

DATE: September 10, 2001

REPLY TO

ATTN OF: 85099-1-HQ

SUBJECT: Rural Development Cooperative Agreement with the Washington State Department of Community, Trade, and Economic Development (CTED)

TO: Michael E. Neruda
Acting Deputy Under Secretary
Rural Development

ATTN: Mark Huntley
Acting Director
Financial Management Division

SUMMARY:

This report contains the results of our audit of Rural Development's cooperative agreement with the Washington State Department of Community, Trade, and Economic Development (CTED). The majority of the United States Department of Agriculture (USDA) funding for this project was used to implement enhancements to the Washington Community Economic Revitalization Team (WA-CERT) database. This audit originated from a hotline complaint received by the Government Accounting Office (GAO) Fraud NET and referred to our office. The complaint alleged potential misuse of appropriated funds, to include issuing the cooperative agreement even though CTED had not submitted a competitive proposal.

We found that the State Director had written and executed the CTED agreement without authority and without seeking clearance from the Office of the General Counsel (OGC) as required. This occurred, in part, because Rural Development had not issued specific guidelines for entering into cooperative agreements and the State Director was unaware of the limitations on her authority. As a result, Rural Development expended \$40,000 through an improper agreement that was (1) executed without proper authority; (2) not supported by the required justification for non-competitive awards; (3) lacking in substantive agency involvement; and (4) missing 15 provisions and certifications required for compliance with departmental regulations.

We recommend that Rural Development develop and execute a plan to ensure that authoritative guidance for entering into cooperative agreements is provided throughout the mission area, to include a written manual and appropriate training.

BACKGROUND:

On September 30, 1999, the Rural Development Washington State Director entered into a \$40,000 cooperative agreement with CTED. The purpose of the agreement, "... to collaborate in a more formal and targeted way through the development and implementation of a cooperative agreement," was not well-defined. As executed, much of the project involved enhancements to the WA-CERT database, to include improved access to the database information by community constituents and partner agencies and an automated county editing process.

Section 759A of the Federal Agriculture Improvement and Reform Act of 1996 (Public Law 104-127) authorized the Secretary of Agriculture to enter into cooperative agreements to improve the coordination and effectiveness of Federal programs, services, and actions affecting rural areas. At the close of fiscal year 1999, this authority had not been redelegated and all cooperative agreements were required to be signed by the Secretary. Further, a longstanding policy required that all cooperative agreements be reviewed by OGC.

Title 7 C.F.R. 3015.158 established the general requirement that agencies enter into discretionary cooperative agreements only after competition. The awarding official may make a determination *in writing* that competition is not appropriate for a particular transaction when it can be adequately justified that a non-competitive award is in the best interest of the Government and necessary to the accomplishment of the goals of the program.

A basic statutory criterion for cooperative agreements is "substantial involvement" anticipated between the agency and the recipient during the performance of the activity. Neither the normal exercise of Federal stewardship responsibilities during the project period nor the execution of general statutory requirements constitutes substantial involvement.

OBJECTIVE:

Our audit objective was to follow up on issues reported in the complaint to GAO Fraud NET. The complainant alleged, in part, that there was no competitive proposal submitted by CTED defining what services would be provided and how these services would be provided at a lower cost than through some alternative means. Specifically, we evaluated whether the cooperative agreement with CTED was authorized and executed in accordance with applicable laws and regulations, to include obtaining competitive proposals or justifying a non-competitive award.

SCOPE AND METHODOLOGY:

Our audit was conducted in accordance with Generally Accepted Government Auditing Standards. Fieldwork was performed at the Rural Development National Office in Washington, D.C. and through telephone contacts with the Washington State Rural Development office in Olympia, Washington, from December 2000 through May 2001.

Our review covered the cooperative agreement between Rural Development and CTED and supporting documentation. We reviewed pertinent directives, regulations, and laws and interviewed Rural Development State and headquarters staff. We discussed general authorities for cooperative agreements with representatives of OGC and confirmed the legal sufficiency of our

preliminary conclusions with them. We reviewed the web site that was enhanced under the cooperative agreement and followed up on corrective action taken in response to a prior Office of Inspector General (OIG) recommendation concerning the need for guidance on cooperative agreements.

DETAILS:

The Rural Development Washington State Director wrote and executed a cooperative agreement with CTED without authority and without the required OGC review. This occurred, in part, because Rural Development had not issued specific guidelines for entering into cooperative agreements and the State Director was unaware of the limitations on her authority. As a result, Rural Development expended \$40,000 through an improper financial assistance agreement that was (1) executed without proper authority, (2) not supported by the required justification for non-competitive awards, (3) lacking in substantive agency involvement, and (4) missing 15 provisions and certifications required for compliance with departmental regulations.

NO DELEGATED AUTHORITY. At the time the cooperative agreement was executed, only the Secretary of Agriculture was authorized to enter into agreements of this nature. The State Director incorrectly assumed that she was authorized to enter into this type of agreement because she had been urged to “cooperate” and “work collaboratively” with outside organizations. She stated that she was unaware of her lack of delegated authority. According to Rural Development managers present at the exit conference, this did not excuse the unauthorized action, as consultation with OGC or a careful reading of applicable law would have shown the proper procedures.

NO JUSTIFICATION FOR NON-COMPETITIVE AWARD. The State Director issued the cooperative agreement noncompetitively, but did not document a determination that the award was in the best interest of the Government. According to the State Assistant Administrator for Procurement and Administrative Services, this occurred because neither she nor the State Director was aware of the requirements regarding competition for discretionary cooperative agreements contained in 7 CFR 3015.158.

NO SUBSTANTIVE AGENCY INVOLVEMENT. The minimal deliverables established for Rural Development as part of the cooperative agreement did not constitute substantive agency involvement, as required by the Federal Grants and Cooperative Agreements Act of 1977. We concluded that only two of the seven deliverables for which Rural Development was responsible potentially qualify as agency involvement. These are (1) attending and participating as a member of the project development teams at a 3 day symposium and (2) providing cross training on Rural Development programs and resources. The other five deliverables (e.g., “Meet with CTED leadership to discuss progress, identify barriers, and determine next steps”) were part of the normal exercise of Federal stewardship responsibilities and did not comprise “substantial involvement.” Given the limited nature of agency participation, we concluded that the agency involvement was incidental and not substantial.

We confirmed our assessment with a representative of OGC, who stated that he considered the level of agency involvement to be marginal. If the required OGC review had taken place before the agreement was executed, he considered it likely that OGC would have questioned the level of involvement. Washington State Rural Development staff stated that they were not aware of the requirement for substantive agency involvement when entering into cooperative agreements.

ABSENCE OF 15 GENERAL COMPLIANCE PROVISIONS. Departmental regulations require that cooperative agreements contain certain general compliance provisions that were missing from the CTED agreement. These provisions require, as a condition of the cooperative agreement, that the recipient assures and certifies that it is in compliance with and will comply with all applicable laws, regulations, Executive orders, and other generally applicable requirements, which are to be incorporated into the agreement by reference. Attachment A lists the provisions required by departmental regulations that were missing from the cooperative agreement.

Many of the missing provisions were important. For example, the CTED agreement did not specify that USDA and the Comptroller General has access to and the right to examine all records, books, papers, or documents relating to the award. The State Director stated that she was not aware of the required compliance provisions.

NO WRITTEN RURAL DEVELOPMENT GUIDANCE FOR ENTERING INTO COOPERATIVE AGREEMENTS. The absence of clear written guidance issued by Rural Development contributed to the State Director's improper execution of the CTED cooperative agreement. The longstanding need for this type of guidance was described in a 1996 OIG audit report. In response to that report, in December 1996, the Under Secretary committed to developing the necessary instructions. However, as of June 1, 2001, almost 4 ½ years later, the guidance has still not been issued. We were unable to determine the reason for the unacceptable delay.

On March 20, 2001, after OIG inquiries about the status of the written guidance on cooperative agreements, the Assistant Administrator for Procurement and Administrative Services issued a request for assistance to the Office of the Chief Financial Officer (OCFO), OGC, and the Office of Budget and Program Analysis (OBPA). According to the letter, representatives from OCFO, OGC, and OBPA would serve as subject matter experts to work with Rural Development staff in preparing a manual which will clearly set forth policy describing basic management controls such as (1) approval of project plans, (2) site visits, (3) performance reporting, (4) financial reporting, (5) audits, (6) other activities to ensure that standards, objectives, terms, and conditions of the project are accomplished, and (7) review of performance after project completion.

RECOMMENDATION:

Establish a project plan, to include interim milestones, to ensure timely completion and publication of the policy manual on cooperative agreements. The plan should include a description of how and when the contents of the manual will be communicated to Rural Development staff and how those responsible for the execution of cooperative agreements will be trained.

RURAL DEVELOPMENT:

In response to our audit, Rural Development officials provided a project plan which included proposed completion dates for implementation of the recommendation.

OIG POSITION:

The project plan for the Grants and Cooperative Agreements Management Manual (included in Attachment B as part of the Rural Development response to the audit) will help ensure publication of appropriate guidance. However, according to the plan, training will not be completed until May 2003. This will be nearly 6 ½ years after the need for guidance was pointed out by OIG. Departmental Regulations require final action on audit recommendations to be completed within 1 year. Prompt action is particularly important in this instance, as nearly all the Rural Development State Directors are new in their positions and may not be fully cognizant of their authorities and limitations. To reach management decision on the recommendation, Rural Development should provide a revised project plan with timeframes that allow for completion of training within 1 year. The plan should also incorporate a description of how the contents of the manual will be communicated to Rural Development staff and how those responsible for the execution of cooperative agreements will be trained.

/s/

RICHARD D. LONG
Assistant Inspector General
for Audit

2 Attachments

GENERAL PROVISIONS FOR COOPERATIVE AGREEMENTS

The general provisions required by departmental regulations to be included in each cooperative agreement include compliance with the following:

- Civil Rights Act of 1964
- Requirement to establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
- Requirements of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794. Section 504 provides that no otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- Access to and the right to examine all records, books, papers, or documents related to the award for USDA, the awarding agency or the Comptroller General, through any authorized representative.
- Age Discrimination Act of 1975, 42 U.S.C. 6101-6107, which prohibits unreasonable discrimination, based on age, in programs or activities receiving Federal financial assistance.
- Requirements to establish safeguards to ensure that USDA funds are properly spent. In particular, to assure that funds are not used for partisan or political activity.
- Requirement to assist the awarding agency in its compliance with Section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470, Executive Order 11593, and the Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 496a-1, et seq.
- Requirement that the facilities under its ownership, lease, or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of violating facilities and that it will notify the awarding agency of the receipt of any communication indicating the project may be listed by the EPA.
- The Flood Insurance purchase requirements of the National Flood Insurance Act of 1968, as amended, and the Flood and Disaster Protection Act of 1973, 42 U.S.C. 4001-4127. Section 102(a) requires, on or after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition of construction or acquisition purposes for use in any area that has been identified by the Secretary of the U.S. Department of Housing and Urban Development as an area having special flood hazards.
- Requirements of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., which prohibits discrimination on the basis of sex in federally assisted education programs.
- Clean Air Act of 1970, 42 U.S.C. 7401 et seq., which requires federally assisted activities to be in conformance with the State (Clean Air) Implementation Plan.
- Rights and welfare of human subjects.
- Animal Welfare Act.
- National Institute of Health Guidelines for Recombinant DNA Research
- International Air Transportation Fair Competitive Practices Act.

Attachment A



AUG 28 2001

**United States
Department of
Agriculture**

Rural Development

**Operations and
Management**

**Washington, DC
20250**

SUBJECT: Rural Development Cooperative Agreement with
the Washington State Department of Community,
Trade, and Economic Development (CTED)
(Audit No. 85099-001-HQ)

TO: Richard D. Long
Assistant Inspector General
for Audit
Office of Inspector General, USDA

Attached for your information is a memorandum dated August 2, 2001, from Sharon Randolph, Assistant Administrator, Procurement and Administrative Services, Rural Development, responding to the official draft of the subject audit. Also attached is the project plan that addresses the recommendation in the audit. Based on this documentation, we request management decision on the recommendation.

This information is being submitted for inclusion in the final report of the subject audit.

If you have any questions, you may contact Walter Wright of my staff at (202) 692-0089.

MARK HUNTLEY
Acting Director
Financial Management Division

Attachment

Rural Development is an Equal Opportunity Lender. Complaints of
discrimination should be sent to: Secretary of Agriculture,
Washington, DC 20250



Attachment B

AUDIT REPORT



United States
Department of
Agriculture

Rural Development

Operations and
Management

Washington, DC
20250

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SUBJECT: Response to Recommendation on Audit No. 85099-001-HQ, "Rural Development Cooperative Agreement with the Washington State Department of Community, Trade, and Economic Development (CTED)"

TO: Barbara Scott
Acting Director
Financial Management Division


The following responds to the recommendation contained in the official draft on the above subject audit.

Recommendation:

Establish a project plan, to include interim milestones, to ensure timely completion and publication of the policy manual on cooperative agreements. The plan should include a description of how and when the contents of the manual will be communicated to Rural Development staff and how those responsible for the execution of cooperative agreements will be trained.

Proposed Response to Recommendation:

The *Project Plan* was submitted to Rural Development's Financial Management Division for official submission to the Office of Inspector General, which includes the proposed completion date for implementation of the action.

 8/24/01
SHARON RANDOLPH
Assistant Administrator
Procurement and Administrative Services

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Attachment B

**Rural Development
Grants and Cooperative Agreements Management Manual
Project Plan**

MILESTONES	START DATE	END DATE	COMMENTS
Establish Cooperative Agreement Re-Write Team Letter Requesting Designation of Team Members Forward Letter to OBPA, OCFO and OGC	Feb-01	Feb-01	
Kick-Off Meeting - Re-Write Team--Aaron Pose (OCFO), Phil Southers (OGC) and Judy Aldridge (PAS) Establish Standard Weekly Meetings Discuss Strategy for Re-write of Manual Develop Strategy for Re-write of Manual	Apr-01	Apr-01	
Develop Outline and Flowchart - Life Cycle of Cooperative Agreements Management Process Develop Program Initiation Process Develop Pre-Application Process Develop Application Process Develop Eligibility Review Process Develop Selection Process Develop Negotiation Process Develop Award Process Develop Administrative Processes Develop Close Out Process Develop Reporting Process Develop Modification Process Develop Compliance Process Develop Audit Process Develop Appeals Processes Develop Dispute Process Develop Monitoring Process	May-01	Aug-01	Includes major categories, functions, responsibility, etc.
Develop Language for Each Flowchart Process and Integrate Into Grants and Cooperative Agreements Management Manual	Aug-01	Dec-01	

Revised July 2001

**Rural Development
Grants and Cooperative Agreements Management Manual
Project Plan**

MILESTONES	START DATE	END DATE	COMMENTS
Submit Manual to Regulations and Paperwork Management Branch for First Review	Dec-01	Jan-02	
Circulate Manual to OBPA, OCFO, OGC and O&M for Review and Clearance	Jan-02	Mar-02	
Revise Manual Based on Suggestions/Recommendations	Mar-02	Apr-02	
Submit Manual to Regulations and Paperwork Management Branch for Final Review	Apr-02	Apr-02	
Submit Manual to the Financial Management Division for Submission to OIG	May-02	May-02	
Develop Training	Jun-02	Aug-02	
Conduct Training	Sep-02	May-03	Contingent upon budget - travel expenses of trainees.

Revised July 2001