United States Department of Agriculture
Office of Inspector General
Washington, D.C. 20250

DATE: November 16, 2011

AUDIT NUMBER: 92-501-0001-12 (1)

TO: Pearlie Reed
Assistant Secretary
Departmental Management

ATTN: Phyllis Holmes
Audit Liaison

FROM: Gil H. Harden /s/
Assistant Inspector General
for Audit

SUBJECT: [IT Contract]

As part of the Office of Inspector General's (OIG) fiscal year (FY) 2011 Federal Information Security Management Act (FISMA) reporting requirement, OIG assessed whether the U.S. Department of Agriculture (USDA) established and maintained a program to oversee systems operated on its behalf by contractors or other entities [REDACTED TEXT].[1] As part of our FISMA audit, which is performed in accordance with generally accepted government auditing standards, we reviewed the [IT] contract issued to [REDACTED TEXT], to determine whether contractual agreements were properly documented, authorized, and maintained [REDACTED TEXT].[2] We found that the contract was signed by a USDA contracting officer who did not have the warrant authority to bind the Department to the subject contract. We are issuing this fast report to quickly disclose this issue to USDA management for resolution. This issue, along with any others issues identified, will be incorporated into a final report.

On [REDACTED TEXT], a contracting officer in USDA's Procurement and Operations Division (POD), Information Technology (IT) Contracting Branch, signed a contract for [REDACTED TEXT] with [REDACTED TEXT], totaling [REDACTED TEXT] million for a period of [REDACTED TEXT] years, despite the fact that the contracting officer's warrant authority was restricted to contracts with a value up to $5 million. We also noted that the contracting officer signed two other contract actions in FY 2010 that exceeded [REDACTED TEXT] warrant

[1] [REDACTED TEXT]
[2] CyberScope – FISMA Reporting question [REDACTED TEXT].

authority.[3] When asked why [REDACTED TEXT] had signed the contracts that had exceeded [REDACTED TEXT] warrant level, [REDACTED TEXT] explained that [REDACTED TEXT] did not do this intentionally, [REDACTED TEXT] had a heavy workload, and [REDACTED TEXT] was aware that the IT Contracting Branch was short handed.

The actions of this contracting officer violated the Federal Acquisition Regulation (FAR),[4] which clearly states that contracting officers may bind the Government only to the extent of the authority delegated to them. In addition, according to the FAR and Agriculture's Acquisition Regulation (AGAR),[5] the action taken by the USDA official without the appropriate warrant authority constitutes an "unauthorized commitment" and requires that the contract be ratified.[6] Documentation of the ratification should be in the contract file for audit purposes.

We discussed this issue with Departmental officials, who agreed that the individual who signed the [IT] contract did not have the proper warrant authority.[7] The Deputy Director of the Office of Property and Procurement Management (OPPM) concurred that signing a contract that exceeded a warrant level is considered an unauthorized commitment. In response, Departmental Management reduced the contracting officer's warrant authority from $5 million to $500,000 and stated that this was the appropriate disciplinary action for exceeding [REDACTED TEXT] warrant. Additionally, signatory responsibilities for the [IT] contract have been assigned to another contracting officer who has the appropriate warrant authority.

Upon further review, we learned that the contracting officer who was reprimanded in this case has a history of violating FAR requirements and exceeding [REDACTED TEXT] authority. For over [REDACTED TEXT] years this individual has been assigned to work on Departmental IT contracts. At times, from calendar year [REDACTED TEXT] through [REDACTED TEXT], [REDACTED TEXT] acted outside of [REDACTED TEXT] roles and responsibilities; [REDACTED TEXT] disclosed sensitive contractual information to vendors; authorized a contractor to work even though the funding was not available,[8] and signed contract actions in excess of [REDACTED TEXT] warrant authority. Management was aware that this contracting officer had previously misused [REDACTED TEXT] authority (in one instance, [REDACTED TEXT] warrant was reduced from $25 million to $200,000), but [REDACTED TEXT] still maintained a warrant and continued to sign IT contract actions.

---

[3] This contracting officer signed a contract for [REDACTED TEXT] on [REDACTED TEXT] and a modification to the [IT] contract on [REDACTED TEXT].

[4] FAR 1.602-1.

[5] FAR 1.602-3(a) and AGAR 401.602-3(a).

[6] When a contract is entered into that exceeds the contracting officer's authority, it is referred to as an "unauthorized commitment." To correct this situation, an authorized official must "ratify" the "unauthorized commitment," which requires that the individual, who entered into the commitment, explain why he/she exceeded his/her authority.

[7] In September 2011, OIG discussed this issue with the Deputy Director of OPPM and in October 2011 with the POD Director.

[8] In FY 2005, five contract actions were ratified because in [REDACTED TEXT] 2004, the contracting officer authorized a vendor to work prior to ensuring funds were available.

Based on this history of repeated violations, it does not appear that management has taken effective measures to prevent the recurrence of inappropriate actions. OIG also noted that POD lacks a process to adequately monitor and administer effective oversight of the IT Contracting Branch. The newly appointed Director of POD concurred that it is necessary to develop policies and procedures to better oversee POD's procurement process.

OIG noted that the internal control —the weekly reports—was not formal in nature[9] or functioning as designed and did not identify the contracting officer's violation of FAR and AGAR. When we reviewed the weekly reports we found that they were incomplete and did not indicate what contract actions [REDACTED TEXT] signed. The [IT] contract was signed on [REDACTED TEXT]. The [REDACTED TEXT] status report did not state the amount of the award, including the base and option years, and did not note that [REDACTED TEXT] had signed the contract. Moreover, the prior months' reports did not state that the contracting officer was working with the Office of the Chief Information Officer on the solicitation and award of the [IT] contract.[10] We concluded that POD needs to formalize the process for completing the weekly status reports so that it can serve as a valuable control for the contracting Branch Chief's oversight of contracting officers.

In conclusion, Departmental Management should document why the contracting officer exceeded [REDACTED TEXT] warrant and take the necessary action to ensure that IT contracts are administered in accordance with Federal and Departmental regulations. Departmental Management should review other contract actions signed by this individual, as well as other contracting officers, to determine if they have exceeded their warrant authority, implement effective procedures to prevent this from recurring, and take any necessary disciplinary action. If unauthorized commitments are identified, the contract actions need to be ratified. In addition, USDA needs to notify vendors when the designated USDA contracting officer changes by issuing a contract modification.

We are currently following up on other contract issues. We will discuss these with Departmental Management officials and, if appropriate, issue additional reports.

We recommend that Departmental Management:

1. Ratify the [IT] contract and have the contracting officer document why the warrant level was exceeded, as required by the FAR and AGAR.

2. Take the necessary actions to ensure that all contracts are administered in accordance with Federal and Departmental regulations.

3. Determine if other contracting officers exceeded their warrants and take any

[9] The IT Contracting Branch Chief required his staff, per an email dated June 2009, to complete a template that shows the status of the solicitations and contracts that the contracting officers are working on to help monitor his staff.
[10] We reviewed the weekly status reports for January through April, 2010.

appropriate management action.

4. Implement the necessary internal controls to ensure warrant levels are not exceeded.

5. Formalize the weekly status reporting tool and implement the necessary controls to help ensure the reports provide effective oversight of contracting officers' procurement activities.

6. Ratify all contracts that were obligated by contracting officers with insufficient warrant authority.

7. Issue a modification for all contracts where the contracting officer has changed.

Please provide a written response within 5 days outlining your proposed corrective actions and timeframes for completing them. If you have any questions or need additional information, please contact me at (202) 720-6945 or Rod DeSmet, Deputy Assistant Inspector General for Audit, at (202) 720-1918.

USDA'S

MANAGEMENT SERVICES

RESPONSE TO AUDIT REPORT

Information removed from this report was redacted IAW FOIA exemption 7

November 22, 2011

United States Department of Agriculture

Office of the Assistant Secretary for Administration
Departmental Management
Management Services

Procurement Operations Division

Reporters Building
300 7th Street, SW
Suite 353
Washington, DC
20024

TO: Gil H. Harden
Assistant Inspector General for Audit

THROUGH: Pearlie Reed*//original signed//*
Assistant Secretary
Departmental Management

FROM: Richard D. Swenson*//original signed//*
Director
Management Services

SUBJECT: [IT Contract], Audit Number 92-501-0001-12 (1)

The Procurement Operations Division (POD) stipulates agreement with the facts, representations, and recommendations of the subject audit and does so without dispute. POD also agrees with the substance of all regulatory citations found within the body of the report. This office provided full assistance and cooperation with the representatives of the Office of the Inspector General for Audit and found this cooperation and assistance to be mutual and reciprocal during the discovery and interview portions of this audit.

In response to the Office of Inspector General (OIG) Fiscal Year 2011, Federal Information Security Management Act (FISMA) audit letter dated November 16, 2011, on proper documentation of the contract agreements of the [IT] services; the Procurement Operations Division in Management Services of USDA's Departmental Management has reviewed OIG's recommendations and has attached the Corrective Action Plans for remediation.

The warrant authority for the referenced Contracting Officer will be terminated. It will be re-evaluated at a later date. The Contracting Officer will be required to take refresher training as a condition of employment. During this period the contracting officer's title will be re-designated to contract specialist and all of [REDACTED TEXT] work will be submitted to the Branch Chief or Director for review prior to contracts or modifications being issued.

If you have any questions regarding the information, you may contact Shawn E. Kerkes, Director of Procurement Operations Division at Shawn.Kerkes@dm.usda.gov or on (202) 690-0142.

Attachment

AN EQUAL OPPORTUNITY EMPLOYER

Attachment 1

Audit No. 92-501-0001-12(1)
[IT Contract]

Rec. No.	Recommendations	Corrective Action Plan	Completion Timeframe
1	Ratify the [IT] contract and have the contracting officer document why the warrant level was exceeded, as required by the FAR and AGAR.	a. The new contracting officer will complete the Request of Unauthorized Commitment and submit to the Head of the Contracting Activity for approval. b. A contracting officer with the appropriate warrant authority will issue modifications to formalize the ratification. c. As part of the ratification process, the contracting officer will document why the warrant level was exceeded.	Jan. 30, 2012
2	Take the necessary actions to ensure that all contracts are administered in accordance with Federal and Departmental regulations.	a. Institute a random sampling of FPDS comparing obligation amount to contractor warrant. b. Revise the Contract File Index Checklist to insure all appropriate pre-award and post award acquisition requirements are fully documented.	June 30, 2012
3	Determine if other contracting officers exceeded their warrants and take any appropriate management action.	a. Develop a report that identifies each active contract; the assigned contract officer and the warrant levels of each contracting officer b. Validate the report to identify instances where warrant levels have been exceeded c. Determine the appropriate management actions as necessary.	July 31, 2012

4	Implement the necessary internal controls to ensure warrant levels are not exceeded.	a. Generate a Procurement Data Mark report generated from IAS monthly. b. The Procurement Operations Division has revised the warrant letter, explicitly prohibiting the Contract Officer signing contracts, including modifications, options, estimated orders against an indefinite delivery contract, or any other agreement, that will result in the total amount of the contract exceeding the delegated warrant authority. c. Develop an AOP for Status Report Procedures. d. OPPM will issue an AOP clarification requiring total contract value reporting that includes total contract value for base year plus all option year contractual values. e. OPPM will develop a Procurement Management Oversight Plan.	May 31, 2012
5	Formalize the weekly status reporting tool and implement the necessary controls to ensure the reports provide effective oversight of contracting officer's procurement activities.	Develop an AOP for Status Report Procedures	May 31, 2012
6	Ratify all contracts that were obligated by contracting officers with insufficient warrant authority.	a. Complete review of Contract Files b. Require the Contract Officer to write up the request for ratification. c. Require Branch chief to perform the review of the request. d. The Head of the Contracting Activity will approve/disapprove all ratifications.	July 31, 2012

7	Issue a modification for all contracts where the contracting officer has changed	a. Run a report in FPDS that identifying active contracts and their assigned Contracting Officers. b. Require Branch Chiefs to review the report identifying departed or reassigned Contracting Officers. c. Branch Chief will ensure all active contracts are assigned to a contracting officer with the appropriate warrant authority. d. The new contracting officer will issue the modification.	Mar 30, 2012