

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

**AGPMR ADVISORY
No. 14-02**

Issued: March 11, 2014

**Title: FY14 Appropriations Restrictions on Use of Funds to
Enter into Financial Transactions with Felon or 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 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.

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 FY13 and the first part of FY14 (through 1/18/14) continued the felony/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 continues the appropriations restrictions and requirements to use specific lease representation and award assurance language.

3. ACTIONS

Effectively immediately:

1. All USDA agencies and staff offices that are making lease awards with remaining FY12 or FY13 money must continue to abide by the appropriations restrictions and instructions in “Real Property Management Advisory Memorandum 2012-01 for FY12, and AGPMR Advisory No. 13-04 for FY13.
2. All USDA agencies and staff offices other than the Forest Service (FS) do not need to abide by the appropriations restrictions for lease awards made with FY14 money after January 18, 2014 – i.e., no appropriations restrictions for FY14 awards made from 1/19/2014 – 9/30/2014. Lease awards that were made with FY14 money January 18, 2014 and prior continue to be subject to the appropriations restrictions that were in place in the FY14 continuing resolution, and must continue to be administered in accordance with those appropriations restrictions – i.e., appropriations restrictions still apply to awards made from 10/1/2013 – 1/18/2014.
3. The FS must continue to abide by the appropriations restrictions for lease awards made with FY14 money (this includes awards made during the continuing resolution and the omnibus bill time periods, or all FY14). Request for Lease Proposal (RLP) representation and lease award assurance language for FY14 is 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 and FY13 applies to those time periods. Presently, agencies may use the following RLP representation and assurance language for lease awards made with FY14 money from now until OPPM issues further guidance that cancels or modifies these clauses. These primarily apply to the FS, which must continue to abide by the appropriations restrictions throughout FY14. USDA agencies other than FS should have continued using the language in prior AGPMR Advisories until now, and their obligation to do so ceased effective January 18, 2014, in the absence of a continuing legislative mandate.

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 organizations.)

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. Applicant has [] has not [] (check one) had any officer or agent of Applicant convicted of a felony criminal violation for actions taken on behalf of Applicant under Federal law in the 24 months preceding the date of signature.
- (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 recipient 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 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 or debaring official of the United States Department of Agriculture has considered suspension or debarment of the recipient corporation, 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. 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.