

United States Department of Agriculture
Marketing and Regulatory Programs
Agricultural Marketing Service
Animal and Plant Health Inspection Service
Grain Inspection, Packers and Stockyards Administration

Directive

MRP 5003.1

08/15/2012

**APPROPRIATIONS RESTRICTIONS FOR FINANCIAL TRANSACTIONS WITH
FELONS AND TAX DELINQUENT CORPORATIONS**

1. PURPOSE

This Directive establishes Marketing and Regulatory Programs' (MRP) policy and implementing procedures for complying with Federal requirements prohibiting agencies from entering into financial transactions with any corporation that was convicted of a felony within the preceding 24 months or that has an unpaid Federal tax liability.

2. POLICY

No MRP agency will enter into financial transactions with any corporation that was convicted (or had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal or State law within 24 months, where the agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation, or such officer or agent, and has made a determination that this action is not necessary to protect the interest of the Government.

Further, no MRP agency will enter into financial transactions with any corporation that has 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, where the agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interest of the Government.

MRP awareness is imputed at the contracting officer level for procurement transactions and at the awarding officer level for nonprocurement transactions.

3. AUTHORITIES

- a. Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012 (Public Law (P.L.) 112-55), Sections 738 and 739.

- b. Federal Acquisition Regulation (FAR) 48, Part 9, Contractor Qualification.

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- c. FAR 48, Part 12, Acquisition of Commercial Items.
- d. Agriculture Acquisition Regulation (AGAR) 48 CFR Chapter 4, Section 409.471, provision at 452.209-70 and clause at 452.209-71.
- e. 2 Code of Federal Regulations, Sections 180.600 – 180.635.

4. DEFINITIONS

- a. Agency Suspension and Debarment Official (SDO) (Nonprocurement). The agency Administrator.
- b. Awarding Officer. The MRP employee(s) who has the authority to, and enters into, financial transactions with a corporation(s).
- c. Contracting Officer. The MRP employee(s) who has the authority to, and authorizes, procurement expenditures.
- d. Corporation. Any for-profit or non-profit entity that has filed articles of incorporation in any of the 50 States, the District of Columbia, or the various territories of the United States of America including American Samoa, Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, and the U.S. Virgin Islands.
- e. Covered Violation. Any criminal felony conviction or any unpaid Federal tax liability as set forth in Section 2.
- f. Financial Transaction. A contract, memorandum of understanding, memorandum of agreement, cooperative agreement, grant, loan, or loan guarantee made to a corporation. For purposes of this definition, cooperative agreements include those in which the MRP agency receives funds for work performed, and memoranda of agreement include those whereby appropriated funds are utilized for indirect costs (employee salaries, benefits, and related expenses).
- g. Procurement Suspension and Debarment Official. The Director, Office of Procurement and Property Management (OPPM).

5. RESPONSIBILITIES

- a. The agency Administrator will:

- (1) Ensure that all responsible employees are aware of the requirements set forth in P.L. 112-55;
 - (2) Serve as the agency SDO; and
 - (3) When notified of a covered violation, consider whether suspension or debarment is necessary to protect the Government's interests. The SDO may take into consideration another agency's determination that suspension or debarment is not necessary, and, if the analysis and conclusion are appropriate for the MRP agency, adopt that determination as its own determination without conducting a further review.
- b. Deputy Administrators will ensure that all Awarding Officers are aware of the requirements set forth in P.L. 112-55.
- c. The MRP Head of the Contracting Activity Designee (HCAD), will:
- (1) Ensure that all Contracting Officers are aware of the requirements set forth in P.L. 112-55; and
 - (2) Notify the Chief of the Procurement Policy Division, OPPM, in writing, if he/she becomes aware of a covered violation.
- d. The Contracting Officer will:
- (1) Ensure that the proper representations are included in all solicitations above the micro-purchase threshold;
 - (2) Not enter into contracts with corporations with a covered violation(s);
 - (3) Ensure that the proper assurance clause is included in all award documents; and
 - (4) Notify the MRP HCAD if he/she becomes aware of a covered violation.
- e. The Awarding Officer will:
- (1) Ensure that the proper representations are included in all solicitations, requests for proposals, and applications;
 - (2) Not make awards to corporations with a covered violation(s);
 - (3) Ensure that the proper assurance clause is included in all award documents; and
 - (4) Notify the Agency SDO, through his/her Deputy Administrator, if he/she becomes aware of a covered violation.

6. PROCUREMENT TRANSACTIONS

- a. Contracting Officers will include the following representation in all solicitations above the micro-purchase threshold, including those for the acquisition of commercial items under Federal Acquisition Regulation Part 12:

“Awards made under this announcement are subject to the provisions contained in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012, P.L. No. 112-55, Division A, Sections 738 and 739 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 50 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 Island, 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.”

- b. For all solicitations released during Fiscal Year 2012 without a representation, where proposals/offers have already been received, but where the award has not yet been made, the Contracting Officer will issue an amendment to the solicitation in writing, notifying every offeror who submitted a proposal/offer of the new

appropriations restrictions and requesting them to submit signed representations to be added to their proposals/offers. The notification will read:

“This is to notify you of recent award prohibitions contained in the (insert MRP agency name) Fiscal Year 2012 Appropriations Act regarding corporate felony convictions and corporate tax delinquencies. Under the Appropriations Act, no awards can be made to any corporation (for profit or non-profit) that has a tax delinquency or felony conviction as defined in the Appropriations Act and described in the attached representation. To comply with these provisions, all offerors are required to return the attached representation to (insert name and submission address) no later than (insert date and time). Please note that if you have a tax delinquency or felony conviction, as defined in the Appropriations Act and described in the attached representation, you are not eligible for award. If you are ineligible for award because of these prohibitions, it is possible that you can regain eligibility for award, but only if the USDA procurement suspension and debarment official considers your tax delinquency and/or felony conviction and determines that suspension or debarment is not necessary to protect the interest of the Government.”

The representation must also include the language set forth in Section 6.a.

- c. Contracting Officers are prohibited from making an award to any corporation that:
- (1) Fails to comply with the requirement to complete the representation;
 - (2) Submits an affirmative response to the representation at 452.209-70 for having been convicted (or had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal or State law within the preceding 24 months, where the awarding agency is aware of the conviction;
 - (3) Submits an affirmative response to the representation at 452.209-70 for having 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, where the awarding agency is aware of the unpaid tax liability; or
 - (4) Has had a felony conviction or tax delinquency, as set forth in c. (2) or (3) above, even if the corporation has not submitted an affirmative representation.
- d. If any of the incidents set forth in Section 6.c. occur, the Contracting Officer will refer the incident to the MRP HCAD who will, in turn, refer the incident, in writing, to the Chief of the Procurement Policy Division, OPPM, for suspension or debarment consideration by the procurement SDO. The notification will include the name and address of the corporation, names of officers or agents, and

a summary of the incident including any additional information needed to assess the incident.

- e. Contracting Officers will include the following assurance clause in all awards documents above the micro-purchase threshold, including those for the acquisition of commercial items under Federal Acquisition Regulation Part 12 and lease contracts.

“This award is subject to the provisions contained in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012, P.L. No. 112-55, Division A. Section 738 and 739 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 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 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 interest of the Government. If the recipient fails to comply with these provisions, the (insert MRP agency name) will annul this agreement and may recover any funds the recipient has expended in violation of Sections 738 and 739.”

- f. If, at any time, a Contracting Officer becomes aware that a corporate contractor has a felony or tax delinquency, the Contracting Officer will notify the MRP HCAD. The MRP HCAD will contact the Chief, Procurement Policy Division, OPPM.

7. NONPROCUREMENT TRANSACTIONS

- a. Awarding Officers will, for all financial transactions with corporations, whether awarded using the SF 424, Application for Federal Assistance, or not, include the representation set forth in Section 6.a. in all solicitations, requests for proposals, and applications for assistance.
- b. Awarding Officers are prohibited from making an award to any corporation that:
 - (1) Fails to comply with the requirement to complete the representation;
 - (2) Submits an affirmative response to the representation for having been convicted (or having had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal or State law within the preceding 24 months, where the awarding agency is aware of the conviction;

- (3) Submits an affirmative response to the representation for having 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, where the awarding agency is aware of the unpaid tax liability; or
 - (4) Has had a felony conviction or tax delinquency, as set forth in Section 6.c. (2) or (3), even if the corporation has not submitted an affirmative representation.
- c. If any of the incidents set forth in Section 7.b. occur, the Awarding Officer will refer the incident, in writing, through his/her Deputy Administrator, to the agency SDO, for suspension or debarment consideration. The notification will include the name and address of the corporation, names of officers or agents, and a summary of the incident including any additional information needed to assess the incident.
 - d. Awarding Officers will, for all financial transactions with corporations, whether awarded using the SF 424, or not, include the assurance clause set forth in Section 6.e. in all award documents.

8. INQUIRIES

- a. Questions concerning the information and processes described in this Directive should be directed to 202-799-7064.
- b. This Directive can be accessed on the Internet at <http://www.aphis.usda.gov/library>, and on the AMS Intranet at <http://www.ams.usda.gov/amsissuances>

/s/

Joanne Munno
Deputy Administrator
MRP Business Services