



Office of the Secretary  
Washington, DC 20250

December 20, 2024

THE HONORABLE HAMPTON DELLINGER  
*Special Counsel*  
*U.S. Office of Special Counsel*  
*1730 M Street NW, Suite 300*  
*Washington, DC 20036*

Re: OSC File No. DI-25-000006

Dear Special Counsel Dellinger:

This responds to your letter of referral dated October 31, 2024. I take all matters seriously that may constitute violations of law, rule, or regulation. Given the gravity of the allegation, I requested the Office of the General Counsel to investigate the matter. The Office of the General Counsel reviewed the cooperative agreement at issue, and analyzed the allegation and applicable statutes. The report of the Office of the General Counsel is attached.

As the report explains, the allegation that the cooperative agreement at issue required competition is not substantiated because the cooperative agreement was entered into pursuant to 7 U.S.C. § 2204b(b)(4). I am steadfastly committed to ensuring that USDA complies with all laws, rules and regulations.

The point of contact for this matter is Inga Bumbary-Langston, Deputy General Counsel who may be reached by calling (202) 720-3351.

Sincerely

A handwritten signature in blue ink, reading "Tom J. Vilsack", is positioned below the word "Sincerely". The signature is fluid and cursive, with the first name "Tom" and last name "Vilsack" clearly legible.

THOMAS J. VILSACK  
*Secretary*

cc: Phyllis K. Fong, USDA Inspector General

Enclosure: Investigative Report

## INTRODUCTION

On October 31, 2024, the Office of Special Counsel (OSC) referred a whistleblower disclosure to the Secretary of Agriculture for investigation. The whistleblower, who chose to remain confidential, alleged that in September 2024, the Under Secretary for Rural Development, Dr. Basil Gooden, executed solicited cooperative agreements without competition or independent review, allegedly in violation of 2 C.F.R. § 415.1. Specifically, the whistleblower alleged that the agency's obligation of funds to Northwest Rural Investment Strategy on September 23, 2024, was not completed in compliance with Section 415.1(b). OSC requested that USDA investigate the matters alleged and provide a report of the Department's findings.

## SUMMARY OF FINDINGS

The competition requirement codified at 2 C.F.R. § 415.1(b) flows from the Federal Grants and Cooperative Agreements Act (FGCAA), 31 U.S.C. 6301 *et. seq.* The cooperative agreement between the Rural Business-Cooperative Service (RBCS) and Northwest Rural Investment Strategy (NRIS) was entered into pursuant to the Secretary's cooperative agreement authority in 7 U.S.C. § 2204b(b)(4). This authority is available "[n]otwithstanding chapter 63 of title 31." Therefore, based on the express language of the statute, transactions entered into pursuant to Section 2204b(b)(4) are not subject to the FGCAA or to the implementing regulations at 2 C.F.R. § 415.1.

## DISCUSSION

Pursuant to 2 C.F.R. § 415.1(b), "USDA awarding agencies must enter into discretionary grants and cooperative agreements only after competition." This requirement flows from the FGCAA, codified at 31 U.S.C. § 6301 *et seq.* One of the stated purposes of the FGCAA is to "promote increased discipline in selecting and using procurement contracts, grant agreements, and cooperative agreements, maximize competition in making procurement contracts, and encourage competition in making grants and cooperative agreements." 31 U.S.C. § 6301(3).

Section 415.1(b) goes on to note the situations in which competition is *not* required:

Exceptions to this requirement may only be made by USDA awarding agencies *where expressly provided by statute*, when directed by Congress, where the requirement is determined to be inconsistent with international assistance objectives of USDA, or as specified in paragraph (d) of this section or as approved by the Secretary and OMB under paragraph (e).

2 C.F.R. § 415.1(b) (emphasis added). One such express statutory exception is found in 7 U.S.C. 2204b(b)(4)(A), which provides as follows:

*Notwithstanding chapter 63 of title 31*, the Secretary may enter into cooperative agreements with other Federal agencies, State and local governments, and any other organization or individual to improve the coordination and effectiveness of Federal

programs, services, and actions affecting rural areas, including the establishment and financing of interagency groups, if the Secretary determines that the objectives of the agreement will serve the mutual interest of the parties in rural development activities.

7 U.S.C. 2204b(b)(4)(A) (emphasis added). As emphasized in the quotation, Section 2204b(b)(4)(A) begins with the phrase “[n]otwithstanding chapter 63 of title 31.” This citation is to the codification of the FGCAA. Therefore, based on the express language of the section, cooperative agreements entered into pursuant to Section 2204b(b)(4) are not subject to the FGCAA or its implementing regulations at 2 C.F.R. § 415.1(b).

The current cooperative agreement authority was enacted in 1996 as part of the Agriculture Improvement and Reform Act of 1996 (P.L. 104-127). Congress made clear its intent to exempt cooperative agreements under Section 2204b(b)(4), noting in the Conference Report that the provision “gives the Secretary the authority to enter into cooperative agreements . . . without being subject to the funding limitations imposed by the Federal Grant and Cooperative Agreement Act of 1977.” H. Rept. 104-494.

As part of its investigation, USDA reviewed the cooperative agreement between RBCS and NWRIS. This agreement states that it was entered into pursuant to the Secretary’s authority under 7 U.S.C. § 2204b(b)(4). This authority has been delegated to the Under Secretary for Rural Development pursuant to 7 C.F.R. § 2.17(a)(26). The purpose of the cooperative agreement is to provide the technical assistance needed by un- and under-served rural communities to conduct predevelopment activities, develop projects, and submit successful applications for Rural Development programs and related financial assistance. The Agency determined that cooperation between RBCS and NWRIS pursuant to this agreement would improve the coordination and effectiveness of Rural Development programs and serve the mutual interests of the parties in rural development activities. *See* 7 U.S.C. § 2204b(b)(4)(A).

## CONCLUSION

The cooperative agreement between RBCS and NWRIS was entered into pursuant to the Secretary’s cooperative agreement authority in 7 U.S.C. § 2204b(b)(4), as delegated to the Under Secretary at 7 C.F.R. § 2.17(a)(26). This authority is available “[n]otwithstanding chapter 63 of title 31.” Therefore, based on the express language of the statute, transactions entered into pursuant to Section 2204b(b)(4) are not subject to the FGCAA or to its implementing regulations at 2 C.F.R. § 415.1. USDA finds that there was no violation of law, rule or regulation by Under Secretary Gooden or his staff with respect to the execution of the RBCS-NWRIS cooperative agreement or other similar agreements.