

preaward survey elements to furnish specific supplies or services being considered for addition to the Procurement List.

(c) The contracting office shall use the Standard Form 1403 to request a capability survey of organizations employing people who are blind or have other severe disabilities.

(d) The contracting office shall furnish a copy of the completed survey, or notice that the AbilityOne participating nonprofit agency is capable and the survey is waived, to the Executive Director, Committee for Purchase from People Who Are Blind or Severely Disabled.

[59 FR 67029, Dec. 28, 1994, as amended at 73 FR 53995, Sept. 17, 2008]

### **9.108 Prohibition on contracting with inverted domestic corporations.**

#### **9.108–1 Definitions.**

As used in this section—

*Inverted domestic corporation* means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. 395(b), *i.e.*, a corporation 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, that meets the criteria specified in 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. 7874.

*Subsidiary* means an entity in which more than 50 percent of the entity is owned—

- (1) Directly by a parent corporation; or
- (2) Through another subsidiary of a parent corporation.

[76 FR 31413, May 31, 2011]

#### **9.108–2 Prohibition.**

(a) Section 738 of Division C of the Consolidated Appropriations Act, 2012 (Pub. L. 112–74) prohibits the use of 2012 appropriated funds for contracting with any foreign incorporated entity

that is treated as an inverted domestic corporation, or with a subsidiary of such a corporation. The same Governmentwide restriction was also contained in the Fiscal Year 2008 through 2010 appropriations acts. Agency-specific restrictions on contracting with inverted domestic corporations also existed in FY 2006 and FY 2007 appropriations for United States Departments of Transportation and Treasury, Housing and Urban Development, the Judiciary and Independent Agencies (including Public Laws 109–115 and 109–289).

(b) This prohibition does not apply as follows:

(1) When using Fiscal Year 2008 funds for any contract entered into before December 26, 2007, or for any order issued pursuant to such contract.

(2) When using Fiscal Year 2009 funds for any contract entered into before March 11, 2009, or for any order issued pursuant to such contract.

(3) When using Fiscal Year 2010 funds for any contract entered into before December 16, 2009, or for any order issued pursuant to such contract.

(4) When using Fiscal Year 2012 funds for any contract entered into before December 23, 2011, or for any order issued pursuant to such contract.

[76 FR 31413, May 31, 2011, as amended at 77 FR 27548, May 10, 2012]

#### **9.108–3 Representation by the offeror.**

(a) In order to be eligible for contract award when using Fiscal Year 2008 through Fiscal Year 2010 funds or Fiscal Year 2012 funds, 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.

(b) The contracting officer may rely on an offeror's representation that it is not an inverted domestic corporation unless the contracting officer has reason to question the representation.

[76 FR 31413, May 31, 2011, as amended at 77 FR 27548, May 10, 2012]

#### **9.108–4 Waiver.**

Any agency head may waive the prohibition in subsection 9.108–2 and the requirement of subsection 9.108–3 for a