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***Via Electronic Transmission***

June 6, 2025

Ms. Catherine A. McMullen  
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1730 M Street, N.W.  
Washington, D.C. 20036-4505

Subject: OSC File No. DI-25-000006 – Request for Supplemental Report

Dear Ms. McMullen:

On behalf of the United States Department of Agriculture (USDA), we are responding to your May 8, 2025, email requesting a supplemental report for the above-referenced matter. Your email requested USDA to address various issues about its decision to use 7 U.S.C. § 2204b(b)(4) for the cooperative agreement at issue instead of the Federal Grants and Cooperative Agreements Act. This correspondence constitutes the requested supplemental report.

A. Background on the Federal Grant and Cooperative Agreements Act and the USDA Authority under 7 U.S.C. § 2204b(b)(4).

The Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. § 6301, *et seq.*) (FGCA) distinguishes Federal assistance relationships from Federal procurement relationships. Before the enactment of the FGCA, no uniform statutory guidelines existed to express the sense of Congress on when executive agencies should use grants or cooperative agreements rather than contracts. The requirements of the FGCA were intended to prevent certain abuses, clarify areas of confusion, and reorder inconsistent practices that resulted from a lack of central guidance. *See* S. Rep. No. 95-449, at 6 (1977).

Under the FGCA, a transaction must be analyzed to determine whether its principal purpose is assistance, which would require the use of a grant or cooperative agreement instrument; or whether its principal purpose is the acquisition of goods or services, which would necessitate the use of a procurement contract instrument. *See Civic Action Institute*, 61 Comp. Gen. 637 (1982). At the time of the enactment of the FGCA, Congress considered the possibility that cooperative agreements represented a separate category of transactions that was neither procurement nor assistance. S. Rep. No. 95-449, at 30 (1977). This additional category is not reflected in the FGCA.

Under the FGCA, agency transactions that have the principal purpose of acquisition (by purchase, lease, or barter) of property or services for the direct benefit or use of the United States Government necessitate the use of a procurement contract instrument. 31 U.S.C. § 6303. Such transactions are subject to Government procurement contract laws and regulations such as the Federal Property and Administrative Services Act, the Competition in Contracting Act, and the Federal Acquisition Regulation.

By comparison, agency transactions that have a principal purpose of transferring a thing of value to a state or local government, or other recipient, to carry out a public purpose of support or stimulation authorized by a law of the United States are characterized in the FGCA as assistance transactions. 31 U.S.C. §§ 6304 and 6305. A grant instrument must be used when the assistance transaction is not expected to have the substantial involvement of a Federal agency. 31 U.S.C. § 6304(2). If substantial involvement is expected, then a cooperative agreement instrument must be used. 31 U.S.C. § 6305(2).

The Office of Management and Budget (OMB), pursuant to statutory mandate found at 31 U.S.C. § 6307, issued guidelines for the implementation of the FGCA. Currently, those guidelines are codified in 2 CFR Part 200. But OMB has long recognized that the FGCA “does not cover all possible relationships that may exist between Federal agencies and others.” *Implementation of Federal Grant and Cooperative Agreement Act of 1978 (Pub. L. No. 95-224), Final OMB Guidance*, 43 Fed. Reg. No. 161, Part V, August 18, 1979.

The authority described in 7 U.S.C. § 2204b(b)(4) is one such authority that is not covered by the FGCA. It provides as follows:

(4) Cooperative agreements.-

(A) In general.-*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.

(B) Cooperators.-Each cooperator, including each Federal agency, to the extent that funds are otherwise available, may participate in any cooperative agreement or working group established pursuant to this paragraph by contributing funds or other resources to the Secretary to carry out the agreement or functions of the group.

(Emphasis added.) As emphasized in the quotation, Section 2204b(b)(4) begins with the phrase “[n]otwithstanding chapter 63 of title 31.” This citation is to the codification of the FGCA. Therefore, based on the express language of the section, transactions entered into pursuant to Section 2204b(b)(4) are not subject to the FGCA. This authority was added in 1996 (Pub. L. 104-127, title VII, § 759A (Apr. 4, 1996)), well after enactment of the FGCA.

Agencies entering into an agreement under Section 2204b(b)(4) are not required to examine the transaction and apply the corresponding rules associated with the FGCA. Rather, if the

conditions of Section 2204b(b)(4) are met, the agency may use a cooperative agreement to document such relationship, and such an agreement is not subject to the requirements of the FGCA, 2 CFR Part 200, or 2 CFR § 415.1. In this regard, the Conference Report accompanying H.R. 2854 (which became Pub. L. 104-127) stated:

The Senate amendment gives the Secretary the authority to enter into cooperative agreements with other Federal agencies and State and local governments without being subject to the funding limitations imposed by the Federal Grant and Cooperative Agreement Act of 1977. (Section 793)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. (Section 759A)

H. Rep. No. 104-494, at 436 (1996).

The above quoted legislative history indicates that Congress did not intend for the transactions entered into pursuant to Section 2204b(b)(4) to be subordinate to the FGCA. Rather, this authority operates independently and provides supplemental authority to agencies authorized to execute Section 2204b(b)(4) agreements. That authority has been delegated to numerous mission areas and staff offices at USDA, including Farm Production and Conservation, Rural Development (RD), the Office of Civil Rights, the Office of the General Counsel, and the Office of Tribal Relations. *See* 7 CFR Part 2.

**B. The Cooperative Agreement at Issue Falls within the Scope of 7 U.S.C. § 2204b(b)(4).**

The cooperative agreement between RD and Northwest Rural Investment Strategy (NWRI), like many such cooperative agreements entered into by RD pursuant to the authority granted in Section 2204b(b)(4) and annual appropriations acts, was designed to improve the coordination and effectiveness of RD programs and services in rural areas.

RD regularly hears from rural, Tribal, and remote communities that public bodies, nonprofits, and small businesses are too often unable to access critical Federal and state funding due to a lack of capacity and technical assistance. Those populations RD most seeks to reach—small, remote communities with limited resources and services and economically challenged rural areas—are the least likely to have the financial resources, staff, and expertise to successfully complete the predevelopment, program application, and project management activities required for administering USDA and other financial assistance. To bridge that gap, RD engages with local community organizations with the resources and local knowledge to provide technical assistance that enables potential applicants to access RD programs and resources.

In the Pacific Northwest, RD has repeatedly heard from rural leaders that they need access to a single information source that clearly identifies the available resources, and provides information on how to access those resources, along with listings of technical assistance providers that can augment rural communities' capacity to access Federal investments and maximize the impact of Federal funds. NWRI is in the process of rolling out such a platform, and RD sought to partner with NWRI to expand access to this resource for rural communities seeking funding from RD. NWRI also has staff and infrastructure on the ground in rural Eastern Washington with experience working with small rural community leaders to assist those communities in finding the right funding opportunities and helping them prepare grant applications to access those funds.

A targeted partnership with NWRI would help RD to meet the expressed needs of rural communities through an existing and immediately available infrastructure. RD opted to enter into a cooperative agreement with NWRI to leverage the resources, staff and connections possessed by the cooperator and improve the coordination and effectiveness of RD programs and services in rural Washington State.

The *Civic Action Institute* decision cited above is particularly instructive to this arrangement. In an early interpretation of the applicability of the FGCA, the Government Accountability Office (GAO) considered the use by the Department of Housing and Urban Development (HUD) of a cooperative agreement to provide technical assistance to Community Development Block Grant recipients on the use of volunteers to supplement grant funds in carrying out their programs. GAO concluded that because the principal purpose of the arrangement was to acquire the services of a third party to aid in the delivery of technical assistance, which otherwise would have been provided by HUD, a contract (rather than a cooperative agreement) should have been used. GAO specifically noted that a contract was the proper instrument “unless the agency has statutory authority—other than the Federal Grant and Cooperative Agreement Act—to award grants or cooperative agreements to intermediaries.” Here, RD has that statutory authority (7 U.S.C. § 2204b(b)(4)), and it properly exercised it in accordance with its express terms. That allowed RD to enter into a cooperative agreement, rather than a contract, and to do so “without being subject to the funding limitations imposed by the [FGCA].” H. Rep. No. 104-494, at 436 (1996).

The provision cited in your supplemental request, 2 CFR § 415.1, provides for USDA’s administrative standards for discretionary grants and cooperative agreements awarded pursuant to the FGCA. It requires competition for such awards, with several exceptions. It would not have been applicable to an RD contract (which is not governed by title 2 of the Code of Federal Regulations), nor does it apply to the use of Section 2204b(b)(4). Given *Civic Action Institute*, RD’s reliance on a statutory authority other than the FGCA was proper. Therefore, there is no basis to conclude that this award constitutes gross mismanagement of the cooperative agreement process.

With regard to your second question, in fiscal year 2024, RD executed 37 cooperative agreements pursuant to 7 U.S.C. § 2204b(b)(4). In that same fiscal year, RD executed 41 cooperative agreements pursuant to other authorities.

Thank you for the opportunity to provide this additional information, and please contact us if you require further information.

Sincerely,

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