



U.S. Department of Agriculture  
Office of Inspector General  
Great Plains Region  
Audit Report

Farm Service Agency  
and  
Commodity Credit Corporation  
Bidding Procedures and Awards for  
Commodities



Report No.  
03008-2-KC  
September 2003



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington D.C. 20250



DATE: September 25, 2003

REPLY TO

ATTN OF: 03008-2-KC

SUBJECT: Farm Service Agency and Commodity Credit Corporation Bidding  
Procedures and Awards for Commodities

TO: James R. Little  
Administrator  
Farm Service Agency

ATTN: T. Mike McCann  
Director  
Operations and Review Analysis Staff

This report presents the results of our review of the corrective actions taken on the recommendations made in our prior audit report on the Farm Service Agency's controls to detect potential antitrust activities in bidding procedures and awards for commodity procurements by the Commodity Credit Corporation. The August 22, 2003, written response to the official draft report is included as exhibit A with excerpts and the Office of Inspector General's (OIG) position incorporated into the Findings and Recommendations section of the report.

Based on the information contained in the response, we were unable to accept your management decisions for Recommendations Nos. 1, 2, 3, and 4. Management decisions can be considered when the Farm Service Agency provides the additional information outlined in the OIG Position sections of the report.

Please furnish a reply within 60 days describing corrective actions taken or planned and the timeframes for implementation of those recommendations where management decisions have not been reached. Please note that Departmental Regulation 1720-1 requires a management decision to be reached on all findings and recommendations within a maximum of 6 months from report issuance.

We appreciate the courtesies and cooperation extended to our staff during the review.

/s/

RICHARD D. LONG  
Assistant Inspector General  
for Audit

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# EXECUTIVE SUMMARY

## FARM SERVICE AGENCY AND COMMODITY CREDIT CORPORATION BIDDING PROCEDURES AND AWARDS FOR COMMODITIES

AUDIT REPORT NO. 03008-2-KC

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### RESULTS IN BRIEF

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This review was performed to follow up and ascertain the status of corrective actions taken on the recommendations made in an August 1987 Office of Inspector General (OIG) audit report and to assess the reasonableness of controls designed to identify potential antitrust activities in bidding procedures and awards for commodity procurements by the Commodity Credit Corporation (CCC) through the Farm Service Agency (FSA) Kansas City Commodity Office (KCCO). KCCO is responsible for procuring, transporting, and disposing of food commodities to fulfill U.S. Department of Agriculture (USDA) and U.S. Agency for International Development (USAID) program commitments.

As reported in our prior audit report,<sup>1</sup> we found that existing controls were still insufficient to provide reasonable assurance that antitrust activities such as price fixing, bid rigging, and other typical antitrust violations, were detected and referred for investigation in conjunction with commodity procurement awards totaling about \$1.2 billion annually (fiscal years (FY) 2000 through 2002). KCCO had not adopted our audit recommendations to use automated means to continuously analyze commodity vendor bid information for suspected collusive bidding activities. We found that vendor bids were still not being properly analyzed to identify potential antitrust activities and no potential cases of suspected collusion had been identified or referred to the Department of Justice (DOJ) and/or Office of Inspector General (OIG).

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### KEY RECOMMENDATIONS

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As in the prior audit, we recommend that FSA take action to develop or contract for automated software capabilities designed to identify potential collusive bidding practices in conjunction with its commodity procurement operations. FSA should

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<sup>1</sup> Audit of Agricultural Stabilization and Conservation Service Bidding Procedures and Awards for Processed Commodities (Audit Report No. 03099-3-FM, dated August 28, 1987).

consult with governmental, public, and/or private entities with experience in the subject field to facilitate the development or procurement of such software. We also recommend that FSA develop internal procedures and make antitrust enforcement a fundamental feature of its procurement activities by evaluating historical vendor bid information on a continuous basis and provide referrals of suspected collusions identified to DOJ and/or OIG, as appropriate.

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## **AGENCY RESPONSE**

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FSA provided comments, dated August 22, 2003, to the official draft report from the Deputy Administrator for Commodity Operations expressing general concurrence with the findings recommendations contained in the report (see exhibit A for the complete response). We have incorporated applicable portions of the FSA response, along with our position, in the Findings and Recommendations section of this report.

The response stated that KCCO made changes since our 1987 audit that improved its ability to detect potential collusive practices. The changes include that bids are now received via electronic process as opposed to faxed or mailed bids. The response said that this process provides additional opportunity for contracting officers to closely review bids prior to awarding contracts. The response stated that, as a result of training by DOJ and of our suggestions, its staff developed an antitrust report for peas, beans, lentils, and rice as a first step because they thought these commodities were more prone to collusive bidding than others. The response said that the report helps identify vendor rotation of success in awards and looks at the percentage of the volume awarded to each individual vendor. It also contracted for training from a vendor to be conducted in October 2003 called "How to Identify Collusion." The training is to provide an overview of collusion detection methods, red flags that may indicate collusive practices, and examples how the methods are used in investigations. However, it explained that it had not budgeted funds for software to detect collusive bidding.

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## **OIG POSITION**

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While the agency response is positive, we remain concerned that the proposed action does not include a decision to pursue developing in-house or contracting outside sources for an automated computer software package that can be used to analyze historical vendor bid information on an ongoing basis. In its response, FSA did not provide sufficient information on internal reports KCCO is developing to identify antitrust activities for selected commodity procurements. We need to be informed as to the extent these reports utilize historical vendor bid information.

In order to consider management decisions, we will need to be advised of the specific actions taken or planned and be provided with detailed timeframes for initiating and completing proposed corrective actions. The information needed has been incorporated into the OIG Position sections of the report.

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## INTRODUCTION

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### BACKGROUND

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The Commodity Credit Corporation (CCC) is a wholly-owned Government corporation created in 1933 to stabilize, support, and protect farm income and prices; to help maintain balanced and adequate supplies of agricultural commodities, including products, foods, feeds, and fibers; and to help in the orderly distribution of these commodities. CCC was originally incorporated under a Delaware charter and was reincorporated in 1948, as a Federal corporation within the U.S. Department of Agriculture (USDA) by the CCC Charter Act (15 U.S.C. 714). CCC has no operating personnel. Its activities are carried out by USDA agencies and personnel, including the facilities of the Farm Service Agency (FSA).

The FSA Kansas City Commodity Office (KCCO) in Kansas City, Missouri, is responsible for the procurement, transportation, and disposition of food commodities to fulfill USDA and U.S. Agency for International Development (USAID) program commitments. Private industry works in partnership with USDA and other Government agencies to supply the various programs with high-quality, nutritious products that meet program requirements. During FY's 2000 through 2002, approximately \$1.2 billion in commodities were procured and distributed annually through domestic and foreign food aid programs.

When surplus commodities are available, CCC aids in the donation of Government-owned commodities for use in domestic and foreign feeding programs. Within USDA, FSA and the Agricultural Marketing Service (AMS) coordinate with the Food and Nutrition Service (FNS) to purchase and supply commodities used in a variety of domestic feeding programs including the National School Lunch Program. The commodities FSA procures include dairy products, processed grain products, peanut products, and vegetable oil. For foreign food assistance programs, FSA also procures and supplies commodities for USAID and USDA Foreign Agricultural Service (FAS) for overseas humanitarian and developmental use under Titles II and III of P.L. 480, Food for Progress, and section 416 (b) programs. Private voluntary organizations distribute many of the commodities overseas. Commodity purchases are based on program needs and available funding by Congress.

The Federal Acquisition Regulations (FAR) apply to most Federal executive agencies in the acquisition of supplies and services with appropriated funds. The Agriculture Acquisition Regulation (AGAR), located in the Code of Federal Regulations (CFR) at Title 48, chapter 4, prescribes Departmental regulations that implement and supplement the FAR.

KCCO uses the sealed bidding methods as prescribed by FAR when contracting for commodity purchases. Invitation for bids are sent to prior suppliers or other interested companies.

For example, domestic use commodities are purchased from various commercial vendors through regularly scheduled solicitations (invitations) and bid processes. Invitations may be scheduled on a monthly, bimonthly, quarterly, or long-term basis to meet program commitments. For the domestic programs, KCCO marketing specialists (MS) receive Food Requisition Orders or Delivery Orders from various agencies e.g., FNS. MS then review and adjust the Delivery Orders to develop a work list of items to be purchased for a particular delivery period. Work lists are processed through the automated Processed Commodities Inventory Management System (PCIMS). 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.

FSA maintains a web site where the procurement schedule, solicitation details, and award information are posted. Invitations are also posted on the FSA web site and a courtesy electronic mail (e-mail) message is sent to the commodity vendors. Vendors can be included in the invitation process by submitting an application to FSA. For each invitation, vendors have approximately 11 days to submit an offer via the Domestic Electronic Bid Entry System (DEBES). Modifications, changes, or withdrawal of vendors bids can also be submitted utilizing DEBES. Modifications, changes, and withdrawals are accepted up to the closing date and time specified in the invitation. Invitations normally close at 9:00 a.m. on Mondays.

The bid analysis is normally completed on Monday of each week. Successful vendors are notified via an acceptance wire, which is faxed to the vendor on day two of the process (normally by 10:00 a.m. on Tuesday). The Public Release of Awards is also posted to the FSA web site, normally by 4:00 p.m. on Tuesday. A Freedom of Information



Act report and/or Item Register Report are posted to the web site 1 week following the release of the award information. This information remains on the FSA web site for approximately 2 months.

The 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 acceptable. Bid rotation is when all vendors participating in the scheme submit bids, but by agreement, take turns being the low bidder or take turns based on the size of the contract. Market division schemes are agreements between vendors to refrain from competing in designated portions of the market.

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## **OBJECTIVES**

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Our primary survey objectives were to follow up and determine what corrective actions had been implemented by FSA/CCC on the recommendations made in our preceding audit report on this matter and to assess FSA/CCC management controls at KCCO to determine if they were sufficient to detect potential antitrust activities in procuring commodities.

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## **SCOPE**

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Our review concentrated on domestic program commodity procurements for FY's 2000 through 2002 programs and focused on the availability of automated controls to analyze domestic bids to detect collusive bidding practices. The audit was conducted at the FSA National office, located in Washington, D.C., and at KCCO, located in Kansas City, Missouri. We also contacted other Federal agencies, private entities, and academic institutions to gather information about the antitrust activities and, specifically, on those activities that related directly to collusive bidding practices among vendors.

During FY's 2000 through 2002, FSA/CCC procured and distributed annually approximately \$1.2 billion in commodities to domestic programs and to foreign countries. Our fieldwork was conducted during April 2002 through December 2002.

We conducted the audit survey in accordance with Government Auditing Standards.

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## METHODOLOGY

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To accomplish our survey objectives, we reviewed Federal and Departmental procurement regulations, policies, procedures, manuals, and instructions. We also interviewed

FSA/CCC officials in Washington, D.C., and Kansas City, Missouri, to identify and evaluate the controls over FSA/CCC bidding activities, particularly, their detection, tracking, monitoring, and reporting of potential collusive bidding among vendors of FSA/CCC contracts. We identified and assessed the automated controls available in the PCIMS. We judgmentally selected and reviewed various bid data including data entry forms and reports related to processing, evaluating, and awarding contracts for commodities.

As part of our examination, we also contacted other Federal governmental agencies, including the General Services Administration, Department of Health and Human Services, FAS, FNS, Environmental Protection Agency, AMS, Forest Service, Department of Transportation, and Department of Defense. We identified those policies, procedures, processes, and/or controls in place at those agencies to detect, track, monitor, and report potential antitrust activities.

In addition, we contacted nine non-federal agencies and six academic institutions in an effort to identify any other entities that had established and put in place any processes or procedures to detect, track, monitor, and report antitrust activities.

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## FINDINGS AND RECOMMENDATIONS

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<b>CHAPTER 1</b>	<b>KCCO DID NOT IMPLEMENT PRIOR AUDIT RECOMMENDATIONS</b>
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### FINDING NO. 1

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As reported in our prior audit, we found KCCO personnel still had done little detailed analyses of commodity procurement bids in order to identify potential antitrust activities, such as collusive bidding, among vendors. We also found that no automated software mechanism had been developed or obtained from outside sources to evaluate commodity bids for potential antitrust violations as recommended in our prior report. Agency officials stated there was not sufficient personnel or time to manually review the large volume of commodity bids received to identify any potential illegal bidding patterns. However, FSA personnel stated that they did review the bids for inconsistencies and, based on their collective knowledge of their bidders, they would know whether bidders were involved in collusive bidding. KCCO officials could not explain why no further actions were ever taken to develop a structured process to evaluate commodity bids to identify potential antitrust violations. As a result, with no specific type of review being completed to identify potential antitrust violations, there was insufficient assurance that potential cases of antitrust activities would be detected and referred for investigation for a commodity procurement program in which approximately \$1.2 billion worth of commodities were purchased annually.

FAR, subpart 3.301, states, in part, that contracting personnel are an important potential source of investigative leads for antitrust enforcement and should, therefore, be sensitive to indications of unlawful behavior by vendors and contractors. Agency personnel shall report, in accordance with agency regulations, evidence of suspected antitrust violations in acquisitions. In addition, subpart 3.303 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.

AGAR, subpart 403.303, "Reporting Suspected Antitrust Violations", states that contracting officers shall report the circumstances of suspected

violations of antitrust laws to the OIG in accordance with procedures in Departmental Regulation (DR) 1710-2, OIG/Investigations Organization and Operations (since superceded by DR 1700-2). In addition, subpart 403.104-10, "Violations or Possible Violations," states, in part, that the contracting officer shall forward information concerning any violation to the chief of the contracting office. Also, heads of contracting activities or their designees who receive information concerning any violation or possible violation are required to take action and refer the reports directly to the Attorney General, as stated in FAR subpart 3.301, and send a copy of each to the Director, Office of Operations.

DOJ further advises that price fixing 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, and (3) the product is more standardized and it is easier for competing firms to reach agreement on a common price. We noted these conditions all exist in the CCC processed commodity purchase programs. For example, domestic processed cereals purchased on August 20, 2002, under Invitation 650 to Announcement 650 (approximately 2.7 million pounds) during the August 2002 domestic program bid cycle, had 4 or less vendors bidding on it. Also, our review disclosed that the average number of vendors that placed bids per each type of bid invitation on major processed commodity groups offered by FSA/CCC usually ranged from about 5 to 10 bidders.

MS evaluates domestic processed commodity bids by using reports generated by PCIMS. The Offer Data Reports detail the bidder register, price changes, and bidder constraints. The Item Register Reports detail the price offered by the bidders and the transportation mode offered by each bidder. The Bid Evaluation Reports detail award control by item, bidder, and any constraints.

The MS' reviews of the PCIMS reports are used to complete the final evaluation of bid invitations. MS is responsible for assuring that small business program, HUB Zone (small firms and businesses located in economically depressed areas throughout the United States), and first time bidder goals, regulations, and policies are met. To meet these requirements, MS is frequently required to allot portions of the overall award and generate new Modified Reports, based on these constraints. Once final awards are determined, Post Award Reports are requested via PCIMS to detail the contract abstracts and create delivery and forwarding notices. However, we found that the PCIMS reports were not being utilized to analyze bidding and award data for indications of collusive bidding activities.

KCCO informed us that constructed prices, which include several different cost variables, are calculated for each commodity by package size. KCCO uses constructed prices to identify vendor bids that may be excessive. However, we found that although this control provides a reasonableness check to identify and eliminate potential excessive bids, it could allow collusive bids to be accepted.

We reported in a prior audit report (OIG Audit Report No. 03099-3-FM, dated August 28, 1987) that vendor bids were not being analyzed to identify potential antitrust violations. At that time, the agency attributed this condition to the large number of commodity bids received and the amount of personnel time that would be required to manually review the bids. We recommended that the agency develop in-house or contract for an automated software package that could analyze historical vendor bid information on an ongoing basis and provide potential leads on collusive bidding practices for procuring commodities. We also recommended that the agency consult with other Federal agencies or private software vendors who could provide guidance and direction in preparing a software package to meet the agency's requirements, evaluate historical vendor bid information on a continuous basis, and provide referrals of suspected collusion to DOJ and/or OIG, as appropriate.

In response to the audit recommendations, KCCO stated that a review of the domestic and export bidding procedures and evaluations under which contracts were awarded led it to the conclusion that it would not be cost effective at that time to establish a software program for analysis of historical bid data for potential collusive bidding practices. KCCO further stated that it did not believe that a large expenditure of time and resources was warranted, but would consider the feasibility of using in-house programs to develop and implement the evaluation of possible collusive bidding practices after PCIMS was installed. However, our review disclosed that no further action was taken by the agency to develop an automated means to prevent or detect collusive bidding practices. KCCO officials could not offer an explanation why no further actions were ever taken to develop a structured process to prevent or detect collusive bidding practices.

During our current review, we found that FSA had not documented any agency regulations or procedures requiring the review and analysis of commodity bids for indications of collusion. However, our review disclosed that other Federal agencies had instituted these types of controls in their programs. For example, the Department of Transportation was utilizing automated bid analysis techniques to detect collusive bidding practices in road and bridge construction contracts.

After we brought these conditions to their attention, KCCO officials stated that they were in agreement that such procedures are needed, and they are now in the process of putting those procedures together. KCCO officials also stated that they would incorporate an agricultural marketing specialist review schedule for the system reports that they have, including recently-initiated "Anti-Trust Reports", that can be made available for all awards for the processed export commodities together with a separate report showing identical bids for review.

During our review, we identified and contacted a private industry computer software vendor that has designed automated bid analysis packages to detect collusive bidding practices. Our intent was to determine if the computer software package could be used to analyze the FSA/CCC processed commodity vendor bids. The vendor indicated that its software package could be modified to analyze the KCCO bid information but the vendor would need to determine what kinds of bid information is maintained by KCCO.

KCCO officials advised us that they had met with DOJ on May 7, 2002, and obtained recent DOJ training on antitrust issues, including collusive bidding. In addition, on November 19, 2002, KCCO officials met with the vendor we identified as part of their process to establish a software package that would assist them in identifying, tracking, and monitoring potential collusive bidding violations among their vendors. KCCO officials have not made any final determination as to the avenue that they would pursue in developing and/or purchasing a software package that would meet their needs in checking, tracking, and monitoring collusive bidding by vendors.

Due to the size of the processed commodity programs (currently about \$1.2 billion annually), we continue to believe that FSA/CCC needs to develop procedures to analyze vendor bids on an ongoing basis for potential antitrust activities. Because of the volume of offer and award data, FSA needs to develop in-house or obtain computer software capability that will effectively analyze vendor bids on an ongoing basis for potential antitrust activities. This automated software must include procedures and processes that can analyze historical vendor bid information on an ongoing basis and provide potential leads on collusive bidding practices for commodities. FSA/CCC should make antitrust enforcement a fundamental feature of all its commodity procurement activities by evaluating vendor bid information on a continuous basis and providing referrals of suspected collusion to DOJ and/or OIG, as appropriate. Based on the lack of corrective action taken to address the recommendations in our prior audit report, we are reiterating our recommendations that FSA/CCC:

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**RECOMMENDATION NO. 1**

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Develop in-house or contract 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.

**FSA/CCC Response**

FSA responded that KCCO made changes that improved its ability to detect potential collusive bidding practices. The agency explained that the way it procures commodities for CCC and USDA has significantly changed since the first audit in 1987. It said that with the exception of bulk commodities, bids are received via an electronic process as opposed to using the fax or mail for bids and that this provides additional opportunity for contracting officers to closely review bids prior to awarding contracts.

FSA said it invited a software vendor to make a presentation on the vendor's capabilities of providing service. FSA stated that the vendor's software could possibly be modified to fit the KCCO bid process. However the estimated \$200,000 start up and \$75,000 annual license fee was not in the budget. A decision was not made as to whether to pursue this avenue. And, before such decision is made, it will further research and discuss the most efficient and cost effective approach to analyze historical data for potential leads on collusive bidding practices.

**OIG Position**

OIG continues to believe an automated analysis or process is needed to adequately analyze historical vendor bid information on a continuous basis. Before we consider the management decision, we need to receive information on whether the agency intends to use computer software to automate its system to analyze historical bid data information on an ongoing basis and provide potential referrals on collusive bidding practices for commodities. If it is determined that an automated process will not be implemented, FSA needs to provide additional information on the compensating controls it will put in place to ensure uniformity and consistency in analysis as well as corrective actions. Also, timeframes for implementing these actions must be provided.

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**RECOMMENDATION NO. 2**

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Consult with other Federal agencies, e.g., the Department of Transportation or private computer software vendors, with experience in collusive bidding software packages, to obtain

guidance and direction in preparing a specific software package to meet FSA/CCC contract bidding collusive detection requirements.

### **FSA/CCC Response**

FSA stated that it would be most beneficial if OIG could share additional information gathered from other Federal agencies, private entities and academic institutions so it can further develop policy, procedures, processes and controls that identify potential antitrust activities. FSA further asked for our assistance in identifying which commodities are most prone to collusive bidding so as to focus its efforts on vulnerable commodities and better develop tracking and monitoring systems.

### **OIG Position**

During the review, OIG made all the information we gathered available to the agency. In regard to determining which commodities would be more prone than others to collusive bidding, we believe that the Department of Justice, industry trade associations, and commodity vendors would be better sources of information on complaints, investigations, and/or prosecutions involving specific commodities. This type of information would be developed upon implementation of a software package designed to analyze historical data and to identify trends and potential collusion among various types of commodities.

Before we consider the management decision, we need additional information on the efforts by the agency in developing an automated means or an active compensating control process to detect and report potential collusive bidding practices.

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### **RECOMMENDATION NO. 3**

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

### **FSA/CCC Response**

FSA responded that DOJ conducted collusive bidding training called "Think Antitrust" for its office on March 7, 2002. It said that as a result of the training and OIG suggestions, its staff developed an antitrust report for peas, beans, lentils, and rice in the Export Operations Division because it thought these commodities might be more prone to collusive bidding than



others. It said that the report helps identify vendor rotation of success in awards and looks at the percentage of the volume awarded to each individual vendor. It said the Dairy and Domestic Operations Division is generating a similar report for rice purchases for domestic programs. Also, it said that it recently made the decision to move contract data for purchases made by the Bulk Commodity Division to PCIMS and it hopes to be able to generate the same type of report once the conversion is complete.

The agency further responded that at the time of the audit, it reported to OIG that no reports of potential collusive practices were referred to DOJ or OIG. The agency said that due to an Historically Underutilized Business Zone issue, OIG is currently conducting a review based on information the agency provided on an award that was made but terminated.

### **OIG Position**

Before we can consider management decision, we need to be provided additional information on the internal procedures or processes being developed for analyzing the vendor bid information for selected commodities.

We need to be provided information on the procedures FSA will put in place to insure conformity and consistency in application, including the extent the cited antitrust reports provide analyses of historical bidding information for the commodities. We will also need to be provided the timeframe for accomplishing the planned actions.

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## **RECOMMENDATION NO. 4**

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Issue periodic reminders to KCCO procurement personnel stressing the importance of preventing and detecting collusion, particularly, collusive bidding practices, amongst vendors of

FSA/CCC contracts.

### **FSA/CCC Response**

The agency responded that from a management standpoint, guarding against collusion will be a high priority and one that will continue to be emphasized with staff. The agency said that a software vendor will conduct two days of computerized training called "How to Identify Collusion" in October 2003. The training is to provide an overview of collusion detection methods, red flags that may indicate collusive practices, and examples of how these methods are used in investigations. The agency said that, depending upon the availability of funds, it would ask the vendor or another qualified firm to review its collusive bidding reports and processes and to provide suggestions on improving the current system. The agency intends to issue periodic reminders to

employees who are involved in procurements that stress the importance of preventing and detecting collusion and collusive practices on CCC contracts.

**OIG Position**

To achieve management decision, we need to be advised of the date when the contemplated actions will be accomplished and the frequency the reminders will be provided.

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## EXHIBIT A – AUDITEE’S RESPONSE TO THE DRAFT REPORT



United States  
Department of  
Agriculture

AUG 25 2003

Farm and Foreign  
Agricultural  
Services


Farm Service  
Agency

Operations Review  
and Analysis Staff

Audits,  
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20250-0540

**TO:** Director, Farm and Foreign Agriculture Division  
Office of Inspector General

**FROM:** Philip Sharp, Chief   
Audits, Investigations, and State and County Review Branch

**SUBJECT:** Response to Audit No. 03008-2-KC, Review of Farm Service Agency  
(FSA) and Commodity Credit Corporation (CCC) Bidding Procedures and  
Awards for Commodities

Enclosed is a copy of a memorandum from the FSA's Deputy Administrator for Commodity Operations, which responds to your July 28 official draft report regarding the subject audit.

Please address any questions to Karren Fava 720-6152.

Enclosure



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Farm and Foreign  
Agricultural  
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AUG 22 2003

**TO:** Philip Sharp, Chief, Audits, Investigations,  
And State and County Review Branch

**FROM:** Bert Farrish *Steve G. G...*  
Deputy Administrator for Commodity Operations

**SUBJECT:** Response to Office of Inspector General (OIG) Official Draft Audit  
Report No. 03008-2-KC, Review of Farms Service Agency (FSA) and  
Commodity Credit Corporation (CCC) Bidding Procedures and  
Awards for Commodities

This is in response to your August 13, 2003, memorandum requesting written comments on the subject audit. We appreciate OIG's review of our bidding processes and appreciate their suggestions on improving our effectiveness in detecting potential collusive bidding patterns. The following are our responses to OIG's recommendations.

**Recommendation 1 - Develop in-house or contract 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.**

**Commodity Operations Response:**

The Kansas City Commodity Office (KCCO) has made changes that improve our ability to detect potential collusive practices. The way we procure commodities for CCC and the Department of Agriculture (USDA) has significantly changed since the first audit was completed in 1987. With the exception of bulk commodities, bids are received via an electronic process as opposed to fax or mailed bids. This process provides additional opportunity for contracting officers to closely review bids prior to awarding contracts.

As suggested by OIG, on November 20, 2002, we invited Info Tech, the organization that designed the system used by Department of Transportation, to make a presentation on their capabilities of providing services to us. They offer bid data analysis services using software that detects patterns of collusion. This decision

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support software could possibly be modified to fit the KCCO bid process. The estimated cost for installation, start up and data analysis is \$200,000, and annual licensing fees would run approximately \$75,000. At this time, we have not budgeted for an expense of this kind. Any proposed Information Technology purchases must go through the FSA IRM Review Board. Additionally, any purchase in excess of \$25,000 requires Department approval. A decision has not been made whether or not to pursue this avenue at this time. Before such a decision is made we will further research and discuss the most efficient and cost effective approach to analyze historical data for potential leads on collusive bidding practices.

**Recommendation 2 – Consult with other Federal agencies, e.g., the Department of Transportation or private computer software vendors, with experience in collusive bidding software packages, to obtain guidance and direction in preparing a specific software package to meet FSA/CCC contract bidding collusive detection requirements.**

**Commodity Operations Response:**

As mentioned in recommendation 1, we contacted Info Tech, the organization that designed the system used by the Department of Transportation, and they discussed their ability to provide services to us. Otherwise, we found limited resources that could help us in implementing this recommendation. It would be most beneficial if you could share additional information you gathered from other Federal agencies, private entities and academic institutions so that we can further develop policy, procedures, processes and controls that identify potential antitrust activities. We also ask for your assistance in helping to identify which commodities are most prone to collusion so we can focus our efforts on vulnerable commodities and better develop tracking and monitoring systems.

**Recommendation 3 – Develop internal procedures requiring the review and analysis of commodity bids for indications of collusion. Make antitrust enforcement a fundamental feature of KCCO commodity procurement activities by evaluating historical vendor bid information on a continuous basis and providing referrals of suspected collusions to Department of Justice (DOJ) and/or OIG, as appropriate.**

**Commodity Operations Response:**

As indicated in Recommendation 1, the way we procure commodities for CCC and

the Department of Agriculture (USDA) has significantly changed since the first audit was completed in 1987. With the exception of bulk commodities, bids are received via an electronic process as opposed to fax or mailed bids. This process provides additional opportunity for contracting officers to closely review bids prior to awarding contracts.

On March 7, 2002, DOJ conducted collusive bidding training for our office called "Think Antitrust." One of the measures they suggested as a preventative tool was expanding competition. We have been conducting outreach in an effort to add qualified vendors to our approved vendor lists. In addition, as a result of the training and your suggestions, our staff developed an Antitrust Report for peas, beans, lentils (PBLs) and rice in the Export Operations Division (EOD) as a first step, because we thought these commodities might be more prone to collusion than others. The report helps identify vendor rotation of success in awards, and looks at the percentage of the volume awarded to each individual vendor. The Dairy and Domestic Operations Division (DDOD) is generating a similar report for rice purchases for domestic programs. We recently made the decision to move contract data for purchases made by the Bulk Commodity Division (BCD) to the Processed Commodity Inventory Management System (PCIMS) and we hope to be able to generate the same type of report once this conversion is complete.

At the time the audit was conducted, we reported that no reports of potential collusive practices were referred to the DOJ or OIG. However, due to a Historically Underutilized Business Zone (HUBzone) issue, OIG in Washington, DC, is currently conducting a review on C & S Trading and ADM based on information that we provided on an award that was made but terminated by earlier in the year.

**Recommendation 4 – Issue periodic reminders to KCCO procurement personnel stressing the importance of preventing and detecting collusion, particularly, collusive bidding practices, amongst vendors of FSA/CCC contracts.**

**Commodity Operations Response:**

From a management standpoint, guarding against collusion will be a high priority and one that will continue to be emphasized with staff.

KCCO will conduct collusion detection training in October 2003. Info Tech sent in a proposal for 2 days of computerized training called "How to Identify Collusion." The training will provide an overview of collusion detection methods, red flags that may

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indicate collusive practices, and examples of how these methods are used in investigations. Some of the steps that will be covered include market areas, market shares, vendor competition and contract analysis. Depending upon the availability of funds, we will ask Info Tech or another qualified firm to review our collusive bidding reports and processes and to provide suggestions on improving the current system.

KCCO will issue periodic reminders to employees that are involved in procurements that stress the importance of preventing and detecting collusion and collusive practices on CCC contracts.

If you need more information please contact Bert Farrish, Deputy Administrator for Commodity Operations, at 202-720-3217.

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## ABBREVIATIONS

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AGAR	-	Agriculture Acquisition Regulation
AMS	-	Agricultural Marketing Service
CCC	-	Commodity Credit Corporation
CFR	-	Code of Federal Regulations
DEBES	-	Domestic Electronic Bid Entry System
DOJ	-	Department of Justice
FAR	-	Federal Acquisition Regulations
FAS	-	Foreign Agricultural Service
FNS	-	Food and Nutrition Service
FSA	-	Farm Service Agency
FY	-	Fiscal Year
KCCO	-	Kansas City Commodity Office
MS	-	Marketing Specialists
OIG	-	Office of Inspector General
PCIMS	-	Processed Commodities Inventory Management System
USAID	-	U.S. Agency for International Development
USC	-	United States Code
USDA	-	U.S. Department of Agriculture