

OFFICE OF  
INSPECTOR GENERAL

*Report of Audit*

Contracting Activities

A-11-01

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Auditor-in-Charge**



**November 17, 2011**

FARM CREDIT ADMINISTRATION

## Memorandum

Office of Inspector General  
1501 Farm Credit Drive  
McLean, Virginia 22102-5090



November 17, 2011

The Honorable Leland A. Strom, Chairman and Chief Executive Officer  
The Honorable Kenneth A. Spearman, Board Member  
The Honorable Jill Long Thompson, Board Member  
Farm Credit Administration  
1501 Farm Credit Drive  
McLean, Virginia 22102-5090

Dear Chairman Strom and Board Members Spearman and Long Thompson:

The Office of the Inspector General completed an audit of the contracting activity at the Farm Credit Administration (FCA or Agency). The objective of this audit was to determine whether FCA's contracting environment is efficient and effective in acquiring products and services that provide the best value to FCA.

The results of our audit revealed that there have been improvements in the contracting process since our last audit conducted in 2002. Contracting officer's technical representatives are receiving standardized training every 18 months. Also contract file maintenance has improved with file documentation better organized and with a more complete history of procurement transactions. However, management and operations of the Agency's procurement function still need improvement. Specifically, contractors are performing a function (examination) that is inherently governmental and performing personal services contracts, both prohibited by Federal and Agency guidelines; a contract pre-award process was inappropriate; procurement oversight needs improvement; procurement office staff lacked sufficient training; and procurement guidance did not include essential information.

We conducted the audit in accordance with *Government Auditing Standards* issued by the Comptroller General for audits of Federal organizations, programs, activities, and functions. We conducted fieldwork from February 2011 through August 2011. We provided a draft report to management on October 18, 2011, and we have included their written response.

We would like to highlight the cooperative actions of the Office of Management Services. Before issuance of the final report, the Office of Management Services took corrective action to close-out all seven agreed-upon actions in this report.

We appreciate the courtesies and professionalism extended to the audit staff. If you have any questions about this audit, I would be pleased to meet with you at your convenience.

Respectfully,

A handwritten signature in black ink, appearing to read "Carl A. Clinefelter".

Carl A. Clinefelter  
Inspector General

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## BACKGROUND

The Chairman of the Farm Credit Administration (FCA) has delegated contracting authority and authority to enter into interagency agreements to the Chief Human Capital Officer (CHCO) who serves as the contracting officer. The Chairman derives contracting authority from Section 5.14 of the Farm Credit Act of 1971, as amended; the Federal Acquisition Regulation (FAR); and 31 U.S.C. §1535 (See Office of the Chairman and Chief Executive Officer, Del-9). The contracting officer is also the alternate Designated Agency Ethics Official (DAEO).

The contracting officer enters into, administers, and terminates contractual actions on behalf of the FCA. Working for the contracting officer is a contract specialist who assists with contract administration, maintains the contract files and database, and interacts with staff on procurement actions.

For contracts requiring frequent interaction with outside vendors, an individual chosen by the contracting officer performs specific duties during the term of the contract. This person is known as the contracting officer's technical representative (COTR). There is a COTR in each office except the Office of Congressional and Public Affairs.

Contracting duties and responsibilities include:

- Development, negotiation, and award of contracts.
- Contract oversight, administration, and disposition.
- Procurement record filing and file maintenance.

The Agency's policies and procedures for procurements are outlined in the following directives:

- Administrative Policy Number 812, Contracting Procurement/Policy and Implementing Procedures, establishes the FCA's policy and procedures for contracting and procurement.
- Administrative Policy Number 840, Role and Responsibility of the Contracting Officer's Technical Representative, delineates the COTR selection process and the COTR's responsibilities.
- Administrative Policy Number 855, Interagency Agreements, establishes the FCA's policy and procedures for entering into an interagency agreement.
- Office of Management Services (OMS) Directive 3, Contract Review Process for Legal Sufficiency, establishes the basis for obtaining a legal review.
- OMS Directive 4, Contract Desk Manual, provides additional implementing direction regarding the Agency's policies and procedures for contracts.

- OMS Directive 6, Charge Card Operating Procedures, is the operating manual for commercial purchase cardholders and approving officials.
- Office of the Chairman and Chief Executive Officer, Del-9, delegates to the CHCO the authority to act as the Agency's contracting officer.

In April 2006, the Agency executed a 6-month agreement for financial services, including procurement, with the Department of the Treasury's Bureau of the Public Debt (BPD). In September 2006, the FCA executed an agreement with BPD for financial services, including procurement, for all of fiscal year (FY) 2007. However, in March 2007, the Agency brought the procurement function back in-house because there was growing frustration among FCA staff with BPD's contracting processes and timeliness.

#### Prior OIG Audit of Contracting

In August 2002, the Office of Inspector General (OIG) completed an audit of the contracting activity at the FCA. The objective of the audit was to determine if FCA's contracting environment and processes provided adequate controls and safeguards to prevent fraud, waste, and abuse. The audit found that many procurement actions resulted in cost efficient purchases of products and services. However, there were problems with 41 percent of procurement actions reviewed. Many of the problems identified were attributed to inattention to contract management responsibilities. Specifically, inadequate acquisition planning, unauthorized commitments, and lax procurement oversight had made the Agency vulnerable to waste and abuse. A complete list of the audit's 2 recommendations and 8 agreed-upon actions is in the Appendix.

Since the 2002 audit, contracting processes have improved. For example, the procurement office has established a COTR training program that includes the COTRs receiving training every 18 months. Also contract files maintenance has improved with file documentation being better organized and including a more complete history of procurement transactions.

However, with respect to the prior audit's recommendations and agreed-upon actions, 2 agreed-upon actions need further resolution. Agreed-upon action A5 required training for contracting staff on personal services contracts and delegated authority responsibilities. Contracting staff received training on these specific topics; however, this current audit found that continuous training is needed to ensure staff remains proficient in performing their duties and responsibilities. See page 12.

Agreed-upon action A7 required quarterly reviews of procurement files and documentation of those reviews to be maintained in the central contract files. The contracting officer stated to us that quarterly reviews are no longer completed.

This and other findings from the current audit indicate the procurement function continues to have significant deficiencies.

## OBJECTIVE AND SCOPE

The objective of this audit was to determine whether the FCA's contracting environment is efficient and effective in acquiring products and services that provide the best value to FCA.

The scope of the audit work included the following:

- interviews with OMS, Office of Examination (OE), and Office of Secondary Market Oversight (OSMO) staff;
- review of Federal and Agency guidance that pertains to the procurement process;
- review of the Agency's procurement process which includes awarding contracts, contract administration, and recordkeeping;
- review of the procurement staff's training records; and
- follow-up on the recommendations and agreed-upon actions from the OIG Audit Report 02-03, *FCA Contracting Activity*, issued August 27, 2002.

### Computer Data Used

For FYs 2009 and 2010, the procurement office provided a listing of all contracts, purchase orders, interagency agreements, and purchase card transactions. We tested the accuracy of the data by reviewing and comparing the data to source documents such as contracts and vendor invoices. We concluded the data were sufficiently reliable for audit purposes.

For these two FYs, the Agency's procurements totaled approximately \$4.8 and \$5.1 million, respectively. We reviewed a sample of contracts, purchase orders, interagency agreements, and purchase card transactions. The sample included the following:

- For FYs 2009 and 2010, we judgmentally selected 26 high risk contracts valued at approximately \$1.1 million. Our criteria for high risk contracts included: high dollar amount; consultant services; single source awards; and multiple year contracts.
- For FY 2010, we reviewed 18 interagency agreements valued at approximately \$1.2 million to ensure the agreements were being appropriately administered.
- For FY 2011 we reviewed:
  - 8 high risk contracts valued at approximately \$379,000, and
  - the procurement office's purchase card transactions from January-June, valued at approximately \$111,000 to ensure procedures were followed and charges were appropriate.

Audit fieldwork was performed at FCA headquarters in McLean, Virginia, from February 2011 through August 2011, in accordance with generally accepted auditing standards for Federal audits.

## FINDINGS AND RECOMMENDATIONS

The management and operations of the Agency's procurement function need significant improvement. Specifically, we note the following deficiencies:

- contractors are performing a function (examination) that is inherently governmental and performing personal services contracts, both prohibited by Federal and Agency guidelines;
- a contract pre-award process was inappropriate;
- procurement office oversight needs improvement;
- procurement office staff lacked sufficient training; and
- procurement guidance did not include essential information.

As a result, Federal hiring laws are circumvented; contractors are effectively functioning as FCA employees; a contractor received preferential treatment when awarded a contract; and the procurement process is vulnerable to waste and mismanagement.

## CONTRACTS AWARDED OUTSIDE FEDERAL AND AGENCY GUIDELINES

According to Federal guidelines, an inherently governmental function should only be performed by Government employees. Our audit disclosed that the contractors termed examiner assistants were performing work that is considered inherently governmental and performing personal services contracts, both prohibited by Federal and Agency guidelines.

### Inherently Governmental

An Office of General Counsel (OGC) legal opinion on Contracts for Examination Services dated February 1, 2002, stated "The FCA may enter into service contracts...provided the functions performed are not inherently governmental."

The Agency's FAIR Act Inventory dated August 16, 2011, and filed with the Office of Management and Budget (OMB), identifies all functions within the OE as inherently governmental.

Thus, the Agency's practice of entering into examiner assistant contracts with private contractors to perform examination services is inconsistent with Government policy and the FCA OGC legal opinion, which is based on its citation of OMB Circular A-76 and section 7.503 (a) of the FAR.

## Personal Services

There is a prohibition expressed both in the FAR, Part 37, and specified in the Agency's own contracting provisions prohibiting contractors from performing personal services.

For FYs 2009 - 2011, the Agency awarded 23 contracts valued at approximately \$1 million for examiner assistants. For each of these 23 FCA examiner assistant contracts, provisions state:

“Neither the Contractor nor any of its employees will be considered a Federal employee for any purpose, regarded as performing a personal service, or eligible for civil service employee benefits.”

“The contract does not create an employer-employee relationship between FCA and the Contractor.”

According to the FAR, a personal services contract is characterized by an employer-employee relationship created between the Government and the contractor. The Government is normally required to obtain its employees by direct hire under competitive appointment as prescribed in Title 5, United States Code, Chapter 33. Obtaining personal services by contract, rather than by direct hire, circumvents this law.

The FAR provides descriptive elements that help define whether a contractor is performing personal services. Using the FAR guidance, we determined the examiner assistant contractors were performing work that is considered personal services. The following chart compares the FAR's descriptive elements of personal services with the examiner assistant contracts.

Descriptive Elements of Personal Services	Examiner Assistant Contracts
Performance on site.	Contractors work at examination site alongside FCA employees.
Principle tools and equipment furnished by the Government.	Contractors are assigned Agency laptops, Outlook accounts, network access & Lotus Notes Database access.
Services are applied directly to the integral effort of the organization.	Work being performed by the contractor is part of the Agency's main mission and is inherently governmental functions.
Civilian personnel at similar agencies perform comparable service.	Examination services at other agencies are performed by employees. Agency staff stated work performed by the contractors is similar to work performed by the examiners.
The need for the service is expected to last longer than a year.	According to the FCA Human Capital Plan there will be a need for the examiner assistant contractors until 2013.
The inherent nature of the service requires direct or indirect supervision.	Contractors work is directed by the examiner in charge at the work site.

The procurement office is responsible for reviewing all contract requirements to ensure personal services contracts are not established. For the examiner assistant contracts, the procurement office received task orders from the OE showing contractors were treated like FCA examiners. Below are specific examples of task order activities:

- “From June 15 - 19 examine loans and loan related assets, conduct interviews with loan officers and executive staff as needed.”
- “Prepare workpapers for the examiner in charge to review and approve.”
- “Conduct other examination activities as directed by the examiner in charge.”
- “Provide on the job training to associate examiners.”
- “Serve as the activity leader for the examination areas related to accounting and System wide financial disclosure.”
- “Work with examiners assigned in evaluating the internal controls.”
- “Prepare the assets lead sheet as assigned.”
- “Receipt of computer equipment and computer training.”

Our analysis shows these contractors are performing an inherently governmental function and providing personal services. This conflict with Federal and Agency guidelines takes on added significance since, according to OE's section in the Agency's Human Capital Plan, examiner assistant contractors will continue to be needed until 2013. Appropriate action will need to be taken to remedy these contracting arrangements, which are inconsistent with Federal and Agency guidelines.

In checking with the National Credit Union Administration and the Federal Deposit Insurance Corporation, they compete contracts for special analysis related to examination or for short term projects requiring a specific expertise. Neither agency uses retired examiners on active credit union or bank examinations.

Based on our discussion of the above finding, the OMS Director and Chief Examiner have taken initial action to address the issues by putting on hold all scheduled and planned contractors completing examination work, both on Farm Credit System (FCS) and United States Department of Agriculture (USDA) contract work. We acknowledge the Agency's initial steps in resolving this issue.

### **Agreed-Upon Action**

1. The OMS Director should request a legal opinion from the OGC on examiner assistant contracts being inconsistent with Federal and Agency guidelines resulting in non-governmental contractors performing an inherently governmental function and providing personal services. Based on the results of the legal opinion, appropriate Agency corrective action should be taken.

### **Agreed-Upon Action Resolution**

Before issuance of this final report, the Office of General Counsel provided the Office of Management Services a legal opinion on contracting for examination services. Based on the

legal opinion, the Chief Operating Officer approved a Decision Memorandum that included corrective actions to close-out this agreed-upon action.

## INAPPROPRIATE CONTRACT PRE-AWARD PROCESS

According to Administrative Policy Number 812, Contracting Procurement/Policy, “FCA employees shall not take part in any action that may result in or create the appearance of a loss of complete independence or impartiality or adversely affect the public’s confidence in the integrity of the FCA.” During our audit, we discovered an instance where FCA staff actions were not consistent with this policy and, as a result, a contractor received preferential treatment during the contract pre-award process.

In 2008, a former FCS employee called a senior level FCA employee with an unsolicited proposal, asking about possible work with OE. After receiving the call, the FCA employee sent an e-mail to several office managers soliciting work for the potential contractor. Below is an excerpt from the e-mail:

- *“... called again to get an update on opportunities to do some contract work for FCA. I obviously didn’t have any new information. Hopefully we can accommodate him since this a great opportunity for us to work with System staff that may be helpful in the future.....”*
- *“.... it seems like we should get him some exposure on some examination assignments to get a feel on how he would do in our environment and so that he can see how we do our jobs. He would like to work about 2 weeks a month, so as much work as you can provide would be great. Let me know if we can make this work.”*

Two weeks after the e-mail was sent, the former FCS employee was awarded a single source contract for \$98,895.

Based on the e-mail language and our review of the contract file, the contractor received preferential treatment for the following reasons:

- The contract was not based on an actual need identified by OE prior to the contract being awarded. Instead, OE found work for the contractor after receiving a call requesting work.
- The single source justification prepared by OE was not supported. The contract’s single source justification included the following statement: “Based on the urgency of the need, we are asking that a contract be awarded on a single source basis...” Based on the e-mail, there was no evident urgent need for the contractor to perform examination work. Instead, the contract was executed to get the contractor some exposure on the examination function and to see how the contractor would work in FCA’s examination environment.
- The contract appears to have been primarily structured to accommodate the contractor’s terms. For example, the contractor stated he would like to work about 2 weeks a month and OE staff was willing to satisfy his requirement.

Since the time the initial contract was awarded in 2008, the contractor continued to receive additional contracts each year. As of July 2011, the contractor had received contracts totaling \$316,244.

In addition to this incident, contracts awarded to former FCA employees are also particularly vulnerable to preferential treatment. Of the 34 contracts reviewed, 23, or 68 percent, involved former employees. These contracts are also at risk of preferential treatment for the following reasons:

- Contracts awarded to former FCA employees were all single source awards.
- Contract services were for similar work the contractor performed prior to leaving the Agency. Agency staff may favor a former employee due to the working relationships that were developed when the contractor was employed at FCA.
- Prior to leaving FCA, employees may have knowledge of contracting opportunities that could influence contracting decisions. OIG staff is aware that one Office of Regulatory Policy retiree verbalized prior to retirement that they were returning under contract subsequent to retirement.

The FAR (Part 6) specifies contracting on a sole-source basis should not take the place of advanced planning for specific human capital needs. Contracting with select FCA retirees and accommodating retired System employees creates, at the least, a perception problem that FCA's contracting may not be impartial. The open, competitive, transparent spirit of government contracting seems compromised in these situations.

The Agency's procurement function should be conducted in a manner above reproach, without preferential treatment. As stated in Administrative Policy Number 812, Contracting Procurement/Policy, "Employees purchasing goods and services shall be held to the highest standards of conduct in performing their duties and shall conduct themselves so as to avoid even the appearance of any impropriety or conflict of interest."

### **Agreed-Upon Action**

2. The OMS Director should coordinate with the DAEO to include the following in the Agency's ethics and contracting program:
  - an Agency policy on acceptable and prohibited conditions relevant to contracting practices with former FCA and FCS employees; and
  - examples of prohibited contract award practices with former FCA and FCS employees.

### **Agreed-Upon Action Resolution**

Before issuance of this final report, the Office of Management Services took corrective action to close-out this agreed-upon action.

## PROCUREMENT OFFICE OVERSIGHT NEEDS IMPROVEMENT

Effective procurement oversight includes management's and employees' support in following procurement control mechanisms. Control mechanisms include policies, procedures, and other practices to prevent fraud, waste, abuse, and mismanagement. Our review showed procurement office staff did not always follow control mechanisms to ensure procurements were appropriately administered. Specifically:

- purchase card procedures were not followed;
- a contract modification was not appropriately processed;
- two contractors were reimbursed for expenses that were inconsistent with contract provisions; and
- contract file reviews were discontinued.

### Purchase Card Procedures Not Followed

According to OMS Directive 6, Charge Card Operating Procedures, it is the responsibility of the purchase cardholder to ensure that the government credit card is not accessible to others. Our review of the contracting officer's credit card purchases showed the contract specialist continuously used the contracting officer's credit card to purchase goods and services for the Agency. The credit card bears the individual's name and should only be used by that person to make purchases. The contracting officer should not allow the contract specialist to use his assigned purchase card.

### Contract Modification Not Appropriately Processed

Prior to a contract price increase modification, the procurement office should receive a request from the program office. In 2011, the procurement office increased a contractor's hourly rate by 33 percent without supporting documentation from the program office.

An OE contract was awarded at a set hourly rate. Six months after the contract was awarded the contracting officer authorized a modification to increase the contractor's hourly rate by 33 percent. According to the contract specialist, because the contractor had another contract with a different program office, the OSMO, for similar services, at a higher rate, the contractor wanted to be paid the same hourly rate on the OE contract. The OE contract rate was increased with no documentation in the file from the OE asking for the hourly rate increase. In addition, the contract files did not include any information on how each office determined their hourly rate.

We discussed with OE and OSMO how the contractor's hourly rate was computed. We determined that each office had a different process for determining the contractor's hourly rate.

- OE based its hourly rate on the base salary FCA employees are paid for similar work, with added adjustment for self-employment taxes and benefits.
- OSMO based its hourly rate on market research of outside consultant prices. According to OSMO staff, when the contract was initially awarded, the contractor's hourly rate was

below the market rate. It was agreed that over the contractor's 5-year performance period, the contractor's hourly rate would increase to eventually meet a comparable market rate.

After the OIG discussed the hourly rate difference with the OE and OSMO, the modified contract was cancelled on June 28, 2011, due to the OE determining services would not be used. Even though the contract was cancelled, procurement staff actions were not appropriate. The procurement office should not increase the price of a contract without justification. The procurement office is the focal point for all contract actions and should be attentive to disparities among contracted services.

### Inconsistent Contract Provisions

An Agency contract provision entitled *No Employer/Employee Relationship* specifies: "The contractor will be responsible for any and all obligations arising from the status as an independent contractor, including but not limited to tax reporting, payment obligations and professional liability insurance." For two FCA contractors doing work for another agency, the Agency was reimbursed by that agency for the contractors' professional liability insurance costs and, as a result, the contracting officer allowed professional liability insurance costs totaling \$5,160 to be included in the contractor's overall reimbursement from FCA, even though the contract provision stated the charge is not allowed.

### Contract File Reviews Discontinued

The OIG Audit Report 02 - 03, *FCA Contracting Activity*, issued August 27, 2002, included an agreed-upon action that addressed contract file reviews. The Agency agreed to perform quarterly contract file reviews to ensure files were being adequately maintained. According to the contracting officer quarterly reviews are no longer completed. The contracting officer indicated he reviews all procurements being awarded and sees all contract files every day, thus quarterly reviews seemed redundant. However, based on our current findings, these reviews should be reinstated due to the increased annual number of contractual actions and the continued contract file weaknesses.

Our review found contract file documents were not always up to date or accurate. Specifically:

- For five files, when the COTR changed during the contract performance period, a new COTR designation letter was not issued.
- For two files, the single source justification used the wrong name for the contractors. It appears the requestor used a standard justification and did not change the name during the cut and paste process.
- For one file, the contracting officer had not signed the single source justification.
- For five interagency agreements, the agency providing the service did not sign the agreement.

Contract files were also missing important market research documentation.

- For the examiner assistant contracts, various hourly rates were used for the contractor's price, and the files lacked the basis for the hourly rate. When we discussed with OE the process for determining the hourly rates, they provided us a spreadsheet explaining how the hourly rates were determined. This documentation should have been part of the contract files or at least referenced, and should have been reviewed by the procurement office for price reasonableness prior to awarding the contracts.
- For a contract valued at \$172,000, the single source justification stated two proposals were received, however, the file only contained the proposal of the company awarded the contract. Both proposals should have been part of the file.

Since the 2002 OIG audit of contracting, the number of contracts/purchase orders has increased significantly. At the prior OIG contracting audit, for FY 2001, the Agency had processed 75 contracts/purchase orders valued at approximately \$1.6 million. For FYs 2009 and 2010, the Agency processed 122 contracts/purchase orders valued at \$3.5 million and 121 contracts/purchase orders valued at \$3.7 million, respectively. Given the issues identified and the increase in the number of transactions processed, contract files need to be reviewed more thoroughly and consistently to ensure contracts are being appropriately administered.

The OMS needs to incorporate more stringent control methods to ensure procurements are being administered appropriately. According to the Agency's guidance on the evaluation of internal control systems, office directors annually review operations and identify functions that should be included in the office's internal control systems. For the procurement function, the OMS's internal control program includes vendor payments and the purchase card program. The OMS should expand its procurement function internal control reviews to ensure: procurement policies and procedures are followed; contract terms are adhered to; and contract files are adequately maintained.

### **Agreed-Upon Action**

3. The OMS Director should strengthen internal controls over the contract administration function. Reviews should be completed as follows:
  - quarterly reviews to ensure contract files are adequately maintained. The reviews should ensure that, at a minimum:
    - file documents are accurate and complete.
    - files contain supporting documentation for contract modifications that change the contract's scope and price.
    - files contain all relevant acquisition history information.

- yearly reviews to ensure procurement policies and procedures are followed during the acquisition process.

### **Agreed-Upon Action Resolution**

Before issuance of this final report, the Office of Management Services took corrective action to close-out this agreed-upon action.

## **PROCUREMENT STAFF TRAINING AND GUIDANCE NOT ADEQUATE**

An effective procurement operation includes developing staff skills and providing adequate guidance to ensure procurement actions are administered appropriately. Our audit found the procurement staff lacked sufficient training and procurement guidance did not include essential information to ensure procurements were appropriately administered.

### **Procurement Office Staff Training Not Sufficient**

The procurement office staff includes the contracting officer and a contract specialist.

- The contracting officer is also the Agency's CHCO and his time is split between the two functions. The contracting officer has been delegated the authority to execute and administer all contracts, interagency agreements, and memoranda of understanding. The contracting officer has been in his position for 16 years.
- The contract specialist manages the day-to-day operations of the procurement office. This includes reviewing requisitions, administering contracts, maintaining contract database and files, and interacting with staff on procurement actions. The contract specialist has been in her position for 4 years and has a warrant to sign contracts up to \$50,000. Prior to being appointed to this position, the contract specialist had no prior contracting experience.

The procurement office is intended to be the Agency's procurement expert. Therefore, procurement office staff should be receiving continuous training to ensure they remain proficient in performing their duties and responsibilities. For FYs 2010 - 2011, the contracting officer's and contract specialist's training included a three hour COTR training with the BPD and an online training video on Solutions for Enterprise-Wide Procurement. Given the procurement office staff's responsibilities and warrant authority, the training received is not sufficient according to Federal guidelines.

The Office of Federal Procurement Policy has established a contract certification program which outlines the core training requirements for contract personnel. The program was established to assist agencies with developing their contract staff skills and identifying training needs. Based on this program guidance, contracting personnel, including those with a warrant, should receive at a minimum 80 continuous learning points (CLP) every two years. However, the contracting officer's and contract specialist's training for FYs 2010 - 2011 only amounted to 6 CLPs. Even though it is not mandatory that the Agency follow the Office of Federal Procurement Policy

(which is primarily focused on training for the FAR requirements), there should be an Agency policy to set forth minimum training requirements.

### Procurement Guidance Missing Essential Information

Directive 4, Contract Desk Manual, outlines additional implementing direction regarding policies and procedures for procurements. Our review of this guidance showed it lacked the following essential information:

- Personal Services - Contractors performing personal services have been a continuous issue with the Agency's contracts. Our prior and current audits identified problems with personal services contracts. Our prior audit also included an agreed-upon action that procurement staff would receive training on personal services contracts. Given the continued misunderstanding by staff on what are personal services, the Agency needs to provide clear guidance on what is considered personal services and provide examples of situations that establish a personal services contract. This type of guidance can help prevent this situation from arising again.
- Contract Modifications - Contract modification can significantly change a contract's scope and price. The contract manual does not address the contract modification process. Procedures on how modifications are to be processed should ensure changes made are appropriate and agreed to by all parties.
- Contract Closeout - Requirements for closing out contract files should be addressed to ensure files are closed out appropriately and efficiently.

Office of the Chairman and Chief Executive Officer, Del-9, dated February 25, 2010, which delegates contracting authority to the CHCO, is out of date in that it references a contract amount limitation to this delegated authority in FCA Board Policy Statement No. 64. However, Policy Statement No. 64 was revised in July 2011 removing what we assume is the referenced contract amount limitation language, i.e., "The objective of single procurements and the provision of services or materials in excess of \$100,000 will be made during the budget approval process." The effect is that the delegation to the CHCO now contains no contract amount limitation.

### Agreed-Upon Actions

4. The OMS Director should establish a policy that identifies the minimum amount, type, and frequency of training required of the contracting officer and contract specialist.
5. The OMS Director should ensure the contracting officer and contract specialist develop a training plan each year that meets the minimum training requirements. The plan should be reviewed annually to ensure training has been taken and to assess the development of skills and knowledge.

6. The contracting officer should revise Directive 4, Contract Desk Manual, to include the following:
  - a definition of a personal services and examples of what is considered a personal services;
  - the procedures for processing contract modifications; and
  - the contract close-out procedures.
7. The OMS Director should take appropriate action to address the inconsistency between delegated authority to the contracting officer under Del-9 and the revised Board Policy Statement No. 64.

#### **Agreed-Upon Actions Resolution**

Before issuance of this final report, the Office of Management Services took corrective action to close-out these agreed-upon actions.

## Appendix

### FOLLOW UP ON PRIOR OIG AUDIT REPORT

As part of this audit, we followed up on the OIG Audit Report 02-03, *FCA Contracting Activity*, issued August 27, 2002. The objective of the prior audit was to determine if FCA's contracting environment and processes being used provided adequate controls and safeguards to prevent fraud, waste, and abuse.

The 2002 audit report included two recommendations and eight agreed-upon actions. Our review showed that for two of the agreed-upon actions the Agency still needs to take corrective actions. They are:

- "The CAO should ensure procurement staff receives training on personal service contracts and delegated authority responsibilities."
- "OCAO management should complete quarterly reviews of procurement files. Documentation of the reviews should be maintained in the central contract file."

We address the resolution to these agreed-upon actions in the current audit report section, Procurement Office Oversight Needs Improvement.

The following chart shows the status of all recommendations and agreed-upon actions.

<b>Recommendations and Agreed-Upon Actions</b>		<b>Current Status</b>
<b>R – Recommendation</b>	<b>A – Agreed-Upon Action</b>	
A1. OCAO should stop processing further amendments on the financial system support contract until a review is completed to determine whether the contract should be completed. If the contract cannot be completed, review should include a detailed justification identifying the reason(s) for non-competitive procedures.		The Agency no longer has a contract with this vendor.
A2. OCAO should require the requestor to provide cost comparison analysis prior to car lease renewal. The analysis should be maintained in the procurement file.		At the time of the audit the Agency had three car leases. Currently, the Agency uses one car for group travel. This agreed-upon action has thus been closed.
A3. The CAO should ensure procurement staff is reviewing at last three vendors' price list or use GSA Advantage on-line shopping services for acquisition exceeding \$2,500 when using the Federal Supply Schedule.		Generally contract files included GSA Advantage on-line price list for services being requested.
R4. The OCAO should discontinue the Ford Grand Marquis lease.		Grand Marquis car lease no longer exist.
A5. The CAO should ensure procurement staff receives training on personal service contracts and delegated authority responsibilities.		Procurement staff have not received adequate training. The prohibited procurement and staff training findings address this issue.
R6. The CAO should obtain Chief Executive Officer approval for an exception to the FAR requirement on the OCFO personal service contract. If approval is not received, the contract should be terminated immediately.		Contract has been terminated.
A7. OCAO management should complete quarterly reviews of procurement files. Documentation of the reviews should be maintained in the central contract file.		Quarterly reviews are no longer completed.
A8. OCFO should provide OCAO will copies of all payment information related to purchase orders, contracts and interagency agreements for inclusion in OCAO's procurement files.		Contract payment information is being tracked by the COTRs who maintain payment information files. Interagency agreements and purchase card payments are maintained in the procurement office files.
A9. OCAO should update the Policies and Procedures Manual 840 and OCAO Directive 3 and 4 to reflect current FAR guidelines and the Agency's organizational structure.		The Agency has developed their own guidance and no longer use the FAR.
A10. The CAO should complete a review to determine whether the procurement staff can be further streamlined. The review should include a cost-benefit analysis on using outside sources to assist with Agency contract services versus in-house personnel.		The Agency outsourced the procurement function in November 2005. In March 2007, FCA decided to bring the procurement function back in-house. The procurement staff is currently a contracting officer and contract specialist.

# Office of Management Services

## Response

# Memorandum

Farm Credit Administration  
1501 Farm Credit Drive  
McLean, Virginia 22102-5090



November 16, 2011

To: Carl Clinefelter, Inspector General  
Office of Inspector General

From: Stephen Smith, Director  
Office of Management Services

Subject: Response to Contracting Audit

A handwritten signature in black ink, appearing to read "Stephen Smith".

Thank you for the opportunity to review and respond to the Office of Inspector General audit of OMS contracting activities. We have carefully reviewed each of the seven recommendations contained in the report and have taken action to address all of those recommendations.

We do want to specifically comment on the part of the draft audit report conclusions regarding contracts issued for examination services. The report notes that the current Commercial Activities Inventory (CAI) report to the Office of Management and Budget, dated August 16, 2011, identified all functions within the Office of Examination (OE) as inherently governmental, yet FCA had contractors performing examination tasks. In addition, the draft report discusses personal service contracts, wherein, after using Federal Acquisition Regulations (FAR) guidance, IG determined that OMS had issued prohibited personal service contracts for examiner assistants.

Under current law and OMB guidance, federal agencies are restricted from contracting for inherently governmental functions. Federal agencies are also subject to certain limitations on contracting for "critical functions" and "functions closely associated with performing inherently governmental functions." Key among the limitations is that agencies retain sufficient internal control of their mission and operations. Identifying work at the activity level, not just the function level, helps differentiate inherently governmental and mission-critical functions from activities that may be performed by contractors. OMB Policy Letter 11-01 explains that the identification and treatment of critical functions and closely associated functions requires a case-by-case determination.

OMB Policy Letter 11-01 provides a new, standard definition of inherently governmental functions, adds additional criteria to identifying inherently governmental functions, and places new limitations on contracting for critical functions and functions closely associated with

performing inherently governmental functions. This policy letter became effective on October 12, 2011, and, until then, agencies continued rely on OMB Circular A-76 (Revised 2003).

As a result, we will now work with the Office of Examination to identify critical functions and functions closely associated with performing inherently governmental functions as well as inherently governmental functions. We will apply the criteria in OMB Policy Letter 11-01 when making these identifications. We will also develop internal criteria for making these identifications on a case-by-case basis. We will replace FCA's existing list of inherently governmental functions with a new list, using the new *inherently governmental function* definition. We will also use the updated identification of FCA inherently governmental functions to complete the 2012 annual CAI report.

Finally, the FAR prohibits the use of personal service contracts unless an agency has specific statutory authority for such. Section 5.14 of the Farm Credit Act of 1971, as amended (Act), authorizes FCA to obtain services through "temporary employment by contract or otherwise, as it may from time to time find necessary for the proper administration of this Act." Thus, FCA is authorized to enter into personal service contracts. The FAR provides six elements to identify personal service contracts, but the key element is direct and continuous supervision of the contractor. FCA will ensure that its staff has instruction and understands the importance of these elements. We note the relationship of FAR § 37.104(d) to OMB Policy Letter 11-01 has yet to be determined. In the interim, we rely on OMB Policy Letter 11-01 and Office of General Counsel legal analysis to identify personal service contracts.

We sincerely appreciate the work performed by your office and believe that it will contribute to improvement in the overall operations of the Agency. We have taken immediate action to address each of the issues that you have identified. Attached to this memorandum is documentation signed by me and the audit follow-up official to certify closure on all of the recommendations.