

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

**AGPMR ADVISORY
No. 15-06**

Issued: September 2, 2015

Revised: September 9, 2015

Title: Acceptance of Free Space

1. SUMMARY

This Advisory provides guidance for U.S. Department of Agriculture (USDA) agencies and offices to accept free space under a lease contract, meaning USDA makes no rent or service/utility payments for the free space to the facility owner/Lessor. The current, revised guidance applies only to real property lease contracts. Unlike the previous version dated September 2nd, this Advisory does not apply to cooperative agreements. If agency's have questions about the breadth of their cooperative authorities they should consult with their program counsel in the appropriate division of USDA's Office of the General Counsel (OGC).

2. BACKGROUND

USDA's preference is to occupy space, free or otherwise, under the auspices of a formal lease contract. A lease best protects the government's interests and rights, including compliance with physical accessibility, security, and against eviction. This Advisory clarifies the circumstances under which free leased space may be solicited or accepted, and advises when USDA's gift acceptance policy, outlined in Departmental Regulation 5200-3 (DR-5200-3), applies.

3. POLICY

The following policy is to be implemented in free leased space situations:

- a. **Excess Free Space.** Free space may not be solicited; however, an offer of free space may be considered in response to a Request for Lease Proposals (RLP), provided the space meets the requirements of the RLP – and only when the free space is in excess to the square footage solicited. Free space might be offered in addition to the solicited amount, for example, if a Lessor has a contiguous block of space available that is otherwise non-marketable.
- b. **Completely Free Space.** An agency may only accept an offer of completely or totally free space, e.g. the free space equals the total solicited square footage amount, when the space that is offered complies with gift acceptance rules in DR 5200-3. In this case none of the space occupied is being paid for by USDA.
- c. **Judicious Acceptance of Free Space.** USDA has statutory gift acceptance authority (7 USC 2269). However, agencies must not engage in the widespread use of the gift acceptance authority to obtain things which would normally be procured through the contracting process, such as leased office space. Agencies must also limit use of the authority to avoid augmenting their appropriations. It is possible that Congress would act to revoke or limit the gift acceptance authority because of perceived misuse or overuse. Finally, accepting free space as a regular practice is not recommended because it may appear to give outsiders undue influence over USDA's decision making process about where to locate its offices.

For these reasons, OPPM cautions agencies to be judicious in the use of gift acceptance authority. Should you require additional information about this guidance or regarding specific cases of accepting free rent, feel free to consult OGC or the Office of Procurement and Property Management's (OPPM) Property Management Division (PMD).

- d. **Maintain accurate and complete records.** DR 5200-03 requires the free space to be properly reported for financial accounting purposes. All leases, including those which contain free space, must also be recorded in USDA's "Corporate Property Automated Information System" (CPAIS).

4. 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

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