



Office of Inspector General
Pension Benefit Guaranty Corporation

December 9, 2016

RISK ADVISORY

To: Arthur S. Block
Director, Procurement Department

From: Robert A. Westbrook 
Inspector General

Subject: Required Disclosures by Technical Evaluation Panel Members

This Risk Advisory is to report our observations related to a Technical Evaluation Panel (TEP) member's failure to disclose information of a potential lack of impartiality, or the appearance thereof, in performing his duties. The suggestions contained in this Risk Advisory 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 we will post this Risk Advisory on our public website in compliance with our responsibilities under the Inspector General Act to keep the Board, Congress, and the public fully and currently informed about problems and deficiencies related 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 OIG.

We have identified the following risk that warrants management's attention:

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.

To mitigate this risk, we suggest the Procurement Department modify the Conflict of Interest Certification Form to require disclosure of prior employment and provide future TEP members with this example during training sessions.

Background

A TEP is a panel of federal employees selected to evaluate proposals received in response to a specific solicitation. The proposal evaluation process is used by PBGC to determine which firm's proposal is the best value in providing the goods or services. For competitive procurements, when the Tradeoff process is utilized to determine best value, a formal TEP is established for all procurements expected to exceed the Simplified Acquisition Threshold, major systems, and/or whenever determined necessary by the Contracting Officer. The Tradeoff process occurs when each proposal is evaluated using pre-established evaluation criteria, followed by a tradeoff analysis to determine best value.

TEP members are selected based on experience and grade level. They must complete a training session conducted by the Procurement Department and Office of General Counsel staff, and must complete a Conflict of Interest Certification Form (version 1.0, October 1, 2015) and other documents.

Risk

The current Procurement Department's Conflict of Interest Certification Form does not 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.

In March 2016, an Enterprise Architecture Department (EAD) employee (Employee) was selected to serve on a TEP for contractors submitting bid proposals for a five-year EAD contract. Before being allowed to serve on the panel, the Employee, like all panel members, was required to sign a Conflict of Interest Certification Form, in which he certified that he had read and was familiar with the Standards of Ethical Conduct in 5 C.F.R. Part 2635. The standards require an employee to act impartially and to avoid the appearance of violating the ethical standards. Further, the Statement signed by the Employee says, "I will avoid any action, whether or not prohibited, that could create the appearance of a lack of independence or impartiality."

The Employee failed to disclose to the Procurement Department that he was previously employed by one of the Contractors who submitted a bid proposal. In 2011, PBGC awarded the Contractor an IDIQ contract, with a base period of performance of one year and 3 one-year options, for Enterprise Architecture services.

From approximately 2012 to 2013, the Employee worked at PBGC as an employee of the Contractor. In 2013, he left employment with the Contractor and began work as a federal employee in EAD.

The Employee's supervisor stated he was aware that the Employee worked at the Contractor, but he selected the Employee for the TEP because he did not view him as a former contractor. Also, when the Employee's supervisor began working at PBGC, the Employee was already a federal employee.

The Employee acknowledged to OIG that he had "developed personal relationships" with his former coworkers while employed at the Contractor. Despite the Employee's potential lack of impartiality or, at a minimum, the appearance thereof, he participated in the TEP. The Employee did not bring the matter of his prior employment to the attention of the Contracting Officer or a PBGC Ethics Officer.

The TEP rated the Contractor's proposal the best value, the Source Selection Authority selected the Contractor for award and, ultimately, the Procurement Department awarded the contract. When a competing contractor notified the Procurement Department of the Employee's prior employment with the winning Contractor, the Procurement Department – at a cost of time and money – terminated the contract and stood up a new TEP. The new TEP was tasked with reevaluating the proposals and submitting their finding to a new Sole Source Authority. This second evaluation of proposals resulted in a contract award to a contractor different from the first. This second award has been protested to the Government Accountability Office. A stop-work order has been issued against the second contract pending resolution of the protest.

The Employee's relationships with his former co-workers and employer created, at a minimum, the appearance of a lack of impartiality when he evaluated his former employer's contract bid. However, despite signing the Conflict of Interest Certification Form, in which he certified that he read and was familiar with the Standards of Ethical Conduct, which require an employee to act impartially and to avoid the appearance of acting impartially, and in which he certified that he "will avoid any action, whether or not prohibited, that could create the appearance of a lack of independence or impartiality," the Employee chose to serve on the TEP without disclosing these relationships. The Procurement Department officials became aware of the Employee's prior employment with the winning Contractor when a competing contractor notified them. By that time, the contract was already awarded. The Conflict of Interest Certification Form specifically addresses direct or indirect financial interest in any of the firms' submitted proposals, but does not address prior employment with these firms.

Canceling the contract caused PBGC to expend time and money by re-evaluating the proposals. The Procurement Department was unable to provide an approximate number of work hours dedicated to re-issuing the EAD contract. However, we found that the previous award process – from solicitation to award – took approximately six months. Additionally, staff (three new TEP members, one TEP advisor, one contract specialist, one contracting officer, and two attorneys) dedicated significant time from their other duties to re-issue this contract. Additional time has been lost as the agency addresses the protest.

Suggestions

To reduce the risk of waste, fraud, and abuse; to enhance program performance; and to aid management in identifying potential lack of impartiality issues, we offer 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.



Pension Benefit Guaranty Corporation

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

To: Robert A. Westbrooks
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