

AGPMR ADVISORY

No. 13-04

Title: FY 13 Appropriations Restrictions On Use of Funds to Enter Into Financial Transactions with Felon or Tax Delinquent Corporations

1. SUMMARY

This Advisory updates guidance issued in “RPMgt.AdvisoryMemo 2012-01,” posted March 19, 2012, in the Property Management Division’s SharePoint site under “Shared Documents, Real Property Management Advisories.” Advisory Memo 2012-01 issued real property lease proposal and contract restrictions intended to prohibit the U.S. Department of Agriculture (USDA) from doing business with felon or tax delinquent corporations, based on language in the USDA appropriations bill for fiscal year 2012 (FY12). This Advisory contains similar contract restrictions that reflects language in this year’s USDA appropriations law, the “Consolidated Further Continuing Appropriations Act, 2013,” P.L. 113-6. Please use the representation and assurance clauses included in this Advisory in all lease contract solicitations and award documents during FY13.

2. ACTIONS

Until advised differently by the Office of Procurement and Property Management (OPPM), these clauses are to be included in all new lease contract solicitations and contract award documents.

I. Representation. This clause is for use in all requests for lease proposals:

REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT FEDERAL TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW

Awards made under this announcement are subject to the provisions contained in the Consolidated and Further Continuing Appropriations Act, 2013, P.L. No. 113~6, Division A, Sections 732 and 733 regarding corporate felony convictions and corporate federal tax delinquencies. To comply with these provisions, all applicants must complete the paragraph (1) of this representation, and all corporate applicants also must complete paragraphs (2) and (3) of this representation.

- (1) Applicant [insert applicant 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 or State 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 or State 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.

II. Assurance. This clause is to be used in all award documents that are entered into with any entity that is a corporation. If the entity receiving award is not a corporation then you do not need to include the assurance in the award document.

ASSURANCE REGARDING FELONY CONVICTION OR TAX DELINQUENT STATUS FOR CORPORATE APPLICANTS

This award is subject to the provisions contained in the Consolidated and Further Continuing Appropriations Act, 2013, P.L. No. 113-6, Division A, Sections 732 and 733 regarding corporate felony convictions and corporate federal tax delinquencies. Accordingly, 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 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 debarment 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 in violation of sections 732 and 733.

3. QUESTIONS

If you have questions or require additional information, please contact Brenda Woodley, Realty Specialist, by phone on (202) 720-4455 or email at Brenda.Woodley@dm.usda.gov.

EXPIRATION DATE: Effective upon issue 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.