



United States Department of Agriculture

OFFICE OF INSPECTOR GENERAL





Review of Expenditures Made by the Office of the Assistant Secretary for Civil Rights

Audit Report 50099-0001-12

What Were OIG's Objectives

Our objectives were to determine whether OASCR expenditures were properly supported by documentation, whether unauthorized commitments were properly ratified by the Office of Procurement and Property Management (OPPM), where appropriate, and whether Federal legal authorities and Departmental regulations were adhered to.

What OIG Reviewed

We reviewed OASCR transactions between FYs 2009 and 2013 to identify unauthorized commitments, which resulted in improper payments to vendors or organizations, by examining transactions and related documentation. We also reviewed 10 ratifications of unauthorized contracts used to purchase goods and services.

What OIG Recommends

OASCR needs to improve its processes to ensure that it follows established Departmental procedures, maintains sufficient documentation when making expenditures, and determine if the improper payments identified need to be addressed, where appropriate.

OIG reviewed OASCR's expenditures to verify payments made were adequately supported by documentation.

What OIG Found

The Office of the Assistant Secretary for Civil Rights (OASCR) provides leadership and direction for the fair and equitable treatment of all Department of Agriculture (USDA) customers and employees, as well as enforces civil rights within USDA programs. To meet its goals, OASCR expends funds on salaries and benefits, purchases goods and services, and engages in sponsorships. The Office of Inspector General (OIG) conducted preliminary work and identified anomalies pertaining to OASCR procurements. Based on this work, we performed a more in depth review of OASCR's expenditures for fiscal years (FY) 2009 through 2013.

During this 5-year time period, we determined OASCR improperly entered into agreements of approximately \$2.65 million with vendors and other organizations for services and sponsorships, without providing sufficient documentation for OIG to discern whether the payment was proper. As a result, while one agreement totaling \$50,000 was properly ratified, thereby validating the procurement contract and subsequent payment, we identified approximately \$2.6 million in improper payments made without sufficient documentation. This occurred because OASCR did not properly identify which legal instrument to use for the applicable expenditure, and, also, for certain legal instruments (i.e., procurement contracts), OASCR did not follow the applicable guidelines to establish the obligation. However, we found that OASCR has taken action to rectify the issues identified.

In addition, we determined that the ratification of unauthorized contracts was not adequately documented.

OASCR and OPPM generally agreed with the recommendations in this report and we have reached management decision on 8 of the 9 recommendations.

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Background and Objectives

Background

The Office of the Assistant Secretary for Civil Rights' (OASCR) mission is to provide leadership and direction for the fair and equitable treatment of all Department of Agriculture (USDA) customers and employees, while ensuring the delivery of quality programs and enforcement of civil rights. To fulfill its mission, for fiscal years (FY) 2009 through 2013, OASCR received a total of approximately \$111 million in annual appropriations. OASCR expends funds on various items, such as salaries, benefits, travel, sponsorships,^{1,2} and purchases for goods and services, which are governed by Departmental and Federal regulations.

In October 2009, the *Management Functions within the Office of the Secretary* memorandum realigned several agencies, including OASCR and the Office of Procurement and Property Management (OPPM), under Departmental Management (DM). Within DM, Management Services (MS) was created to provide operational services (including human resources, procurement, budget, and financial management) to DM's various offices. The realignment altered the reporting structures and reassigned OASCR's accounting and procurement functions to MS. On September 1, 2012, the Secretary dissolved MS, and the reporting structure reverted to the alignment that existed prior to the October 2009 memorandum.

During FYs 2009 through 2013, OASCR had 1,744 expenditures related to the purchase of goods, services, and sponsorships. From that universe, we identified 629 transactions in excess of the \$3,000 micro-purchase threshold, totaling approximately \$49 million.

Three legal instruments by which agencies expend funds include procurement contracts, grants, and cooperative agreements.³ 31 United States Code (U.S.C.) Chapter 63, outlines criteria for executive agencies to apply when selecting an appropriate legal instrument to use for expenditures in order to achieve a clear definition of the relationships they reflect, as well as a better understanding of the responsibilities of the parties involved.⁴ Chapter 63 also defines three instruments that may be used for agency expenditures: (1) procurement contracts; (2) grants; and (3) cooperative agreements. Specifically, a procurement contract should be used when the principal purpose is to acquire property or services for the direct benefit or use of the Government. A grant or a cooperative agreement should be used when the principal purpose is to transfer a thing of value (i.e., funds) to a recipient to support a public purpose. A grant should be used when substantial involvement is not expected between the executive agency and the recipient; conversely, a cooperative agreement should be used when substantial involvement is expected.

¹ According to OASCR officials, sponsorships are expenditures, which ensure civil rights and outreach are fairly and equitably supported at USDA.

² This audit did not evaluate whether OASCR had the legal authority to enter into sponsorships during the scope period of the audit.

³ According to an OASCR official, it only has the legal authority to use procurement contracts, grants, and cooperative agreements as legal instruments to obligate the Government.

⁴ 31 U.S.C. § 6301(2)(B) – (C).

Multiple Federal and Departmental regulations govern the use of contracts in the Federal procurement process. Within USDA, all agencies and staff offices have the authority to purchase eligible goods and services under the micro-purchase threshold. Contracting Officers (CO) must complete procurement contracts above that threshold. The use of a designated CO helps to ensure the Government is in compliance with the terms of the procurement contract and safeguards the interests of the United States in its contractual relationships.⁵ OPPM's Procurement Operations Division (POD) is OASCR's designated contracting and procurement support office and is responsible for contracting for goods and services requested by OASCR.

In regards to procurement contracts, only a CO may enter into and sign a contract on behalf of the Government.⁶ Additionally, a dollar amount can only be recorded as an obligation when there is supporting evidence of a binding agreement between the agency and another party.⁷ If a procurement contract was not executed by a CO, and a payment was made, then an improper payment has occurred. The Improper Payments Elimination and Recovery Act of 2010 defines an improper payment as "any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements."⁸ Furthermore, Office of Management and Budget (OMB) Circular A-123 states that when an agency's review is unable to discern whether a payment was proper as a result of insufficient documentation, this payment must also be considered an error (i.e., an improper payment).⁹

An unauthorized commitment is a nonbinding agreement because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government. For unauthorized commitments that required a procurement contract, the Federal Acquisition Regulation (FAR) establishes uniform policies for the acquisition of supplies and services by executive agencies. When an unauthorized commitment occurs (is made), the FAR gives the ability to ratify certain unauthorized contracts to the Head of Contracting Activity (HCA), unless a higher official is designated by the Department.¹⁰ There are certain conditions pertaining to a ratification of a procurement contract that the HCA must take into account when considering whether to ratify it. A contractual unauthorized commitment may only be ratified if the following conditions are met:

- supplies or services have been provided to and accepted by the Government, or the Government has obtained, or will obtain, a benefit resulting from performance of the unauthorized commitment;
- the resulting procurement contract would have otherwise been proper if made by the appropriate CO;

⁵ 48 Code of Federal Regulations (C.F.R.) § 1.602-2.

⁶ 48 C.F.R. § 1.601(a).

⁷ 31 U.S.C. § 1501(a)(1).

⁸ Public Law (Pub. L). No. 111-204, § 2(f)(2)(A).

⁹ OMB, *Issuance of Part III to OMB Circular A-123, Appendix C*, Memorandum M-10-13 (March 22, 2010).

¹⁰ HCA is the official who has overall responsibility for managing the contracting activity. 48 C.F.R. § 2.101.

- the CO determines the price to be fair and reasonable; and
- funds were available at the time the unauthorized commitment was made.¹¹

In addition to the requirements outlined by the FAR, the Department has established additional requirements in the Agriculture Acquisition Regulation (AGAR) regarding ratifications. Such requirements include, among others:

- when ratifying an unauthorized commitment, the official must notify the cognizant program supervisor about the final disposition of the case, which may include a recommendation that the unauthorized commitment should be further considered a violation of USDA's employee conduct regulations; and
- when an official is authorized to ratify an unauthorized commitment, the official shall maintain related approval, decisional, and background documents in the procurement contract file.¹²

Objectives

Our objectives were to determine whether OASCR expenditures were properly supported by documentation, whether unauthorized commitments were properly ratified by OPPM, where appropriate, and whether Federal legal authorities and Departmental regulations were adhered to.

¹¹ 48 C.F.R. §§ 1.602-3(b)(2), 1-602-3(c).

¹² 48 C.F.R. § 401.602-3(a).

Section 1: Improper Expenditure and Accounting Methods

Finding 1: OASCR Did Not Comply with Federal and Departmental Expenditure and Accounting Guidelines

We determined OASCR improperly entered into agreements with vendors and other organizations for services and sponsorships totaling approximately \$2.65 million during FYs 2009 through 2013. This occurred because, for certain legal instruments (i.e., procurement contracts), OASCR did not follow applicable guidelines to establish the obligation or it did not maintain sufficient documentation for OIG to discern whether the payment was proper. For example, OASCR personnel did not know which purchases required the use of a warranted CO and which purchases did not, such as micro-purchases.¹³ Involvement of a warranted CO is necessary for procurement contracts because this individual is trained to ensure Federal procurement law is adhered to, proper competition is obtained, and the price paid for goods and services is fair and reasonable. When funds are obligated without sufficient documentation to discern whether the payment was proper or through the improper use of a legal instrument, the subsequent payment is considered improper. As a result of OASCR entering into these improper agreements and subsequently paying the vendors for the goods and services received without maintaining sufficient documentation, these transactions and the dollars associated with them are considered improper payments.¹⁴ In February 2013, OPFM instructed OASCR staff to obtain procurement training, which it provided to OASCR on September 5, 2013.

While agencies may have other authorities for making expenditures, 31 U.S.C. Chapter 63 defines three instruments that agencies may use for agency expenditures: (1) procurement contracts; (2) grants; and (3) cooperative agreements.¹⁵ Specifically, agencies should use a procurement contract when the principal purpose is to acquire property or services for the direct benefit or use of the Government.¹⁶ Only a warranted CO may enter into and sign a procurement contract on behalf of the Government.¹⁷ Expenditures made, for example under a procurement contract, are considered improper if they should not have been made or were made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements.¹⁸ In addition to Federal legal authorities, USDA's Departmental Regulation 5031-6 specifies only a warranted CO may purchase items above the micro-purchase level.¹⁹

¹³ Micro-purchase is an acquisition of supplies or services, the aggregate amount of which does not exceed \$3,000 (48 C.F.R. § 2.101).

¹⁴ One of the unauthorized commitments for \$50,000 was properly ratified by POD.

¹⁵ According to an OASCR official, it only has the legal authority to use procurement contracts, grants, and cooperative agreements as legal instruments to obligate the Government.

¹⁶ 31 U.S.C. § 6303(1).

¹⁷ 48 C.F.R. § 1.601(a).

¹⁸ Pub. L. No. 111-204, § 2(f)(2)(A).

¹⁹ USDA Departmental Regulation 5031-6, Use of Purchase Card and Related Alternate Payment Methods, (November 14, 2012).

Unauthorized Contracts

Of the \$2.65 million in agreements that OASCR entered into, it attempted to submit payments to 10 vendors for \$704,000 through OPPM's contracting office –POD. POD identified that these payments were the result of unauthorized commitments resulting from unauthorized contracts entered into by OASCR.²⁰ Subsequently, POD attempted to ratify all 10 procurement contracts. However, due to a lack of supporting documentation, we could not determine if 9 of the 10 ratifications were valid. We consider these 9 unauthorized contracts, totaling about \$654,000, as still being unratified, since no binding agreement appears to have existed, as required by 31 U.S.C. § 1501(a)(1). Therefore, a valid obligation of funds for those commitments did not occur. Because OASCR paid the vendors, and the ratifications were not completed properly, these payments to vendors are improper. (See Finding 2 and Exhibit A.)

Other Unsupported Expenditures

Given that unauthorized commitments are not readily identifiable, we designed tests to trace expenditures made back to supporting documentation. Using financial accounting data, we identified that 629 of the 1,744 OASCR transactions from FYs 2009 to 2013 were related to expenditures over the micro-purchase threshold, according to the budget object classification code.²¹ We then reviewed the available supporting documentation for all 629 to determine if an appropriate legal instrument was used to support the expenditure. We found that 130 transactions (21 percent), totaling over \$1.94 million, were improper payments because OASCR made payments, but could not provide proof of a valid procurement contract, grant, cooperative agreement, or other legal instrument or authority. For example, OASCR made:

- 6 payments, totaling \$798,998, to a firm for equal employment opportunity counseling and alternative dispute resolution services;
- 7 payments, totaling \$42,000, to a single vendor for independent reviews of final agency decisions on a sample of USDA civil rights complaints;
- 25 payments, totaling \$179,794, to one vendor for access to an online legal database; and
- A \$15,000 payment to sponsor a Youth in Agriculture Pavilion at a children's holiday event.²²

As a result of our review, we identified improper payments totaling approximately \$2.6 million (improper payments totaling over \$1.94 million and improper ratifications of contracts of about \$654,000).

For the 130 transactions that we identified as improper, we did not make a determination which legal instrument should have been used. To do so would have required making a determination

²⁰ An unauthorized commitment is an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government. (48 C.F.R. § 1.602-3(a)).

²¹ The 629 transactions were identified by the budget object classification code assigned to each transaction. These codes are used by the Federal Government to record its financial transactions according to the nature of services provided or received when obligations are first incurred. For example, we included codes such as 2540 for Contractual Services, and the 3100 series that encompasses equipment purchases, among others.

²² During our review, we noted the sponsorships identified were funded using a procurement request; however, beginning in FY 2015, OASCR is funding sponsorships using cooperative agreements as the legal instrument.

as to whether OASCR received a direct benefit from the expenditure and the extent to which OASCR was involved in the fulfillment of the agreement. Additionally, this audit did not evaluate whether OASCR had the legal authority to enter into sponsorships during the scope period of the audit. However, to ensure that future agreements between OASCR and outside parties are properly administered, we recommend that OASCR coordinate with the Office of the General Counsel (OGC) to ensure that it uses the appropriate legal instrument and authority for all types of future expenditures.

These improper payments occurred because OASCR did not properly identify which legal instrument to use for the applicable expenditure, and also, for certain legal instruments (i.e., contracts), OASCR did not follow the applicable guidelines to establish the obligation. For example, in some instances where OPPM determined that a procurement contract should have been issued, OASCR personnel did not know which purchases required the use of a warranted CO and which purchases, such as micro-purchases, did not. In one instance, OASCR stated that it had requested an appropriate procurement contract action in the form of a modification; however, it did not provide evidence to support the request or subsequent modification of the procurement contract and the ensuing payments exceeded the maximum procurement contract value and were improper. OASCR's management stated that the loss of support staff with the FY 2009 DM reorganization contributed to the issues we noted. We also noted that POD does not have a process in place to prevent OASCR from entering into an unauthorized commitment, or to detect when an improper payment is made for a procurement. POD should develop a process to conduct periodic reviews of agency procurement activities, in excess of the micro-purchase threshold, to ensure agencies are complying with Departmental policies for purchases that require procurement contracts. For the sponsorship activities, OASCR should consult with OGC to determine which legal instrument and authority is appropriate for the given situation.

During our review, we noted that OASCR has begun taking action to rectify the issues identified. In February 2013, OPPM instructed OASCR staff to obtain procurement training, which it provided to OASCR on September 5, 2013. Since this training occurred, POD has not identified any additional OASCR unauthorized commitments that occurred without the use of an appropriate procurement contract.

Additional Issues Noted

While testing transactions, we determined that POD improperly completed bank reconciliations for two ratifications—totaling \$17,709—on behalf of OASCR. As a result of the improper reconciliations, two USDA offices each paid for a procurement contract that should have been charged to OASCR. This ultimately resulted in OASCR's FY 2012 appropriation potentially being augmented, which is considered a possible Antideficiency Act (ADA) violation;²³ however, once we notified OASCR of the potential augmentation, it demonstrated it had adequate FY 2012 funding available to cover these payments. On December 2, 2014, the Office of the Chief Financial Officer (OCFO) issued a memorandum requiring the responsible office to notify OCFO within 30 days of discovering a potential ADA violation. Additionally, the memorandum states that the agency or staff office should initiate a preliminary inquiry with

²³ An agency may not circumvent limitations imposed by a congressional appropriation by augmenting its appropriations from other sources. GAO, *Principles of Federal Appropriations Law*, Vol. II (February 2006).

OGC to determine whether further review is warranted; as such, OASCR should initiate this process.

While testing the 629 transactions, we also noted that OASCR could not provide adequate support for two general ledger (G/L) adjusting entries totaling \$834,000. This occurred because OASCR had not established appropriate internal controls over G/L adjustments. Due to the lack of supporting documentation, we were unable to determine the purpose and accuracy of the adjusting entries (see Exhibit A). OASCR personnel stated they were unaware of an OCFO Bulletin, issued in September 2011 that required USDA agencies to implement specific internal controls over G/L adjustments and accruals. As a result, OASCR is at risk of not being able to properly account for its G/L adjusting entries.

In conclusion, we determined OASCR personnel did not properly adhere to Federal legal authorities and Departmental guidance, which requires a valid legal instrument, such as a procurement contract, grant, or cooperative agreement, to be used to obligate funds on behalf of the Government. As a result, OASCR made approximately \$2.6 million of improper payments (see Exhibit A). At this time, we are not recommending recovery of the questioned costs identified because OASCR needs to work with POD and OGC to determine whether the expenditures, including unauthorized commitments that resulted in the improper payments, should be ratified or otherwise addressed.

Recommendation 1

OASCR needs to train its staff, at least annually, on Federal legal authorities and Departmental policies and procedures regarding proper practices for obligating funds.

Agency Response

In its August 31, 2015, response, OASCR stated that on September 5, 2013, OASCR, at OPPM's recommendation, had POD conduct procurement training for all OASCR staff who processed and/or approved procurement actions. Additionally, OASCR staff attended a meeting sponsored by POD and received additional procurement training in July 2015. OASCR managers received copies of the Contracting Overview Training book. OPPM's POD division will conduct annual procurement training, in June of each year, for all OASCR staff involved in procurement activities, the first being conducted by June 2016. The procurement training requirement will also be incorporated in GS-15 and SES staff's performance plans.

OIG Position

We accept OASCR's management decision.

Recommendation 2

OASCR needs to consult with OGC and, where appropriate, with POD, to determine the appropriate legal authority and legal instrument that should have been used for the underlying

unauthorized commitments resulting in 130 improper payments, totaling over \$1.94 million, and subsequently determine if those transactions should be ratified or otherwise addressed.

Agency Response

In its August 31, 2015, response, OASCR stated that it will work collaboratively with OGC and, where appropriate with POD, to determine the appropriate legal authority and legal instrument that should have been used for unauthorized commitments and determine the possible, necessary actions to rectify said unauthorized commitments. These actions should be completed by November 1, 2015.

OIG Position

We accept OASCR's management decision.

Recommendation 3

OASCR needs to coordinate with OGC on future agreements to ensure the appropriate legal instrument is used prior to obligating funds.

Agency Response

In its August 31, 2015, response, OASCR stated that it agrees with OIG's recommendation and at present is coordinating with OGC to complete a Final Rule, which revises the Delegation of Authority, to permit OASCR to award grants and enter into cooperative agreements, as appropriate, for the purpose of conducting outreach efforts. OASCR expects this to be completed by October 1, 2015.

OIG Position

We accept OASCR's management decision.

Recommendation 4

POD needs to work with the appropriate entities to establish a process for conducting periodic reviews of agency procurement activities exceeding the micro-purchase threshold, to ensure agencies are complying with Departmental policies.

Agency Response

In its August 12, 2015, response, OPPM stated that the HCA Designee for DM revised Acquisition Operating Procedure Number 8 that established a review process for pre-solicitation, pre-award and contract documents. The review process applies to acquisitions with a threshold of \$3,000 and above to ensure the proper execution of the contract actions. OPPM revised procedures were effective as of September 9, 2014.

OIG Position

We are unable to reach management decision based on OPPM's response. The process detailed in the revised acquisition operating procedure would not identify purchases over the micro-purchase threshold that did not follow the traditional procurement process through OPPM POD. In addition, OPPM's response does not specify whether such periodic reviews will be required or the frequency. In order to reach management decision, OPPM needs to work with appropriate entities – coordinate with other USDA agencies – and establish a process for conducting periodic reviews that will identify any purchases over the micro-purchase threshold which are not bound by a contract and provide OIG the details and the estimated implementation date.

Recommendation 5

OASCR needs to notify OCFO and OGC of the potential ADA violation and take appropriate action based on any determination.

Agency Response

In its August 31, 2015, response, OASCR stated that although it was never in danger of an ADA violation, OASCR will notify OCFO and OGC of the potential ADA violation and take appropriate action based on any determination. These corrective actions will be completed by September 1, 2015.

OIG Position

We accept OASCR's management decision.

Recommendation 6

OASCR needs to establish accounting internal controls related to G/L adjusting entries.

Agency Response

In its August 31, 2015, response, OASCR stated that it has established a communication lead to work with OCFO to ensure all new, mandated G/L accounting controls procedures are implemented. In March 2015, OASCR established new, internal control procedures as it relates to G/L accounting entries in compliance with OCFO Bulletin 11-03, *Internal Controls over General Ledger Adjustments in the Financial Management Modernization Initiative*.

OIG Position

We accept OASCR's management decision.

Recommendation 7

OASCR needs to research the \$834,000 in G/L adjusting entries identified and make any necessary corrections.

Agency Response

In its August 31, 2015, response, OASCR stated that it researched the \$834,000 G/L adjusting entries and reconciled all charges to the G/L accounts and found no corrections were needed. OASCR completed this review as of August 5, 2015.

OIG Position

We accept OASCR's management decision.

Section 2: Unauthorized Commitment Ratifications

Finding 2: POD Did Not Properly Ratify Unauthorized Contracts

Of the 10 ratifications completed by POD for OASCR's unauthorized commitments, totaling approximately \$704,000, we determined that 9 of the 10 ratifications, totaling nearly \$654,000, were not completed properly. The ratification files, which are supposed to include all related ratification background and decisional documentation, did not support that the unauthorized commitments were ratified according to FAR, AGAR, and agency procedures. This occurred because POD lacked adequate file maintenance procedures. As a result, these commitments were not binding, and OASCR was not contractually bound to pay for the services received.

Where a procurement contract award is determined to be invalid, the effect is that no binding agreement ever existed, making it an unauthorized commitment.²⁴ For procurement contracts, the FAR states that the HCA has the authority to ratify an unauthorized commitment. USDA has outlined ratification procedures within the AGAR and agency policy.²⁵

The FAR states that the HCA may ratify an unauthorized commitment only when:

- supplies or services have been provided to and accepted by the Government, or the Government has obtained or will obtain a benefit resulting from performing the unauthorized commitment;
- the resulting procurement contract would have otherwise been proper if made by the appropriate CO;
- the CO determines the price to be fair and reasonable; and
- funds were available at the time the unauthorized commitment was made.²⁶

We found that POD did not properly complete the ratifications and did not include supporting documentation to demonstrate that the unauthorized commitments were ratified according to FAR, AGAR, and agency procedures. For example:

- For 6 of the 10 ratifications we were unable to verify that POD obtained all the required signatures to ratify the unauthorized commitments.
- The AGAR states that when ratifying an unauthorized commitment, the official (i.e., contracting officer) must notify the cognizant program supervisor about the final disposition of the case, which may include a recommendation that the unauthorized commitment should be further considered a violation of USDA's employee conduct regulations.²⁷ However, our review of ratifications found 6 of the 10 procurement contract files lacked evidence that demonstrated the supervisor of the individual who entered into the unauthorized commitment was notified of the unauthorized commitment.

²⁴ GAO, *Principles of Federal Appropriations Law*, Vol. II, Ch. 7.B.1.d (February 2006).

²⁵ Acquisition Operating Procedure No. 4: Ratification of an Unauthorized Commitment (June 18, 2013).

²⁶ 48 C.F.R. §§ 1.602-3(b)(2), 1-602-3(c).

²⁷ 48 C.F.R. § 401.602-3(c)(4)(iv).

- Additionally, the AGAR requires an official who is authorized to ratify an unauthorized commitment to maintain related approval, decisional, and background documents in the procurement contract file. However, our review found 6 of 10 ratifications did not have documentation to support that the price paid was fair and reasonable.

This occurred because POD lacked proper file management practices to track, record, and maintain related approval, decisional, and background documents in the file related to the ratification. POD could not locate 4 of the 10 files we requested and had to recreate them. As a result, 9 of the 10 commitments entered into by OASCR are still considered unauthorized; effectively no binding agreement exists, as required by 31 U.S.C. Chapter 15, and OASCR was not required to pay for the services rendered.²⁸ OASCR may have overpaid for the services received because documentation to support that the agreed to prices were fair and reasonable was not contained in the file.

In response to a recommendation from a prior OIG audit,²⁹ POD issued a Procurement Advisory to establish electronic procurement contract files to address some of its preceding documentation deficiencies.³⁰ Additionally, POD finalized its centralized contract file procedures in January 2015, and subsequently completed the centralized file room in March 2015. Based on these procedural initiatives, we are not making a recommendation specific to POD regarding improved procurement contract file maintenance practices.

In summary, we could not determine if 9 of the 10 ratifications were properly completed due to POD's inadequate file maintenance. We also concluded that these ratifications were not in accordance with FAR, AGAR, and agency procedures. It is critical for POD to maintain adequate supporting documentation when ratifying unauthorized commitments.

Recommendation 8

POD needs to properly ratify, where appropriate, or otherwise address, the nine unauthorized commitments.

Agency Response

In its August 12, 2015, response, OPPM stated that the Contracting Branch Chiefs in OPPM will review the documentation for the 9 unauthorized commitments, and, where appropriate, ensure compliance with the ratification process or provide a response to address actions found not proper for the procurement process. OPPM expects to have the 9 unauthorized commitments properly addressed by June 30, 2016.

OIG Position

We accept OPPM's management decision.

²⁸ 31 U.S.C. § 1501(a)(1).

²⁹ USDA OIG Audit Report 92501-0001-12, *Review of Procurement Operations* (September 27, 2013).

³⁰ AGAR Advisory 105, *Use of Automated Procurement Systems* (October 1, 2012).

Recommendation 9

POD needs to revise its ratification acquisition operating procedure to require the CO to notify the appropriate supervisor regarding an unauthorized commitment and properly document the notification in the file.

Agency Response

In its August 12, 2015, response, OPPM stated that the HCA Designee of DM will revise the acquisition operating procedure to include in the ratification review process the appropriate supervisor responsible for the office that caused the unauthorized commitment. This process will ensure management at the highest level, and the immediate supervisor of the person who caused the unauthorized commitments, are informed of the action. OPPM expects to complete the revision to the acquisition operating procedure by December 31, 2015.

OIG Position

We accept OPPM's management decision.

Scope and Methodology

We conducted this audit to evaluate whether OASCR expenditures were properly supported by documentation, whether unauthorized commitments were properly ratified by OPPM where appropriate, and whether Federal legal authorities and Departmental regulations, including policies and procedures, were adhered to. The scope of our audit encompassed FYs 2009 through 2013, during which time OASCR's funding totaled approximately \$111 million through its annual appropriations. In FY 2013, OIG received complaints pertaining to OASCR's procurement activities. Based on initial work related to those complaints, we identified unrelated procurement anomalies within OASCR's procurement process that required additional audit work. We subsequently initiated an audit to address those concerns.

We chose our scope period based on the dates of the 10 OASCR unauthorized commitments identified by POD. We reviewed the 10 ratification files. We also obtained expenditure records from USDA's financial system of record for the period of October 1, 2008, through September 30, 2013, which we compared to data from the procurement system of record, using computer assisted auditing techniques to determine if OASCR entered into additional unauthorized commitments. Based on the budget object classification codes (such as inclusion of code 2540 for Contractual Services, and the 3100 series that encompasses equipment purchases, among others), we identified 1,744 expenditures related to the purchase of goods, services, and sponsorships. Within that universe, we identified a total of 629 transactions over the micro-purchase threshold, totaling approximately \$49 million. We did not solely rely on data from information technology systems; instead, we reviewed and verified available supporting documentation for all 629 transactions and conducted interviews with applicable OASCR, OPPM, OCFO, and OGC personnel pertaining to the transactions. We considered a transaction to be valid if it was supported by sufficient documentation to determine whether the payment was proper.

Fieldwork was conducted at USDA offices located in Washington, D.C., and Kansas City, Missouri, from February 2014 through March 2015.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Abbreviations

| | |
|--------|--|
| ADA | Antideficiency Act |
| AGAR | Agriculture Acquisition Regulation |
| C.F.R. | Code of Federal Regulations |
| CO | Contracting Officer |
| DM | Departmental Management |
| FAR | Federal Acquisition Regulation |
| FY | Fiscal Year |
| G/L | General Ledger |
| HCA | Head of Contracting Activity |
| OASCR | Office of the Assistant Secretary for Civil Rights |
| OCFO | Office of the Chief Financial Officer |
| OGC | Office of the General Counsel |
| OIG | Office of Inspector General |
| OMB | Office of Management and Budget |
| OPPM | Office of Procurement and Property Management |
| MS | Management Services |
| POD | Procurement Operation Division |
| Pub.L. | Public Law |
| U.S.C. | United States Code |
| USDA | Department of Agriculture |

Exhibit A: Summary of Monetary Results

The table below summarizes the monetary results for our audit report by finding, recommendation, and includes the amount and category of the monetary result.

| Finding | Recommendation | Description | Amount | Category |
|----------------|-----------------------|--|--------------------|---|
| 1 | 2 | Improper Payments to Vendors and Organizations | \$ 1,941,996 | Questioned Costs, No Recovery Recommended |
| 1 | 7 | Adjusting Entry without Support | \$834,000 | Other: Accounting Classification Errors |
| 2 | 8 | Improper Payments to Vendors and Organizations | \$653,749 | Questioned Costs, No Recovery Recommended |
| Total | | | \$3,429,745 | |

**USDA'S
OASCR and OPPM
RESPONSE TO AUDIT REPORT**

TO: Gil H. Harden
Assistant Inspector General for Audit
Office of the Inspector General

FROM: Joe Leonard, Jr., Ph.D. /s/ 8/31/15
Assistant Secretary for Civil Rights

SUBJECT: Response to Review of Expenditures Made by the Office of the
Assistant Secretary for Civil Rights

This letter responds to your request for management's response to the audit recommendations in the draft audit report No. 50099-0001-12.

U.S. Department of Agriculture (USDA) appreciates the Office of Inspection General's (OIG) review of the issue of expenditures made by the Office of the Assistant Secretary for Civil Rights (OASCR). This report, which reviews OASCR's expenditures from fiscal years (FY) 2009 through 2013, will help inform and guide our work moving forward.

As you noted in your report, there were many significant changes to the procurement process as it relates to OASCR from FY 2009-2013, and although you identified some issues, OASCR has taken action to rectify the issues identified.

Again, we thank OIG for your attention to the matter of OASCR's expenditures. These recommendations, in part, underscore the work underway at USDA to enhance, modernize, and provide meaningful assistance to OASCR and USDA as a whole.

If you have any questions or need additional information, please contact my office at (202) 720-3808.

Attachment

OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS
RESPONSE TO AUDIT NUMBER: 50099-0001-12
EXECUTIVE SUMMARY

What OIG Found:

The Office of the Assistant Secretary for Civil Rights (OASCR) provides leadership and direction for the fair and equitable treatment of all Department of Agriculture (USDA) customers and employees, as well as enforces civil rights within USDA programs. To meet its goals, OASCR expends funds on salaries and benefits, purchases goods and services, and engages in sponsorships. The Office of Inspector General (OIG) conducted preliminary work and identified anomalies pertaining to OASCR procurements. Based on this work, we performed a more in depth review of OASCR's expenditures for fiscal years (FY) 2009 through 2013.

During this 5-year time period, we determined OASCR improperly entered into agreements of approximately \$2.65 million with vendors and other organizations for services and sponsorships, without providing sufficient documentation for OIG to discern whether the payment was proper. As a result, while one agreement totaling \$50,000 was properly ratified, thereby validating the procurement contract and subsequent payment, we identified approximately \$2.6 million in improper payments made without sufficient documentation. This occurred because OASCR did not properly identify which legal instrument to use for the applicable expenditure, and, also, for certain legal instruments (i.e., procurement contracts), OASCR did not follow the applicable guidelines to establish the obligation. However, we found that OSCAR has taken action to rectify the issues identified.

In addition, we determined that the ratification of unauthorized contracts was not adequately documented.

OASCR'S RESPONSE:

In 2009, OASCR underwent significant organizational and staffing changes. The Food, Conservation, and Energy Act of 2008 ("Farm Bill) created the Office of Advocacy and Outreach which had responsibilities for functions previously carried out by OASCR's Office of Outreach and Diversity. The functions were removed but OASCR staff had to assume new responsibilities. On October 1, 2009, OASCR was placed within the newly created Departmental Management (DM), headed by the Assistant Secretary for Administration. The realignment and reorganization, eliminated two divisions within OASCR: the Budget and Finance Division (BFD) - nine OASCR FTE moved to a new Management Services Division in DM; and the Civil Rights Services Division (CRSD) - functions remained but six FTE moved to other OASCR divisions.

The removal of BFD staff and functions to Management Services created a skills void within OASCR. From 2009 until 2013 when the BFD staff returned to OASCR, procurement, finance and budget responsibilities were assumed by staff not adequately trained or specifically hired to do the same. The use of the form AD-700 for sponsorships or services was unintentional and without guidance from OPPM, the only form staff knew to use. It should be noted, prior to the

OIG audit, POD and OASCR met to discuss the issue of unauthorized commitments in the past and the proper procedures moving forward. Since December 11, 2012, OASCR has not conducted any unauthorized commitments nor has OASCR failed to follow proper procurement process protocols. OASCR currently works collaboratively with POD to ensure the proper legal instrument is used to procure all contractual services.

The dissolution of CRSD required OASCR to hire a contractor to process the inventory of conflict complaints of discrimination. From October 2009 through September 2012, OASCR relied on a contractor to assume the responsibilities of CRSD, from informal and formal EEO counseling, alternative dispute resolution, investigation to drafting final agency decisions. DM's Management Services Division placed two stop work orders on the vendor which resulted in OASCR being placed in the untenable position of ratifying work done by the vendor. In 2012 OASCR established through a reorganization, the Corporate Services Division, and the need to rely on the contractor for the full complement of EEO services diminished. In order to save approximately \$750,000 annually, a similar EEO vendor was hired to process a limited number of EEO counselings and investigation of conflict complaints. As a result, OASCR was able to see marked improvement in the timeliness of its complaint process as well as cost savings.

OIG RECOMMENDATION 1: OASCR needs to train its staff, at least annually, on Federal legal authorities and Departmental policies and procedures regarding proper practices for obligating funds.

OASCR RESPONSE TO RECOMMENDATION 1:

On September 5, 2013, OASCR at the recommendation of the Office of Procurement and Property Management (OPPM), had the Procurement Operations Division within OPPM conduct procurement training for all OASCR staff (primarily managers) who processed and/or approved procurement actions.

In July 2015, staff attended POD meeting. Additionally, on July 23, 2015, OPPM conducted a second training and OASCR provided copies of the "Contracting Overview Training" books to managers, who signed for receipt of the books.

From 2009 to 2013, OASCR did not have any budget staff within the organization as they were realigned to the then Management Services Division within DM. Upon the dissolution of Management Services in 2013, all budget personnel were returned to their agency of record. The returning budget and finance staff along with the OASCR management team, required training on procurement policies and activities.

OASCR believes continuous training of such personnel is imperative to remain up to date and knowledgeable of procurement activities. As such, OPPM's POD division will conduct annual procurement training in June of each year for all OASCR staff involved in procurement activities, the first being conducted by June 2016. The procurement training requirement will also be incorporated in the performance plans under mission results for all GS-15 and SES staff.

COMPLETION DATE: September 2013, July-August 2015, and ongoing

OIG RECOMMENDATION 2: OASCR needs to consult with OGC and, where appropriate, POD, to determine the appropriate legal authority and legal instrument that should have been used for the underlying unauthorized commitments resulting in 130 improper payments, totaling over \$1.94 million, and subsequently determine if those transactions should be ratified or otherwise addressed.

OASCR RESPONSE TO RECOMMENDATION 2:

OASCR will work collaboratively with OGC and, where appropriate POD, to determine the appropriate legal authority and legal instrument that should have been used for unauthorized commitments and determine the possible, necessary actions to rectify said unauthorized commitments.

COMPLETION DATE: November 1, 2015

OIG RECOMMENDATION 3: OASCR needs to coordinate with OGC on future agreements to ensure the appropriate legal instrument is used prior to obligating funds.

OASCR RESPONSE TO RECOMMENDATION 3:

OASCR agrees with OIG Recommendation 3 and at present is coordinating with OGC to complete a Final Rule, which revises the Delegation of Authority, to permit OASCR to award grants and enter into cooperative agreements, as appropriate, for the purpose of conducting outreach efforts.

COMPLETION DATE: October 1, 2015

OIG RECOMMENDATION 4: POD needs to work with the appropriate entities to establish a process for conducting periodic reviews of agency procurement activities exceeding the micro-purchase threshold, to ensure the agencies are complying with Departmental policies.

OASCR RESPONSE TO RECOMMENDATION 4:

Not applicable to OASCR. A response will be provided by the Procurement Operations Division within the Office of Procurement and Property Management.

COMPLETION DATE:

OIG RECOMMENDATION 5: OASCR needs to notify OCFO and OGC of the potential Antideficiency Act violation and take appropriate action based on any determination.

OASCR RESPONSE TO RECOMMENDATION 5:

Although OASCR was never in danger of an Antideficiency Act violation,

OASCR will notify OCFO and OGC of the potential Antideficiency Act violation and take appropriate action based on any determination.

COMPLETION DATE: September 1, 2015

OIG RECOMMENDATION 6: OASCR needs to establish accounting controls related to general ledger adjusting entries.

OASCR RESPONSE TO RECOMMENDATION 6:

OASCR has established a communication lead to work with OCFO to ensure all new, mandated general ledger accounting controls procedures are implemented. In March 2015, OASCR established new, internal control procedures as it relates to general ledger accounting entries in compliance with the OCFO Bulletin 11-03, *Internal Controls over General Ledger Adjustments in the Financial Management Modernization Initiative*.

COMPLETION DATE: March 30, 2015

OIG RECOMMENDATION 7: OASCR needs to research the \$834,000 in general ledger adjusting entries identified and make any necessary corrections.

OASCR RESPONSE TO RECOMMENDATION 7:

OASCR researched the \$834,000 general ledger adjusting entries and reconciled all charges to the general ledger accounts in the Financial Management Modernization Initiative (FMMI) system and found no corrections were needed.

COMPLETION DATE: August 5, 2015



United States
Department of
Agriculture

August 12, 2015

Office of the
Assistant Secretary
for Administration

TO: Gil H. Harden
Assistant Inspector General for Audit
Office of Inspector General

Office of
Procurement and
Property
Management

FROM: Lisa M. Wilusz /s/
Director
Office of Procurement and Property Management

300 7th Street
Southwest
Room 302
Reporters Building

SUBJECT: Review of Expenditures Made by the Office of the Assistant Secretary for Civil Rights (Audit Number 50099-0001-12)

Washington, DC
20024-9300

Office of Procurement and Property Management (OPPM) appreciates the opportunity to respond to the U. S. Department of Agriculture Office of Inspector General's report, "Review of Expenditures Made by the Office of the Assistant Secretary for Civil Rights (Audit Number 50099-0001-12)," dated July 15, 2015. OPPM is in general agreement with the findings in the Office of Inspector General report. However, we would like to provide comments in regards to specific findings:

Section 1: Improper Expenditure and Accounting Methods

Recommendation 4: OPPM will work with the appropriate entities to establish a process for conducting periodic reviews of agency procurement activities exceeding the micro-purchase threshold, to ensure agencies are complying with Departmental policies.

- Corrective Action: The Head of the Contracting Activity Designee (HCAD) for Departmental Management revised Acquisition Operating Procedure Number 8, Preaward and Postaward File Review that established a review process for pre-solicitation, preaward and contract documents. The review process applies to acquisitions with a threshold of \$3,000 and above to ensure the proper execution of the contract actions.
- Target Completion Date: September 9, 2014.

Section 2: Unauthorized Commitment Ratifications

Recommendation 8: OPPM will properly ratify, where appropriate, or otherwise address, the nine (9) unauthorized commitments.

- Corrective Action: The Contracting Branch Chiefs in OPPM will review the documentation for the 9 unauthorized commitments, and where appropriate will ensure compliance with the ratification process or provide a response to address actions found not proper for the procurement process.
- Target Completion Date: June 30, 2016.

Review of Expenditures Made by the Office of the Assistant Secretary for Civil Rights (Audit Number 50099-0001-12)

Page 2

Recommendation 9: OPPM will revise its ratification Acquisition Operating Procedure to require the Contracting Officer to notify the appropriate supervisor regarding an unauthorized commitment and properly document the notification in the file.

- Corrective Action: The HCAD of Departmental Management will revise the Acquisition Operating Procedure to include in the ratification review process the appropriate supervisor responsible for the office that caused the unauthorized commitment. This process will ensure management at the highest level and the immediate supervisor of the person who caused the unauthorized commitments are informed of the action.
- Target Completion Date: December 31, 2015.

If you have any questions, please contact Richard R. Jiron, Chief, Procurement Operations Division (POD) at Richard.Jiron@ftc.usda.gov, (970) 295-5487; or Brinder Billups, Procurement Analyst/POD at Brinder.Billups@usda.gov, (202) 720-8946.

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