Office of Inspector General

September 2009
Report No. EVAL-09-008

Controls over Contracts Related to Resolution and Receivership Activities

Office of Evaluations

oig

Office of Evaluations

oig

Background and Purpose of Evaluation

Starting in 2008, the FDIC began experiencing a significant increase in the number and size of institution failures as compared to previous years. This activity has resulted in a significant increase in the workload for the FDIC's Division of Resolutions and Receiverships (DRR) and a corresponding increase in the reliance on contractors to address failing and failed institutions. For example, through June 30, 2009, the FDIC had awarded over $1 billion in contracts, of which 98 percent were DRR-related.

DRR relies on Receivership Assistance Contractors (RAC) to provide a full range of closing support functions. DRR also hires firms for other services, including financial advisory, asset management, and loss share agreement oversight.

The Division of Administration (DOA) provides contracting support to the FDIC and plans, solicits, and manages FDIC contracts through completion.

The objective of the evaluation was to identify and evaluate controls in place to address the risks presented by a significant increase in resolution and receivership-related contracting activity.

To view the full report, go to www.fdicig.gov/2009reports.asp

Controls over Contracts Related to Resolution and Receivership Activities

Results of Evaluation

The FDIC has controls in place to award and manage resolution and receivership-related contracts, including procurement procedures, minimum standards for contractor fitness and integrity, background investigations of contractor employees, and FDIC oversight manager (OM) and technical monitor (TM) designations and training.

Notwithstanding these efforts, we noted that the FDIC did not always complete background investigations for contractor personnel, OM and TM workloads varied and were sometimes challenging, and OMs generally did not prepare contract management plans or find them to be useful. We also identified contract file documentation weaknesses in contracts that we reviewed. DRR's internal review efforts have identified similar findings. DRR and DOA management have taken action to address these issues.

DRR and DOA have also taken action to mitigate risks associated with a significant increase in contracting activity, including increasing authorized procurement-related staff, creating oversight manager refresher training, establishing DRR contract support functions in the Dallas Regional Office, and establishing a corporate-level contracting project management office.

While these actions are positive, FDIC management and personnel involved in the procurement process must remain vigilant to ensure that contractors perform work consistent with contract terms and maintain sufficient documentation to preserve a complete history of contract-related decisions and outcomes. Additionally, the success of the FDIC's contract administration and oversight management is dependent on maintaining sufficient resources to address contracting administration needs and ensuring individuals are fully-trained and understand their responsibilities. Because DRR and DOA have taken or are planning to take steps to address issues we identified during our review, we are not making recommendations.

Although this report did not contain recommendations, management was given the opportunity to comment. Management elected not to provide written comments.

TABLE OF CONTENTS

ACRONYMS IN THE REPORT

APM	Acquisition Policy Manual
ASB	Acquisition Services Branch
CEFile	Contract Electronic File
CLU	Contracting Law Unit
CMP	Contract Management Plan
CU	Corporate University
DOA	Division of Administration
DRR	Division of Resolutions and Receiverships
GAO	Government Accountability Office
MSB	Management Services Branch
NFE	New Financial Environment
OERM	Office of Enterprise Risk Management
OIG	Office of Inspector General
OM	Oversight Manager
ORE	Owned Real Estate
PGI	Procedures, Guidance, and Information
RAC	Receivership Assistance Contract
RBOA	Receivership Basic Ordering Agreement
RFP	Request for Proposal
RTC	Resolution Trust Corporation
SEPS	Security and Emergency Preparedness Section
TM	Technical Monitor

FDIC
Federal Deposit Insurance Corporation
3501 Fairfax Drive, Arlington, Virginia 22226

Office of Evaluations
Office of Inspector General

DATE: September 30, 2009

MEMORANDUM TO: Mitchell L. Glassman, Director
Division of Resolutions and Receiverships

Arleas Upton Kea, Director
Division of Administration

[Signed]

FROM: E. Marshall Gentry
Acting Assistant Inspector General for Evaluations

SUBJECT: *Controls over Contracts Related to Resolution and Receivership Activities* (Report No. EVAL-09-008)

This report presents the results of our evaluation of controls over contracts related to resolution and receivership activities. In 2008, the FDIC began experiencing a significant increase in the number and size of institution failures as compared to previous years, which has resulted in a significant increase in the workload for the FDIC's Division of Resolutions and Receiverships (DRR) and a corresponding increase in the reliance on contractors to address failing and failed institutions. The Government Accountability Office (GAO) has reported that an increased reliance on contractors can increase the risk of fraud, waste, and abuse absent effective controls and vigilant oversight.

EVALUATION OBJECTIVE AND APPROACH

The objective of the evaluation was to identify and evaluate controls in place to address the risks presented by a significant increase in resolution and receivership-related contracting activity. To address this objective, we:

- Reviewed prior Office of Inspector (OIG) and GAO reports to identify areas of potential risk associated with contracting activity. Although we recognize that the organizations and circumstances differ, we also reviewed Resolution Trust Corporation (RTC) OIG semiannual reports to the Congress to identify contracting issues that existed during the last period of significant resolution activity;

- Reviewed controls established and actions being taken or planned by the FDIC to mitigate risks, including internal resource considerations;

- Evaluated the implementation of controls associated with contract administration and oversight management by reviewing a judgmental sample of five DRR contracts.

For the purpose of this evaluation, we focused on risks associated after contracts were awarded because at the time we were planning our work, DRR was relying on contracts that were already in place. Accordingly, we focused on potential risks associated with fitness and integrity requirements, the background investigation process, and the FDIC's contract administration and oversight management function. Initially, the scope of our review was to include Legal Division contracting activity, but we decided to focus the review on DRR contracting activity, given the level of such activity in DRR. We performed our evaluation between December 2008 and June 2009 in accordance with the *Quality Standards for Inspections*. Details on our objective, scope, and methodology are provided in Appendix I.

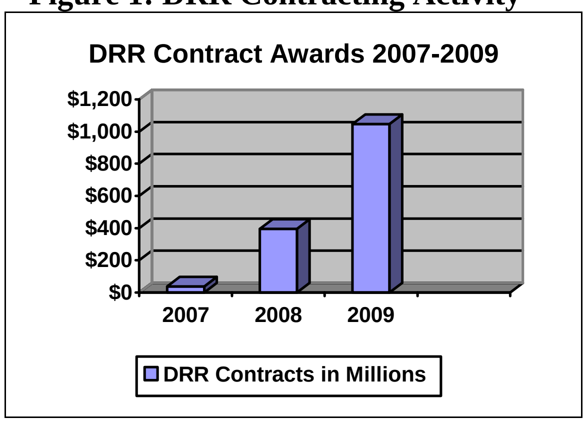
BACKGROUND

During 2008, 25 FDIC-insured institutions with assets of $372 billion failed,[1] the largest number of failures since 1993 when 41 institutions with combined assets of $3.8 billion failed (excluding thrifts resolved by the RTC). Through September 2009, 95 FDIC-insured institutions with combined assets of $104.4 billion have failed. To address the increased workload, DRR's use of contractor resources has increased. This approach is consistent with the Corporation's established business model for resolutions and receivership management, which relies on contractors and staff on time-limited appointments to handle major upticks in workload.

The Division of Administration (DOA), Acquisition Services Branch (ASB), provides contracting support to all FDIC divisions except the Legal Division.[2] The acquisition team includes the contracting officer, contracting specialist, and other support staff in ASB; the responsible officials in the program office, including the oversight manager (OM) and technical monitor (TM); the Legal Division Contracting Law Unit (CLU); and, as appropriate, the supporting officials and staff in the Office of Diversity and Economic Opportunity, and ASB Policy and Operations Staff.

In 2008, FDIC contract awards totaled $651.8 million as compared to $345.4 million in contracts in 2007, which represented an increase of approximately 89 percent. As of June 30, 2009, the FDIC had already awarded over $1 billion in contracts. Figure 1 illustrates the increase in DRR contracting since 2007, which accounts for 98 percent of the Corporation's contracting activity during 2009. According to information provided by ASB, DRR awarded approximately $395.3 million or 61 percent of the total contracts for the Corporation in 2008. This was compared to $37.9 million, or 11 percent of the total contracts for the Corporation in 2007.

Figure 1: DRR Contracting Activity



Source: DOA.
Note: 2009 data as of June 30, 2009.

[1] This amount includes Washington Mutual Bank which had assets of $307 billion at the time of failure.
[2] The Legal Division has its own process for awarding and managing Legal Services Agreements.

With regard to DRR contracting, the FDIC is using Receivership Basic Ordering Agreements (RBOAs) to expedite the acquisition of goods and services in support of failing or failed financial institutions. An RBOA is similar to a Basic Ordering Agreement in all respects except it is limited to awards in support of DRR and is not assigned a monetary value or a contract ceiling amount. Instead, dollar value ceiling controls are established at the task order level, allowing DRR the ability to formulate requirements and resultant cost estimates as needs become better defined.

One of the principal RBOAs that DRR relies upon, the Receivership Assistance Contract (RAC), includes the full range of closing support functions as indicated in Figure 2.[3] In addition, DRR has other contracts in the following areas:

- Owned Real Estate (ORE) Management and Marketing Services
- National Valuation (Appraisal) Services
- E-Banking Advisory/Support Services
- Credit Card Consulting
- Shared Loss Basic Ordering Agreement
- Temporary Employment Services
- Secured Web Site
- Business Information Systems
- Due Diligence Services
- Environmental Due Diligence/Site Assessment Services
- Financial Advisory Services
- Loan Servicing
- Web-Based Marketing
- Call Center activities

Figure 2: Functional Areas of RAC Contractors

- Facilities
- Asset Management
- Claims
- Investigations
- Settlement
- Employee Benefit Plans
- Financial Closing Process
- Personnel Administration
- Franchise Marketing
- Branch Management
- Trust

Source: *DRR Resolutions Contracting*

On June 11, 2009, ASB officials told us that DRR also has RBOA requests for proposals out for bid on the following:

- Financial Advisor for Securities Sales
- Financial Advisor for Loan Sales (replaces existing contract which is expiring)
- Financial Advisor for Mortgage Servicing Rights
- Due Diligence (replaces existing contract which is expiring)
- Loss Share Agreement Oversight
- Loan Servicing Oversight
- Title
- Assignments
- Trustee
- Custodian
- Subsidiary Management (replaces existing contract which is expiring)
- ORE (to add additional firms)

[3] Under RAC I, the FDIC had engaged four contractors. In January 2009, the FDIC completed a second solicitation for four additional contractors and refers to this RBOA as RAC II.

EVALUATION RESULTS

Established Controls

In August 2008, ASB issued revised policies and procedures for the acquisition of goods and services. The policies and procedures in the Acquisition Policy Manual (APM),[4] and the accompanying Procedures, Guidance, and Information (PGI) apply to all procurement actions awarded in the corporate, receivership, or conservatorship capacity. The revised manual and guidelines were not done in response to the increase in DRR contracting activities; rather, the issuance of the revised manual was the result of a multi-year DOA effort to update the policies and guidelines to reflect ASB's current policies and procedures, procurement-related systems, and ASB organizational changes.[5]

The FDIC's revised policies include:

- an introduction to the RBOA,
- a discussion of special issues surrounding receivership contracting, and
- a description of the OM and TM nomination and appointment process.

In addition, emergency and expedited contracting procedures[6] have also been developed for meeting the contracting needs related to financial institution failures when insufficient time is available to follow established contracting procedures. The APM states that DRR and ASB rely on advanced planning to reduce the need for expedited or emergency contracting procedures to award contracts, and expedited and emergency procedures are not to be used when there is sufficient time to follow established contracting procedures. The APM further states that in order to obtain the goods and services needed to support DRR efforts in relation to the anticipated closing of an institution, Contracting Officers must use existing contracts to the maximum extent possible.

As related to our objectives, the APM and PGI establish controls designed to ensure contractors meet fitness and integrity standards and receive required background investigations commensurate with risk designation. In addition, the APM and PGI provide a framework for managing and overseeing the contractor's performance. As discussed further below, the APM and PGI establish policies and procedures, and define roles and responsibilities of the acquisition team related to these areas.

A GAO report entitled, *Framework for Assessing the Acquisition Function at Federal Agencies,*[7] states that clear and current procedures help to ensure that management's directives and

---

[4] Circular 3700.16, *FDIC APM*, dated August 22, 2008.
[5] An OIG report entitled, *FDIC's Contract Administration*, Report No. 06-026, dated September 2006, included a recommendation regarding the completion of the policy update.
[6] These expedited procedures focus on providing optimum contracting support for DRR's critical mission, while using competition to award contracts to the extent possible. Emergency procedures should be used when time constraints do not allow for use of expedited or normal contracting procedures.
[7] GAO-05-218G, dated September 2005.

intentions are carried out. Policies and processes embody the basic principles that govern the way an agency performs the acquisition function. Ideally, policies and processes clearly define the roles and responsibilities of agency staff, empower people across the agency to work together effectively to procure desired goods and services, and establish expectations for stakeholders to strategically plan acquisitions and proactively manage the acquisition process. To be effective, policies and processes must be accompanied by controls and incentives to ensure they are translated into practice. Policies and processes that do not address these objectives contribute to missed opportunities to achieve savings, reduce administration burdens, and improve acquisition outcomes.

FDIC's Minimum Fitness and Integrity Standards

The APM sets policy and minimum standards of contractor integrity and fitness that must be followed. The FDIC does not contract for services with anyone who has committed an act deemed to be a disqualifying condition. The APM specifically does not allow the FDIC to enter into, or continue contracts with individuals or organizations that present an unmitigated conflict of interest. If a conflict of interest exists, it precludes a contractor from performing the contract unless the conflict is waived by the FDIC or the contractor eliminates it.

A conflict of interest can be either individual or organizational. Frequent conflicts arise when a personal, business, or financial interest of a contractor or its employee or subcontractor is such that the contractor's judgment and loyalty in performing services for the FDIC might be compromised by concerns for pursuit of its own interest. Other conditions that create a conflict of interest include (1) involvement in litigation adverse to the FDIC as a party or representative of a party; (2) offering to buy an asset from the FDIC for which services were performed in the 3 years prior to the offer, unless provided for in the contract for services; or (3) engaging in an activity that would cause the FDIC to question the integrity of the services a contractor has performed, is performing, or offers to perform. Table 1 summarizes the FDIC's policies and procedures related to fitness and integrity designed to mitigate associated risk.

Table 1: FDIC's Policy and Procedures Related to Minimum Fitness and Integrity Standards

Potential Risk Area	FDIC Policy	Procedures
Contractor does not meet minimum fitness and integrity or FDIC eligibility standards.	The FDIC expects all contractors and subcontractors to perform using the highest ethical standards, reflecting the integrity necessary to support and retain public trust and confidence in the acquisition process. The ethical standards to which the FDIC holds its contractors and subcontractors are delineated in 12 CFR §366.	• Contractor submits completed *FDIC Integrity and Fitness Representations and Certifications*. • Contracting Officer is responsible for reviewing the integrity and fitness representations and certifications submitted to identify any issues related to eligibility.

Table 1: FDIC's Policy and Procedures Related to Minimum Fitness and Integrity Standards (Continued)

Potential Risk Area	FDIC Policy	Procedures
	The FDIC does not contract for services with anyone who has committed an act deemed to be a disqualifying condition. The disqualifying conditions are set out in the Federal Deposit Insurance Act at 12 USC §1822(f)(4) and are restated in the regulations at 12 CFR §366.3. They are: 1. Conviction of a felony; 2. Removal from or being prohibited from participation in the affairs of an insured depository institution as a result of a federal banking agency final enforcement action; 3. Demonstration of a pattern or practice of defalcation or embezzlement on financial obligations to insured depository institutions; or 4. Causing a substantial loss to a federal deposit insurance fund.	• Contracting Officer refers any eligibility issues to CLU for review. • CLU reviews conflicts of interest raised by the representations and certifications. CLU issues a written decision of its determination. • CLU also prepares the cases for eligibility determination, waiver of conflicts of interest, appeals from final decisions, and other documents for the Corporation's Ethics Committee. • The delegated authority to waive a conflict of interest, if a contractor requests a waiver, rests with the Corporation's Ethics Committee and the Assistant General Counsel of the Corporate and Legal Operations Section of the Corporate Operations Branch of the Legal Division. • DOA's Security and Emergency Preparedness Section (SEPS) conducts background checks on contractors, subcontractors, and contractor personnel at the request of the Contracting Officer and OM in accordance with Circular 1610.2. • During the term of the contract, the contractor must immediately notify the FDIC if any of the information submitted was incorrect at the time of submission, or has subsequently become incorrect. • Contractors with disqualifying conditions that arise prior to or after award are required to notify the FDIC in writing within 10 calendar days. There are no waivers for disqualifying conditions.

Source: FDIC's APM and PGI.

The Corporation's Conflict Committee reviews conflicts for contracts awarded by ASB. This committee is made up of seven members that include representatives from various divisions and offices, including DOA, DRR, and a representative from the Legal Division who chairs this committee. Table 2 below shows the number of conflicts reviewed by the Corporation's Conflict Committee for years 2007, 2008, and 2009.

Table 2: Conflict of Interest Waiver Activity

Year	Corporation Conflict Committee	
	Number of Conflicts Reviewed	**Number of Waiver Requests Denied**
2007	5	2
2008	7	2
2009*	0	0

Source: Legal Division.
* This information is as of March 17, 2009.

Aside from completing the *FDIC Integrity and Fitness Representations and Certifications* form during the solicitation phase, contractors have a responsibility to report conflicts that may arise after the contract is awarded. For instance, a DRR contractor that was hired by the FDIC to perform work related to a failed institution wanted to represent a potential buyer of assets of the closed bank. Accordingly, the contractor submitted a conflicts waiver request. The Conflicts Committee determined that the day-to-day management and operation of the bank represented a conflict for the contractor to also represent a potential buyer of bank assets. In addition, contractor employees attended various strategic meetings on how the institution assets might be marketed. Thus, the waiver was denied and the contractor was not allowed to represent the potential buyer of bank assets.

In addition to its policy and procedures, and related training to reinforce its policy, DOA and the Legal Division also send periodic reminders to employees and contractors to advise them of their respective ethical responsibilities. For example, in April 2009, DOA and the Legal Division sent a global email message intended to remind employees of certain ethical and contractual obligations that FDIC employees must keep in mind in dealing with contractors and contractor representatives. A copy of the global email is included in Appendix 2. Such periodic reminders coupled with coverage in OM training courses serve to reinforce the FDIC's policy related to ethics.

<u>Background Investigations</u>

We also reviewed whether background investigations[8] had been completed as required for the contracts in our sample. As discussed later in this section, background investigations were not initiated for DRR contract employees in all cases. If background investigations are not conducted on contract employees, the risk increases that someone with a criminal record or questionable credit history may be hired to work for the FDIC. This can result in embarrassment to the Corporation or a loss of funds or assets.

[8] A background investigation is a generic term that describes the process SEPS completes on contractors and contractor personnel to ensure they meet minimum security and fitness standards set forth by the FDIC. These may include Federal Bureau of Investigation fingerprint criminal records checks, searches of various on-line data bases, and credit reports. It also includes various background investigations conducted by the U.S. Office of Personnel Management for the FDIC.

Significance of Background Investigations *Effective background investigations are just as important as physical security and emergency preparedness. We (FDIC) can spend a million dollars on a security system to protect our people, but if we let the bad guys in the front door by hiring one of them, we will have defeated the entire purpose of that security system. A strong background investigation program ensures that your co-worker is the type of person you want to have next to you.* Assistant Director, Security and Emergency Preparedness, DOA FDIC News, February 2009

As indicated in Table 3 below, Circular 1610.2, *Security Policy and Procedures for FDIC Contractors and Subcontractors*, dated August 1, 2003, establishes the security policy and procedures for contractors and subcontractors to do business with the FDIC. It is the policy of the FDIC to provide a safe working environment for all its personnel, protect and secure FDIC assets, and ensure that all contractors who provide services to the FDIC meet minimum security and integrity and fitness standards dictated by the FDIC and its regulatory requirements. DOA is in the process of revising this circular in part to clarify applicability to DRR contracting.

Table 3: FDIC's Policy and Procedures Related to Contractor Security

Potential Risk Area	FDIC Policy	Procedures
Contract employees who perform work and handle sensitive information do not meet the FDIC's minimum security requirements.	The policy applies to all contracts awarded, including the following: (1) all contracts for services greater than $100,000, (2) contracts at any amount when contractor employees will have access to FDIC facilities or network/systems, or (3) any contract at the discretion of the FDIC. This policy shall not apply to intermittent contractors who access FDIC facilities on an infrequent and generally unscheduled basis.	• The Program Office is responsible for establishing the risk level for contracts or contractors as part of the planning phase for future solicitations. • A unit within SEPS reviews the risk level designation. • **Pre-award:** The Contracting Officer is responsible for including appropriate background forms in solicitations. • All investigations will generally be completed before contract award. However, if an award is urgent, it may be made contingent upon the outcome of the investigation. The OM shall closely monitor the contractor's performance if a contingent award is made, and the Contracting Officer will ensure that all investigations are completed as soon as possible following the award. • **Post-award:** No later than 5 days after the contract award, the contractor will provide the Contracting Officer with a list of all contract personnel working on the contract.

Table 3: FDIC's Policy and Procedures Related to Contractor Security (Continued)

Potential Risk Area	FDIC Policy	Procedures
		• The Contracting Officer will furnish the required information to SEPS, and SEPS will provide the required forms to contractor personnel. • Contractor personnel shall complete electronic fingerprint and credit check applications and will not be permitted to begin work until the results of the fingerprint reviews are completed. • Upon receipt of the results of the background investigations, SEPS will notify the OM and Contracting Officer.

Source: FDIC Circular 1610.2.

The existing circular, dated August 1, 2003, provides for some discretion with respect to DRR contracts. Specifically, Circular 1610.2 states

> No background investigations or fingerprint checks shall be required when a receivership is created, except when a receivership is of a long-term nature, in which case all contractor personnel employed thereafter shall comply with the terms and conditions for contractor personnel set forth in the RFP and the contract.

The existing circular does not define "long-term nature." This leaves the matter open to interpretation and could potentially result in the policy being inconsistently applied. For instance, one of the contracts we sampled awarded out of headquarters had 20 contractor employees that were deployed to do work without undergoing a background investigation. At the time of our fieldwork, the contractor had completed the tasks related to this contract, and the contract was in the close-out process. For this task order, background investigations were completed for the contractor's principals as part of the pre-award process.[9] During the pre-award phase in May 2007, SEPS reported that:

> Checks completed did not review any information that would preclude the contractor or individual(s) from obtaining a contract or contract work, respectively, with the FDIC. All contractor and subcontractor employees working on the contract shall complete electronic fingerprints and will not be permitted to begin work until the results of the fingerprint reviews are completed.

When this particular task order was awarded in May 2008, the Contracting Officer did not initiate action to process background investigations for contract personnel actually performing work on the task assignment because he did not believe that a background investigation was required. Specifically, he thought that because this task assignment related to a receivership,

[9] An AutoTrack background was conducted on seven employees identified in the task order. An AutoTrack is a limited criminal check that is done on an individual for a "region" of the United States only. In this situation, AutoTrack results did not reveal any criminal activity for any of the seven employees in the specific region it checked.

background investigations were not required under Circular 1610.2 beyond the background investigations that were done on the contractor and the five principals.

In addition to the contract discussed above, two contracts in our sample were RAC contracts. During our fieldwork, in discussions with SEPS and DRR Dallas officials, we learned that 86 RAC I contract employees that were doing work for the FDIC had not had background investigations. Since that time, we understand that DRR officials in the Dallas Regional Office have worked with SEPS to ensure necessary investigations were completed. DRR management officials stated it was their intent for contract personnel to receive background investigations commensurate with their risk-level designation. DRR has taken steps to coordinate with DOA SEPS to ensure that DRR contract employees meet minimum security requirements. Also, DRR officials stated that RAC II contract employees will not be deployed to perform work until those individuals are cleared by SEPS. DRR and DOA are working together to track background investigation submissions and clearances for both RAC I and RAC II contract employees. Circular 1620.2 is currently being revised, in part, to clarify the applicability of its provisions to DRR contracts, and we plan to provide comments on the draft circular to FDIC officials outlining our view that the policy should apply to DRR contractors unless the DRR Director determines that an exception is warranted.

Oversight Management

Oversight management is the management of the technical performance requirements of the contract and is primarily the responsibility of the OM. Oversight management ensures that the contractor delivers the required goods or performs the work according to the delivery schedule in the contract and includes monitoring of funds expenditure in relation to the contract ceiling. The Program Office is responsible for ensuring that adequate resources are available for monitoring contractor performance. For the contracts we sampled, DRR had assigned an OM and TMs to oversee the work on specific task assignments. The number of TMs assigned varied based on DRR’s assessment of workload associated with a contract. In addition, as discussed later in the report, DRR has established a group in the Dallas Regional Office to assist in the oversight management of RAC contractors. Table 4 summarizes the FDIC’s policy and procedures related to oversight management.

Table 4: FDIC’s Policy and Procedures Related to Oversight Management

Potential Risk Area	FDIC Policy	Procedures
Contractors perform work that does not meet contract requirements.	All procurement actions require some level of administrative management as well as performance monitoring and management (oversight management) by the Contracting Officer and the Program Office. The extent varies based upon many factors, including contract type, the complexity of the requirement, and the dollar amount of the contract action.	• The Contracting Officer and the OM must develop a Contract Management Plan (CMP) for all contracts and task orders for services having a total estimated value of $1,000,000 and greater. • The Contracting Officer files a signed copy of the CMP in the official contract file.

Table 4: FDIC's Policy and Procedures Related to Oversight Management (Continued)

Potential Risk Area	FDIC Policy	Procedures
		• The Contracting Officer appoints an OM (and TM if required) to monitor contract performance for all contracts over $100,000, or other contracts where appropriate. • The OM monitors the contractor's performance of the contract and acts as a technical liaison between the FDIC and the contractor and ensures technical compliance with the contract by all parties. • Contracting Officers must verify that the OM and TM have completed the 2-day in-class OM Training course. If it is necessary to appoint an OM and TM before completion of the 2-day course, they may be appointed after successfully completing the FDIC Web-based OM training course, and being scheduled for the 2-day course.

Source: FDIC's APM & PGI.

As discussed in Table 4, to be appointed as an OM or TM, the individual must attend a 2-day *Oversight Management Training Course,* which is conducted quarterly through the FDIC's Corporate University (CU) and complete a Web-based *Oversight Management Training* course. These courses are designed to cover the procurement process -- acquisition planning, award, contract administration, and closeout. All of the OMs and TMs assigned to the contracts that we reviewed completed the required training. However, documentation related to the completion of the course was missing for one employee who had taken the course. Further, one TM took the training in 1999 but neither the APM nor the PGI outlines how often training is required. The FDIC's CU is responsible for maintaining the official list of the names of all FDIC employees that have completed the training. DOA also maintains a list of all class attendees for the training in their records to ensure OMs and TMs have met this requirement. We identified discrepancies with the training list maintained by CU and the one maintained by DOA during our review. Officials from both offices, CU and DOA, worked together to update their lists so that both offices have training lists that are accurate and complete.

Responsibilities of an OM and TM are covered in the training course and are also outlined in the *Oversight Manager Appointment Memorandum* and the *Technical Monitor Appointment Memorandum,* which OMs and TMs are required to sign at the time they are appointed. Our evaluation focused on some key responsibilities:

- Read and understand contract requirements.
- Develop and document oversight plan.
- Ensure completion of security access and background investigations with fingerprinting prior to work start date.

- Provide technical oversight and direction.
- Ensure performance is in accordance with the Statement of Work and the contract standards.
- Identify and resolve performance issues expeditiously.
- Review personnel changes for adequacy.
- Monitor budget by ensuring the contractor spending rate is on target and expenditures are within the contract ceiling.
- Maintain the FDIC's Contract Electronic File (CEFile)[10] and ensure files are complete and accurate.
- Evaluate and document contractor performance.
- Inspect and accept deliverables.
- Review and approve invoices.

OMs and TMs we interviewed indicated that they understood contract requirements and were working together to monitor contractor performance and review contractors' invoices. However, some of the OMs and TMs acknowledged workload was a challenge. Table 5 summarizes information about the OM workload related to the contracts we sampled. Given the critical role of OMs and TMs, DRR needs to remain mindful about an individual's capacity to effectively carry out assigned responsibilities.

Table 5: OIG Analysis of OM Workload

Type of Contract	Number of Task Orders*	OMs Assigned	TMs Assigned	Other
Business Information Services	100	1	2	
Financial Advisory Services	1	1	1	OM was also TM for another contract.
Receivership Assistance Contract I	14	1	1	OM was also OM for another DRR contract.
Receivership Assistance Contract II	16	1	3	OM was also OM for another DRR contract.
Temporary Employment Services	21	1	1	OM was also OM for another contract.

Source: OIG discussions with OMs and TMs.
*Note: The number of task orders an individual OM can oversee depends on a number of factors including: the nature of the task, level of TM support, and the stage of work being done under the task order (i.e., some OMs told us that some of the task orders included above were still active but most of the work was complete and required less oversight at that point).

Although OMs and TMs were actively involved in overseeing the work performed, we found some instances where policies and procedures were not being followed. As discussed later, our findings were consistent with issues raised in DRR's internal review reports. Specifically, we found:

[10] CEFile is a utility that automates the official contract file through the use of Documentum and the FDIC Digital Library. Contracting Officers, OMs, and TMs must ensure the contract file is maintained in CEfile and is current, accurate, and complete throughout the life of the contract.

- CMPs were generally not prepared and not viewed by OMs as needed. A CMP was only prepared for one of the five contracts we reviewed. According to the FDIC's APM, the CMP is an important tool to ensure the OM and Contracting Officer have defined the level of oversight required. Specifically, the OM, together with the Contracting Officer, are responsible for determining the level of oversight that is necessary to ensure the contractor makes satisfactory progress toward successful completion of the contract. To assist in performing oversight activities for services, the OM should work with the Contracting Officer to develop the CMP. Several OMs we interviewed did not view the CMP as a useful tool, and, accordingly did not prepare one.

- Contract documentation was not always placed in the CEFile as required. Specifically, we found only 5 OM and TM appointment letters in the CEFile for the 13 OMs and TMs that were assigned to contracts reviewed (38 percent). In addition, the CMP that was prepared was not placed in the file until after we met with the OM. According to the FDIC's APM, documentation in CEFile must provide a complete history of all procurement-related actions and the basis for informed decisions at each step in the acquisition and oversight management process. Prior OIG reports have identified issues related to the completeness of documentation in the CEFile. We recognize that DRR and DOA have emphasized the importance of such documentation in formal training and through other means. While we have not evaluated the underlying root cause of this problem, OMs we interviewed indicated that it is difficult to keep up with the documentation requirements because the electronic system is slow and not user-friendly. One OM suggested that it might be beneficial to have administrative assistance to keep up with the document requirements to allow OMs more time to focus on overseeing the work of the contractor.

The results of our work were consistent with recent reviews completed by DRR's Office of Internal Review. Specifically, DRR has completed two internal reviews that focused on DRR's contract oversight management process. The first review focused on the Dallas Field Operations Branch, and the follow-up review was expanded to include the Washington Office.[11] The objectives of the review were to: (1) verify that DRR received deliverables according to the appropriate provisions of the contracts; (2) confirm that payments for contract services were made according to the proper and correct terms; and (3) determine whether contracts were closed out properly.

The results of the first review found that the contract oversight management in DRR was performing in a less than adequate manner. Specifically, certain procedures and practices were not being performed as required, such as (1) maintaining OM files electronically in CEFile, (2) documenting contractor performance reviews, and (3) using oversight manager tools such as OM checklists and OM invoice review checklists. In addition, OMs were not using New Financial Environment (NFE) reports to monitor and manage contracts against approved levels.[12] According to the internal review report, OMs were generally reviewing invoices and did maintain various types of hardcopy files. DRR management developed a corrective action plan to address issues identified. As discussed below, one of the principal actions taken was the development of an OM refresher trainer course.

---

[11] IR Review No. 2008-004, *Review of DRR Contracting Process*.
[12] NFE is the FDIC's financial management system.

In the follow-up report,[13] the Office of Internal Review found that OMs actively monitored contractor performance and ensured that services and deliverables provided were acceptable, OMs' level of attention was appropriate given the nature of the services performed, and OMs approved invoices according to the terms of the contract. Further, DRR's Office of Internal Review noted marked improvement in the overall contract oversight management process in the Dallas Field Office Branch since the prior review; however, exceptions were found related to documentation of the CMP and OM and TM appointment letters. Moreover, there was no evidence that site visitations had been conducted, and contractor performance evaluations were not documented as required. Consistent with DRR Internal Review practice, management will provide a corrective action plan to address the issues identified.

In addition to internal reviews conducted by DRR, DOA's Management Services Branch (MSB) is currently conducting an internal study to evaluate whether acquisition specialists are using CEFile as intended and required. This study/review is the first of a series of periodic reviews that will be conducted by MSB at ASB's request. The review will focus on essential contracting documentation maintained in CEFile for all phases of the contracting process, including pre-solicitation, solicitation, evaluation, selection, award and modification, administration, and closeout. As appropriate, MSB plans to identify systemic trends and exceptions that may warrant follow-up corrective action(s).

Actions Taken to Mitigate Risks Associated with Increased Contracting Activity

<u>Increased Authorized Staff</u>

As part of the corporate planning process, divisions and offices assess their workload needs based on an analysis of existing and projected workload. The 2009 Corporate Operating Budget provided for a significant increase in authorized staffing in DRR and the Legal Division to address the Corporation's elevated resolutions and receivership management workload. DRR's increased use of contracts also affects resource needs of ASB and SEPS.

To that end, DOA is hiring additional contract specialists in both in the Washington Office and the Dallas Regional Office. Specifically, there are six Contract Specialists in the Dallas Regional Office and six in the Washington Office. In addition, according to ASB officials, there is a job posting for three additional contract specialists for the Dallas Regional Office. Further, ASB officials stated that they are currently evaluating the number of Contract Specialists that the FDIC will need to handle the increase in the number of contract awards based upon its current activity. In evaluating staffing needs, government-wide or ASB-specific metrics do not exist for evaluating the number of contracting officers and contract specialists needed to handle the volume of activity. ASB officials indicated that staffing needs would be evaluated periodically. In addition, SEPS anticipates having a total of 17 security management specialists in the Washington Office and 9 in the Dallas Regional Office to manage the increase in the number of background investigations that are required due the number of contracts being awarded.

---

[13] IR Review No. 2009-001, *Review of DRR Contracting Process*.

Created an OM Refresher Training Course

To address issues in the DRR Office of Internal Review's first report on the contracting oversight process, DRR, in conjunction with DOA, developed a refresher course that was provided to all DRR OMs and TMs in the Dallas, Texas, and Irvine, California, offices. This course was created to specifically address deficiencies noted in the report as well as review OM and TM roles and responsibilities. For 2009, this refresher training course is scheduled to be provided eight times in Dallas and six times in Irvine, and the two divisions anticipate training approximately 252 OMs and TMs. Several of the OMs and TMs we interviewed had taken this refresher training and generally had positive comments to make about the course. Providing refresher training for DRR OMs and TMs during a time when the FDIC is increasing its contracting activity should help reinforce policy and promote consistency.

Established DRR Contract Support Functions

DRR recently established two groups in the Dallas Regional Office to (1) perform oversight management of RAC contractors and (2) assist in the various aspects of the solicitation and award process.

- The Contract Oversight Management Group was established in the third quarter of 2008 to perform the contract oversight function on RAC and payroll contracts awarded by the FDIC. Within the group, there are two sections consisting of section chiefs, 12 OMs, and 4 technicians. Staffing for one section is nearly complete, and DRR is working to fill vacancies related to the second section.

- The Contracts Support Group was established in August 2008 to assist in the contracting effort, specifically, case writing for RAC and payroll contracts, technical evaluation panel participation, statement of work preparation, obtaining board approval for contracts over $20 million, and assisting with special projects related to contracting activities. One of the goals of this group is to perform contract quality assurance; however, this function has not yet started. Currently, there are six employees in this group, and five additional positions have been announced. DRR has also established a Contract Support Unit in the West Coast Temporary Satellite Office and plans to set up a similar unit in the new East Coast Temporary Satellite Office.

Established Corporate-level Contracts Project Management Office

In addition to efforts ongoing within DOA and DRR, on a broader-level, the FDIC is establishing various project management offices (PMOs), including a Contracting PMO, to help manage the establishment of new programs and expansion of existing program activities, such as contracting to address current workload issues. The purpose of this Contracting PMO is to provide accurate and timely information to FDIC executive management on the effectiveness of the FDIC's internal controls and business processes regarding contracting, identify and report on significant risks, develop mitigation plans for significant risks, and provide resource impact updates. The Director, OERM, will serve as the executive sponsor of this PMO, which includes individuals from DOA, Division of Finance, DRR, and the Legal Division. OERM has also initiated a program to conduct quarterly invoice reviews.

CONCLUSION AND MATTERS FOR CONTINUED ATTENTION

Collectively, the established controls and all of the steps being taken are positive and provide evidence of management's attention to monitor and mitigate risks associated with the significant increase in contracting activity that has occurred since 2007 and is expected to continue for the foreseeable future. However, FDIC management and those involved in the process must remain vigilant to ensure that contractors perform work consistent with the contract terms and contract documentation is kept up-to-date to ensure there is a complete history of contract-related decisions and outcomes. Additionally, the success of the FDIC's contract administration and oversight management is dependent on maintaining sufficient resources to address contracting administration needs and ensuring individuals are fully trained and understand their responsibilities. Because DRR and DOA have taken or are planning to take steps to address issues we identified during our review, we are not making any recommendations. However, to mitigate risks associated with the surge in contracting activity going forward, management should:

- Ensure that policies remain current and reflect contracting needs as they may evolve. For instance, DOA may determine that its policies with regard to CMP need to be modified to provide a more useful mechanism for contract oversight planning. Additionally, the results of DOA's MSB study of CEFile documentation may result in suggestions that impact policy that will need to be captured to ensure process improvements are readily made.
- Ensure that contractors comply with minimum ethical standards and appropriate security requirements by following through on efforts to ensure background investigations are appropriately initiated. Given the sensitive nature of information that some contractors handle, the FDIC needs to ensure that contractor personnel meet minimum security requirements before they are allowed to begin work.
- Continue to ensure that staff involved in the contracting process, especially program office personnel, complete necessary training and understand the importance of their role in administering contracts.
- Continue to conduct periodic internal reviews focused on contract oversight in order to readily identify issues and take corrective action before issues become widespread.
- Continue to periodically evaluate staffing needs to ensure DOA, the Legal Division, and DRR have the resources necessary to effectively carry out contracting policies and procedures, monitor compliance, and oversee the work performed by the contractors.
- Sustain management attention on contracting activity. The Contracting PMO and OERM invoice review program should play a pivotal role in assessing risks and monitoring the effectiveness of controls on a continuing basis.

Moreover, although we did not evaluate controls related to the solicitation and award of contracts, the FDIC needs to remain vigilant in implementing controls associated with those processes to in order to mitigate the risk that procedures -- including those established for expedited or emergency situations -- are unnecessarily bypassed for the sake of expediency.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of the evaluation was to identify and evaluate controls in place to address the risks presented by a significant increase in resolution and receivership-related contracting activity. For the purpose of this evaluation, we focused on post-contract award risks because at the time we were planning our work, DRR was relying on contracts that were already in place. Accordingly, we focused on potential risks associated with fitness and integrity requirements, the background investigation process, and the FDIC's oversight management function. Initially, the scope of our review was to include Legal Division contracting activity, but we decided to focus the review on DRR contracting activity due to the extent and materiality of DRR-related contracting. To address our objective we:

- Reviewed prior OIG reports and GAO reports to identify areas of potential risk associated with contracting activity. Although we recognize that the organizations and circumstances differ, we also reviewed RTC OIG semiannual reports to identify contracting issues that existed during the last period of significant resolution activity.

- Reviewed the GAO report entitled, *Framework for Assessing the Acquisition Function at Federal Agencies*, in order to help us assess the FDIC's contract administration efforts. GAO developed this framework to enable high-level, qualitative assessments of the strengths and weaknesses of the acquisitions function at federal agencies.

- Reviewed relevant FDIC policies and procedures, including:

    - Circular 3700.16, *FDIC APM*, dated August 22, 2008.
    - Circular 1610.2, *Security Policy and Procedures for FDIC Contractors and Subcontractors*, dated August 1, 2003.

- Interviewed DRR and DOA officials in both Washington, DC, and Dallas, Texas, involved in awarding contracts and overseeing DRR contractors to understand their respective roles, workload, and actions being taken or planned by the FDIC to mitigate risks associated with the increase in contracting activity. We also interviewed officials in OERM and the Legal Division.

- Reviewed DRR Internal Review No. 2008-004 entitled, *Review of DRR Contracting Process*, dated October 23, 2008 and the response to that report, *DRR Contracting Process Corrective Action Plan*, dated November 26, 2008. We also reviewed DRR Internal Review No. 2009-001, *Review of DRR Contracting Process* dated June 1, 2009.

- Reviewed requirements of the FDIC Conflicts Committee, chaired by a Legal Division, official and specific conflicts that were identified during 2008.

- Judgmentally selected five DRR contracts from a Purchase Order Summary Report (as summarized in Table 6) in order to evaluate the implementation of controls related to fitness and integrity standards, background investigations, and oversight management. Specifically, in addition to discussions with OMs and TMs about their workload and approach for overseeing contracts, we determined whether:

- Background investigations had been initiated when required.
- OMs and TMs assigned to oversee these contracts had completed required training.
- The CEFile included key documents such as the OM/TM appointment letters and the CMP.

Table 6: Contracts Sampled by OIG

Sample No.	RBOA
1	Business Information Services
2	Financial Advisory Services
3	Receivership Assistance Contract (RAC I)
4	Receivership Assistance Contract (RAC II)
5	Temporary Employment Services

Source: Purchase Order Summary Report for 2008.

We performed our evaluation between December 2008 and June 2009 in accordance with the *Quality Standards for Inspections.*

GLOBAL E-MAIL –
GUIDELINES FOR INTERACTING WITH FDIC CONTRACTORS

From: Global Messenger
Sent: Wednesday, April 22, 2009 11:21 AM
To: FDIC EMPLOYEES CORPORATE
Cc: CONTRACTORS CORPORATE
Subject: Guidelines for Interacting with FDIC Contractors

The FDIC continues to strategically utilize the expertise and resources of private sector entities in conducting our mission responsibilities. In order to use these resources most effectively, it is essential that the FDIC and contractor employees interact appropriately. This message is intended to remind you of certain ethical and contractual obligations that FDIC employees must keep in mind in dealing with contractors and contractor representatives. FDIC employees must observe appropriate boundaries in dealing with contractor employees, particularly when they are former co-workers and friends who are now providing contract services to the Corporation. As you know, there are strict ethical limitations on employees receiving anything of value, or otherwise benefiting or appearing to benefit, from a contractor or contractor ' s representative. Employees are required to maintain impartiality in the performance of their jobs and may not use or allow the use of public office for their own private gain or the gain of another. Additionally, the standards of conduct prohibit showing preferential treatment to a particular contractor; allowing contractors access to government equipment or property except as provided by the contract; accepting proposals outside of normal contracting channels; or disclosing nonpublic information. As always, any questions concerning these ethical limitations should be referred to the Ethics Unit of the Legal Division.

In addition to the strict ethical rules, it is very important that the distinction between FDIC employees and contractor employees continues to be observed. Among other things, this means that contractors and their employees should never be given the responsibility for setting policy or making decisions on behalf of the agency. Contractors provide a wide range of services for the FDIC that include but are not limited to safeguarding our facilities and employees, managing and disposing of assets from failed financial institutions, and developing and maintaining our information technology applications. While they provide valuable insights and technical information on a wide variety of issues and projects at the FDIC, final decisions regarding those issues and projects must always reside with the FDIC. Individuals who serve as Oversight Managers on FDIC contracts are delegated limited authority to carry out certain tasks and directly interact with contractors in order to effectively carry out contract activities. Even when acting in the capacity of an Oversight Manager, there are stringent limitations on the actions that may be taken. For example, a contract may require technical support and input on important issues facing the FDIC, but it would be inappropriate for an Oversight Manager to allow a contractor to be the final decision maker. In order to ensure actions with contractors are appropriate, it is important to keep the Contracting Officer well informed about activities that occur on the contract. If you have any questions about appropriate actions for FDIC employees or contractor representatives while performing FDIC contracts, please contact the contracting officer for the contract or Assistant Director for Policy in the Acquisition Services Branch, DOA.