C. White
Interim Materials Management Officer and State Engineer

Re: Iran Divestment Act of 2014

Date: January 28, 2015

This is to alert you to the requirements of the Iran Divestment Act of 2014. On January 5, 2015, the Budget and Control Board, pursuant to S.C. Code Ann. 11-57-310(A)(1), published a list of persons engaged in investment activities in Iran. The list is available at the following URL:

<http://procurement.sc.gov/PS/PS-iran-divestment.phtm>

Section 11-57-310(B) declares that any person identified on the Iran Divestment Act List is ineligible to contract with the State. Section 11-57-310(C) provides "Any contract entered into with a person that is ineligible to contract with the State shall be void ab initio." Section 11-57-330(A) provides:

A state agency or entity shall require a person that attempts to contract with the State, including a contract renewal or assumption, to certify, at the time the bid is submitted or the contract is entered into, renewed, or assigned, that the person or the assignee is not identified on a list created pursuant to Section 11-57-310. A state agency shall include certification information in the procurement record.

Section 11-57-330(B) prohibits any State contractor from utilizing any subcontractor identified on the Iran Divestment Act List. You may read the entire act at the following URL:

<http://www.scstatehouse.gov/code/t11c057.php>

We plan to publish extensive guidance about the Act soon. In the meantime we have developed two new solicitation clauses, and revised a third clause, for use beginning immediately.

The first new clause creates the bidder's certification she is not on the list. It is part of instructions to offerors, and must be added by amendment to Section IIA in all solicitations that have not yet been opened. The clause reads:

IRAN DIVESTMENT ACT - CERTIFICATION (JAN 2015): (a) The Iran Divestment Act List is a list published by the Board pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <http://procurement.sc.gov/PS/PS-iran-divestment.phtm>(.) Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to award a contract to you. (b) By signing your Offer, you certify that, as of the date you sign, you are not on the then-current version of the Iran Divestment Act List. (c) You must notify the Procurement Officer immediately if, at any time before posting of a final statement of award, you are added to the Iran Divestment Act List. [02-2A077-1]

For solicitations that have been opened but not awarded, the successful offeror must execute a separate certification prior to award. A form for this certification is attached.

The second new clause (1) creates a duty to advise the buyer if, after award but before a renewal, a contractor is added to the list; and (2) prohibits subcontracting with persons on the list. It must be added to all open solicitations by amendment; and to solicitations that have been opened but have not yet been awarded and to any current contracts that have renewable option terms remaining, by change order or directive. It is part of the performance requirements of the contract, and appears in Section VIIA. The clause reads:

IRAN DIVESTMENT ACT – ONGOING OBLIGATIONS – (JAN 2015): (a) You must notify the procurement officer immediately if, at any time during the contract term, you are added to the Iran Divestment Act List. (b) Consistent with Section 11-57-330(B), you shall not contract with any person to perform a part of the Work, if, at the time you enter into the subcontract, that person is on the then-current version of the Iran Divestment Act List. [07-7A072-1]

The final clause should be used in place of existing clause 7B245-1. It should be added to all open solicitations; to all contracts awarded or to be awarded pursuant to solicitations that did not include the clause; and to all current contracts, where the contract term includes renewal options. The revised clause reads:

TERM OF CONTRACT – OPTION TO RENEW (JAN 2015): (a) At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of year(s), month(s), and day(s), unless contractor receives notice that the state elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award. (b) Contractor acknowledges that, unless excused by Section 11-57-320, if the contractor is on the then-current Iran Divestment Act List as of the date of any contract renewal, the renewal will be void ab initio. [07-7B245-2]

Recapping:

For all solicitations that have not been opened:

- Add clause 2A077-1 by amendment
- Add clause 7A072-1 by amendment

For solicitations providing for renewal options that have not been opened:

- Add clause 7B245-2 by amendment :

For all solicitations that have been opened but not yet awarded:

- Require contractor to execute the attached certification prior to award
- Add clause 7A072-1 by change order or directive immediately upon award

For solicitations providing for renewal options that have been opened but not yet awarded:

- Add clause 7B245-2 by change order or directive immediately upon award

For contracts awarded on or after January 5, 2015, where the solicitation did not include clause 2A077-1:

- Require contractor to execute the attached certification

For all existing contracts:

- Add clause 7A072-1 by change order or directive

For existing contracts with renewal options remaining:

- Add clause 7B245-2 by change order or directive

The SCEIS dialog has been modified to insert these clauses in appropriate solicitations. For state agencies that do not use SCEIS, they should be manually inserted as described above. OSE forms have been modified to include analogous provisions for design and construction solicitations and contracts.

The Act has similar but not identical restrictions for political subdivisions. **These clauses may not reflect the Act's requirements for counties, municipalities, school districts, etc.** We will be working with representatives of the Municipal Association, the Association of Counties, and the School Boards Association in the coming days to provide appropriate language for statewide term contracts that will make their use by political subdivisions in compliance with the Act.