PBGC
Protecting America's Pensions

OFFICE OF INSPECTOR GENERAL

AUDIT REPORT

Internal Controls Must Be Strengthened to Promote Procurement Integrity

Report No. AUD-2021-01

December 8, 2020

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PBGC Office of Inspector General **BRIEF SHEET**

Internal Controls Must Be Strengthened to Promote Procurement Integrity

Background	**PBGC Contracting.** PBGC's Procurement Department (PD) is responsible for buying goods and services for PBGC and, in FY 2019, PD awarded approximately $340 million in contracts. **PBGC Procurement Department Director Pled Guilty in Bribery and Contract Steering Case.** The former PBGC PD Director pled guilty to conspiracy to bribe a public official in May 2020. At the time of his criminal acts, from 2015 through August 2017, he served as the Chief of PD's Contract Administration Division and was promoted to PD Director in October 2018. In 2015, his initial attempt to steer a contract to Company A did not succeed, but in 2016 he helped Company A win a contract to edit PD's acquisition templates. His assistance included tailoring requirements for a key position to match the qualifications of a Company A manager and providing sensitive, non-public information to help Company A develop its proposal. The contract had an initial value of $509,000, and was later modified to increase payments to Company A to $3.3 million. The former PD official received at least $48,000 in cash and additional items from Company A officials to defraud the government.
Key Questions	**Objective.** To 1) determine how procurement practices allowed award(s) to be steered, and 2) determine if there are indications of steering in a sample of awards.
Audit Results	**Overall Conclusion.** We found the former PD official steered the contract in the bribery case by including overly restrictive personnel requirements in the solicitation and then increased its value to $3.3 million through out-of-scope modifications. His actions were enabled by internal control weaknesses; specifically, inadequate oversight of PD procurements and a lack of a control mechanism to ensure that PD sent all requisite contract actions for legal reviews. Although PBGC quickly began requiring that more contract actions receive legal review after the PD Director resigned in February 2020, it does not have a mechanism to ensure PD complies with this requirement. Finally, although we did not identify other contracts that the former PD Director fraudulently steered, we found internal control deficiencies allowed PD to avoid competition requirements when awarding five other contracts, three of which were for PD support. Four of the contracts were awarded on a sole-source basis, including three using small business set-aside programs.
Corrective Actions	**Our recommendations.** We made three recommendations that included the Office of Management and Administration implementing an additional review for PD contracts or outsourcing PD requirements to another agency's contracting function, implementing a mechanism to ensure the legal review process is followed, and providing procurement integrity training to PD staff members on identifying fraud indicators. **Management agreement.** PBGC concurred with the finding and recommendations and will develop a priority action plan to address the report's recommendations, which we will evaluate to determine if it meets the intent of the recommendations.

December 8, 2020

TO: Gordon Hartogensis
Director

FROM: Nicholas J. Novak *Nicholas J. Novak*
Acting Inspector General

SUBJECT: Issuance of Final Audit Report, *Internal Controls Must Be Strengthened to Promote Procurement Integrity*
(Report No. AUD-2021-01)

We are pleased to provide you with the above-referenced final report. We appreciate the cooperation you and your staff extended to OIG during this project. We thank you for your receptiveness to our recommendations and your commitment to reducing risk and improving the effectiveness and efficiency of PBGC programs and operations.

This report contains public information and will be posted in its entirety on our website and provided to the Board and Congress in accordance with the Inspector General Act.

cc: Alice Maroni, Chief Management Officer
Paul Chalmers, Acting General Counsel
Frank Pace, Director, Corporate Controls and Reviews Department
Latreece Wade, Risk Management Officer
Juliet Felent, Procurement Director
Kristin Chapman, Chief of Staff
Department of Labor Board staff
Department of the Treasury Board staff
Department of Commerce Board staff
House committee staff (Education and Workforce, Ways and Means, HOGR)
Senate committee staff (HELP, Finance, HSGAC)

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Background

The Pension Benefit Guaranty Corporation (PBGC) protects the retirement incomes of over 35 million American workers in private-sector defined benefit pension plans. The Corporation is directly responsible for the pension benefits of about 1.5 million current and future retirees in trusteed pension plans and pays over $6 billion a year in benefits. PBGC receives no taxpayer funds. Because of its vital mission and operating model, one of the three strategic goals articulated in PBGC's Strategic Plan is to "maintain high standards of stewardship and accountability."

PBGC Contracting

The Procurement Department (PD) within PBGC's Office of Management and Administration (OMA) is responsible for the acquisition of all goods and services used by PBGC to accomplish its mission. In fiscal year (FY) 2019, PBGC awarded approximately $340 million in contracts for goods and services.

PBGC follows the Federal Acquisition Regulations (FAR) for awarding and administering contracts. PBGC also uses Corporate directives and the PBGC FAR Supplement as guidance on acquisition procedures.

Federal contracting involves a variety of contract types, including small business contracting programs administered by the Small Business Administration. Small businesses certified in some of these programs, such as the Women-Owned Small Business (WOSB) Program and the Historically Underutilized Business Zone (HUBZone) Program, are eligible for sole-source contract awards in certain circumstances. The HUBZone program helps small businesses in urban and rural communities gain preferential access to federal procurement opportunities.

PBGC Procurement Department Director Pled Guilty in Bribery and Contract Steering Case

The former PBGC PD Director pled guilty to conspiracy to bribe a public official in May 2020. At the time of his criminal acts, from 2015 through August 2017, he served as the Chief of the Contract Administration Division within PD. He was promoted to PD Director in October 2018.

In 2015, the former PD official offered to help Company A win a PBGC contract in exchange for a future job with the company. Company A created a subsidiary to bid on this contract (Contract Number PBGC01-D-15-0003), which had an estimated total value of $55 million. Despite the former PD official's efforts, which included helping draft the company's proposal and its bid protest, Company A lost the competition. The company did not meet all requirements in the solicitation and did not have a reasonable basis to protest the award.

In 2016, the former PD official helped Company A win a contract to edit PD's acquisition templates (Contract Number PBGC01-CT-16-0034). His assistance included tailoring requirements for a key position to match the qualifications of a Company A manager, and providing sensitive, non-public information, including sample templates and pricing guidance, to help Company A develop its proposal. The contract had an initial value of $509,000 and included a 12-month option period. The contract was later modified to increase payments to Company A to $3.3 million. The former PD official received at least $48,000 in cash and additional items, including silver coins, ammunition, and a rifle scope, from Company A officials to defraud the government.

Objectives

We initiated this audit following a request from the PBGC Director and interest from the PBGC Board of Directors. Our audit objectives were to 1) determine how procurement practices allowed award(s) to be steered, and 2) determine if there are indications of steering in a sample of awards.

Audit Results

Finding: Inadequate Internal Controls Allowed Contract Steering

FAR 3.101-1 requires that government business be conducted in a manner above reproach with complete impartiality, and FAR 6.101(a) requires that Contracting Officers (COs) provide for full and open competition, with limited exceptions. However, the former PD official steered the contract associated with the bribery case (Contract Number PBGC01-CT-16-0034) by including overly restrictive personnel requirements in the solicitation. Then, after the contract was awarded, he increased its value to $3.3 million through out-of-scope modifications. These actions were enabled by internal control weaknesses; specifically, inadequate oversight of PD procurements and the lack of a control mechanism to ensure that PD sent all requisite contract actions for legal reviews. Although PBGC quickly began requiring that more contract actions receive legal reviews after the PD Director resigned in February 2020, it does not have a mechanism to ensure PD complies with this requirement. Further, PBGC spent $3.3 million on the contract (netting Company A $2.2 million profit according to the Statement of Facts in the criminal case), thereby undermining public trust in PBGC's fiscal stewardship. Finally, although we did not identify other contracts that the former PD Director fraudulently steered, we again found internal control deficiencies allowed PD to avoid competition requirements when awarding five other contracts.

Restrictive Solicitation Requirements Used to Steer Contract

In May 2016, PBGC issued a contract solicitation to edit and develop acquisition templates, including statements of work and sole source justifications. The former PD official, knowing a Company A manager held a Project Management certification, included in the solicitation the requirement that the template editor hold such a certification. However, FAR 11.002 (a)(1)(ii) requires that agencies include restrictive provisions like this only to the extent necessary to meet their needs. In this particular circumstance, because a Project Management certification was not necessary to edit templates, we determined this requirement did not require the restrictions PD placed on this position and inhibited full and open competition.

In the "general comments" section of its solicitation review, the Office of General Counsel (OGC) questioned PD whether this Project Management certification requirement was necessary. An OGC supervisory attorney explained to us that it is unclear as to what constitutes a restrictive personnel requirement, and COs have wide latitude to use their professional judgement in proposing requirements. As such, the CO was not required to, and in fact did not, address the question in his response to OGC.

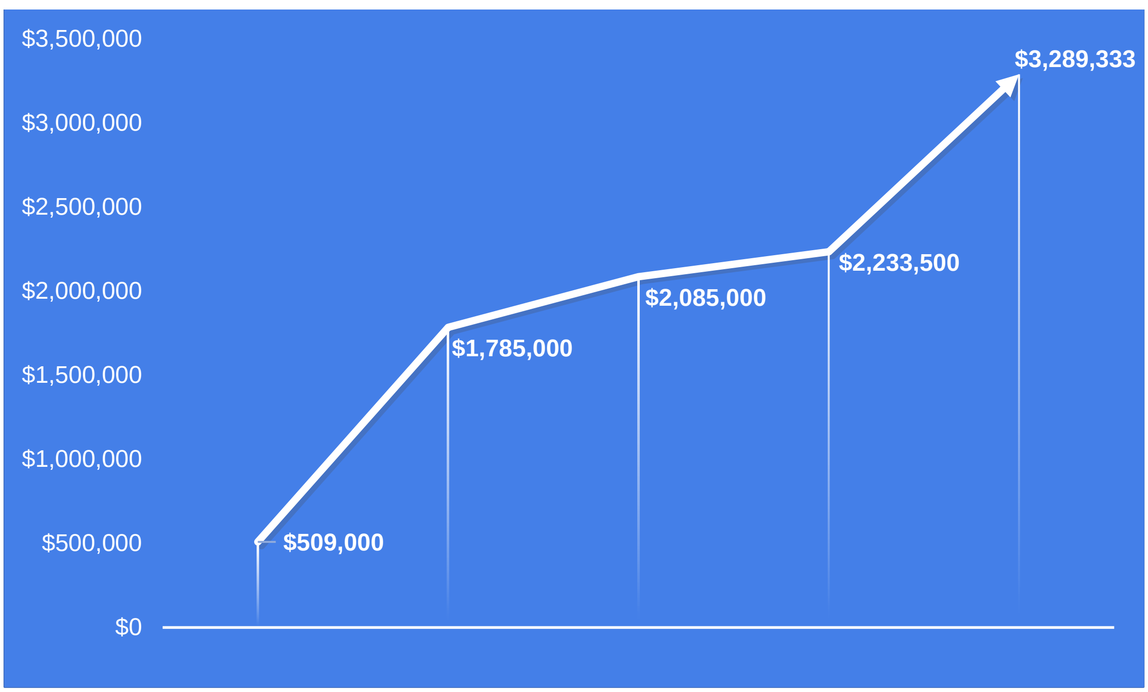
PD did not change the restrictive requirement and issued the solicitation for competition. After the solicitation was issued, potential bidders also questioned this requirement as overly restrictive; one noted it was “almost to the point of steering.” When we interviewed the CO for the award, he stated that he did not recall questions on this issue or how the requirement came about, and he described the former PD official’s involvement as asking about the status of the procurement.

PD Increased the Contract’s Value to $3.3 Million Through Out-of-Scope Modifications

The restrictive requirements limited competition and led Company A to submit the only on-time proposal. One other company provided its proposal late and was disqualified. On June 1, 2016, PD awarded the contract to Company A for a base award of $275,000 and an option for an additional 12 months for a maximum of $234,000, or a total contract value of $509,000.

Four modifications increased the total contract value to $3.3 million, more than 6 times the original contract value of $509,000. Two modifications added in September 2016, only three months after the contract was awarded, increased the total contract value to $2.1 million. A modification in July 2017 increased the total value to $2.2 million, followed by a final increase to $3.3 million in September 2017. Figure 1 shows the increases in total contract value.

Figure 1. Growth in Total Contract Value



Source: Data from *USASpending.gov*

The scope of the original contract required the contractor to develop templates in Microsoft Word and Excel. The option required the contractor to develop additional templates on an ad hoc basis, revise the PBGC FAR Supplement, and provide policy support services that the contract did not explain.

The modifications added unrelated work, mainly developing an eProcurement system in SharePoint, which Company A described as “an end-to-end workflow and document management system,” without specifying what this system would include. An additional modification added unrelated work that included developing documents needed for solicitations and white papers on IT contracting. The original contract and its solicitation did not include developing a procurement system, SharePoint development work, or writing papers. A PD official told us that the department was unable to locate documentation supporting the modifications. We found documentation for the basis of only one modification, and it did not address the relationship of the new work to the original contract.

Out-of-scope modifications are essentially improper sole-source awards in violation of the Competition in Contracting Act, as implemented through FAR Part 6, and are subject to protest.[1] This part of the FAR requires agencies to compete contract requirements to the greatest extent practical unless certain circumstances are present.

We found the modifications were out of-scope because they added new requirements and work not included in the original contract, and potential bidders would not have reasonably anticipated the changes based on the scope of work in the solicitation. As a result, we concluded $2.8 million in modifications should have been competed as a separate contract.

Inadequate Oversight and a Lack of Controls Over PD Contract Actions

The Government Accountability Office’s (GAO) *Standards for Control in the Federal Government* states that separation of duties is an important control to prevent fraud, waste, and abuse. In keeping with this principle, PBGC program offices may not approve their own contract actions. For contracts originating outside of PD, a program office identifies a need, and submits acquisition documents to PD – including market research, independent government cost estimates, justification for not competing a contract (if required), and a statement of work or performance work statement. *See* Figure 2. In addition, the program office is responsible for justifying modifications to

[1] 2019 Contract Attorneys Deskbook, United States Army (2019); 41 U.S.C. § 3306(a)(1)(A). As an example of a GAO decision on a protest of an out-of-scope modification, see *Sprint Communications Company,* B-278407.2 (1998).

contracts to PD. COs within PD are responsible for ensuring that all requirements, such as applicable FAR provisions, are met prior to signing contracts and modifications.

Figure 2. Typical Contract Formation Process

Source: PBGC with OIG notation.

Although PD reviews the contract actions of other PBGC departments, we found there is inadequate independent review of PD's own contract actions. Although the Chief Management Officer (CMO) must approve requisitions of $500,000 and above, the CMO stated that this review is primarily to check for Budget Department approval and that it does not include reviewing the related contracts or modifications to ensure compliance with the FAR. Review of PD's contract requirements, for example, is limited to OGC's review for legal sufficiency. And, as shown above, that review did not prevent PD from inserting restrictive requirements that inhibited full and open competition and allowed the contract to be steered to Company A.

Because there was no separate program office involved in this contract, the former PD official, who was the PD Acquisition Division Chief at the time, had to seek approval of the restrictive personnel requirement and the out-of-scope modifications only from COs and another PD official. The requisitions for these modifications received approval from the then PD Director, and another PD Division Chief signed modifications that added $2.5 million to the value of the contract as the CO. (This official explained that he was unaware these actions were part of a contract steering scheme and believed that Company A's work for PD was necessary.) In contrast, the former PD official's previous attempt to steer a non-PD contract failed, in part, because Company A's subsidiary could not meet the personnel requirements for that contract.

PD Did Not Provide Contract Modifications to OGC for Review

PBGC Directive FM 15-01 states that modifications that increase the contract value by a total of 50% or more must receive legal review. Here, although the contract value increased by over 600%, the contract modifications resulting in the increase were not submitted to OGC for review. The CO initially assigned to administer the contract reported she told a PD official that OGC would never approve the proposed modification increasing the contract value. She said he replied that the modification did not need to go to OGC. We found that, shortly before the first modification increasing the contract's value was issued, the contract was reassigned to another CO.

In response to the OIG auditors' question regarding whether PD officials took steps to avoid OGC oversight, one former PD official stated, "We all did" because OGC's reviews were an obstacle to finalizing contracts. Another PD official categorized OGC reviews as contributing to COs' heavy workloads. Although PD staff members generally characterized PD as an organization committed to ethics, we found PD sometimes circumvented the legal review process – an important internal control to ensure compliance with competition requirements, reduce delays due to bid protests, and to avoid Antideficiency Act violations.

Although PBGC Directive FM 15-01 requires legal review of solicitations, awards, and modifications meeting certain thresholds, PBGC did not have controls to ensure PD sent such actions to OGC for review. COs emailed draft solicitations, awards, and modifications to the OGC Assistant General Counsel for the General Law and Procurement Group to distribute to an attorney to review. However, PBGC did not have a mechanism to track whether all requisite solicitations, awards, and modifications were sent to OGC, nor did it have a system to ensure OGC reviewed and approved the planned action. (Ironically, Company A planned to incorporate legal reviews into the eProcurement system, but this did not occur.)

While the former PD official took significant steps to conceal his illegal activity and interviewees reported that they were unaware of it, fraud indicators were present and may have triggered additional scrutiny if PD acquisitions had received outside oversight. As it was, the modifications did not receive any legal review. The fraud indicators included the large increase in contract value, missing justifications for most modifications, restrictive solicitation requirements, and circumventing the important internal control of legal review. In particular, the extraordinarily large increase in contract value was an indicator of possible fraud.

PBGC's Actions Do Not Yet Fully Address Control Weaknesses

In response to the contract steering case, PBGC began changes to procurement processes to address control weaknesses. PD developed a Standard Operating Procedure (SOP) in September 2020 for review of contract files, including whether legal reviews are in the files, with the first set of reviews completed in October 2020. In February 2020, PD began requiring all procurements over $10,000 and all modifications increasing a contract's value to receive legal reviews. COs now send items to an OGC legal review email inbox; however, this is not significantly different than the previous practice of emailing items to the OGC Assistant General Counsel that PD circumvented. More importantly, PBGC has not put in place a mechanism to ensure PD sends all items requiring legal review to OGC.

PBGC has recognized the need for an electronic procurement system that provides better process controls, but implementing a new system is not planned for the near future. A cross-departmental team conducted an analysis in December 2018 and found PD's processes were inconsistently followed. The team recommended implementing rules-based automation to force adherence to correct procedures. The CMO reported that funding for a new system has been requested for the FY 2022 budget.

Also, at the end of our audit, the CMO reported that her office has begun reviewing statements of work for contracts originating in OMA, which includes PD. However, to comply with our recommendation, a broader review of PD contracts, including sole source justifications and award decisions, would be more effective and ensure sound procurement practices are used. The CMO and PD Director are also exploring outsourcing contracting for PD requirements to another agency as an alternative approach to provide separation of duties. The CMO also reported that PD, OGC, and the Budget Department began holding weekly meetings to identify and address potential problems with procurements at the end of FY 2020.

$3.3 Million Contract Harmed PBGC's Reputation and Did Not Meet PBGC's Needs

The former PD official's contract steering undermined public confidence in PBGC's financial stewardship. In addition, according to the Statement of Facts from the criminal case, Company A's net profit was approximately $2.2 million of the $3.3 million contract, indicating PBGC did not receive a good value. Further, PBGC's December 2018 analysis found that the main product of this contract – PD's eProcurement system – did not meet PBGC's needs. In addition, Company A provided poor quality deliverables to

OIT on another out-of-scope modification that led OIT to cancel the remaining deliverables; yet these cancellations did not reduce the total contract obligations. We classify the $3.3 million obligated on this contract as questioned costs because the contract was obtained by fraud. (*See* Appendix IV.)

Similar Internal Control Weaknesses Reduced Competition in Five Other Contracts

The discussion above addresses how the lack of internal controls and oversight allowed the former PD official to manipulate aspects of the contracting process to engage in contract steering. The internal control problems we note below are similar to those already identified, except in one instance in which a procurement official recused herself during the evaluation process. We selected the following five high-risk contracts for in-depth review after analyzing PBGC contracts from March 2014 through July 2020 and receiving information from interviewees. Because we selected these contracts based on risk, they are not representative of PBGC contracts in general. *See* Appendix I for more information on the methodology used to select these contracts.

The five contracts lacked adequate justification to award them, including one contract that did not have adequate justification for selecting a higher-priced contractor. Three of the contracts were for PD support; one of which was awarded to Company A to continue the work it fraudulently obtained. Four of the contracts were awarded on a sole-source basis, including three using small business set-aside programs.

1. **Company A (Additional Contract, Contract Number 16PBGC-18-C-0034)**. PD awarded a sole-source HUBZone contract on September 28, 2018 to Company A to continue work on eProcurement that started under the contract discussed above. We identified the $1.5 million obligated on this contract as questioned costs because it continued work started under the fraudulently obtained contract.

   This award did not comply with the FAR requirement for a sole-source HUBZone award. FAR 19.1306(a)(1) allows sole-source awards under the HUBZone program if the CO does not have a reasonable expectation that two or more HUBZone firms would submit offers. OGC’s review noted that PD’s sole-source justification was questionable and that PD’s assertion that PBGC would not receive at least two bids if it were bid competitively among HUBZone firms was “disingenuous” because it is unlikely there are no other HUBZone firms with SharePoint development and federal contracting expertise. The legal review notes that the end of the fiscal year timing “conveniently” prevented PD from contacting other HUBZone firms, and OGC would be unable to defend the award if it were challenged by another HUBZone offeror. In addition, as discussed below, a second HUBZone firm was awarded a HUBZone set-aside on a sole source basis for the same type of work. Recommendation 1 applies to issues with this procurement.

2. **Company B (Order Number 16PBGC-19-F-0077)**. PBGC awarded a sole-source HUBZone contract to Company B for SharePoint development work on September 27, 2019, with the Information Technology Infrastructure Operations Department (ITIOD) as the program office. Previously, Company B was a subcontractor performing SharePoint development for ITIOD.

   At the time of this award to Company B, Company A was also performing SharePoint development under a sole-source HUBZone contract noted above; this indicated that more than one HUBZone firm was capable of performing this type of work and neither sole-source award complied with HUBZone FAR requirements. For the award to Company B, emails indicated that market research had not been completed prior to selecting a sole-source HUBZone award, and the former PD official directed another PD official to provide the market research report from an earlier SharePoint procurement. A third PD official signed the award as the CO. OGC raised concerns about the justification for a HUBZone sole source award, but PD awarded the contract without OGC completing a legal review. OGC noted, "a lack of advanced planning cannot be used as our basis to sole source," but we concluded that pressure to spend funds at the end of the fiscal year drove this award. Recommendation 2 applies to issues with this procurement.

3. **Company C (Contract Number 16PBGC-18-C-0027)**. PD awarded a sole-source WOSB contract to Company C on September 26, 2018, for acquisition support services to continue work that Company C's principal began under another contract. OGC noted that a sole-source contract with a short period of performance could be justified for transition purposes, and the former PD official agreed to an 8-month contract instead of up to 5 years as initially proposed. In spite of this agreement between OGC and PD, PD issued modifications that extended the total contract term to 14 months and increased the contract value from $337,889 to $835,306. The modifications did not receive OGC reviews although they more than doubled the total contract value and were primarily to extend the period of performance beyond the agreed-upon length. These modifications were not priced as part of the original award. The CO for this contract stated that OGC reviews were not required for modifications exercising a 6-month extension; however, PBGC Directive FM 15-01 requires legal reviews for modifications increasing the contract value by 50% or more, with no exceptions.

   The former PD official was involved in this acquisition, and interviewees stated that he described its principal as a professional acquaintance. PD attempted to retain Company C by issuing a new solicitation for the same services with narrowly tailored personnel requirements, although it cancelled this solicitation following a protest of the requirements. The qualifications in the cancelled solicitation matched those of Company C’s principal, including Senior Executive Service experience for an agency with greater than $350 million in annual spending. Recommendations 1 and 2 apply to issues with this procurement.

4. **Company D (Order Number 16PBGC-19-F-0073)**. PD awarded a task order for procurement support through a General Services Administration Schedule on September 29, 2019, with a total value of $10.0 million. Parts of the proposals were presented orally by the contractors, which we could not review because PBGC could not find the video recordings of the presentations although the PBGC FAR Supplement requires COs to maintain video recordings.

   Interviewees differed regarding whether PD management preferred Company D and whether it merited the 15% price premium over its next most highly rated competitor. The CO for this acquisition stated that the former PD official, who was an advisor to the TEP, and other PD managers (but not the official who recused herself) were adamant regarding which company should be selected, while a TEP member stated that she did not recall anyone having a preference for a particular vendor. OGC raised concerns that PD emphasized Company D's experience working with PBGC, even though past performance was not one of the evaluation factors, and noted in the draft tradeoff analysis that the other vendors could not compete with Company D's knowledge of PBGC. However, OGC’s review of the draft award raised concerns that PD did not specifically justify the price premium by comparing vendors and explaining why their strengths and weaknesses did or did not merit the price premium or discount, which was not corrected. Instead, the final Award Decision Memorandum notes that Company D’s technical capability and management approach significantly exceed PBGC’s requirements. The CO did not respond to OGC regarding the legal sufficiency comments, although the SOP between OGC and PD requires this. OGC interviewees noted that PD often did not respond to OGC regarding legal sufficiency concerns.

   In addition, the PD official serving as the TEP chair sought an ethics opinion after attending vendor presentations and learning of a potential appearance of a conflict of interest because the proposed project manager for Company D previously had mentored her. She followed OGC’s recommendation to recuse herself to avoid any appearance of a conflict of interest, leaving the TEP with only one member.

   Although FAR 3.101-1 requires that government business be conducted in a manner above reproach with complete impartiality, the CO was concerned that the former PD director and other PD managers (but not the official who recused herself) advocated for Company D, leading him to award the contract to this firm. If Company D was the best choice, PD should have provided more justification for this decision. In addition, the CO stated that the former PD official also attempted to exert pressure to have a subsequent contract awarded to Company D, but that this contract was awarded to another company.

Recommendations 1 and 2 apply to issues with this procurement.

5. **Company E (Contract Number 16PBGC-18-L-0018)**. PBGC awarded a lease on a sole source basis to Company E for office space in Euclid, Ohio on August 21, 2018, with a total contract value of $2.5 million. While PBGC needed to quickly move the Field Benefit Administration (FBA) office out of its Richmond Heights, Ohio space due to widespread water leaks and mold, it did not adequately justify a sole source award for the new location. OGC's review on July 31, 2018, determined that the sole source justification for this award was not legally sufficient. Legal sufficiency concerns included not showing that the building in question was the only responsible source because the Justification and Approval (J&A) did not have a defined geographic area or other specifications that PBGC developed prior to searching for new space or evidence of competition to determine what the market rate was. Additionally, PBGC did not appear to seek other acceptable sources for the lease or delineate a geographical area for its search. The published J&A did not correct these legal sufficiency concerns. An interviewee explained that while the Euclid location was initially described as ready to move in, which was a factor in trying to sign a lease quickly, it required work prior to occupancy. The former PD official who pled guilty helped coordinate this procurement. Recommendation 2 applies to issues with this procurement.

Conclusion

For the acquisitions we examined, weak controls permitted contracting decisions with questionable justifications and, in the case of Company A, fraud. Time pressure at the end of the fiscal year, not providing contract documents to OGC for their review, and some former PD officials' views that legal reviews were an impediment to awarding contracts contributed to these deficiencies. In addition to promoting compliance with competition requirements, legal reviews are important to help prevent Antideficiency Act violations and to reduce the risk of bid protests that could delay needed services. While PBGC has taken action by adding additional processes and reviews, strong internal controls will be vital to promoting procurement integrity.

Recommendations

We recommend the Office of Management and Administration:

1. Develop and implement a requirement that contract actions originating in PD receive, in addition to OGC review, a review outside of PD to ensure that

solicitations, awards, and modifications comply with requirements; or that PD requirements are outsourced to another agency's procurement function.

PBGC's Response and OIG's Evaluation

PBGC concurred with the recommendation and will develop a priority action plan to address the report's recommendations, which we will evaluate to determine if it meets the intent of the recommendations.

2. Develop and implement a mechanism in an electronic system to ensure that contract actions that require legal reviews according to PBGC policy receive these reviews and that disagreements with legal sufficiency comments are communicated to OGC.

   PBGC's Response and OIG's Evaluation

   PBGC concurred with the recommendation and will develop a priority action plan to address the report's recommendations, which we will evaluate to determine if it meets the intent of the recommendations.

3. Ensure PD staff members receive periodic training on procurement integrity to identify fraud indicators.

   PBGC's Response and OIG's Evaluation

   PBGC concurred with the recommendation and will develop a priority action plan to address the report's recommendations, which we will evaluate to determine if it meets the intent of the recommendations.

Appendix I: Objectives, Scope, and Methodology

Objectives

The audit objectives are to 1) determine how procurement practices allowed award(s) to be steered, and 2) determine if there are indications of steering in a sample of awards.

Scope

Our scope was focused on the contract to Company A and additional contracts awarded between March 2014 and July 2020 that we identified as high risk. We performed field work remotely due to the COVID-19 pandemic from May 2020 through October 2020.

Methodology

We interviewed all current PD staff members, two former PD staff members, and Quality Management Department and OGC personnel to obtain information regarding the contract with Company A, other contracts, internal controls, and possible contract steering. In addition, the PBGC Director emailed OIG's request for contributions regarding this audit to all PBGC staff. We also analyzed PBGC contract data in *USASpending.gov*. We analyzed all PBGC contracts for a period that included the former PD official's employment at PBGC to identify procurement support contracts, which we identified as a high-risk area, that had significant increases in value through modifications. We also searched contract data for contact information for contractors mentioned in plea documents to determine if they obtained PBGC contracts under a different company name.

We reviewed contract files, emails, and related documents. In addition, we reviewed FAR provisions, the PBGC FAR Supplement, PBGC procurement directives, and an SOP between OGC and PD.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate documentation to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the documentation obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Use of Computer Processed Data

We relied on computer processed data extracted from *USASpending.gov* and PBGC's Comprizon system. To assess the reliability of computer processed data, we relied on testing conducted as part of the 2019 DATA Act audit for PBGC.

Assessment of Internal Controls

We assessed internal controls and compliance with laws and regulations necessary to satisfy the audit objectives. In particular, we assessed the internal control components and underlying principles significant to the audit objectives. However, because our review was limited to these internal control components and underlying principles, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit. Our review was limited to controls applicable to our audit objectives as it related to weaknesses that may have allowed contract steering. We considered internal control principles under the categories of control environment, risk assessment, control activities, information and communication, and monitoring. We focused on one principle in the category of control activities significant to our audit objectives, which was designing control activities to achieve objectives and respond to risks. The body of our report discusses internal control deficiencies related to the design of controls for the legal review process and for contracts originating in PD.

Appendix II: Agency Response

PBGC
Protecting America's Pensions

Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

December 3, 2020

To: Nick Novak
Acting Inspector General

From: Gordon Hartogensis
Director

Gordon Hartogensis Digitally signed by Gordon Hartogensis Date: 2020.12.03 17:24:40 -05'00'

Subject: Response to OIG's Draft Audit Report—Procurement Practices

Thank you for the opportunity to comment on the Office of Inspector General's (OIG) draft Procurement Practices report, received November 27, 2020. I appreciate your office making my February 27, 2020 memorandum, "Request for Inquiry Into PBGC Procurement Activities," a high priority.

I commend OIG's efforts to identify weaknesses, vulnerabilities, or systemic issues that may have facilitated or allowed illegal Procurement Department contract steering to occur. Additionally, your investigation into our Procurement Department and its oversight for other contracting improprieties or illegal activities is critical to restoring the legal, trusted, and effective execution of PBGC procurement activities.

Fraud, abuse, and any other illegal and unethical behaviors or actions have no place in federal government operations. They are unacceptable in any case—but especially when they involve the hard-earned dollars of the workers and retirees PBGC protects. I am committed to ensuring the agency's employees and contractors operate responsibly, transparently, ethically, and in accordance with the law. PBGC's Board of Directors has also emphasized the importance of identifying any wrongdoing, strengthening controls, and promoting recommended measures to prevent future misconduct.

PBGC management concurs with your findings and recommendations on internal controls and we are fully committed to addressing the issues noted in this report. To date, we have already revised acquisition procedures put in place for the Procurement Department. Effective February 14, 2020, the agency changed the thresholds for the Office of General Counsel (OGC) review of procurement actions. The following actions must now be sent to OGC for review: all contracts exceeding the micro-purchase threshold of $10,000 (prior threshold was $200,000); and all contract modifications, with the exception of $0 modifications and straightforward option exercises that do not make any other changes to the original contract. Additionally, I have directed the Office of Management and Administration and the OGC to develop a priority action plan for my approval that addresses your report's recommendations in order to restore complete confidence in future PBCG procurement practices.

I value the OIG's role in improving PBGC's ability to carry out its critical mission. We will continue working with your office to uphold the high standards we have set for ourselves since my confirmation. Addressing these recommendations in a timely manner is an important priority for PBGC. More than 35 million American workers, retirees, and beneficiaries rely on our agency to protect their retirement security—and they deserve nothing less.

cc: Kristin Chapman, Chief of Staff
Alice Maroni, CMO
Patricia Kelly, CFO
Paul Chalmers, Acting GC
Frank Pace, Director, CCRD

Supplemental Management Response Received

on February 16, 2021

Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

February 16, 2021

To: Nick Novak
Acting Inspector General

From: Gordon Hartogensis
Director

Gordon Hartogensis
Digitally signed by Gordon Hartogensis
Date: 2021.02.16 21:04:43 -05'00'

Subject: Supplemental Management Response to OIG's Audit Report

Please find PBGC's supplemental management response to the Office of Inspector General's (OIG) Procurement Practices report, dated December 8, 2020. Your office's work on making my February 27, 2020 memorandum, "Request for Inquiry Into PBGC Procurement Activities," a high priority is sincerely appreciated.

I continue to commend OIG's efforts to identify weaknesses, vulnerabilities, or systemic issues that may have facilitated or allowed illegal contract steering by PBGC's Procurement Department to occur. As stated in my letter to you dated December 3, 2020, management concurs with the report's findings and recommendations and we are fully committed to addressing the issues noted in this report.

As I stated when I first learned of this misconduct, there is no place for illegal or unethical behavior at PBGC. These kinds of actions are unacceptable in any case, but they are especially egregious when they involve the hard-earned dollars of the workers and retirees PBGC protects.

On December 10, 2020, I briefed the PBGC Board of Directors on the revised acquisition procedures that have been put in place. The Board emphasized the importance of identifying any wrongdoing, strengthening controls, and promoting recommended measures to prevent future misconduct.

In the attachment to this memorandum, you will find our specific responses to each recommendation included in the report, as well as our planned corrective actions and scheduled completion dates. Addressing these recommendations in a timely manner is an important priority for PBGC.

cc: Kristin Chapman, Chief of Staff
Alice Maroni, CMO
Patricia Kelly, CFO
Russ Dempsey, GC
Frank Pace, Director, CCRD

Attachment

Our comments on the specific recommendations in the draft report are as follows:

1. **Develop and implement a requirement that contract actions originating in PD receive, in addition to OGC review, a review outside of PD to ensure that solicitations, awards, and modifications comply with requirements; or that PD requirements are outsourced to another agency's procurement function.**

PBGC Response: Management concurs with this recommendation. The Chief Management Officer will work through the directive revision process, which will include final approval by the PBGC Director, to incorporate this requirement in PBGC Directive FM 15-01.

Scheduled Completion Date: March 15, 2021

2. **Develop and implement a mechanism in an electronic system to ensure that contract actions that require legal reviews according to PBGC policy receive these reviews and that disagreements with legal sufficiency comments are communicated to OGC.**

PBGC Response: Management concurs with this recommendation. These requirements will be included in the new procurement system by the end of the first quarter 2023. The new procurement system is expected to be fully implemented by the spring of 2024. However, we will evaluate interim solutions that satisfy the recommendation. The Chief Management Officer will work with the Office of Information Technology and the Office of the General Counsel to complete a technical analysis of potential interim electronic system solutions by April 15, 2021. We will provide your office with the completed technical analysis of viable interim solutions with an implementation schedule and additional details. In the meantime, contracting staff are required to copy the "OGC Review Mailbox," which is monitored by Procurement Department management to ensure contract actions receive required legal review.

Scheduled Completion Date: We have budgeted for a new procurement system and will work to implement as soon as possible.

3. **Ensure PD staff members receive periodic training on procurement integrity to identify fraud indicators.**

PBGC Response: Management concurs with this recommendation. PD will ensure that its employees receive procurement integrity training at least on an annual basis. The first training will later this month or in March 2021.

Scheduled Completion Date: March 31, 2021

Appendix III: Acronyms

Acronym	Meaning
CMO	Chief Management Officer
CO	Contracting Officer
COR	Contracting Officer’s Representative
FAR	Federal Acquisition Regulations
FY	Fiscal Year
GAO	Government Accountability Office
HUBZone	Historically Underutilized Business Zone
ITOID	Information Technology Infrastructure Operations Department
J&A	Justification and Approval
OGC	Office of General Counsel
OIG	Office of Inspector General
OIT	Office of Information Technology
OMA	Office of Management and Administration
PBGC	Pension Benefit Guaranty Corporation
PD	Procurement Department
SOP	Standard Operating Procedure
TEP	Technical Evaluation Panel
U.S.C.	United States Code
WOSB	Women-Owned Small Business

Appendix IV: Summary of Monetary Impact

Monetary Impact Area	Amount	Associated Recommendation
Finding – Questioned Costs [Company A's contracts resulting from fraud]	**$4.8 M**	**1-3**

Appendix V: Staff Acknowledgement

Staff Acknowledgement	John Seger, Audit Manager; Kara Burt, Auditor-In-Charge; Tiara Grotte, Auditor; and Natali Dethomas, Auditor, made key contributions to this report.

Appendix VI: Feedback

Please send your comments, suggestions, and feedback to OIGFeedback@pbgc.gov and include your name, contact information, and the report number. You may also mail comments to us:

Office of Inspector General
Pension Benefit Guaranty Corporation
1200 K Street, NW, Suite 480
Washington, DC 20005

If you want to discuss this report or your comments with a member of the Office of Inspector General staff, please contact our office at (202) 326-4030.