



U.S. Department of Agriculture

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Office of Inspector General  
Great Plains Region

# **Audit Report**

## **Agricultural Marketing Service Contract and Competitive Bidding Practices**

Report No. 01601-1-KC  
January 2005

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UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington, D.C. 20250



DATE: January 31, 2005

REPLY TO  
ATTN OF: 01601-1-KC

SUBJECT: Agricultural Marketing Service Contract and Competitive Bidding Practices

TO: A. J. Yates  
Administrator  
Agricultural Marketing Service

ATTN: David N. Lewis  
Deputy Administrator  
Compliance and Analysis Program

This report presents the results of our audit of Agricultural Marketing Service Contract and Competitive Bidding Practices. Your January 13, 2005, written response to the official draft report is included as exhibit A with excerpts and the Office of Inspector General's position incorporated into the Findings and Recommendations section of the report, where applicable.

We accept the management decisions for all recommendations. Please follow your agency's internal procedures in forwarding documentation for final action to the Office of the Chief Financial Officer (OCFO). We are providing a separate memorandum to your agency and OCFO that provides specific information on the actions to be completed to achieve final action.

We appreciate the cooperation and assistance provided to our staff during the audit.

/s/

ROBERT W. YOUNG  
Assistant Inspector General  
for Audit

# **Executive Summary**

## **Agricultural Marketing Service, Contract and Competitive Bidding Practices (Audit Report No. 01601-1-KC)**

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### **Results In Brief**

This review was performed to assess the sufficiency of the Agricultural Marketing Service's (AMS) internal controls to prevent and detect potential collusive bidding activities and whether identified activities or complaints were properly referred to the Office of Inspector General (OIG) or the U.S. Department of Justice (DOJ).

(AMS), along with the Farm Service Agency (FSA), are responsible for purchasing a variety of food products through competitive bids or negotiated contracts in support of the National School Lunch Program and other Federal feeding programs that are administered by the Food and Nutrition Service (FNS). AMS purchases red meat, fish, poultry, eggs, fruit, and vegetable products.

For the school year<sup>1</sup> 2002-2003, AMS commodity purchases totaled over \$900 million for over 1.4 billion pounds of food products. To make these purchases, AMS utilizes an automated computer system called the Processed Commodity Inventory Management System (PCIMS). AMS, along with FSA and FNS, share this automated system for the acquisition, management, storage, disposition, transportation, and accounting activities for processed commodities and uses PCIMS to analyze electronically submitted bids and award contracts based on the bidders' prices and constraints. Bids are electronically submitted to AMS and FSA through the Domestic Electronic Bid Entry System (DEBES).

Our review disclosed that AMS personnel performed little detailed analyses of commodity procurement bids in order to identify potential antitrust activities, such as collusive bidding, among vendors. AMS does not use any automated software mechanism to evaluate historical vendor bid data by commodities for patterns of potential antitrust violations. Although AMS uses PCIMS reports to analyze bidding and award data, AMS does not perform the in-depth trend analysis of historical data that is necessary to identify indications of collusive bidding activities. We also found that, since 1999, AMS has not provided training for identifying collusive bidding activities to its contracting officers.

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<sup>1</sup> A school year starts on July 1<sup>st</sup> and ends on June 30<sup>th</sup> of the following year.

Similar findings were noted with respect to our previous audit of FSA and Commodity Credit Corporation (CCC) Bidding Procedures and Awards for Commodities (Audit Report No. 03008-2-KC dated September 25, 2003). As a result of our report, FSA is in the process of developing and implementing an automated system for identifying potential collusive bidding patterns.

Since AMS and FSA utilize the same automated computer systems for conducting commodity procurements, we believe that both agencies would benefit by coordinating their activities related to shared implementation of an automated system for tracking and analyzing bids for potential antitrust activity.

## **Recommendations In Brief**

We recommended that AMS coordinate with FSA in developing and implementing an automated computer software package to analyze historical vendor bid information on an ongoing basis for providing potential leads of collusive bidding practices. The shared system should be capable of analyzing data for both FSA and AMS. If a shared system with FSA is not feasible, AMS should develop in-house or contract from outside sources for an automated computer software package that can adequately analyze historical vendor bid information on an ongoing basis and provide potential leads on collusive bidding practices for procuring commodities. We also recommended that AMS develop and implement internal procedures requiring the review and analysis of commodity bids for indications of collusion. AMS management should make antitrust enforcement a fundamental feature of AMS commodity procurement activities by having procurement staff evaluate historical vendor bid information on a continuous basis and provide the DOJ or OIG with referrals of suspected collusions or other antitrust activity as appropriate.

## **Agency Response**

In its January 13, 2005, response to the official draft report, AMS agreed in principal with the findings and recommendations presented therein. The response provided specific actions the agency has taken, or plans to take, as well as timeframes for implementing proposed actions for each recommendation. We have incorporated applicable portions of the response, along with our position, in the Findings and Recommendations section of this report. The AMS response is included in its entirety as exhibit A.

## **OIG Position**

We concur with AMS' proposed corrective actions and have accepted management decisions for all recommendations.

## ***Abbreviations Used in This Report***

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AGAR	Agriculture Acquisition Regulations
AMS	Agricultural Marketing Service
CCC	Commodity Credit Corporation
DEBES	Domestic Electronic Bid Entry System
DOJ	U.S. Department of Justice
FAR	Federal Acquisition Regulation
FNS	Food and Nutrition Service
FSA	Farm Service Agency
OIG	Office of Inspector General
OCFO	Office of the Chief Financial Officer
PCIMS	Processed Commodity Inventory Management System
USDA	U.S. Department of Agriculture

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# ***Background and Objectives***

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## **Background**

The Agricultural Marketing Service (AMS) purchases, with appropriated funds, a variety of food products through competitive bids or negotiated contracts in support of the National School Lunch Program and other Federal feeding programs. AMS operates the procurement programs primarily using funding under Section 32 of the Agriculture Adjustment Act. AMS makes these purchases to help stabilize prices in agricultural commodity markets by balancing supply and demand. AMS purchased over 1.4 billion pounds of food products totaling over \$900 million for school year 2002-2003.

AMS oversees six commodity programs--Cotton, Dairy, Fruit and Vegetable, Livestock and Seed, Poultry, and Tobacco. Each commodity program employs specialists who provide standardization, grading, and market news services. The specialists enforce such Federal laws as the Perishable Agricultural Commodities Act and the Federal Seed Act. AMS commodity programs also oversee marketing agreements and orders, administer research and promotion activities, and purchase non-price supported commodities for Federal food assistance. AMS Livestock and Seed, Poultry, and Fruit and Vegetable divisions are responsible for conducting all the agency's commodity procurements.

Within the U.S. Department of Agricultural (USDA), AMS and the Farm Service Agency (FSA) coordinate with the Food and Nutrition Service (FNS) to purchase and supply commodities used for domestic feeding programs. Purchases are coordinated with FNS to assure the quantity, quality, and variety of commodities purchased meet the desires of schools and institutions participating in the domestic nutrition programs. Although AMS and FSA purchase the commodity food products for these Federal feeding programs, FNS actually administers the distribution of program benefits to participants. After AMS commodity purchase contracts have been awarded, FSA takes over the administration of the contracts, including making payments to vendors to whom contracts have been awarded, ensuring the proper storage of commodities when needed, and facilitating the distribution and transportation of the commodities to the ultimate locations.

The Federal Acquisition Regulation (FAR) applies to most Federal executive agencies in the acquisition of supplies and services with appropriated funds. FAR Part 14 provides the regulations for acquisitions made by sealed bidding, which includes most of AMS purchases. On a very few occasions AMS makes purchases using

negotiated contracts, However, for the 2002–2003 school year, AMS did not make any commodity purchases using negotiated contracts.

The Agriculture Acquisition Regulations (AGAR) located in the Code of Federal Regulations Title 48, chapter 4, prescribes departmental regulations that implement and supplement the FAR. The AGAR must be used in conjunction with the FAR. The AGAR Part 414 and Part 415 provide additional regulation pursuant with the FAR for sealed bidding and negotiated contracts, respectively. In addition, bidders must follow specific Agricultural regulations<sup>2</sup> for the procurement of agricultural commodities.

Commodities are purchased from various commercial sources through regularly scheduled solicitations (invitations) and bid processes. Invitations may be scheduled on a weekly, monthly, bimonthly, quarterly, semi-annual, or long-term basis to meet program commitments. Also, some commodities such as fruits and vegetables are purchased only on a seasonal basis. AMS receives food requisitions orders or delivery orders from various agencies and organizations through FNS. AMS then reviews and adjusts the requisition orders or delivery orders to develop a work list of items to be purchased by a particular delivery period or date. Work lists are processed through the automated Processed Commodity Inventory Management System (PCIMS).

The actual purchase process begins when AMS develops announcements, which provide technical requirements, product descriptions, and other bid and contract provisions to the vendors. Companies meeting the required specifications can apply with AMS by submitting a technical proposal. AMS marketing specialists use the automated PCIMS to create the invitations in coordination with FNS. PCIMS generates an invitation file from which the applicable invitation detail is downloaded for each commodity. PCIMS also generates an invitation detailing the solicitation terms which include: the delivery periods, total pounds, small business program requirements (if applicable), offer due dates and times, and dates and times of Notification of Award and Public Release of Award information, as well as other specifications and certifications.

AMS maintains a web site where the procurement, solicitation detail, and award information are posted. Invitations are also posted on the AMS web site and an electronic mail message and/or a fax is sent to the commodity vendors. AMS utilizes the Domestic Electronic Bid Entry System (DEBES) for receiving contract bids and the PCIMS for analyzing bids and awarding contracts. For each invitation, vendors

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<sup>2</sup> USDA-1, General Terms and Conditions for the Procurement of Agricultural Commodities or Services.

submit bids electronically via the DEBES, a real-time web-based computer system. Within DEBES, vendors can submit, withdraw, and modify bids until the invitation's prescribed closing time. DEBES will not allow vendors to submit or modify bids after the closing time. For each invitation and depending on the type of commodity purchased, vendors have from 2 to 11 days to submit an offer via the DEBES. After the bid closing time, AMS marketing specialists will access DEBES, to review the bids for obvious errors or unreasonable bids, such as a decimal position error, and print out a bidder log. The bid data in DEBES are transferred to PCIMS, which allows the AMS marketing specialists to analyze bids using various analytical tools. Once the bids have been analyzed and either accepted or rejected by AMS management, the marketing specialists use PCIMS to award the contracts.

The bid analyses are normally completed within 1 to 3 days after the final offers and invitations are opened, depending on the type of commodity. Successful vendors are notified via an acceptance wire, which is faxed to the vendor, usually, on the same day of the acceptance of the bid offers. The Public Release of Awards are also posted to the AMS website between 12:00 P.M., Central Standard Time (CST) and 4:00 P.M. (CST) on the day of the award, depending on the type of commodity.

Vendors who are eligible to participate in AMS programs must submit annual certifications, representations, and warranties. Included in the certifications is the "Certificate of Independent Price Determination." The vendor certifies that the person submitting the bid is either the person responsible for determining the prices offered in the bids, or the authorized agent for the principal (usually the vendor). In either case, the vendor certifies that the vendor's actions taken to obtain the prices offered do not violate department regulations. Article 30 of USDA-1 has three stipulations that the vendor or offeror certifies: 1) the prices in the offer have been arrived at independently; 2) the prices in the offer have not been knowingly disclosed by the offeror to any other offeror or competitor before bid opening; and 3) no attempt has been made by the offeror to induce any other concern to submit or not submit a bid for purpose of restricting trade.

The U.S. Department of Justice's (DOJ) Antitrust Division encourages agency personnel to recognize common collusive bidding patterns including bid suppression, complementary bidding, bid rotation, and market division. Bid suppression occurs when one or more competitors (who would otherwise be expected to bid) refrain from bidding or withdraw a previously submitted bid, so that a competitor's bid will be accepted. Complementary bidding occurs when competitors submit

token bids that are too high to be accepted or submit special terms that will not be accepted. Bid rotation is when all vendors participating in the scheme submit bids, but by agreement, take turns being the low bidder or take turns on the size of the contract. Market division schemes are agreements between vendors to refrain from competing in designated portions of the market.

## **Objectives**

Our primary objectives were (1) to assess the sufficiency of AMS management controls to prevent and detect potential collusive bidding activities in procuring commodities and (2) to determine whether identified collusive bidding activities or complaints of bid rigging were properly referred to the OIG or DOJ, where warranted.

# Findings and Recommendations

## Section 1. Bid Analysis for Potential Antitrust Activity Among Vendors

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### Finding 1

#### AMS Needs to Improve Analysis and Awareness of Potential Antitrust Activity Among Vendors

AMS personnel performed little detailed analyses of ongoing commodity procurement bids to identify potential antitrust activities among vendors, such as collusive bidding. In addition, we found AMS did not use any automated software mechanism to evaluate historical vendor commodity bid data for patterns of potential antitrust violations. These conditions existed, in part, because AMS emphasizes analysis of market conditions to make commodity purchases rather than evaluating current or historical bid data to monitor or detect potential antitrust activity among its vendors. However, AMS personnel stated they did review bids for inconsistencies and based on their collective knowledge of their bidders and market conditions, they would know whether bidders were involved in collusive bidding activities. Also, AMS officials believe that if collusive bidding occurred, it would have a nominal effect on agency purchases. With AMS placing little emphasis on detecting antitrust activity, we noted that AMS does not have written policies, procedures, or a structured process to specifically evaluate commodity bids to identify antitrust activities. As a result, there is reduced assurance that potential cases of antitrust activities will be detected and referred for investigation for commodity procurement programs ranging from approximately \$850 to over \$900 million annually.

The FAR states that contracting personnel are a significant source for providing investigative leads against antitrust violators and should be sensitive to signs of unlawful vendor conduct.<sup>3</sup> In addition, the FAR states that agencies are required by 41 U.S.C. §253b(i) and 10 U.S.C. §2305(b)(9) to report to the Attorney General any bids or proposals that evidence a violation of the antitrust laws. Any agreement or mutual understanding among competing firms that restrains the natural operation of market forces is suspect.<sup>4</sup> The AGAR states that contracting officers shall report the circumstances of suspected violations of antitrust laws to the OIG in accordance with procedures in Departmental Regulation.<sup>5</sup>

The FAR list numerous activities that are not necessarily improper, but are sufficiently questionable to warrant notifying the appropriate authorities. Several of the practices would require that procurement

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<sup>3</sup> See FAR, subpart 3.301

<sup>4</sup> See FAR, subpart 3.303

<sup>5</sup> See AGAR subpart 403.303 and Departmental Regulations DR 1700 series

personnel track historical bid data and contract awards. These practices listed in the FAR include: (1) the existence of an “industry price list” or “price agreement” to which contractors refer in formulating their offers; (2) a sudden change from competitive bidding to identical bidding; (3) simultaneous price increases or follow-the-leader pricing; (4) rotation of bids or proposals so that each competitor takes a turn in sequence as low bidder, or so that certain competitors bid low on some sizes of contracts and high on other sizes; (5) division of the market so that certain competitors bid low only for contracts in certain geographical areas, or on certain products, or (6) establishment by competitors of a collusive price estimating system. In addition, under this section of the FAR, agencies are to report identical bids if the agency has reason to believe that the bids were the result of collusion among the competitors.<sup>6</sup>

In a DOJ publication for procurement professionals, the DOJ advises that collusion is most likely to occur in industries where (1) there are only a few sellers of the product, (2) the product cannot easily be substituted for another product, (3) the product is more standardized and it is easier for competing firms to reach agreement on a common price, (4) repetitive purchases may increase the chance of collusion, (5) competitors know each other well, and (6) bidders congregate in the same place to submit bids. The DOJ cautioned that while these indicators may arouse suspicion of collusion, they are not proof of collusion. Rather, indicators of collusion merely call for further investigation to determine whether or not collusion exists. Most of these conditions exist within AMS processed commodity purchase programs. For example, we reviewed AMS purchases of one-pound tubes of fine ground beef for the period of July 2003 through May 2004. During this period, AMS purchased a total of 5,920,000 pounds of fine ground beef tubes totaling over \$9 million from various invitations. We noted that the number of bidders ranged from one to four and on two occasions only one bidder responded. We also noted that one vendor received contracts on 10 of the 11 invitations.

Our review disclosed that AMS marketing specialists do not perform a detailed analysis of bids to detect potential antitrust activity. We observed the bid opening, bid analysis, and contract award processes of one AMS commodity invitation. We noted that AMS procedures emphasized an analysis of items such as bid prices, market prices, and margins; however, AMS personnel did not make any attempt to evaluate bids or track bid patterns for antitrust activity. During the observation process, we specifically inquired about duties related to detection of collusive bidding. An AMS marketing specialist stated that obvious signs of collusive bidding such as excessive numbers of tie bids, or bids significantly higher than the estimated range of market

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<sup>6</sup> See FAR subpart 3.303 (b) (c) and (d)

prices, are to be brought to the attention of the AMS contracting officers.

AMS marketing specialists evaluate domestic processed commodity bids by using reports generated by PCIMS. The Log of Bidders shows the vendor, the vendor's identification number, and whether or not PCIMS recommends the vendor's bid be accepted or rejected. PCIMS bases the acceptance or rejection of the bids on lowest prices and vendors' constraints. The Bidder Constraints Proof List shows the quantities a vendor wants to bid on for selected locations for the invitation and the Destination Price Bid Array report shows each line item and the vendors' bid for each line item. The Destination Evaluation Report by Vendor shows each vendor, the line items (i.e., types of commodities) they should be awarded, and pertinent information such as quantity, price, and destination.

The marketing specialists' reviews of the PCIMS reports are also used to complete the final evaluation of bid invitations. Marketing specialists are responsible for assuring that the agency adheres to the regulations and policies for small business programs, such as Historically Underutilized Business Zones (HUBZones). This program provides help to small firms and businesses located in economically depressed areas throughout the United States. To meet these HUBZones requirements, marketing specialists are frequently required to allot portions of the overall award to non-winning bidders and generate new modified reports, based on these constraints. After the marketing specialist has completed all analytical operations in PCIMS, the bid analysis and recommended purchases go through several "bid sessions" with different levels of management. The "bid sessions" are a time when marketing specialists, contracting officers, and managers get together for discussion of all aspects of the purchase. The "bid sessions" allow management to review the analytical preparation and PCIMS reports and make final approval of the purchase. Once final awards are determined, post award reports are requested via PCIMS to detail the contract abstracts and create delivery and forwarding notices.

While PCIMS reports are being used to ensure proper awarding of contracts, the reports are not being used to analyze bidding and award data for indications of collusive bidding activities. AMS does not have any written policies, procedures, or instructions directly related to monitoring or identifying potential collusive bidding activities or the process or procedures for reporting them. In addition, an AMS official informed us that AMS currently has no plans to implement any internal or external reviews, studies, or special projects concerning collusive bidding. Similarly, the data collected to prepare these PCIMS reports

and for historical vendor bid data from the DEBES and for PCIMS is not used or analyzed to assess potential antitrust activities.

AMS personnel told us that they do not focus efforts toward analyzing data for potential antitrust activity among their vendors because, if such activity did occur, it is viewed as only having a nominal effect on the agency's commodity purchases. An AMS official stated that the agency works closely with available market information; therefore, they believe the impact of any potential collusive bidding would be nominal based on the premise that AMS would not purchase commodity food products at prices significantly in excess of the applicable market prices. AMS personnel further stated that the marketing specialists work closely with the vendors and based on their knowledge of their vendors, they would know if the bids were submitted inconsistent with market conditions. For example, the marketing specialist would become suspicious if an abnormal amount of identical bids were submitted for an invitation. Therefore, AMS relies on the bid analyses directed towards reasonableness of purchases to ultimately detect potential collusive bidding among the vendors.

Since 1984, AMS had documentation to support the referral of only one case of potential collusion to the DOJ. This 1999 case involved a vendor whose bid was allegedly prepared by a competitor. AMS became aware of the potential for collusion when the vendor faxed in a bid to AMS that included the competitor's name, facsimile number, and other information similar or identical to one competitor's bid. Although the case showed strong potential for possible collusion, the DOJ declined to investigate. During our review, AMS personnel brought to our attention another possible antitrust situation they identified by noting an excessive numbers of tie or identical bids submitted for ten invitations for a variety of frozen lamb roast products. Each of the ten invitations had at least one tie bid with six invitations having tie bids ranging from six to twenty-seven tie bids submitted. AMS did not cancel the cited invitations before they awarded the contracts<sup>7</sup>. AMS did not become concerned that these conditions could be representative of collusive activities until after it awarded the contracts. Subsequently AMS personnel felt these cases should be referred to the DOJ for investigation into possible collusion and they began preparing this case for referral during our review. The case is still pending with DOJ.

We noted similar conditions with respect to an audit of FSA/CCC (Commodity Credit Corporation) Bidding Procedures and Awards for Commodities.<sup>8</sup> In response to our report, FSA stated that it is in the process of developing and implementing an automated system

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<sup>7</sup> FAR 14 Subpart 14.404-1(c) allows the agency head to cancel the invitations and reject all bids if the bids were not independently arrived at in an open competition, were collusive, or were submitted in bad faith.

for identifying potential collusive bidding patterns from historical vendor bid data.

Since AMS and FSA share DEBES and PCIMS for accepting and analyzing bids and awarding contracts, we believe that AMS and FSA would benefit by engaging in discussions related to shared implementation of an automated system for tracking and analyzing historical bid data for potential antitrust activity.

Lastly, we learned that since 1999, AMS has not held formal training courses for its commodity procurement staff regarding collusive bidding practices. AMS personnel said that, during the summer of 1999, the DOJ provided a training course on collusive bidding; however, no other training had been provided since that time. Furthermore, the official said that although AMS has hired new procurement staff, these individuals have not received any formal training regarding preventing and detecting antitrust activities. According to the official, the new staff members were provided a pamphlet describing signs of antitrust activity. We believe the entire procurement staff would benefit from periodic training on the types and signs of antitrust activities and the detection of potential violations.

## **Recommendation No. 1**

Coordinate with FSA to develop and implement an automated computer software package to analyze historical vendor bid information on an ongoing basis for providing potential leads of collusive bidding practices for procuring commodities. The shared system must be capable of analyzing data for both FSA and AMS.

### **Agency Response.**

AMS concurs with this recommendation. AMS has been in contact with FSA and will continue to coordinate with FSA in looking at potential automated solutions. AMS will also work with FSA to prevent duplication of efforts. FSA has performed extensive market research but has not found a clear cost effective solution. According to AMS, FSA will also look into the Risk Management Agency's use of data mining operations as a possible avenue to analyze bids for collusive bidding.

AMS and FSA face the limitation of identifying software packages that will work with their aged computer system, PCIMS, which is used to

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<sup>8</sup> Audit Report No. 03008-2-KC, Farm Service Agency and Commodity Credit Corporation Bidding Procedures and Awards for Commodities, dated September 25, 2003.

manage the commodity operations. The PCIMS represents 1980's technology and is relatively inflexible. The Department has recognized the need to replace PCIMS and has requested funding for that effort in the FY 2005 budget request. Congress approved funding and AMS and FSA are currently waiting for OMB to apportion the funding. AMS anticipates being able to work with FSA by August 31, 2005, to review the possibilities of a shared system.

#### **OIG Position.**

We accept the management decision.

### **Recommendation No. 2**

Develop in-house, or contract for, an automated computer software package that can adequately analyze historical vendor bid information on an ongoing basis and provide potential leads on collusive bidding practices for procuring commodities if a shared system with FSA is not feasible.

#### **Agency Response.**

AMS concurs with this recommendation. AMS and FSA will work together to find solutions that meet both agencies needs. The response also indicated that PCIMS is in the process of being replaced, and since both AMS and FSA will share the new system for commodity purchases, AMS personnel do not believe it will be likely that AMS will adopt a system to identify collusive bidding apart from FSA. The Department would not likely approve of AMS and FSA procuring separate systems for both agencies to do the same task. However, in the unlikely event that separate systems would be necessary, any system AMS acquires would need to be compatible with the PCIMS replacement; therefore, the acquisition of the system to analyze bids for collusion could not take place until after the installation of the PCIMS replacement. AMS does not expect the installation of the PCIMS replacement to be finalized until FY 2009.

#### **OIG Position.**

We accept the management decision. Due to the length of the timeframe for replacing PCIMS, AMS will need to provide a progress report to the Office of the Chief Financial Officer (OCFO) yearly showing the status of the process to complete implementation of the planned system as well as any necessary revision to the system's planned completion date.

### **Recommendation No. 3**

Develop and implement internal procedures requiring the review, analysis, and reporting of commodity bids for indications of collusion. Make antitrust enforcement an ongoing feature of AMS commodity procurement activities by evaluating both current and historical vendor bid information on a continuous basis and providing referrals of suspected collusions to DOJ and/or OIG, as appropriate.

#### **Agency Response.**

AMS concurs with our recommendation. AMS has procedures in place for analyzing bids. AMS will be strengthening the procedures and adding them to a desk manual. AMS expected to complete this task by August 31, 2005.

#### **OIG Position.**

We accept the management decision.

### **Recommendation No. 4**

Develop a training program to alert new marketing specialists and contracting personnel to the signs of antitrust activities and to stress the importance of preventing and detecting collusion, particularly collusive bidding practices amongst vendors and AMS contractors. Periodically provide refresher training on detecting and preventing antitrust activities to the entire procurement staff.

#### **Agency Response.**

AMS concurs with our recommendation. AMS is currently working with the DOJ to provide training for all three procurement divisions (Poultry, Fruit and Vegetables, and Livestock and Seed) in the areas of price fixing, bid rigging, and market allocation schemes. Depending on the outcome of the training, AMS will explore additional opportunities with the DOJ. AMS expects the training to be completed by August 31, 2005.

#### **OIG Position.**

We accept the management decision.

# ***Scope and Methodology***

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Our review concentrated on AMS commodity procurements for school years 2001 through 2004 and focused on the availability of internal and automated controls to analyze domestic vendor bid data to detect collusive bidding practices. Our review focused on AMS' competitive bid processes as AMS did not make any negotiated contract purchases for the school year 2002-2003. However, for purposes of ascertaining the number of suspected cases of antitrust activities reported to the DOJ or OIG Investigations, we requested available documentation for all referred cases since 1984. The audit was conducted at the AMS National Office, located in Washington, D.C.

To accomplish our audit objectives, we reviewed Federal and Departmental procurement regulations, policies, procedures, manuals, and instructions and accessed available literature from private entities and academic institutions to gather information about any processes or procedures to detect, track, monitor, and report antitrust activities. At the AMS National office, we interviewed management officials and procurement staff from the AMS procurement divisions, Livestock and Seed, Poultry, and Fruits and Vegetables, to identify and evaluate their management controls over AMS bidding activities, particularly their detection, tracking, monitoring, and reporting of potential collusive bidding among their vendors. We identified and assessed the automated controls available in the PCIMS. We judgmentally selected and reviewed various data entry forms and reports related to receiving, processing, evaluating, and awarding contracts for commodities.

To gain an understanding of the AMS management controls related to the procurement process, we performed a walkthrough of the bidding and award operations with a marketing specialist and contracting officer from the Livestock and Seed Division to observe the process from the opening of bids through the awarding of contracts for one ground beef invitation. Since all three AMS procurement divisions conducted their procurements similarly, we limited our observations to just this division's commodity procurement activities.

We judgmentally selected and reviewed purchase files for various invitations from each of the three AMS procurement division to assess the procedures being followed. We selected 16 purchase files for review, including the information contained in the files for the cited ground beef invitation award, we observed. We selected different commodity products within each procurement division in order to assess the activities performed by different marketing specialists. The information reviewed

from the files included data entry forms and reports related to processing, evaluating, and awarding contracts for commodities.

In addition, we obtained AMS procurement information from their internet site. From the AMS Livestock and Seed procurement website, we reviewed the purchases for 11 invitations for the school year 2003 through 2004. We used the information for these invitations to illustrate that conditions described by the DOJ as conducive to price fixing exist for AMS commodity procurements and vendors.

During the school year 2001-2002, AMS procured and distributed approximately 1.2 billion pounds of food commodities costing over \$850 million for all of the domestic programs. During the school year 2002-2003, AMS procured and distributed approximately 1.4 billion pounds of food commodities totaling over \$900 million for domestic programs.

During our fieldwork we also contacted the Office of the Chief Economist and Office of the General Counsel to determine if they had information or concerns related to AMS purchasing activities including the ability of AMS to prevent, track, monitor, and report antitrust activities.

The audit was performed in accordance with Government Auditing Standards. We performed our fieldwork from February through August 2004.

# Exhibit A – Agency Response

Exhibit A – Page 1 of 3



United States  
Department of  
Agriculture

Agricultural  
Marketing  
Service

1400 Independence Avenue, SW  
Room 3529-S, STOP 0203  
Washington, DC 20250-0203

TO: Robert W. Young  
Assistant Inspector General for Audit  
Office of Inspector General

FROM: A. J. Yates  January 13, 2005  
Administrator  
Agricultural Marketing Service

SUBJECT: 01601-1-KC  
Agricultural Marketing Service Contract and Competitive Bidding  
Practices

We have reviewed the subject audit report, and agree in principle with the findings and recommendations. Our detailed response, including actions already taken and actions to be taken to address the recommendations, is attached.

If you have any questions or need further information, please contact Neil Blevins, our Management Control Officer, at 202-720-6766.

Attachment

**Agricultural Marketing Service Responses**  
**To OIG Inspection Recommendations**  
**Audit 01601-01-KC**

**Recommendation No. 1**

Coordinate with FSA to develop and implement an automated computer software package to analyze historical vendor bid information on an ongoing basis for providing potential leads of collusive bidding practices for procuring commodities. The shared system must be capable of analyzing data for both FSA and AMS.

**Agency Response:** We have been in contact with FSA and will coordinate with them in looking at potential automated solutions. Our understanding is that the extensive market research that FSA has already conducted in this area has not identified any clear cost effective solution. We will work with them so as to avoid duplication of effort by the two agencies. Recently, FSA was going to look at data mining operations conducted by the Risk Management Agency to see if they had any applicability to our situation.

One of the limitations that we will face in identifying a software package that will readily work in our environment is the age of the system we use, along with FSA, to manage our commodity operations. The Processed Commodity Inventory Management System (PCIMS) represents 1980's technology. It is relatively inflexible. The Department has recognized the need to replace PCIMS and requested funding for that effort in the FY2005 budget request. Congress approved funding and we are currently awaiting apportionment of the funding by OMB. We anticipate that we will be able work with FSA and complete the review of possibilities for a shared system by August 31, 2005.

**Recommendation No. 2**

Develop in-house or contract for an automated computer software package that can adequately analyze historical vendor bid information on an ongoing basis and provide potential leads on collusive bidding practices for procuring commodities if a shared system with FSA is not feasible.

**Agency Response:** As mentioned in our response to recommendation 1, we will coordinate with FSA to identify potential solutions that will meet the needs of both agencies. Also, as mentioned above, we are in the process of replacing PCIMS with a new system. We are currently finalizing the acquisition strategy for this replacement system. Since both FSA and AMS share and will continue to share the same systems in procuring commodities, and the threat of collusive bidding would seem to equally affect both agencies, we do not believe a separate system for AMS will be necessary. We also do not believe that the Department would be willing to approve procurement of separate systems to accomplish the same tasks. In the unlikely event that separate systems would be necessary, any system we acquire will need to be compatible with the replacement of PCIMS; therefore, the acquisition of the system could not take place until the PCIMS replacement has been installed. This is not planned to be finalized until FY 2009.

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### **Recommendation No. 3**

Develop and implement internal procedures requiring the review, analysis, and reporting of commodity bids for indications of collusion. Make antitrust enforcement an ongoing feature of AMS commodity procurement activities by evaluating both current and historical vendor bid information on a continuous basis and providing referrals of suspected collusions to DOJ and/or OIG, as appropriate.

**Agency Response:** We have procedures in place for analyzing bids. We will be strengthening the procedures and adding them to a desk manual. This is expected to be done by August 31, 2005.

### **Recommendation No. 4**

Develop a training program to alert new marketing specialists and contracting personnel to the signs of antitrust activities and to stress the importance of preventing and detecting collusion, particularly collusive bidding practices amongst vendors and AMS contractors. Periodically provide refresher training on detecting and preventing antitrust activities to the entire procurement staff.

**Agency Response:** We are working with the Department of Justice to provide training for all three programs (Poultry, Fruit & Vegetables, and Livestock & Seed) in the areas of price fixing, bid rigging, and market allocation schemes. Depending on the outcome of this training, additional opportunities with the Department of Justice will be explored. We expect to be able to provide training by August 31, 2005.

Informational copies of this report have been distributed to:

Administrator, AMS

Attn: Agency Liaison Officer

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Office of the Chief Financial Officer

Director, Planning and Accountability Division

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Government Accountability Office

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Office of Management and Budget

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