

DEVIATION 2012-1: AGRICULTURE ACQUISITION REGULATION
(48 CFR Chapter 4)

AGAR 409.471 Solicitation Provision and Contract Clause.

(a) **Solicitation Provision.** The contracting officer shall insert the provision at 452.209–70, *Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction*, in all solicitations above the micro-purchase threshold, except for those of the Forest Service. **For all Forest Service solicitations** above the micro-purchase threshold, the contracting officer shall use Alternate 1 of the provision.

AGAR 452.209 – 70 Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction.

As prescribed in 409.471, insert the following provision:

REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION (DEVIATION 2012-01) (FEB 2012)

(a) Awards made under this solicitation are subject to the provisions contained in sections 738 and 739 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012 (P.L. No. 112-55), Division A, as amended and/or subsequently enacted, regarding corporate felony convictions and corporate federal tax delinquencies. To comply with these provisions, all offerors must complete paragraph (1) of this representation, and all corporate offerors also must complete paragraphs (2) and (3) of this representation.

(b) The Offeror represents that –

- (1) The Offeror is [], is not [] (*check one*) an entity that has filed articles of incorporation in one of the fifty states, the District of Columbia, or the various territories of the United States including American Samoa, Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, U.S. Virgin Islands. (Note that this includes both for-profit and non-profit organizations.)

If the Offeror checked “is” above, the Offeror must complete paragraphs (2) and (3) of the representation. If Offeror checked “is not” above, Offeror may leave the remainder of the representation blank.

- (2) (i) The Offeror has [], has not [] (*check one*) been convicted of a felony criminal violation under Federal or State law in the 24 months preceding the date of offer.
- (ii) The Offeror has [], has not [] (*check one*) had any officer or agent of Offeror convicted of a felony criminal violation for actions taken on behalf of Offeror under Federal or State law in the 24 months preceding the date of offer.
- (3) The Offeror does [], does not [] (*check one*) have 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.

(End of provision)

Alternate 1 (Feb 2012). The Contracting Officer shall use this alternate for all **Forest Service** solicitations above the micro-purchase threshold:

(a.) Awards made under this solicitation are subject to the provisions contained sections 433 and 434 in the Consolidated Appropriations Act, 2012 (P.L. No. 112-74), Division E, as amended and/or subsequently enacted, regarding corporate felony convictions and corporate federal tax delinquencies. To comply with these provisions, all offerors must complete paragraph (1) of this representation, and all corporate offerors also must complete paragraphs (2) and (3) of this representation.

(b) The Offeror represents that –

- (1) The Offeror is [], is not [] (*check one*) an entity that has filed articles of incorporation in one of the fifty states, the District of Columbia, or the various territories of the United States including American Samoa, Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, U.S. Virgin Islands. (Note that this includes both for-profit and non-profit organizations.)

If the Offeror checked “is” above, the Offeror must complete paragraphs (2) and (3) of the representation. If Offeror checked “is not” above, Offeror may leave the remainder of the representation blank.

- (2) (i) The Offeror has [], has not [] (*check one*) been convicted of a felony criminal violation under Federal or State law in the 24 months preceding the date of offer.
- (ii) Offeror has [], has not [] (*check one*) had any officer or agent of Offeror convicted of a felony criminal violation for actions taken on behalf of Offeror under Federal law in the 24 months preceding the date of offer.

- (3) The Offeror does [], does not [] (*check one*) have 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.

(End of provision)

AGAR 409.471 Solicitation Provision and Contract Clause.

(b) Contract Clause. The contracting officer shall insert the basic clause at 452.209–71, *Assurance Regarding Felony Conviction Or Tax Delinquent Status For Corporate Applicants*, in all contract awards above the micro-purchase entered into with any entity that is a corporation, except for contracts of the Forest Service. **For all Forest Service contracts** above the micro-purchase threshold entered into with any entity that is a corporation, the contracting officer shall use Alternate 1 of the clause.

AGAR 452.209 – 71

As prescribed in 409.471, insert the following clause:

**ASSURANCE REGARDING FELONY CONVICTION OR TAX DELINQUENT
STATUS FOR CORPORATE APPLICANTS**

(a) This award is subject to the provisions contained in sections 738 and 739 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012, P.L. No. 112-55, Division A, as amended and/or subsequently enacted, regarding corporate felony convictions and corporate federal tax delinquencies. Accordingly, by accepting this award the contractor acknowledges that it –

(1) 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, and

(2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal violation under any Federal or State law within 24 months preceding the award, unless a suspending and debarring official of the United States Department of Agriculture has considered suspension or debarment of the awardee, or such officer or agent, based on these

convictions and/or tax delinquencies and determined that suspension or debarment is not necessary to protect the interests of the Government.

(b) If the awardee fails to comply with these provisions, [**insert agency name**] may terminate this contract for default and may recover any funds the awardee has received in violation of sections 738 or 739, as amended and/or subsequently enacted.

(End of Clause)

Alternate 1 (Feb 2012). The Contracting Officer shall use this alternate for all **Forest Service** contracts above the micro-purchase threshold entered into with any entity that is a corporation:

**ASSURANCE REGARDING FELONY CONVICTION OR TAX DELINQUENT
STATUS FOR CORPORATE APPLICANTS**

(a) This award is subject to the provisions contained in sections 433 and 434 of the Consolidated Appropriations Act, 2012 (P.L. No. 112-74), Division E, as amended and/or subsequently enacted, regarding corporate felony convictions and corporate federal tax delinquencies. Accordingly, by accepting this award the contractor acknowledges that it –

(1) 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, and

(2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal violation under any Federal law within 24 months preceding the award, unless a suspending and debarring official of the United States Department of Agriculture has considered suspension or debarment of the awardee, or such officer or agent, based on these convictions and/or tax delinquencies and determined that suspension or debarment is not necessary to protect the interests of the Government.

(b) If the awardee fails to comply with these provisions, the Forest Service may terminate this contract for default and may recover any funds the awardee has received in violation of sections 433 or 434, amended and/or subsequently enacted.

(End of Clause)