




Office of Inspector General
Pension Benefit Guaranty Corporation

February 19, 2016

RISK ADVISORY

To: W. Thomas Reeder, Jr.
Director

From: Robert A. Westbrook
Inspector General 

Subject: Monitoring and Oversight of Multiemployer Expert Consultant Contracts

This Risk Advisory is to report our observations relating to management's oversight of two multiemployer expert consultant contracts. We commenced a review of these contracts in October 2015 after information was brought to our attention relating to management's monitoring and oversight of these contracts. The suggestions contained in this report do not constitute formal audit recommendations; therefore, no management response is required. If management does take action as a result of this Risk Advisory, we respectfully request a written summary of the action taken. Please be advised that this Risk Advisory will be posted on our public website in compliance with our responsibility under the Inspector General Act to keep the Board, Congress, and the public fully and currently informed about problems and deficiencies relating to the Corporation's programs and operations.

Summary

As you know, management is responsible for identifying internal and external risks that may prevent the Corporation from meeting its strategic goals and objectives, assessing risks to determine their potential impact, and applying the appropriate risk responses. One source of risk information is the Office of Inspector General.

We have identified the following risks in management's monitoring and oversight of these two multiemployer expert consultant contracts:

1. **Succession planning for technical expertise** - PBGC relies upon technical consultants who gained their expertise while they were Corporation employees. Little effort has been made to formally train replacements to perform Plan Data Analysis or to formally document these experts' analysis and methods so that this knowledge can be transferred to Federal employees.

2. **Contracting Officer Representative (COR) monitoring of contract performance** - Program offices must appoint a COR who has the appropriate core technical and professional competencies to effectively monitor performance of that specific contract. Monitoring is a key detective control to ensure contractors are meeting all contract requirements including quality and timeliness of deliverables. Monitoring includes furnishing mandatory quarterly reports to the Administrative Contracting Officer and raising issues of potential contract non-performance.
3. **Procurement Department (PD) oversight of COR and contract performance** - PD must ensure that quarterly reports are provided by CORs and must ensure that annual reviews of COR contract files are designed and operating effectively.

To mitigate these risks, we suggest that the Chief of Negotiations and Restructuring and the Director of the Procurement Department ensure that: (1) future statements of work for expert consulting contracts contain a deliverable requiring training of PBGC career staff and documentation of analytical procedures and methods; (2) CORs are selected based on technical and professional competencies and are positioned within the organization to effectively monitor contract performance; and (3) CORs provide quarterly reports to PD as required and that PD has controls in place to timely identify non-receipt of quarterly reports.

Background

In FY 2015, the PBGC paid \$103 million in financial assistance to 57 multiemployer pension plans. Program expenses exceeded income for a net loss of \$9.9 billion. This loss increased the deficit in the multiemployer program to \$52 billion---an all-time record high for the program.

PBGC's calculation of its multiemployer financial assistance obligation consists of assistance actually paid to insolvent plans and an estimation of assistance that in PBGC's judgment will be paid to a "probable" insolvent plan in the future based on economic conditions. As of September 30, 2015, the Corporation expects 160 plans will seek financial assistance having a present value of \$54 billion. In addition, PBGC estimates that it is "reasonably possible" that other multiemployer plans may require future financial assistance of nearly \$20 billion.

According to the latest PBGC projections report, it is more likely than not that the program will run out of money by 2025. The multiemployer pension insurance program has been on the Government Accountability Office's High-Risk List since 2009, and the fiscal sustainability of the program has been a long-standing concern of our office.

The two multiemployer expert consultants who are the subject of this Risk Advisory (Contractor #1 and Contractor #2) are both former PBGC employees. Contractor #1 began employment at PBGC in 1976, retired in 1997, and thereafter returned to PBGC as a contractor. Contractor #2 began employment at PBGC in 1984, retired in 2009, and thereafter returned as a contractor. Both contractors play a significant role in analyzing Form 5500 plan data (called Plan Data

Analysis or PDAs) to prepare the contingency list of “probable” and “reasonably possible” insolvent plans used to estimate PBGC’s liability, among other important activities. As one witness stated, Contractor #1 and Contractor #2 developed the process to analyze Form 5500 data in the early 1990s. According to at least one manager, PBGC “relies heavily” on the judgments of these contractors and this manager consults “constantly” with Contractor #1 because he is “the only person in the world who can do what he does.” Both contracts are scheduled to terminate in March 2016.

Risks

Succession planning for technical expertise

The Chief Human Capital Officers Act of 2002 acknowledges the critical importance of Federal employees to the effective and efficient operation of Government. The U.S. Office of Personnel Management, the agency responsible for providing leadership to agencies on human capital management, includes knowledge management and talent management in its Human Capital Assessment and Accountability Framework. Human capital management is also an important component of the Federal Performance Framework found in Office of Management and Budget Circular A-11. The PBGC Strategic Plan FY 2014-2018 includes a performance goal to “Recruit, train, and retain a high-quality multidisciplinary workforce.” It should be noted that the Strategic Plan for FY 2011-2016 included additional detail including the following three key indicators:

- A human capital strategic plan,
- Proactive retention and recruitment of employees including mentoring, employee assessment and feedback, outreach, incentives, and recognition programs; and
- Succession planning and knowledge management programs.

Our review identified an October 9, 2007, memorandum to the then acting PBGC Director requesting authorization to continue the expert consulting services of Contractor #1. In his memorandum, the then Chief Insurance Program Officer (the predecessor of the Chief of Office of Negotiations and Restructuring) stated,

- “[Contractor #1] plays an indispensable role in assisting me to train the rising PBGC professionals who will need to run the multiemployer program as key senior employees retire over the next three years. This is a vital task.”
- “...there is little room for amateurs in the PBGC multiemployer program. The cases that come in to us are usually complex, involve large dollars, and almost always raise cutting edge issues. Over the past ten years, however, most of the PBGC employees who could

deal with these matters retired or died. Further, no effort was made to train replacements, or to pass on accumulated program experience.”

- “Replacements are needed, and soon, since most of those (myself included) who work in this area are already eligible to retire. Training replacements is easier said than done. True succession management requires the trainee to obtain hands-on experience in handling challenging assignments on an independent basis. But we cannot easily assign important cases to trainees and grant them autonomy they need unless we know the trainee has access to a mentor. Our rising replacements need coaches.”
- “[As a PBGC employee, Contractor #1]...ran the ‘higher-end’ functions of the multiemployer program virtually single-handed. Unfortunately, despite repeated requests, senior PBGC management made no effort to recruit or train replacements.”

The then acting PBGC Director approved the request to renew the services of Contractor #1.

We found that the Corporation has done little since the 2007 memorandum to address the talent management and knowledge management needs within the Multiemployer Program Division (MEPD). Contractor #1 and Contractor #2 have completed virtually all the plan data analyses for the past two years, and the PBGC manager who reviewed these analyses is no longer serving in that role. The contracts expire in March 2016, and the manager who will be responsible for this function has less than 2 years’ experience as a PBGC employee and has no experience in conducting or reviewing these analyses. Further, MEPD plans to transition responsibility for conducting these analyses to a GS-9 financial analyst who has limited experience conducting analyses of simple plans and has not conducted any analyses since FY 2013. This employee was recently told by the manager to “pick the minds” of the contractors as much as possible before their planned departure in March 2016. By contrast, both the contractors served in management positions when they were PBGC employees.

The following two factors contributed to the lack of attention and progress in talent management and knowledge management. First, notwithstanding the concerns noted in the October 2007 memorandum, the statement of work for Contractor #1 does not contain any requirements to conduct formal training or document procedures. Second, according to one official, no one has been trained to do what Contractor #1 and Contractor #2 do and they “don’t have a back-up plan” because “nobody thought they would ever leave.” This official acknowledged that the Corporation should have trained a PBGC employee along the way, but were too busy with other responsibilities.

Beginning in FY 2014, MEPD reduced the number of plans to be analyzed by eliminating the requirement to analyze certain small plans.¹ Nevertheless, analysis of large, and complex plans will continue to be necessary.² As a result of the failure to train staff and transfer knowledge, the Corporation is at increased risk of not having qualified staff to review critical data that is relied upon for the Corporation's financial statements and the longer term Projections Report.

Contracting Officer Representative (COR) monitoring of contract performance

PBGC Order PM 25-5 directs the "requiring activity" (in this case MEPD or the Office of Chief Counsel) to nominate a COR to monitor contract performance who "has the appropriate core competencies, experience, and training for managing the specific contract." CORs are to be selected "on the basis of technical and professional competencies." This order emphasizes the importance of CORs: "CORs are the eyes and ears of the Contracting Officer (CO) and play a critical role in the effective management of a contract." The following are some of the principle responsibilities of CORs:

- Performs periodic inspections and carefully monitors contractor performance.
- Provides technical direction within scope of the contract.
- Approves invoices for payment. If applicable, reviews the contractor's invoice to ensure that labor hours and materials charged to the contract are accurate.
- Reports suspected procurement fraud, bribery, conflicts of interest, or other improper conduct on the part of the contractor, its employees or other Government Officials to the Administrative Contracting Officer.
- Furnishes quarterly reports, if applicable, to the Administrative Contracting Officer as to contract performance, deliverables received and whether the deliverables were accepted or rejected.

The COR for the two contracts reviewed by the OIG received a Letter of Appointment for Contractor #1 dated March 15, 2012, and a Letter of Appointment for Contractor #2 dated March 23, 2012. Both of these letters state that the COR is the "primary point of contact at PBGC" for the contractors and is expected to give the contractors "technical direction." The COR is also responsible for reviewing all invoices and submitting a quarterly status report to the CO.

¹ PBGC Annual Report Fiscal Year 2014: The reserve for small ongoing probable losses not individually identified uses an aggregate method to estimate liability and exposure, rather than reviewing each plan.

² PBGC Annual Report Fiscal Year 2014: PBGCs existing methodology for determining probable liability.

We found that the COR is not effectively monitoring contract performance of these two contracts. The COR does not provide any technical direction to the contractors and advised the OIG that he “does not have a way of verifying” what Contractor #1 is doing because he is “not kept in the loop.” The COR reported that he has minimal communications with Contractor #1, that much of the contract deliverables are oral advice, and that he relies upon others to verify written contract deliverables. The COR reported that he has voiced his concerns to MEPD management on several occasions about the lack of deliverables for Contractor #1 and his difficulty in verifying completion of work.

We found that in at least one instance the COR failed to properly raise concerns to the CO regarding a Contractor #1’s invoice for payment. The COR told the OIG that because of his limited role, he only sees “what’s written on the invoices” with minimal supporting detail and generally no written confirmation from MEPD that work has been completed. After reviewing Contractor #1’s April 2014 invoice, the COR made the following handwritten notations on the invoice: “? BS” and “Total BS Fraud.” The COR reported that he made this notation because the invoices lacked detail and looked like a cut and paste from prior invoices. The COR told the OIG that he did not know if the invoice was, in fact, fraudulent. He said he wrote the notations because he “could never tell what [Contractor #1] was doing.” The COR stated that he did not report this issue to the Contracting Officer and he otherwise approved this invoice for payment. The COR noted that the level of detail on invoices improved after the OIG began this review. While documentation could be improved, we found no evidence of fraud with this invoice.

These monitoring limitations have occurred because MEPD did not select a COR who is in a position to effectively monitor the performance of these two contracts. The COR appears to have become largely responsible for just invoice processing, and this limited role makes it virtually impossible for him to effectively serve as the “eyes and ears of the Contracting Officer.” As a result, PBGC is at risk of not being able to timely identify non-compliance with contract provisions and other legal requirements.

We also found that the COR did not provide quarterly status reports to the CO as required under PBGC Order PM 25-5 and the COR’s Letters of Appointment. The COR and MEPD management stated they were unaware of this requirement. These reports could have alerted the CO to problems with or opportunities to improve contract performance.

Procurement Department oversight of COR and contract performance

PBGC Order PM 25-5 establishes internal controls for CORs and the Procurement Department to ensure the Department receives contractual performance. In addition to the requirement for the COR to provide quarterly reports, PD is required to conduct an annual review of COR records for compliance with the Order, the Letter of Appointment, the contract and other applicable PBGC directives. We found PD was not aware that the COR was not providing quarterly status reports. This occurred because PD lacked detective controls to timely and

effectively identify that quarterly reports were not being received. We also found that PD's annual COR review erroneously reported that the quarterly reports were in the COR files. This occurred because the contractor that PD retained to conduct the annual COR review failed to identify the missing quarterly status reports. This is an item that is required to be verified; the PD contractor simply reported "yes" indicating the quarterly status reports were present in the files when, in fact, they were not. As a result of this error, the Contracting Officer was not made aware of the failure of the COR to fulfill this important responsibility. These reports could have alerted the CO to problems with or opportunities to improve contract performance.

Suggestions

To reduce the risk of waste, fraud, and abuse, and to enhance program performance, we offer the following suggestions:

Suggestion 1: The Chief of Negotiations and Restructuring and the Director of the Procurement Department should ensure that: (a) statements of work for expert consulting contracts contain a deliverable requiring the training of PBGC career staff and the formal documentation of analytical procedures; and (b) training of PBGC career staff occurs and formal documentation of analytical procedures is developed, updated, and maintained.

Suggestion 2: The Chief of Negotiations and Restructuring and the Director of the Procurement Department should ensure that CORs are selected based on technical and professional competencies and are positioned to effectively monitor contract performance.

Suggestion 3: The Director of the Procurement Department should ensure that CORs provide quarterly reports to PD as required and that PD has controls in place to timely identify non-receipt of quarterly reports and to monitor the performance of its contractors.



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

April 21, 2016

TO: Robert A. Westbrook
Inspector General

FROM: Karen L. Morris *KLM*
Acting Chief of Negotiations and Restructuring

Steve Block *SB*
Director, Procurement Department

SUBJECT: Monitoring and Oversight of Multiemployer Expert Consultant Contracts

Background

In October 2015, the Office of the Inspector General (the "OIG") commenced a review of the Multiemployer Program's technical expertise contracts after information was brought to the OIG's attention about the monitoring and oversight of these contracts. On February 19, 2016, the OIG released the results of this review in the form of a Risk Advisory addressed to Director Tom Reeder.

This is a coordinated response between the Office of Negotiations and Restructuring (ONR) and the Procurement Department (PD). We appreciate OIG's concerns and have taken actions to address them, as described below.

Suggestions

Your office issued three suggestions in the Risk Advisory

1. The Chief of Negotiations and Restructuring and the Director of the Procurement Department should ensure that: (a) statements of work for expert consulting contracts contain a deliverable requiring the training of PBGC career staff and the formal documentation of analytical procedures; and (b) training of PBGC career staff occurs and formal documentation of analytical procedures is developed, updated, and maintained.
2. The Chief of Negotiations and Restructuring and the Director of the Procurement Department should ensure that CORs are selected based on technical and professional competencies and are positioned to effectively monitor contract performance.

3. The Director of the Procurement Department should ensure that CORs provide quarterly reports to PD as required and that PD has controls in place to timely identify non-receipt of quarterly reports and to monitor the performance of its contractors.

PBGC Response

Suggestion 1.

For the reasons articulated by OIG, MEPD elected not to renew any of the expert consultant contracts referenced in the Risk Advisory. In addition to other important consulting work, the expert consultants trained MEPD staff over past years on relevant issues and matters in order to transfer technical knowledge and plan for succession.

ONR determined, however, that the most significant knowledge transfer needs to occur between expert consultants and the multiemployer attorneys in the Office of the Chief Counsel (OCC). Therefore, should there be a need for expert multiemployer consultant contractors in the future, OCC will be the contracting department. OCC has determined that any such future contract with the individuals identified in the Risk Advisory would be in effect for one year only, with the primary purpose of transferring institutional and subject matter knowledge to OCC career staff. OCC would document this transfer of knowledge, and these commitments would be reflected in the Statement of Work being drafted for the contract as well as OCC's internal procedures.

Where applicable, all future ONR expert consulting contracts will contain provisions to ensure appropriate knowledge transfer to PBGC career staff as described in the Risk Advisory.

Suggestion 2.

MEPD has two other contracts for the performance of multiemployer plan audit work. The MEPD Manager has ensured that the COR on these contracts is qualified to serve in that role, and that the COR works closely with MEPD auditors to track the deliverables required by the contracts and attends weekly meetings to ensure effective monitoring.

Regarding the expert consultant contractors addressed in the Risk Advisory, if expert consultant contracts are needed in the future for multiemployer work, OCC's most experienced COR will monitor the contract performance, aided by the Assistant Chief Counsel for the Multiemployer Section in OCC, who has professional competence in the subject matter area.

ONR reviewed CORs on its existing contracts to ensure that all CORs have the necessary technical and professional competencies or are paired with professional staff with the relevant competencies, as necessary, and will continue to do so with all existing and new contracts.

Suggestion 3.

PD has dedicated resources ensuring contract status reports are received and reviewed. If necessary, we will notify program offices of non-receipt or contractual issues.

Additionally, PD will work with OIT and implement, through SharePoint, a system for CORs to submit their reports electronically. This system will immediately send the Administrative Contracting Officer (ACO) a notification email that the report has been submitted. The system will also notify the ACO and CORs when reports are due and overdue.

PD plans to have the automated system operational by September 30, 2016. With this system in place, PD will be able to closely monitor submissions and escalate to supervisors and managers as appropriate.

cc: Alice Maroni, Chief Management Officer
Israel Goldowitz, OCC Chief Counsel
Steve Block, PD Director
Marty Boehm, CCRD Director



Pension Benefit Guaranty Corporation

1200 K Street, N.W., Washington, D.C. 20005-4026

To: Robert A. Westbrook
Inspector General

From: Arthur S. Block
Director, Procurement Department

 11/13/17

Subject: Risk Advisory: Required Disclosures by Technical Evaluation Panel Members

On December 9, 2016, you issued the following risk advisory:

The current PBGC Procurement Department Conflict of Interest Certification form does not expressly require TEP members to identify prior employment which may result in management failing to identify and consider issues relating to a potential lack of impartiality.

You offered the following suggestion:

The Procurement Department Director should modify the Conflict of Interest Certification form (version 1.0, October 1, 2015) to require affirmative disclosure of relevant prior employment and provide future TEP members with this example during training sessions.

We have taken the following action:

The Conflict of Interest Certification form has been modified, and now includes the statement: **I acknowledge that I must disclose my prior employment history to the Contracting Officer and an agency Ethics Counselor if it includes one or more of the offerors and/or their subcontractors** (attached).

We have added a TEP training slide specific to the Conflict of Interest Certification form that highlights key points and provides the basis for further discussion (attached).

Thank you for bringing this matter to my attention. Please let me know if these actions meet your expectations, or if there is additional work that needs to be done to avoid future failures.

cc: Alice Maroni
CCRD