

**UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT**

**AGPMR ADVISORY
No. 15-03**

Issued: January 16, 2015

**Title: FY15 Appropriations Restrictions on Use of Funds to
Enter into Financial Transactions with Federal Felony/
Tax Delinquent Corporations**

1. SUMMARY

This Advisory provides current guidance to implement appropriations contract restrictions language for real property lease proposals and awards to corporations with certain Federal felony convictions or tax delinquencies. Previous Advisories issued by the Office of Procurement and Property Management (OPPM), Property Management Division (PMD) on this topic are:

- Real Property Management Advisory Memorandum 2012-01, issued March 19, 2012;
- AGPMR Advisory No. 13-04, issued April 24, 2013;
- AGPMR Advisory No. 14-02, issued March 11, 2014.

All PMD real property AGPMR Advisories are posted on PMD's web page at:

<http://www.dm.usda.gov/pmd/directives.htm>.

2. BACKGROUND

The continuing resolutions that funded the U.S. Department of Agriculture (USDA) during fiscal year (FY) 13 and the first part of FY14 (through 1/18/14) continued felony conviction/tax delinquent appropriations restrictions first put into place in FY12. The omnibus bill (Public Law 113-76, "Consolidated Appropriations Act, 2014") for the latter part of FY14 (1/19 – 9/30/2014), however, only partially continued the appropriations restrictions and requirements to use specific lease representation and award assurance language.

Presently, PL. 113-235 (“Consolidated and Further Continuing Appropriations Act, 2015”) establishes an FY15 omnibus government-wide appropriations restriction on entering into contracts, grants, cooperative agreements, loans, loan guarantees, or memoranda of understanding with corporations that have had a federal felony conviction within the past 24 months or have an outstanding federal tax delinquency.

There are some differences between the language of the FY15 government-wide provision and the prior years’ USDA and Forest Service (FS)-specific provisions. For example, the restrictions no longer apply to corporations that have had a corporate officer or agent convicted of a felony, including convictions under State laws. Additionally, the appropriations restrictions now apply to all corporations with a qualifying Federal tax delinquency regardless of whether the agency is “aware” of the liability. Other than these few language changes the major difference between the earlier and current provisions is that there are no longer two separate sets of provisions for the FS and the rest of USDA. There is now just one set of provisions for all of USDA and the rest of the Federal Government.

3. ACTIONS

Effectively immediately, all USDA agencies and staff offices that are making lease awards with FY15 money must abide by the appropriations restrictions and instructions in this AGPMR Advisory, and use the Request for Lease Proposal (RLP) representation and lease award assurance language for FY15 provided in Part 4, below.

4. RLP REPRESENTATION AND LEASE AWARD ASSURANCE

RLP representation and lease award (to a corporation) assurance language previously issued by OPPM during FY12-FY14 applies to those time periods. Agencies are to use the following RLP representation and assurance language for lease awards made with FY15 money from now until OPPM issues further guidance that cancels or modifies these clauses.

Representation. This clause is for use in all RLPs.

“All applicants must complete paragraph (1) of this representation, and all corporate applicants must also complete paragraphs (2) and (3) of this representation.

- (1) Applicant [insert applicant’s name] 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 entities.)

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

- (2) Applicant [insert applicant name] has [] has not [] (check one) been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of application.
- (3) Applicant [insert applicant name] has [] does not have [] (check one) 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.”

Assurance. This clause is to be used in all lease award documents that are entered into only with an entity that is a corporation.

“By accepting this award, the corporation recipient acknowledges: (1) that it does not have a Federal 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 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) that it has not been convicted of a felony criminal violation under any Federal law within 24 months preceding the award, unless a suspending or debarring official of the United States Department of Agriculture has considered suspension or debarment of the recipient corporation based on these convictions and/or tax delinquencies and determined that suspension or debarment is not necessary to protect the interests of the Government. If the recipient fails to comply with these provisions, [insert agency name] will annul this agreement and may recover any funds the recipient has expended.”

5. QUESTIONS

Please direct any questions regarding this Advisory to Brenda Woodley, Realty Specialist, by phone on (202) 720-4555, or email at Brenda.Woodley@dm.usda.gov.

EXPIRATION DATE: Until canceled.



Paul Walden, Chief, PMD

AG PMR Advisories are posted on the USDA World Wide Web site at the following URL: <http://www.dm.usda.gov/pmd/>. If you have questions or comments regarding this advisory, please contact Paul Walden, Chief Property Management Division by telephone at (202) 720-7283, via email at Paul.Walden@dm.usda.gov, or by sending an email message to propertymanagement@dm.usda.gov.