

52.209-13 Violation of Arms Control Treaties or Agreements-Certification.

As prescribed in 9.109-5 , insert the following provision:

Violation of Arms Control Treaties or Agreements-Certification (Nov 2021)

(a) This provision does not apply to *acquisitions* at or below the *simplified acquisition threshold* or to *acquisitions of commercial products and commercial services* as defined in Federal Acquisition Regulation 2.101.

(b) *Certification.* [*Offeror shall check either (1) or (2).*]

(1) The *Offeror* certifies that-

(i) It does not engage and has not engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the *United States* is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the *United States* is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a). The report is available at <https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-arms-control-verification-and-compliance/>; and

(ii) No entity owned or controlled by the *Offeror* has engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the *United States* is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the *United States* is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a). The report is available at <https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-arms-control-verification-and-compliance/>; or

(2) The *Offeror* is providing separate information with its *offer* in accordance with paragraph (d)(2) of this provision.

(c) Procedures for reviewing the annual unclassified report (see paragraph (b)(1) of this provision). For clarity, references to the report in this section refer to the entirety of the annual unclassified report, including any separate reports that are incorporated by reference into the annual unclassified report.

(1) Check the table of contents of the annual unclassified report and the country section headings of the reports incorporated by reference to identify the foreign countries listed there. Determine whether the *Offeror* or any person owned or controlled by the *Offeror* may have engaged in any activity related to one or more of such foreign countries.

(2) If there *may* have been such activity, review all findings in the report associated with those foreign countries to determine whether or not each such foreign country was determined to be in violation of its obligations undertaken in an arms control, nonproliferation, or disarmament agreement to which the *United States* is a party, or to be not adhering to its arms control, nonproliferation, or disarmament commitments in which the *United States* is a participating state. For clarity, in the annual report an explicit certification of non-compliance is equivalent to a determination of violation. However, the following statements in the annual report are not equivalent to a determination of violation:

- (i) An inability to certify compliance.
- (ii) An inability to conclude compliance.
- (iii) A statement about compliance concerns.

(3) If so, determine whether the *Offeror* or any person owned or controlled by the *Offeror* has engaged in any activity that contributed to or is a significant factor in the determination in the report that one or more of these foreign countries is in violation of its obligations undertaken in an arms control, nonproliferation, or disarmament agreement to which the *United States* is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the *United States* is a participating state. Review the narrative for any such findings reflecting a determination of violation or non-adherence related to those foreign countries in the report, including the finding itself, and to the extent necessary, the conduct giving rise to the compliance or adherence concerns, the analysis of compliance or adherence concerns, and efforts to resolve compliance or adherence concerns.

(4) The *Offeror* *may* submit any questions with regard to this report by email to NDAA1290Cert@state.gov. To the extent feasible, the Department of State will respond to such email inquiries within 3 business days.

(d) Do not submit an *offer* unless—

(1) A certification is provided in paragraph (b)(1) of this provision and submitted with the *offer*; or

(2) In accordance with paragraph (b)(2) of this provision, the *Offeror* provides with its *offer* information that the President of the *United States* has

- (i) Waived application under [22 U.S.C. 2593e\(d\)](#) or (e); or
- (ii) Determined under [22 U.S.C. 2593e\(g\)\(2\)](#) that the entity has ceased all activities for which measures were imposed under [22 U.S.C. 2593e\(b\)](#).

(e) *Remedies*. The certification in paragraph (b)(1) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the *Offeror* knowingly submitted a false certification, in addition to other remedies available to the Government, such as *suspension* or *debarment*, the *Contracting Officer* may terminate any contract resulting from the false certification.

(End of provision)

Parent topic: [52.209 \[Reserved\]](#)