



Capping Report: PBGC Contract Type Selection

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Issued by: John Seger

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Background

PBGC protects the retirement security of over 31 million workers, retirees, and beneficiaries. In fiscal year 2023, PBGC paid over \$6.0 billion in benefits to nearly 920,000 participants. Because of its vital mission, one of the three strategic goals articulated in PBGC's Strategic Plan is to "maintain high standards of stewardship and accountability" including "improving procurement activities." The current PBGC workforce consists of just under 1,000 federal employees, who are supported by approximately 1,500 contractor employees. In Fiscal Year 2023, PBGC awarded approximately \$340 million in contracts for goods and services.

The Federal Acquisition Regulation (FAR) contains uniform acquisition policies and procedures for Federal agencies, including requirements related to contract type. FAR § 16.101(a) notes that the Government has a wide selection of contract types available to provide needed flexibility. FAR § 16.103(b) states, "A firm-fixed-price contract, which best utilizes the basic profit motive of business enterprise, shall be used when the risk involved is minimal or can be predicted with an acceptable degree of certainty. However, when a reasonable basis for firm pricing does not exist, other contract types should be considered..."


Both procurement and program office staff have important roles in acquisition planning for needed goods and services. FAR § 7.102(b) states that acquisition planning "shall integrate the efforts of all personnel responsible for significant aspects of the acquisition to ensure that the Government meets its needs in the most ... timely manner."

Summary

Our office's past work has shown the importance of determining the best contract type for a particular acquisition while ensuring timely contract awards and compliance with the FAR. Our work has examined the circumstances of two acquisitions where contract type was a core issue.

These two reports highlight some of the challenges PBGC has faced regarding contract type selection. While the FAR indicates that Firm-Fixed-Price (FFP) contracts generally are preferable, it provides flexibility to use other contract types if FAR requirements are met. In addition, coordination between the Procurement Department (PD) and departments requesting acquisitions (referred to as program offices) is critical to promote timely contract awards.


While this report does not contain additional recommendations, we continue to highlight to PBGC that the correct contract type is dependent on many factors and PD and the program offices have to continue to work as a team to identify the most advantageous contract type based on the goods and services that are required.



Past Work: PBGC Needs to Strengthen Acquisition Planning for Actuarial Support Services (EVAL-2021-09), issued June 4, 2021

Related to contract type selection, we found that the program office and PD did not effectively communicate at the beginning of acquisition planning. This led to a lengthy disagreement on contract pricing type for the actuarial support services, which delayed award of the new contracts. The disagreement centered around whether the new awards should be FFP or Labor Hour, in which charges are based on the number of hours worked at fixed hourly rates. While FFP is generally the preferred type of contract to reduce risk to the government, it requires a defined scope of work and minimal or predictable risk. However, according to the program office and vendors' replies to PBGC's Request for Information for this acquisition, when PBGC initially acquires a pension plan, the risk involved is unpredictable and revealed only after the contractor begins work. Therefore, FFP task orders may not be the most advantageous for the program office's actuarial support services because the work involves significant unknowns at the time PBGC trustees a pension plan. After the new awards were finally made, the initial FFP task orders awarded to the five contractors had poorly defined requirements and different volumes of work for the same price, indicating that PBGC may not have selected the most appropriate contract type.

Given the delays in award, due in part to the disagreement on contract type, we recommended that the Office of Management and Administration (OMA) develop and implement a mediation or escalation process to resolve disagreements during the acquisition planning process. This recommendation was closed on May 12, 2022.



Past Work: PBGC Needs to Improve Incentive Contracting Practices (AUD-2020-11), issued September 23, 2020

This report focused on the use of incentive contracting, specifically on a Cost-Plus-Award-Fee (CPAF) task order. This CPAF task order was for a broad range of information technology infrastructure operations and maintenance services. A CPAF contract is an incentive contract that reimburses the contractor for its allowable incurred costs, plus a fixed fee, when applicable, and an additional award based on performance. According to FAR § 16.401(d) and (e), a Determination and Findings shall be completed for all award-fee contracts documenting how a proposed award-fee contract meets specific requirements, including that the work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets for cost, schedule, and technical performance. PBGC's Determination and Findings did not adequately address the FAR requirements for using an award fee contract. For this task order, most of the activities were routine services, such as data center operations, and occur according to a set and known schedule. As such, these routine services could have had predetermined objective incentive targets for cost, schedule, and technical performance.

One of the recommendations in this report was that OMA evaluate a related contract to determine if any of the CPAF requirements could be converted to FFP task orders. In response to our recommendation, PD provided a memorandum from the Contracting Officer explaining that changes to the current task orders could not be made, but that steps would be taken to convert the re-compete contract in 2025 to a non-CPAF contract type, such as FFP or a hybrid combining FFP and Time and Materials or Labor Hour. Our office closed this recommendation on September 28, 2022.

Scope, Methodology, and Standards

This report presents the results of our previous work on PBGC's contract type selection. This report does not contain recommendations. All the work completed for this report is in alignment with the standards of the Council of the Inspectors General on Integrity and Efficiency's Quality Standards for Federal Offices of Inspectors General, that, in our professional opinion, are related to conducting our analysis and reporting. These standards require that OIG staff conduct their work with integrity, including the elements of objectivity, independence, and professional judgment. In addition, these standards require that our office establish a quality assurance program to ensure that the overall work of the OIG meets appropriate standards. 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.

Staff Acknowledgement

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In addition to the contact above, Kara Burt, Audit Manager, and Ruth Walk, Auditor, made key contributions to this report.

Feedback

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