



Forest  
Service

Washington  
Office

1400 Independence Avenue, SW  
Washington, DC 20250

File Code: 6300

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Route To:

**Subject:** Prohibition Against Contracting with Corporations with an Unpaid Delinquent Tax Liability or a Felony Conviction Under Federal Law

**To:** Regional Foresters, Station Directors, Area Director, IITF Director and Deputy Chiefs

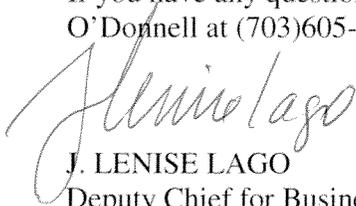
This letter serves as a notification to all program office and acquisition personnel that the requirements found in System for Award Management (SAM) and Agriculture Acquisition Regulation (AGAR) Advisory 104 in reference to tax liability and felony convictions apply to all solicitations and contracts for corporations only. This advisory issues a class deviation to the Federal Acquisition Regulation (FAR) to prohibit the use of federal funds to enter into a contract with a corporation that has unpaid Federal tax delinquencies or certain felony convictions unless the corporation has been considered for suspension or debarment and the agency determines suspension or debarment is not necessary.

Forest Service Contracting Officers (CO) are required to include representation provision 452.209-70 Alternate 1 in all solicitations above the micro-purchase threshold. Clause 452.209-71, Alternate 1 in all contact awards above the micro-purchase threshold entered into with a corporation. A corporation who has an applicable felony conviction or tax delinquency would be considered statutorily ineligible for award but would not be considered non-responsible. The AGAR Advisory is available at <http://www.dm.usda.gov/procurement/policy/advisories.htm>.

This is separate from a contractor's Certification Regarding Responsibility Matters as found in FAR 52.209-5 and FAR 52.212-3 concerning Federal tax delinquency. COs are responsible for checking the SAM Database Delinquent Federal Debt field and making a determination of responsibility. Forest Service letter dated December 9, 2010, concerning Responsibility Determinations for Contractors with Delinquent Federal Debt is still applicable.

For example, a vendor who is a corporation certifies that they has no tax debt and are not a convicted felon (pursuant to AGAR 104), yet is showing a "Yes" response to delinquent federal debt in SAM. The CO would further investigate and could still award if arrangements have been made with Treasury to offset the debt and the vendor is otherwise responsible. The Advisory language "does not have a tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, **for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.**" In this scenario the SAM "Yes" would be a red flag, but not an automatic cause for non-award.

If you have any questions, or require further discussion concerning this matter, please contact Shawn O'Donnell at (703)605-4544.

  
J. LENISE LAGO  
Deputy Chief for Business Operations

