

GAO

Report to the Ranking Member,  
Committee on the Judiciary,  
U.S. Senate

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June 2011

# PENSION BENEFIT GUARANTY CORPORATION

## More Strategic Approach to Contracting Still Needed



G A O

Accountability \* Integrity \* Reliability

Highlights of [GAO-11-588](#), a report to the Ranking Member, Committee on the Judiciary, U.S. Senate

## Why GAO Did This Study

The Pension Benefit Guaranty Corporation (PBGC) insures the pension benefits of more than 44 million U.S. workers and retirees in more than 27,500 private defined benefit plans. In response to growing workloads over the last 20 years, PBGC has come to rely heavily on contractors to perform its work. With the influx of plan terminations during the recent economic downturn, GAO was asked to examine: (1) how PBGC decides between contracting for services and performing services in house; (2) the steps PBGC has taken to strengthen its internal controls over the contracting process; and (3) PBGC's implementation of a performance-based approach in its recent contracts.

To conduct this study, GAO reviewed federal and PBGC contracting policies; interviewed PBGC officials and selected contractors; examined a small judgmental sample of eight recent contracts selected based on type, amount, and location; and assessed PBGC's actions in response to past GAO and PBGC Inspector General (IG) recommendations.

## What GAO Recommends

GAO recommends that PBGC improve its strategic approach to contracting by developing an inventory of contract resources, assessing risk in areas heavily reliant on contractors, documenting its consideration of performance-based contracting, and linking contractor performance to agency goals. PBGC agrees with our recommendations.

View [GAO-11-588](#) or key components. For more information, contact Barbara Bovbjerg at (202) 512-7215 or [BovbjergB@gao.gov](mailto:BovbjergB@gao.gov) or William Woods at (202) 512-4841 or [WoodsW@gao.gov](mailto:WoodsW@gao.gov)

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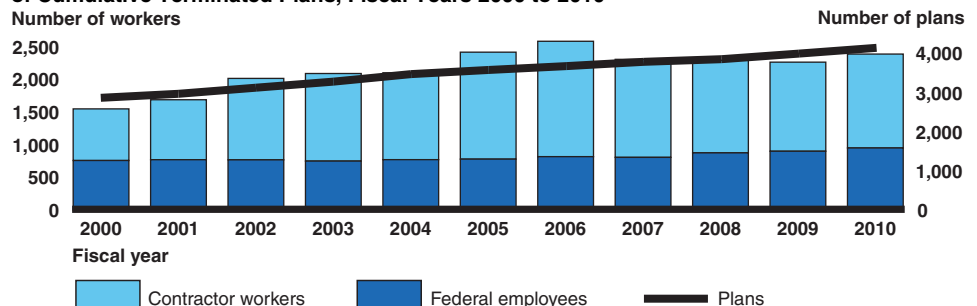
### What GAO Found

PBGC's contracting decisions are based primarily on historical practice within each of its departments rather than strategic assessment. Nearly three-fourths of PBGC's budget is allocated to contractors, yet PBGC does not have a strategic agency-level plan for contracting. PBGC often justifies extensive use of contractors based on the need to manage fluctuating workloads; however, historical data appear to indicate that PBGC has more contractor workers than needed to respond to workload fluctuations. Some of its contractor use is justified based on needed expertise or lower cost. However, because PBGC does not routinely conduct cost-benefit or risk analyses as part of its contract decision-making process, the efficiency and effectiveness of its contracting is unknown, and PBGC's long-term extensive reliance on contractors may be placing the agency at risk of eroding management control in core functions.

At the same time, PBGC has adopted new policies and procedures to improve contractor oversight and ensure that federal contracting requirements are met, addressing past GAO and PBGC IG recommendations in this area. For example, PBGC has issued new standard operating procedures and is conducting training for staff involved in the agency's contracting activities. In addition, PBGC has increased the use of competitive and fixed price contracts, which provide more integrity to the contracting process by limiting government cost and performance risk.

In addition, PBGC has implemented new guidance and training to improve staff knowledge and understanding of performance-based contracting and has expanded its use. Between fiscal years 2008 and 2010, PBGC increased the use of performance-based contracts from 2 to 12 percent. PBGC also increased its incorporation of performance metrics across various types of contracts to ensure performance is measured in terms of outcomes. Thus, past GAO and IG recommendations in this area have been partially addressed. However, unlike work performed in house, PBGC does not require performance metrics for its contract work to be linked to agency mission and goals, which is important to ensuring such work is well integrated into its strategic plan.

**Levels of Federal Employees and Contractor Workers Compared with Fluctuations in Number of Cumulative Terminated Plans, Fiscal Years 2000 to 2010**



Source: GAO analysis of PBGC annual workforce data and cumulative data for terminated and trusted plans.

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## Abbreviations

BAPD	Benefits Administration and Payment Department
BPIT	Budget and Planning Integration Team
CID	Corporate Investment Department
COTR	Contracting Officer Technical Representative
DISC	Department of Insurance Supervision and Compliance
ERISA	Employee Retirement Income Security Act
FAIR Act	Federal Activities Inventory Reform Act of 1998
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
FTE	full-time equivalent
IG	Office of Inspector General
IT	information technology
OIT	Office of Information Technology
OMB	Office of Management and Budget
OPM	Office of Personnel Management
PBGC	Pension Benefit Guaranty Corporation
PBSA	performance-based service acquisition
SOP	standard operating procedures
TEP	Technical Evaluation Panel

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United States Government Accountability Office  
Washington, DC 20548

June 29, 2011

The Honorable Charles E. Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate

Dear Senator Grassley:

As a government corporation established under the Employee Retirement Income Security Act of 1974 (ERISA),<sup>1</sup> the Pension Benefit Guaranty Corporation (PBGC) insures the pension benefits of more than 44 million American workers and retirees participating in more than 27,500 private-sector defined benefit plans.<sup>2</sup> With the growth in the number of underfunded plans that PBGC has terminated and trustee over the past 2 decades, PBGC has come to rely heavily on contractors to conduct its work—from issuing letters to participants of terminated plans, to calculating benefit payments, to managing the investment of its assets. In response to concerns about PBGC's preparedness to manage a sudden increase in workload following the recent economic downturn and subsequent influx of pension plan terminations, you asked us to examine PBGC's contracting process. Specifically, we examined (1) how PBGC decides between contracting for services and performing the services in house, (2) the steps PBGC has taken to strengthen its internal controls over the contracting process, and (3) the extent to which PBGC has implemented a performance-based approach in its recent contracts.

To address these topics, we reviewed PBGC's policies, directives, procedures, and orders related to workforce management, procurement, and contract monitoring (see app. I); interviewed officials in PBGC's Procurement Department, Office of Inspector General (IG), Budget Department, and four main program departments; and reviewed Office of Management and Budget (OMB) guidance and federal regulations,

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<sup>1</sup>Pub. L. No. 93-406, § 4002(a), 88 Stat. 829, 1004 (codified as amended at 29 U.S.C. § 1302(a)).

<sup>2</sup>A defined benefit plan promises a specified monthly benefit at retirement, generally based on a plan formula that considers such factors as salary and service. In contrast, a defined contribution plan does not promise a specific amount of benefits at retirement, but is based on the investment returns on employee and/or employer contributions to an employee's individual account.

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including relevant portions of the governmentwide Federal Acquisition Regulation (FAR).<sup>3</sup> We reviewed GAO and IG reports on these topics and obtained information on the steps taken by PBGC in response to past recommendations (see app. II). To identify recent trends in contracting, we analyzed data from the Federal Procurement Data System-Next Generation (FPDS-NG) about PBGC's use of various contract types and methods, including performance-based contracting.<sup>4</sup> We also obtained examples of recent changes to PBGC's contracting processes by reviewing a small judgmental sample of eight recent contracts: two contracts for ongoing activities within each of the four main program departments that were selected on the basis of award amount, award date, type of services, location where services are provided, and continuity of contractors between award cycles (see app. III).<sup>5</sup>

We conducted this performance audit between December 2009 and June 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

PBGC was created as a self-financing, nonprofit, wholly owned government corporation under ERISA to protect the retirement income of

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<sup>3</sup>48 C.F.R. ch. 1 (2011). The FAR is the primary regulation for all federal executive agencies in their acquisition of supplies and services with appropriated funds. Although PBGC is not required to follow the FAR in all acquisitions, it generally does so on a voluntary basis. For a complete list of contract-related policies and regulations that we reviewed, see appendix I.

<sup>4</sup>FPDS is a database for the government-acquisition community that provides summary-level data on federal contracts and is used for policy and trend analysis. The FPDS-NG was intended to improve the prior FPDS system in several ways, including providing more timely and accurate data; enabling users to generate their own reports; and providing easier user access to data. Although we have identified issues with the system, we believe the data used in this report are sufficiently reliable for our purposes. For an example of our work on FPDS, see GAO, *Improvements Needed to the Federal Procurement Data System-Next Generation*, [GAO-05-960R](#) (Washington, D.C.: Sept. 27, 2005); and GAO, *Federal Contracting: Observations on the Government's Contracting Data Systems*, [GAO-09-1032T](#) (Washington, D.C.: Sept. 29, 2009).

<sup>5</sup>Performance-based acquisition is a technique for structuring an acquisition around the results to be achieved as opposed to the process by which the work is to be performed. 48 C.F.R. §§ 2.101 and 37.101 (2011).

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workers with private-sector defined benefit plans<sup>6</sup>—that is, plans that promise a set benefit amount upon retirement to vested employees typically based on a formula.<sup>7</sup> PBGC administers two separate insurance programs for these pension plans: a single-employer program and a multiemployer program.<sup>8</sup> The single-employer program is the larger of the two, and as of fiscal year 2010 covered about 34 million participants in just over 26,000 plans. The multiemployer program covered over 10 million participants in about 1,500 collectively bargained plans that are maintained by two or more unrelated employers. If the sponsor of a single-employer plan meets the statutory requirements for financial distress and the plan does not have sufficient assets to pay all promised (vested accrued) benefits that have become due, the plan will be terminated and PBGC will likely become the plan's trustee, assuming responsibility for paying benefits to participants, up to certain limits specified under statute in ERISA and related regulations.<sup>9</sup> If the sponsors of a multiemployer pension plan are unable to pay all promised benefits that have become due, PBGC will provide financial assistance to the plan, usually a loan, so

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<sup>6</sup>29 U.S.C. § 1302.

<sup>7</sup>Vested employees are those employees who have earned a nonforfeitable right to benefits funded by employer pension contributions. 29 U.S.C. § 1002(25).

<sup>8</sup>29 U.S.C. §§ 1322 and 1322a. A single-employer plan is established and maintained by one employer. Single-employer plans can be established unilaterally by the sponsor or through a collective bargaining agreement with a labor union. 29 U.S.C. § 1002(41). A multiemployer plan is a collectively bargained arrangement between a labor union and a group of employers in a particular trade or industry. Management and labor representatives must jointly govern multiemployer plans. 29 U.S.C. § 1002(37).

<sup>9</sup>29 U.S.C. § 1342(a). The guaranteed benefit limits for participants in single-employer plans cannot exceed the statutory maximum, adjusted annually, at the time the plan terminates. For 2011, the maximum is \$54,000 per year for a person retiring at age 65 with no survivor benefit (that is, a single-life annuity). The maximum is lower for those retiring under age 65 or with a survivor benefit. 29 U.S.C. § 1322(b)(3); 29 C.F.R. § 4022.23 (2011). Other guaranteed benefit limits for participants in single-employer plans include the phase-in limit and accrued-at-normal limit. Under the phase-in limit, for any benefit increase implemented through a plan amendment that has been in effect for less than 5 years, only a pro-rata portion can be guaranteed. 29 U.S.C. § 1322(b)(1) and (7); 29 C.F.R. § 4022.25 (2011). Under the accrued-at-normal limit, the monthly guaranteed benefit cannot be greater than the monthly benefit provided as a straight-life annuity (that is, a periodic payment for the life of the retiree, with no additional payments to survivors) available at the plan's normal retirement age. 29 C.F.R. § 4022.21 (2011).



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that retirees can receive the guaranteed portion of their benefits, but PBGC does not assume trusteeship of the plan.<sup>10</sup>

PBGC's Director, who is appointed by the President and subject to Senate confirmation, is responsible for managing the agency's daily operations.<sup>11</sup> A three-member Board of Directors, consisting of the Secretaries of the Departments of Commerce, Labor, and the Treasury, is charged with providing policy direction and oversight of PBGC's finances and operations.<sup>12</sup> PBGC is self financed through insurance premiums set by Congress and paid by companies that sponsor defined benefit plans, the assets of underfunded single-employer plans terminated and trusted by PBGC, recoveries from companies formerly responsible for those plans, and the returns earned on the investment of these funds.<sup>13</sup> Thus, PBGC's primary responsibilities are to collect premiums from the sponsors of defined benefit plans, monitor the financial status of the plans it insures, assume administration of underfunded single-employer plans that terminate, calculate benefit amounts and make payments to participants in those plans when due, and manage the investment of plan assets under its control.

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## Previous GAO Reports on PBGC Contracting

In our 2001 high-risk update, we included PBGC in a list of examples of agencies that were facing human capital challenges, stating: "Because the agency did not adequately link its contracting decisions to long-term strategic planning, it may not have the cost-effective mix of contractor and federal employees needed to meet future workload challenges. Further, PBGC employees who monitor contractors lack adequate guidance and policies essential to monitoring contractor performance."<sup>14</sup> Subsequently, we designated PBGC's single-employer program as a "high-risk" program

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<sup>10</sup>29 U.S.C. § 1431. The guaranteed benefit limits for participants in multiemployer plans are lower than for those in single-employer plans. The Multiemployer Pension Plan Amendments Act of 1980 established a benefit guarantee resulting in a limit of \$5,850 per year for participants with 30 years of service in multiemployer plans. Pub. L. No. 96-364, § 102, 94 Stat. 1210-15. The Consolidated Appropriations Act of 2001 effectively raised the guaranteed limit to \$12,870. Pub. L. No. 106-554, app. F, § 951, 114 Stat. 2763, 2763A-586 (2000) (codified at 29 U.S.C. § 1322a(c)).

<sup>11</sup>29 U.S.C. § 1302(a).

<sup>12</sup>29 U.S.C. § 1302(d).

<sup>13</sup>29 U.S.C. § 1305.

<sup>14</sup>GAO, *High-Risk Series: An Update*, [GAO-01-263](#) (Washington, D.C.: January 2001), p. 79.

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in 2003 due to PBGC's net deficit, as well as the continuing likelihood of future terminations of large, underfunded pension plans,<sup>15</sup> and the program has remained on the list with each subsequent update.<sup>16</sup> In 2009, we also designated the multiemployer program as high risk.<sup>17</sup> Between fiscal years 2008 and 2010, the single-employer program's deficit grew from \$10.7 billion to nearly \$22 billion, and the multiemployer program's deficit grew from \$473 million to just over \$1.4 billion.<sup>18</sup> We noted in our February 2011 high-risk report that PBGC's current strategic planning does not adequately incorporate goals in several key management areas, including goals to determine the optimal mix of contract and federal workers.<sup>19</sup> We reported that PBGC could take steps—such as including procurement decision making in its corporate-level strategic planning—to strengthen strategic management of its contractor workforce to better manage the challenges of its unstable financial condition and increasing workload.

We have also issued a number of reports on ways to improve contracting practices by federal agencies governmentwide, and by PBGC in particular. For example, in 2005, we published *Framework for Assessing the Acquisition Function at Federal Agencies* in response to federal agencies' increasing reliance on contractors to perform their missions and the systemic weaknesses identified in key areas of contracting by us, IGs, and other accountability organizations<sup>20</sup> (see app. I). With respect to PBGC in particular, in September 2000, we reported on a variety of challenges facing its contracting activities, including that the agency did not adequately link decisions to contract for services to longer-term strategic

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<sup>15</sup>GAO, *High-Risk Series: An Update*, [GAO-03-119](#) (Washington, D.C.: January 2003).

<sup>16</sup>Although we again designated PBGC's single-employer program as a "high-risk" program in 2003, we first designated PBGC as a high-risk area in 1990, citing taxpayers' exposure to potential losses from the termination of large, underfunded plans. In 1995, we removed PBGC from our list of high-risk areas due to congressional and agency actions that we believed would reduce PBGC's exposure to losses.

<sup>17</sup>GAO, *High-Risk Series: An Update*, [GAO-09-271](#) (Washington, D.C.: January 2009).

<sup>18</sup>PBGC estimated that its exposure from underfunded single-employer plans that were at risk of "reasonably possible" termination in the future totaled approximately \$170 billion in fiscal year 2010, up from \$47 billion in fiscal year 2008. PBGC estimated that its exposure from multiemployer plans increased from \$30 million in fiscal year 2008 to \$20 billion in fiscal year 2010, due primarily to the addition of two large plans.

<sup>19</sup>GAO, *High-Risk Series: An Update*, [GAO-11-278](#) (Washington, D.C.: February 2011).

<sup>20</sup>GAO, *Framework for Assessing the Acquisition Function at Federal Agencies*, [GAO-05-218G](#) (Washington D.C.: September 2005).

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planning considerations.<sup>21</sup> We recommended that PBGC develop a strategic approach to contracting by conducting a review of its future human capital needs and to link contracting decisions to PBGC's long-term strategic plan. More recently, in 2008, we reported that while PBGC had taken steps to improve its acquisition infrastructure, most of the agency's contracts still lacked performance incentives and methods to hold contractors accountable.<sup>22</sup> We recommended that PBGC revise its strategic plan to reflect the importance of contracting.

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## PBGC's Organizational Structure

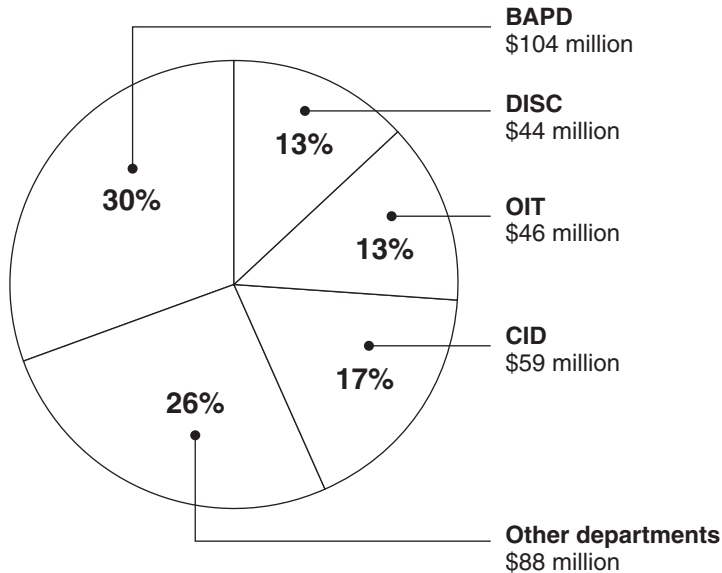
PBGC is organized into different program and administrative departments that are responsible for different aspects of its pension plan insurance programs, including the termination of defined benefit plans and administration of plan benefits, and other internal functions such as legal services, financial operations, and procurement. Four program departments account for most contract expenditures at PBGC—the Benefits Administration and Payment Department (BAPD), the Corporate Investment Department (CID), the Department of Insurance Supervision and Compliance (DISC), and the Office of Information Technology (OIT) (see fig. 1).

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<sup>21</sup>GAO, *Pension Benefit Guaranty Corporation: Contracting Management Needs Improvement*, [GAO/HEHS-00-130](#) (Washington, D.C.: Sept. 18, 2000).

<sup>22</sup>GAO, *Pension Benefit Guaranty Corporation: Some Steps Have Been Taken to Improve Contracting, but a More Strategic Approach is Needed*, [GAO-08-871](#) (Washington D.C.: Aug. 18, 2008).

**Figure 1: Percentage and Amount of PBGC's Contract Spending By Four Main Program Departments, Fiscal Year 2010**



Source: GAO analysis of PBGC data.

Other departments provide support services for the program departments. For example, PBGC's Procurement Department manages all contract award activities for the agency. Only contracting officers in the Procurement Department may sign and award contracts on behalf of PBGC. The program departments develop requests for the purchase of goods and services needed to accomplish their objectives, which they submit to the Procurement Department to initiate the contracting process. In addition, PBGC's Budget and Organization Performance Department (Budget Department) manages the formulation and execution of the PBGC budget and establishes and implements policies, regulations, and guidelines related to organizational performance. According to the Budget Director, when PBGC departments submit their annual budget requests, the Budget Department identifies any changes in contract service requirements and workforce requests to inform its budget recommendation to PBGC executive management.

## PBGC's Workload

PBGC's workload has increased in the last 20 years as the cumulative number of plans terminated and trusteed, number of participants eligible for or receiving benefits in those plans, and amount and complexity of

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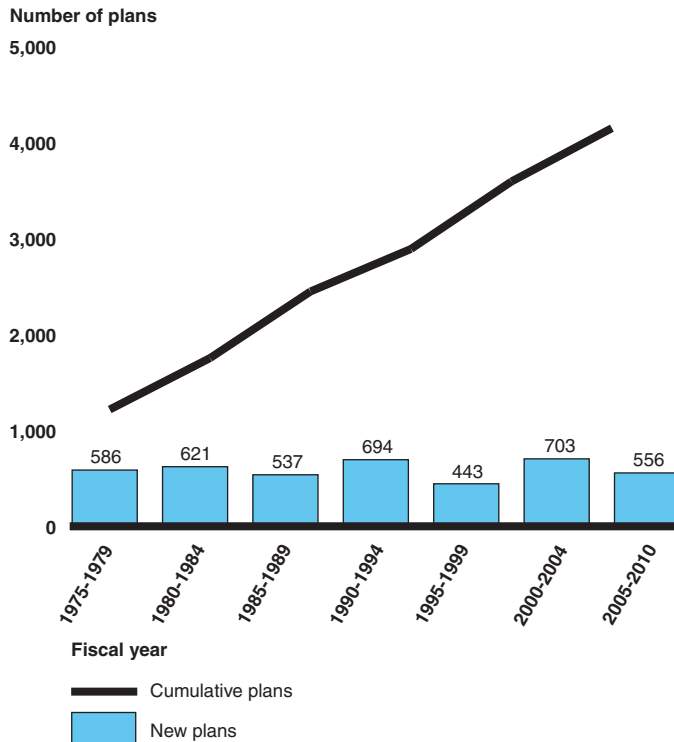
plan assets taken over by PBGC have grown. As of fiscal year 2010, PBGC had terminated and trusteeed a total of 4,150 underfunded pension plans<sup>23</sup> (see fig. 2). Following the economic downturn, during the combined 2009 and 2010 fiscal years, a total of 301 underfunded single-employer plans were trusteeed by PBGC. By comparison, during the combined 2007 and 2008 fiscal years, only 189 underfunded single-employer plans were trusteeed. In addition, during fiscal years 2009 and 2010, PBGC provided assistance to 93 multiemployer pension plans, up from 78 plans during the prior 2 years.<sup>24</sup>

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<sup>23</sup>On average, it takes PBGC approximately 3 years to value the assets and determine the benefits for all the participants in an underfunded pension plan that is terminated and placed under its trusteeship.

<sup>24</sup>In contrast with underfunded single-employer plans that are terminated and trusteeed, PBGC does not trustee multiemployer plans. The event triggering PBGC's involvement is the same for both types of plans: plan insolvency—the inability to pay benefits when due. 29 U.S.C. § 1431(a). But in the case of multiemployer plans, insolvency usually occurs after all contributing employers have withdrawn from the plan, leaving the plan without a source of income. In such cases, PBGC will provide financial assistance, but will not assume trusteeship of the plan.

**Figure 2: New and Total Cumulative Number of Plans Terminated and Trusteed by PBGC (1975-2010)**



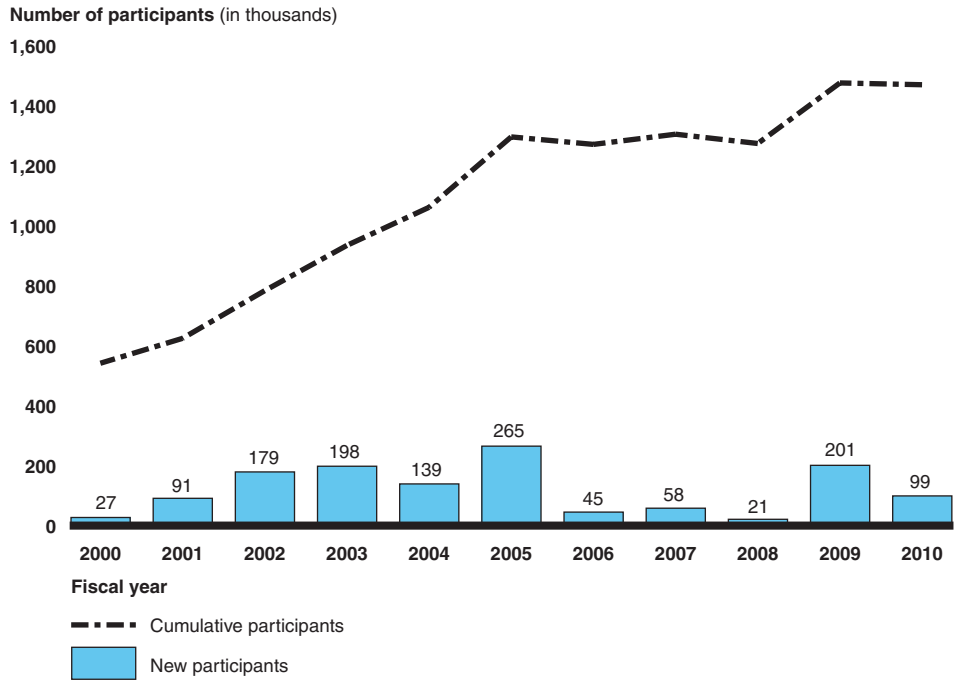
Source: GAO analysis of PBGC data.

Note: Cumulative plans include 10 multiemployer plans trusteed by PBGC before 1980. PBGC has not trusteed any multiemployer plans since 1980. The Multiemployer Pension Plan Amendments Act of 1980 changed PBGC's responsibility from trusteeship of troubled multiemployer plans to providing financial assistance (loans) to insolvent plans. Pub. L. No. 96-364, 94 Stat. 1208.

As a result of the increase in terminated plans, the number of participants in plans terminated and trusteed by PBGC has also grown over the last decade (see fig. 3). By fiscal year 2010, PBGC paid or owed benefits to nearly 1.5 million total participants in 4,150 trusteed plans.<sup>25</sup> During fiscal years 2009 and 2010 alone, PBGC became responsible for the retirement benefits of an additional 300,000 pension plan participants when their underfunded plans were terminated and trusteed.

<sup>25</sup>During fiscal year 2010, PBGC paid a total of nearly \$5.6 billion in benefits and financial assistance to participants in single-employer and multiemployer plans.

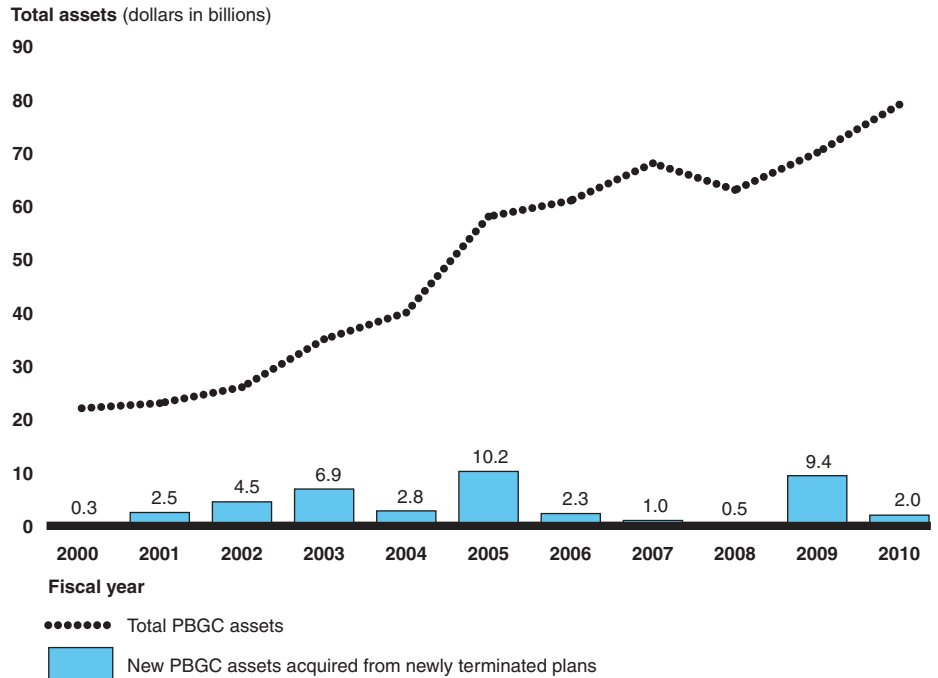
**Figure 3: New and Total Cumulative Participants in Plans Terminated and Trusted by PBGC, Fiscal Years 2000–2010**



Source: GAO analysis of PBGC data.

The increase in terminated plans has also contributed to the amount of assets PBGC manages. Total assets managed by PBGC have grown from less than \$22 billion in fiscal year 2000 to nearly \$80 billion in fiscal year 2010 (see fig. 4). In recent years, PBGC’s investment portfolio has become more challenging as it now includes complex financial instruments and the oversight of additional managers.

**Figure 4: New and Total Cumulative Assets under PBGC Management, Fiscal Years 2000-2010**



Source: GAO analysis of PBGC data.

Note: Dollars not adjusted for inflation.

## Decisions to Contract Based More on Past Practice than Strategic Assessment

PBGC has come to rely heavily on contracting to conduct much of the core work of the agency, yet PBGC does not make decisions to use contractors in accordance with an agency-wide strategic plan or focus. Rather, individual departments develop their own rationales for contracting, largely based on historical practice rather than on an assessment that using contractors would be more advantageous than using federal employees to conduct its work. PBGC's long-term, extensive reliance on contractors raises concern that the agency may be eroding its in house expertise and management control over core functional areas.



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## Contracting Decisions Not Strategically Managed at the Agency Level

In 2005, we issued a framework for assessing federal agencies' contracting activities that identified four cornerstones to promote an efficient, effective, and accountable acquisition function.<sup>26</sup> One of these cornerstones was "organizational alignment and leadership," with "organizational alignment" defined as appropriately placing the acquisition function within the agency, having clearly defined roles and responsibilities for stakeholders, aligning contracting with the agency's mission and needs, and organizing the contracting function. Our 2008 report on PBGC's contracting activities found that PBGC was falling short in this area. The agency had not involved its Procurement Department in helping the agency make strategic decisions about contracting early in the process or in developing long-term strategic approaches, thus leaving the agency less able to effectively identify, analyze, prioritize, and coordinate agency-wide acquisition needs. We recommended that PBGC take several steps to better incorporate contracting into its strategic planning. In our work for this report, we found that while PBGC has taken certain steps to improve its acquisition infrastructure, such as adding staff to the Procurement Department to help manage and monitor contract awards and developing staff training, the agency has not fully integrated its contracting function at the corporate level. Instead, PBGC has continued to leave contracting decisions to the agency's individual program departments.

In our 2008 report, we recommended that one way PBGC could incorporate contracting in its strategic planning would be to include the Procurement Department in agency-wide strategic planning and ensure that the Procurement Director sits on PBGC's three strategic teams.<sup>27</sup> The teams, now called "governing bodies," are known as the Executive Management Committee, the Budget and Planning Integration Team (BPIT), and the Information Technology Investment Review Board. These bodies, respectively, review corporate-wide programs, projects, and internal policies; approve corporate-wide resource allocations and align resources to the agency's strategic objectives; and review information

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<sup>26</sup> GAO, *Framework for Assessing the Acquisition Function at Federal Agencies*, [GAO-05-218G](#) (Washington, D.C.: September 2005). See appendix I for details on the four cornerstones.

<sup>27</sup> GAO, *Pension Benefit Guaranty Corporation: Some Steps Have Been Taken to Improve Contracting, but a More Strategic Approach is Needed*, [GAO-08-871](#) (Washington D.C.: Aug. 18, 2008). At the time of our 2008 report, these bodies were called, respectively, the Operations Integration Board, the Budget and Planning Integration Team, and the Capital Planning for Information Technology Team.

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technology investments to assure alignment with strategic objectives. In response to our 2008 recommendation, PBGC maintained that the Procurement Director need not be a member of the three bodies to be effective, as its Chief Management Officer (to whom the Procurement Director reports) represents contracting on these teams. Despite including the Chief Management Officer in these corporate-wide meetings, however, corporate-level strategic planning regarding contracting remains limited. Without some way of better integrating contract decision making into the corporate-level strategic planning process and aligning contract activities with the agency's mission and goals along the lines outlined in the four cornerstones, the program departments remain responsible for contracting decisions without meaningful top-level management involvement to identify, analyze, prioritize, and coordinate agency-wide contracting needs.

In addition, the agency has provided guidance to its departments about how contracting decisions should be made, but not how to link such decisions to agency-wide strategic planning. An August 2009 policy memo from the Chief Management Officer to PBGC managers discussed whether to use contractors or government employees for services.<sup>28</sup> This memo provided a list of factors for departments to consider when deciding whether or not to use contractors, but only one of these factors called on departments to evaluate the appropriateness of using contractors. Specifically, departments are required to ensure that the contractors would not be performing duties that could be considered "inherently governmental functions,"<sup>29</sup> reflecting a requirement contained in the FAR.<sup>30</sup> All other factors addressed the limitations on using federal employees, such as lack of expertise and full-time equivalents (FTE). Moreover, the memo did not include any requirements to ensure decisions to use contractors are linked to agency-wide strategic planning.

PBGC also has an agency-wide strategic plan and a human capital strategic plan, but neither of these plans discuss the division of labor between federal employees and contractors, or how to determine the optimal mix of each type of worker. For example, PBGC's *Strategic Plan, FY 2011-*

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<sup>28</sup> PBGC, *Guidelines for Determining Whether to Use Contractors or Government Employees and Contracting with PBGC Retirees*, Directive GA 15-4, (Washington D.C., Aug. 11, 2009).

<sup>29</sup> 48 C.F.R. § 2.101 (2011). See appendix I for information on inherently governmental functions.

<sup>30</sup> 48 C.F.R. § 7.503 (2011).

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2016, describes human capital management under its goal of effective and efficient stewardship of agency resources, but does not reflect the important role contracting plays in achieving the agency's mission. Similarly, PBGC's *Human Capital Strategic Plan, FY 2010-2014*, acknowledges the importance of contracting and the challenges of balancing the workforce between federal and contract workers, but it does not describe how it plans to achieve that balance; rather, it focuses primarily on recruiting, knowledge retention, and succession planning for PBGC's federal employees. The plan stated that a strategic focus on human capital requires, among other things, a balanced workforce, succession plans for potential workforce gaps, and an evaluation of maintaining a significant number of contractor workers versus converting those positions to permanent staff. The plan noted that "the gaps in tenure and the heavy use of contracting staff present unique human capital planning challenges in sustaining critical organizational knowledge."<sup>31</sup> However, the plan did not outline a strategic approach to retaining organizational knowledge, address an optimal mix of federal versus contract workers, or provide specifics about when and how the evaluation would be accomplished. As of May 2011, the proposed evaluation of the potential for converting positions from contractors to federal employees is under review by the Executive Management Committee. The newly hired Chief Management Officer indicated that she plans to study various options regarding the appropriate mix of contractor and federal staff necessary to accomplish the agency mission, but this study was not yet under way.

Findings from a recent IG report highlight the need for further action to incorporate contracting decision making into the agency's strategic planning process. In November 2010, PBGC's IG found the agency's strategic planning for workload surges to be inadequate, as it did not reflect, among other things, the importance of contractors, even though PBGC had concluded informally that it would handle such a surge mostly by expanding the contract workforce. The IG recommended that the agency develop a workforce strategy tailored to address gaps in numbers, deployment, and placement of the workers to be obtained through contracts.<sup>32</sup> The IG also recommended that the workforce strategy should reflect the importance of the contract workforce to PBGC and support

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<sup>31</sup>PBGC, *Human Capital Strategic Plan, FY 2010-2014*, (Washington D.C., 2010), p. 14.

<sup>32</sup>PBGC IG Report, *Evaluation of PBGC's Strategic Preparations for a Potential Workload Influx*, Eval 2011-1/ PA-09-65 (Washington D.C., Nov. 16, 2010).

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linkage of staffing and contracting decisions at the corporate level with an expanded coordinating role for the Procurement Department. In response, PBGC management noted the risk of a large influx of pension plans had decreased from early 2009 levels, and, therefore, as an alternative, proposed modifying an existing work group to plan for workload surges that involve more than just large cases.<sup>33</sup> However, the IG has continued to express concerns to PBGC management that it is unclear how the agency would implement the proposed alternative, and noted that as of February 2011, the agency still had not committed to specific preplanned solutions for workload-surge events.

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### Costs and Benefits of Contracting Not Routinely Weighed by Departments

The four PBGC programming departments we reviewed decide individually, subject to annual budget approval,<sup>34</sup> whether to accomplish their work through contractors or federal employees, and their rationales for deciding to use contractors vary (see table 1). In accordance with PBGC's policy memo about how to decide whether to use contractors or government employees for services,<sup>35</sup> managers are to consider various prescribed factors and submit their documented decisions annually to the Procurement Department. One decision factor included in this memo is for departments to consider if the service can be provided more cost effectively by federal employees than by contractors, referring to OMB guidance for estimating the costs.<sup>36</sup> However, department officials told us they do not routinely conduct an evaluation of the costs and benefits of performing work through contractors when making contracting decisions. Officials from all four of the programming departments we reviewed cited the agency's historical practice of using contractors to accomplish certain types of work among their primary reasons for using contractors. Officials

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<sup>33</sup>Specifically, PBGC proposed the development of a "Large Influx Working Group," which would develop a planning document as a basis for alternative actions to address the IG's recommendations, including creating a capacity model to project the impact of an influx on existing contracts and reviewing existing contractors and program areas to gauge workforce capacity.

<sup>34</sup>During PBGC's annual budget process, executive management reviews department funding requests for contracting and FTE levels.

<sup>35</sup>PBGC, Directive GA 15-4.

<sup>36</sup>Specifically, the PBGC policy memo cites two OMB documents: OMB, *Performance of Commercial Activities*, OMB Circular No. A-76 Revised (Washington, D.C., Apr. 27, 2000); and OMB, *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs*, Circular No. A-94 Revised (Washington, D.C., Oct. 29, 1992).

often also cited the need to manage workload fluctuations more efficiently, as well as a lack of needed expertise among federal employees.

**Table 1: Rationales and Extent of Contracting in PBGC’s Four Main Program Departments, Fiscal Year 2010**

Department/responsibilities	Primary rationales for contracting work	Number of contractor workers	Number of contracts and amount of contract obligations
<b>BAPD</b>			
BAPD manages the termination process for defined benefit plans, provides participant services (including calculation and payment of benefits) for PBGC-trusted plans, provides actuarial support for PBGC, and carries out PBGC’s responsibilities under settlement agreements. When a plan is terminated, BAPD values plan assets and liabilities, and collects, evaluates, and performs participant and plan financial audits, making decisions on participant benefit entitlements and plan worth.	<ul style="list-style-type: none"> <li>• Workload fluctuation—need to manage varying numbers of newly trusted plans and participants</li> <li>• Historical practice</li> </ul>	834	107 contracts \$104 million
<b>CID</b>			
Established as a separate unit in 2009, CID provides investment management services for plans trusted by PBGC and for PBGC assets. Prior to 2009, these functions were performed within FOD, which established and continues to maintain PBGC’s financial and accounting systems and financial management policy, among other responsibilities.	<ul style="list-style-type: none"> <li>• Workload fluctuation—need to handle the agency’s investment portfolio</li> <li>• PBGC policy prohibiting federal employees from managing investments</li> <li>• Lack of staff expertise—staff needed to manage investment portfolios</li> <li>• Historical practice</li> </ul>	Not applicable <sup>a</sup>	19 contracts \$59 million
<b>DISC</b>			
DISC monitors the corporate events and transactions of defined benefit plan sponsors (employers) and provides financial and actuarial analyses for PBGC to mitigate risks to the insurance program and increase overall funding levels for plans. In coordination with the Office of Chief Counsel, DISC determines and pursues recoveries of unpaid employer contributions, makes recommendations to the Executive Director concerning the filing of liens, and makes recommendations to the Internal Revenue Service for granting waivers of minimum funding standards for insured plans.	<ul style="list-style-type: none"> <li>• Workload fluctuation—need to track the status of varying numbers of troubled pension plans potentially requiring termination and trusteeship by PBGC</li> <li>• Lack of staff expertise—staff needed to design and develop proprietary actuarial software</li> <li>• Historical practice</li> </ul>	Not applicable <sup>a</sup>	26 contracts \$44 million

Department/responsibilities	Primary rationales for contracting work	Number of contractor workers	Number of contracts and amount of contract obligations
<b>OIT</b>			
OIT provides information technology (IT) and electronic communications services and support to PBGC; plans for, directs, and coordinates the allocation of IT resources, support, and related activities; delivers IT business solutions driven by customer requirements; operates, maintains, and safeguards PBGC business and infrastructure systems; and oversees the acquisition of IT resources for PBGC.	<ul style="list-style-type: none"> <li>Lack of staff expertise—difficulty keeping skilled software engineers on staff</li> <li>Historical practice</li> </ul>	190 <sup>b</sup> (estimated)	200 contracts \$46 million

Source: GAO analysis of PBGC fiscal year 2010 data as of May 2011.

<sup>a</sup>PBGC officials noted that some program departments, such as CID and DISC, do not routinely track the number of contractor workers providing services for most of their contracts because the fees paid to the contractors are fixed—that is, not based on staffing hours or number of staff required to support deliverables. These departments only count contractor workers providing services on site. For fiscal year 2010, CID reported having 2 on-site contractor workers, and DISC reported having 18 on-site contractor workers.

<sup>b</sup>PBGC officials estimated that OIT had 360 contractor workers in fiscal year 2010, with 190 contractor workers accounted for within OIT and 170 distributed over four other PBGC departments.

## Using Contractors Based on Historical Practice

Officials in all four main program departments we interviewed included historical practice as one of the primary reasons they use contractors. According to agency officials, even though PBGC requires its departments to evaluate the costs and benefits of continuing to perform the work through contractors each time a contract expires, some types of work have been performed by contractors for 10 years or more with no assessment as to whether the use of contractors is the most economical and effective way of getting the work done. For example, BAPD has awarded contracts for its work administering plans through its field offices since 1978, shortly after the agency was established. When PBGC first began taking over large, underfunded pension plans, it awarded contracts to either companies that sponsored a plan or former employees of those companies to continue administering the plan, including determining benefits and processing payments for plan participants. This practice allowed PBGC to take advantage of these workers' familiarity with the pension plans being terminated and geographic proximity to the affected participants in those plans. In 1981, PBGC expanded the role of such contracts to cover pension plans of other sponsors and established a small

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number of field offices under contract.<sup>37</sup> Over time, the link to plan expertise and geographic proximity has essentially disappeared. Now, plans are assigned to a field office based on the size of a plan and the capacity of an individual office to take on a plan of that particular size, with prior expertise in a particular industry and geography only occasionally entering into the decision.

In response to recommendations from our 2000 report, PBGC commissioned the National Academy of Public Administration to study PBGC's future workforce needs, with the goal of using the study's results to better link staffing and contracting decisions to PBGC's long-term strategic planning process.<sup>38</sup> This study found that, prior to 2001, PBGC had conducted some cost-benefit analyses on the use of contractors that found it was more economical to obtain services through contractors than to hire federal employees for its field offices. However, PBGC officials interviewed for our current study could not identify any more recent analyses that compared the benefits and costs of contractors versus federal employees performing work in the field offices, or for any other contracts we examined.

## Using Contractors to Manage Workload Fluctuations

Although the need to manage workload fluctuation and plan complexity is often cited by PBGC officials as the key reason for needing to use contractors, we found that agency-wide, the number and percentage of contractor staff appears to exceed the amount needed to address such fluctuations. PBGC has used contractors to perform a substantial portion of its core tasks beyond the numbers of workers needed to address

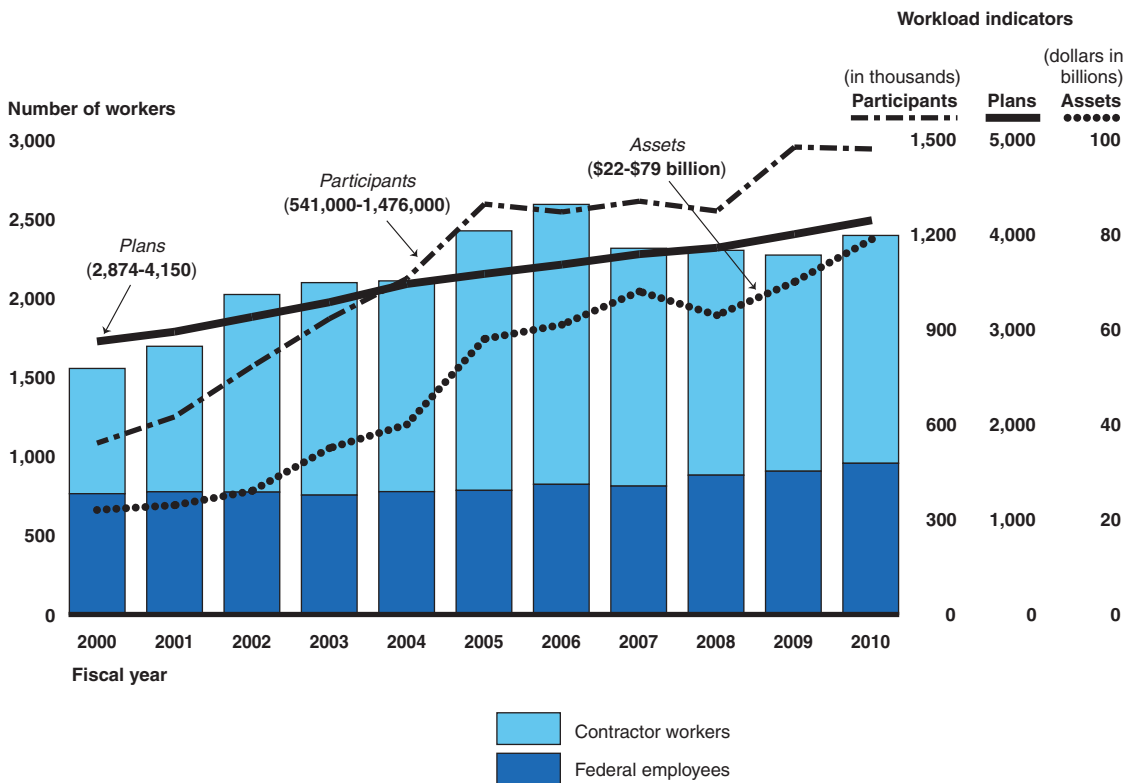
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<sup>37</sup>At one point, there were 23 field offices under contract to PBGC. An agency policy in place from the early 1980s to the mid-1990s, which is no longer in effect, required that whenever a pension plan with 1,000 or more participants was terminated and trustee, a new field office would open.

<sup>38</sup>National Academy of Public Administration, *Addressing the Pension Benefit Guaranty Corporation's Future Workforce Needs* (Washington D.C., 2001). PBGC requested assistance from the National Academy of Public Administration to address our recommendation that it conduct a comprehensive review of its future human capital needs, and to use the results of the review to better link staffing and contracting decisions to its long-term strategic planning process.

marginal increases and decreases in key workload indicators, including the number of participants, number of plans, and assets<sup>39</sup> (see fig. 5).

**Figure 5: Levels of Federal Employees and Contractor Workers Compared with Fluctuations in Various Workload Indicators, Fiscal Years 2000–2010**



Source: GAO analysis of PBGC annual workforce data and cumulative data for terminated and trusted plans, participants in those plans, and assets under management.

Among the four main program departments we reviewed, BAPD, DISC, and CID officials all cited the need to manage workload fluctuations as the primary reason they use contractors to supplement their departments' federal workforce. Officials particularly emphasized the speed with which the contractor workforce can be reduced at times of lower workload. In

<sup>39</sup> Although these indicators are imperfect measures of workload and may not adequately capture the dynamic flow and changing complexity of PBGC's workload, PBGC uses these indicators to characterize its workload in annual reports and its budget justification to Congress.



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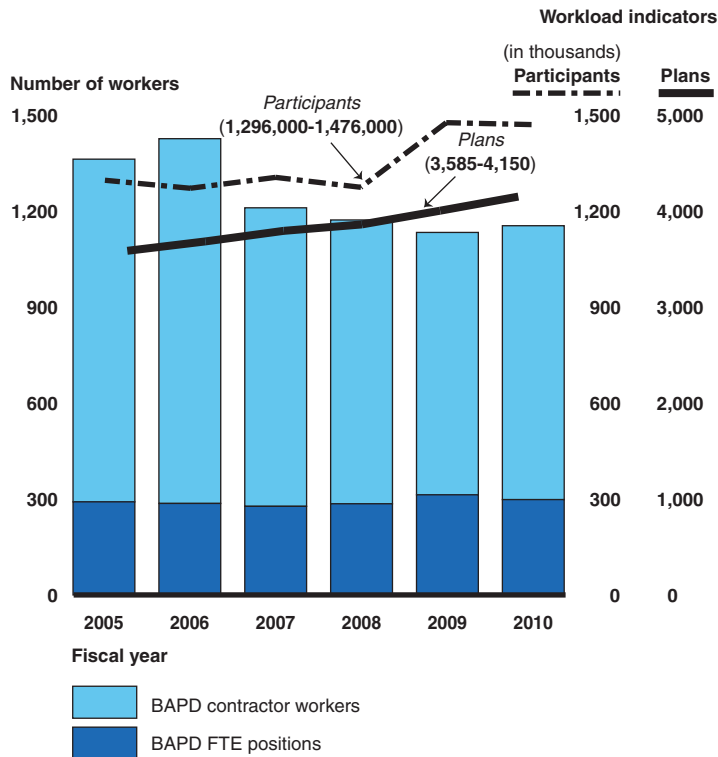
determining the need for contractors, BAPD and DISC officials said they consider both incoming work and work in process in their decisions. For example, BAPD's workload is tied to the number of plans being trustee'd and the number of participants in those plans. In DISC, the workload is tied to the number of troubled pension plans potentially requiring termination and trusteeship by PBGC.<sup>40</sup> In CID, the workload is tied to the volume and complexity of assets from plans that PBGC has terminated and trustee'd, as well as a number of other factors.

While it may be true that the amount of contractor workers can more easily rise and fall with the workload than if all PBGC workers were federal employees, it appears that the extent of contracting is greater than the amount needed to respond to such fluctuation. For example, in the case of BAPD, between fiscal years 2005 and 2010, the number of terminated plans increased steadily, between 2 and 4 percent each year, and the number of participants in newly terminated plans increased between 2 and 20 percent of total cumulative participants. Meanwhile, over that same period, the proportion of contractor workers ranged between 72 and 80 percent of BAPD's total workforce (see fig. 6).

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<sup>40</sup> According to PBGC officials, "troubled plans" include those PBGC defines as either "reasonably possible terminations" (that is, plans that have \$5 million or more of underfunding and have a sponsor that has filed for bankruptcy, has not made its minimum funding contributions, or has a below-investment-grade bond rating) or "probable terminations" (that is, plans that have plan sponsors that are in liquidation or a comparable insolvency proceeding, that may file for plan termination due to distress, or that PBGC is considering for involuntary termination).

**Figure 6: BAPD Levels of Federal Employees and Contractor Workers Compared with Fluctuations in Workload Indicators, Fiscal Years 2005–2010**



Source: GAO analysis of PBGC data.

## Using Contractors to Provide Needed Expertise

Officials from OIT, CID, and DISC also cited the need to acquire specific expertise as a primary reason for contracting. Officials from these departments said contractors are used particularly for certain types of IT, actuarial, legal, and investment work. For example, a senior OIT official told us it is general agency practice to have software design and development work done by contractors, as it is difficult to keep skilled software engineers on staff as government employees. In fiscal year 2010, OIT had 337 contractor workers providing software engineering services. Similarly, CID officials said they lack the in house expertise to manage investment funds due to the complexity of investment instruments. CID officials also told us that since PBGC's inception, the agency has required the use of outside investment managers under contract to invest PBGC assets as a safeguard to prevent government employees from affecting private companies and the market, consistent with a 1977 OMB memorandum, and this has been reaffirmed by the PBGC Board of

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## Using Contractors Due to Administrative Constraints on Hiring

Directors and investment policy statements ever since.<sup>41</sup> CID officials stated that, as a government corporation, PBGC may not have to comply with the OMB memo, but that its principles—including the use of outside investment managers—have been the foundation of PBGC’s investment management approach for the agency’s entire history.

Beyond the rationales discussed above, officials across the four departments we reviewed noted that contracting is necessary, to some extent, because there are simply not enough federal employees to perform the work, mostly due to a cap on the number of federal employees that PBGC can have at any one time. The cap is established each year as the result of PBGC’s annual budget process where the agency requests from OMB a specific number of FTE staff. PBGC is then allotted a certain number of FTEs, which are then assigned to each department based on program needs.

According to a PBGC Budget Department official, the agency assigns FTEs to each department by program activity, then the departments decide how to fill FTEs based on the extent to which activities are comprised of inherently or noninherently governmental functions, and the ability of their existing federal staff to perform the work. The official told us that, as of October 2010, the number of on-board FTEs—the actual number of positions filled by federal employees—was above the agency’s FTE allotment for fiscal year 2010 (955 filled versus 941 allotted.)

Another temporary disincentive to hiring federal employees mentioned by some departmental officials was the imposition of additional review procedures on PBGC’s hiring process during a 12-month period between June 2008 and June 2009.<sup>42</sup> The Office of Personnel Management (OPM) imposed these procedures after an evaluation found severe deficiencies in PBGC’s competitive recruitment process.<sup>43</sup> After PBGC officials worked with OPM staff to review all phases of the process, including auditing

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<sup>41</sup>Bowman Cutter, a memorandum written for OMB, Oct. 12, 1977.

<sup>42</sup>OPM delegates personnel management functions to federal agencies and other entities, including PBGC, and provides oversight to ensure that delegated activities are performed in accordance with established principles and standards. If OPM finds an agency to be out of compliance, it may withdraw such delegation. 5 U.S.C. § 1104.

<sup>43</sup>Specifically, because of a severe lack of documentation to support PBGC’s examining actions during its competitive recruitment process, OPM was unable to validate that selections complied with law, regulation, and merit system principles.

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selection certificates before extending job offers to candidates, the additional review procedures were lifted.

Responding to the available allotment of FTEs and the lifting of OPM's added review procedures, over the past 2 years, some departments have taken action to hire more federal employees to assume work previously performed by contractors. For example, BAPD officials told us that since fiscal year 2009, BAPD had taken steps to add new FTEs, hiring 12 new federal employees during this period. In addition, between fiscal years 2008 and 2010, BAPD requested a conversion of contractor dollars for 20 FTEs. BAPD officials told us that this shift helped fill the need for additional in-house knowledge of contracts in one of its divisions. In addition, DISC officials told us that federal employees could carry out the tasks performed by a particular actuarial contractor if sufficient FTEs were available to the department, but it had not requested any new FTEs in fiscal years 2009 or 2010.

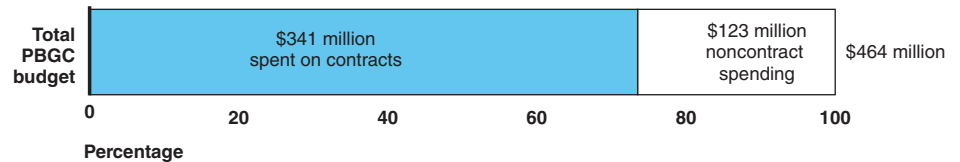
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### Long-Term Extensive Reliance on Contracting May Be Putting PBGC at Risk

PBGC's history of heavy reliance on contractors to carry out its operations, achieve its goals, and meet its agency mission, goes back to the mid-1980s. At that time, when faced with a significant influx of large pension plan failures, PBGC chose to award contracts for services rather than seek additional federal employees. Over time, PBGC continued contracting to address its expanding workload and quickly obtain necessary services. As of fiscal year 2010, nearly 80 percent of its total budget was spent on contracts (see fig. 7). Over time, such heavy reliance on contractors may be placing PBGC at risk of diminishing management control over contract activities and decreasing the level of expertise among its federal employees.

## Potential Impacts on Management Control and Institutional Knowledge

**Figure 7: Proportion of PBGC's Total Budget Consisting of Contract Spending, Fiscal Year 2010**



Source: GAO analysis of PBGC data.

In 2006, we convened a forum of government, industry, and academic participants to discuss federal acquisition challenges and opportunities.<sup>44</sup> Subsequently, in 2007, the congressionally mandated Acquisition Advisory Panel issued its report based on its review of laws, regulations, and governmentwide acquisition policies regarding various aspects of contracting.<sup>45</sup> Both of these groups noted how an increasing reliance on contractors to perform services for core government activities challenges the capacity of federal officials to supervise and evaluate the performance of these activities. In addition, some of our previous reports on contracting across various federal agencies—including the Department of Homeland Security<sup>46</sup> and the Department of Defense<sup>47</sup>—advised that long-term extensive reliance on contractors can diminish management control over contract activities.<sup>48</sup> In guidance to agencies about how to better manage a

<sup>44</sup>GAO, *Highlights of a GAO Forum: Federal Acquisition Challenges and Opportunities in the 21st Century*, [GAO-07-45SP](#) (Washington, D.C.: Oct. 6, 2006).

<sup>45</sup>Acquisition Advisory Panel, *Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress* (Washington D.C., January 2007); see Services Acquisition Reform Act of 2003, Pub. L. No. 108-136, Title XIV, § 1423.

<sup>46</sup>For example, in reviewing the use of professional and management support services at the Department of Homeland Security, we found that program officials failed to assess the risk that government decisions were not sufficiently independent from contractor judgments in such critical areas as intelligence analysis. See GAO, *Department of Homeland Security: Improved Assessment Needed to Manage Risk of Contracting for Selected Services*, [GAO-07-990](#) (Washington, D.C.: Sept. 17, 2007).

<sup>47</sup>In reviewing the management and oversight of contractors at the Department of Defense, we found various problems may have negatively impacted agency operations at deployed locations, see GAO, *Military Operations: High-Level DOD Action Needed to Address Long-standing Problems with Management and Oversight of Contractors Supporting Deployed Forces*, [GAO-07-145](#) (Washington D.C.: Dec. 18, 2006).

<sup>48</sup>For a list of additional previous GAO reports on this topic, see the Related GAO Products section on governmentwide contracting practices at the end of this report.

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workforce comprised of both contractors and federal employees, OMB also noted that agencies often lack adequate information on how contractors are deployed throughout their organizations, and that as a result, agencies risk underutilizing the full potential of their total workforce—both contract and federal.<sup>49</sup>

In light of PBGC's extensive reliance on contractors, the agency may be at risk for the same types of problems mentioned earlier, particularly a lack of adequate management control and contract oversight—problems which could impede PBGC's ability to manage increasing workloads, contractor costs, and program outcomes. As illustrated in figure 7, almost three-fourths of PBGC's fiscal year 2010 budget was allocated to contracting. Moreover, our analysis of PBGC's workforce data shows that based on the number of contractor workers being monitored, nearly two-thirds of its fiscal year 2010 workforce was comprised of contractor workers. But the actual total of contractor workers performing services is even higher, as these data do not include contractor workers providing services to the agency under some types of contracts. For example, in CID, services for managing assets are provided to PBGC under fixed price contracts by a team of investment managers supported by workers in numerous functional areas within the firms that were awarded contracts. The contracts for services managing assets apply a percentage to the investment portfolio value to determine fees paid to the contractor—the contractor is not required to provide the staffing hours or number of staff tasked to support deliverables.

Additionally, PBGC's extensive reliance on its contractor workforce may be placing the agency at risk of not building institutional knowledge among its federal workforce in those areas in which the agency has come to rely on contractors. This is of greatest concern for work that is central to the mission of the agency—work that if contractors are relied on too extensively, could result in the agency essentially ceding its core functions to its contractor workforce. Without taking action to address the potential effects of its extensive reliance on contracting, PBGC risks being unprepared to meet future workload changes amid ever-increasing financial liabilities. The agency's contractor workforce performs an array of services, including core functions such as processing terminations of

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<sup>49</sup>OMB, *Managing the Multi-Sector Workforce*, OMB M-09-26 (Washington D.C., July 29, 2009).

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defined benefit plans, providing actuarial services, managing asset investments, and conducting IT-related activities.

Although PBGC has not acknowledged or taken steps to address the potential risks of eroding expertise at an agency-wide level, such risks have been noted at the department level. For example, OIT officials told us that in fiscal year 2007, it conducted a risk assessment that identified certain deficiencies, including a competency gap between contractor and federal employees. To build and retain institutional knowledge and expertise, and to provide better guidance to and oversight of contractors, OIT made a concerted effort to shift some funds from contractors to hiring additional federal employees. As a result, between fiscal years 2007 and 2010, OIT increased the number of federal employees from 84 to 104, and decreased its contractor workforce from 390 to 360 contractor workers.<sup>50</sup> However, other departments we interviewed had not conducted similar risk assessments or identified similar concerns, nor has a risk assessment been conducted on an agency-wide basis.

Also, PBGC has not undertaken an analysis at an agency-wide level to better understand how services being performed under contract are supporting its mission and operations and whether contractor workforce skills are being used in an appropriate manner in coordination with the skills of federal employees. At the department level, some units within PBGC have examined the costs of using contractors to provide certain functions compared with federal employees. As a result, PBGC officials told us that between fiscal years 2007 and 2010, nine departments submitted requests to convert contract dollars for hiring 102 federal employees to do the same work. OMB approved 73 new FTEs during this period, due in part to PBGC lagging in bringing new employees on board. However, without accurate information on the type and extent of work being performed by contractors at agency-wide level, including how contract work is being distributed by function and location across the entire agency, PBGC risks diminishing its management control over the contracting decision-making process.

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<sup>50</sup>PBGC officials estimated that OIT had 360 contractors in fiscal year 2010, with 190 contractors accounted for within OIT and 170 distributed over four other PBGC departments. The activities OIT shifted to federal employees have been primarily service desk and IT customer service-related activities. Officials noted that because of the expertise required, reducing the number of software development contractor workers by hiring additional federal employees would be much more difficult.

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## Governmentwide Initiative to Better Manage Decisions to Contract

In 2009, Congress enacted a new federal provision requiring most agencies to give greater consideration to using federal employees to perform functions currently performed by contractors (referred to as “insourcing”).<sup>51</sup> OMB subsequently issued guidance on how to manage decisions to contract and help mitigate the effects of extensive reliance on contracting.<sup>52</sup> Steps outlined in this guidance included (1) developing more strategic acquisition strategies, (2) conducting a pilot human capital analysis of one program where the agency had concerns about the extent of reliance on contractors, and (3) conducting a service contract inventory to allow better understanding of how contracted resources are distributed and to identify contracts that may involve inherently governmental functions. As noted in a November 2010 OMB memo,<sup>53</sup> the inventory is a tool for assisting an agency in better understanding how services awarded under contract are being used to support its mission and operations, and whether the contractors’ skills are being utilized in an appropriate manner. An agency manager can gain insight into where, and the extent to which, contractors are being used to perform activities by analyzing how contractor resources are distributed by function and location across the agency and within its components. This insight is especially important for components with contracts whose performance may involve critical functions or core work that is closely associated with inherently governmental functions. Moreover, while the fiscal year 2010 inventories

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<sup>51</sup>The new insourcing provision was enacted with the Omnibus Appropriations Act, 2009, and applies to all executive agencies subject to the Federal Activities Inventory Reform Act of 1998 (FAIR Act). Pub. L. No. 111-8, div. D, tit. VII, § 736, 124 Stat. 524, 689-91. Government corporations, such as PBGC, are exempt from the FAIR Act. Hence, PBGC is exempt from the new insourcing requirement and from OMB’s guidance on this topic.

<sup>52</sup>OMB M-09-26; OMB, *Improving Government Acquisition*, OMB M-09-25 (Washington D.C., July 29, 2009); OMB, *Increasing Competition and Structuring Contracts for the Best Results*, Memorandum for Chief Acquisition Officers, Senior Procurement Executives (Washington D.C., Oct. 27, 2009); OMB, *Acquisition Workforce Development Strategic Plan for Civilian Agencies—FY 2010-2014*, Memorandum for Chief Acquisition Officers, Senior Procurement Executives, Chief Financial Officers, Chief Human Capital Officers (Washington D.C., Oct. 27, 2009); and OMB, *Service Contract Inventories*, Memorandum for Chief Acquisition Officers, Senior Procurement Executives (Washington D.C., Nov. 5, 2010). OMB has proposed a policy letter clarifying “inherently governmental functions,” which has not yet been finalized. OMB, *Work Reserved for Performance by Federal Government Employees*, 75 Fed. Reg. 16,188 (Washington D.C., Mar. 31, 2010).

<sup>53</sup>OMB, *Service Contract Inventories*. The Consolidated Appropriations Act, 2010 required, among other things, executive agencies subject to the FAIR Act (other than the Department of Defense) to develop inventories of their service contracts and tasked OMB with developing and disseminating guidance to aid them in this requirement. Pub. L. No. 111-117, div. C, tit. VII, § 743 123 Stat. 3034, 3216-19 (2009).



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conducted by federal agencies were not required to include the number of contractor workers or the role the services play in achieving agency objectives, such information is required for the fiscal year 2011 inventories. As part of the 2011 inventory process, covered agencies are required to determine if contractors are being used in an appropriate and effective manner and if the mix of federal employees and contractors in the agency is effectively balanced, with priority consideration given to professional and management services and IT support services.<sup>54</sup>

As a government corporation, PBGC is not subject to the new insourcing requirements and is not required to comply with OMB's guidance on conducting a service contract inventory.<sup>55</sup> Nevertheless, conducting such an inventory, as outlined in the guidance, could offer PBGC a useful tool for enhancing the agency's contracting performance by strengthening its management controls and building institutional knowledge, which is essential to identifying and mitigating the effects and potential risks of its extensive reliance on contracting. With respect to the service contract inventories in particular, OMB has noted that when used as part of a balanced workforce analysis, such inventories can help identify whether an agency has an overreliance on contracting in certain areas that would require increased contract management or rebalancing to ensure the agency is effectively managing risks and obtaining the best results for the taxpayer.<sup>56</sup>

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<sup>54</sup>OMB required civilian agencies to submit their fiscal year 2010 inventories by December 30, 2010, and their fiscal year 2011 inventories by December 30, 2011. Specifically, the 2010 inventories were to include, for each contract over \$25,000, the organizational components of the agency administering and receiving services under contract, the total dollar amount obligated and funding source for the contract, and identifying information about the contract, among other things. The 2011 inventories are to include all of the above, plus a description of the role that contracted services played in achieving agency objectives, the total dollar amount invoiced for services under the contract, and the number and work location of contractor employees, expressed as FTEs. We are conducting a study of the inventories, and the report is expected to be completed next year.

<sup>55</sup>See footnote 51.

<sup>56</sup>OMB, *Service Contract Inventories*.

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## Steps Taken to Strengthen Its Contracting Process

Over the past 2 years, PBGC has adopted several new tools and practices to strengthen its contracting process, including developing a comprehensive procurement standard operating procedures manual and various reporting tools to help managers and staff make well-informed acquisition decisions and to improve contract oversight. In addition, PBGC has increased its use of competitively awarded contracts and fixed price contracts. In our view, use of competitively awarded contracts and these contract types has been shown to improve the contracting process by limiting the cost and performance risk assumed by the government.<sup>57</sup>

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## New Structure and Practices for Awarding and Overseeing Contracts

Over the past decade, both we and PBGC's IG have made a number of recommendations to strengthen the agency's contracting practices. In our 2000 report, we identified underlying management weaknesses regarding PBGC's overall approach to selecting and managing contractors, as well as day-to-day contract administration activities, and we recommended that PBGC take action to address specific operational and procedural weaknesses identified in our review. In our 2008 report, we found that while PBGC had made efforts to improve its acquisition infrastructure, it had not developed a strategic approach to its contracting processes as envisioned in our 2000 report and we recommended that PBGC improve its contract management and develop practices to help ensure the accountability of Procurement Department staff. Since 2008, in response to these recommendations as well as various recommendations from its IG,<sup>58</sup> PBGC's Procurement Department has made several structural changes, and has adopted new tools and practices to strengthen its contract award and oversight processes.

## Structural Changes in the Procurement Department

In 2009, the Procurement Department was reorganized into separate divisions: an Acquisition Division responsible for the awarding of contracts for goods and services and a Policy and Contract Administration Division responsible for the management of awarded contracts. The Acquisition Division is charged with ensuring the integrity of the pre-award contracting process, which includes acquisition planning, proposal

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<sup>57</sup>The President and OMB have also encouraged using fixed price contracts and awarding contracts competitively. See the President's March 4, 2009, *Memorandum for the Heads of Executive Departments and Agencies on Government Contracting*, and OMB, *Increasing Competition and Structuring Contracts for the Best Results*.

<sup>58</sup>PBGC's IG, *Trend Analysis Report: PBGC Procurement Issues From 2000 through 2007*, 2007-6/CA-0036 (Washington, D.C., July 26, 2007).

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evaluation, and contract award. The Policy and Contract Administration Division is charged with ensuring that all aspects of the contract are fulfilled after award, including oversight of the contractor's performance, contract modifications, proper payment of contractor billings, and contract termination or closeout when work is completed. One official told us that before the reorganization, a single person would be responsible for both the pre-award and postaward activities on each contract, and that postaward activity often received less attention as a result. PBGC officials told us the level of contract oversight being provided by PBGC staff has improved now that administrative contracting officers are focusing exclusively on postaward activity and have dispensed with other duties. However, PBGC officials were unable to provide us with any measurements or quantitative evidence of this improvement.

In addition, the Procurement Department secured approximately \$1.8 million in the agency's fiscal year 2009 and 2010 budgets for the hiring of additional procurement staff and to make awards to several support contractors. Procurement Department staffing has increased from 14 in February 2008 to 17 as of March 2011, with 1 additional position still being recruited. Budgetary resources were also provided for contractor support to assist with completing contract closeout work, reviewing postaward contract files, and operating the agency's contract writing system.<sup>59</sup> Funding has also been provided to hire a contractor to conduct a capital asset study that may be used to support a future funding request for a new contract writing system or the resources to make improvements to the existing one.

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<sup>59</sup>The Procurement Director said that this additional contractor support is for recurring work that will require funding in future budget years, and may at some point involve the transition from contractors to federal employees. More importantly, he noted that if the recurring work for postaward contract file reviews is not supported in future budget requests, then the Procurement Department will not be able to continue to address the IG's recommendations in this area. See, for example, PBGC IG, *Audit of Monitoring Activities Related to Morneau Sobeco Contracts*, PBGC01-CT-00-0597 and PBGC01-CT-03-0667 (2005-19/CA-0008-2), (Washington D.C., 2005); and PBGC IG, *Procurement Cycle Performance Audit Report on the Initiation, Monitoring, and Close-out of Acquisition of Goods and Services in Excess of \$2,500* (2006-09/CA-0010), (Washington D.C., 2006).

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## Changes to the Contract Award Process

There are several steps for awarding contracts at PBGC that can be categorized in terms of four key stages: acquisition planning, proposal solicitation, proposal evaluation, and contract award (see fig. 8). The basic structure of PBGC's contracting process is based on the FAR, PBGC's own regulations, and guidance from OMB. As a government corporation with unique responsibilities, PBGC is not required to comply with many of the laws, federal regulations, policies, and procedures that may apply to other federal agencies. For example, while PBGC's contracting activities for certain functions, such as the insurer of defined benefit plans, may be subject to the FAR, PBGC contracting activities related to its role as trustee of terminated plans are not bound by the FAR.<sup>60</sup> As a matter of policy, however, PBGC has decided to abide voluntarily by the FAR in procuring all goods and services.

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<sup>60</sup>See GAO, *Matter of Pension Benefit Guaranty Corporation's Use of Contingent Fee Arrangement With Outside Counsel*, B-223146 (Washington D.C.: Oct. 7, 1986); and GAO, *Matter of Pension Benefit Guaranty Corporation—Reimbursement for Financial Analysis Services*, B-307849 (Washington D.C.: Mar. 1, 2007).

**Figure 8: PBGC's Process for Awarding Contracts**



Source: GAO analysis of PBGC documents.

Since 2008, the Procurement Department has developed several new tools and practices designed to improve PBGC's contracting process by fostering a closer working relationship with other PBGC departments. These new measures include requiring departments to submit advance procurement planning documents with realistic contract award milestones, share information on the progress of contract awards, provide estimates of acquisition planning needed for future contract awards, and adhere to a new standard operating procedures (SOP) manual for procurement so that contracting and agency staff carry out their responsibilities correctly (see table 2).

**Table 2: New Tools and Practices for PBGC's Contract Award Process**

Tool/practice	Recent change
<p><i>Advance Procurement Planning document</i></p> <p>This document describes the desired good or service, the method of procurement, proposed contract type, and contracting process milestone dates for each new procurement with an estimated value greater than \$100,000.</p>	<p>As of October 2009, began requiring</p> <ul style="list-style-type: none"> <li>• more realistic contracting process milestone dates, and</li> <li>• approval signatures of both procurement and program representatives.</li> </ul> <p>Since February 2011, began instructing departments to</p> <ul style="list-style-type: none"> <li>• include an attachment to the APP documenting the decision to use a contractor to provide the needed services as required to be prepared by PBGC Directive GA 15-4, last updated in 2009.</li> </ul>
<p><i>Procurement Department SOP manual</i></p> <p>These procedures implement the FAR and other statutory requirements to guide procurement activities and establish basic internal controls over PBGC's contracting process.</p>	<p>First drafted in March 2008 and updated in December 2009, the SOP establishes</p> <ul style="list-style-type: none"> <li>• a uniform procedure for all PBGC acquisitions,</li> <li>• assurances that FAR requirements and other control objectives are met, and</li> <li>• provisions that address compliance with applicable federal requirements, including policies that pertain to ethical conduct and requirements that all solicitations be clearly written and promote fair competition.</li> </ul>
<p><i>Procurement Status chart</i></p> <p>This chart lists all PBGC department requests for contract award support, tracks the progress of each request through the contracting process, and reports on any delays that may impact the planned award date.</p>	<p>In use since February 2009, this chart is updated weekly and provides</p> <ul style="list-style-type: none"> <li>• transparency into the current status of all pending contract awards, and</li> <li>• notice of any delays to a planned contract award and whether a PBGC department needs to address them.</li> </ul>
<p><i>Expiring Contracts chart</i></p> <p>This chart lists all active contracts and tracks when they are expiring as well as the options available to ensure there are no unplanned interruptions in services provided.</p>	<p>In use since April 2009, this chart is updated monthly and provides</p> <ul style="list-style-type: none"> <li>• advance warning of expiring contracts, and</li> <li>• sufficient lead times so that necessary actions can be taken for the awarding of a new contract or exercise of an option year to avoid a lapse in service.</li> </ul>

Source: GAO analysis of PBGC data.

PBGC staff have reacted positively to these new measures. For example, several contracting officers told us that requiring advance procurement plans to include realistic contracting process milestones was helpful and provided adequate lead time for the contract awards. The IG found the new SOP to be a useful "first step" toward improving procurement effectiveness, but maintained that PBGC leadership needs to develop ways to measure compliance with the new procedures and make corrections or adjustments. Also, the Procurement Director told us that before the Procurement Status chart was in place, the program departments complained they had little insight into how their contracting needs were being supported or whether the expected contract award dates would be

met. With the Expiring Contracts chart, these two tools function as part of an integrated procurement data system that provides information to inform acquisition decisions and management. In our review of the eight contract files,<sup>61</sup> we found that those contracts and related task orders awarded after the updated December 2009 SOP was issued showed a pattern of better compliance with documentation requirements and other controls and internal procedures compared with contract awards made before the updated SOP (see table 3).

**Table 3: Pattern of Increased Compliance Postadoption of the December 2009 Updated Procedures**

Total awards reviewed	Number of awards made <i>before</i> issuance of updated SOP		Number of awards made <i>after</i> issuance of updated SOP	
	5 contracts, 3 task orders	8	3 contracts, 5 task orders	8
Advance procurement planning documented in contract file	Yes	3	Yes	7
	No	5	No	1
	Not applicable	0	Not applicable	0
Justification for use of cost reimbursement and labor hour contracts documented in contract file	Yes	2	Yes	1
	No	2	No	3
	Not applicable	4	Not applicable	4
Evaluations of proposals and award decisions documented in contract file	Yes	3	Yes	7
	No	5	No	0
	Not applicable	0	Not applicable	0
Justification for the use of option years documented in contract file	Yes	3	Yes	4
	No	2	No	1
	Not applicable	3	Not applicable	3

Source: GAO analysis of PBGC data.

## Changes in Policies Regarding Contract Oversight

In response to the IG's and our recommendations, the Procurement Department has also adopted several new tools and practices to strengthen contract oversight, including issuance of a new directive in December 2010 establishing uniform policies and procedures for the selection, appointment, training and oversight of contracting officer technical representatives (COTR) (see table 4).<sup>62</sup> A COTR at PBGC is the

<sup>61</sup>For details of our review of the eight contract files, see appendix III.

<sup>62</sup>PBGC, *Selection, Appointment, Training and Management of Contracting Officer Technical Representatives (COTRs) and Task Monitors (TMs)*, PBGC Directive Number: PM 25-5 (Washington D.C., Dec. 21, 2010).

person the contracting officer relies upon to monitor a contractor's work, ensuring it meets all contract requirements before approving the payment of contractor billings. Before issuance of the December 2010 COTR directive, PBGC had no specific policy for contracting officers to ensure COTRs performed their responsibilities and sufficiently documented their actions in a COTR file. Some contracting officers told us this resulted in inconsistent documentation and minimal reviews of COTR files, leaving questions about whether the COTR was assuring that all contract requirements were met. One contracting officer explained that before the COTR directive, COTR status reports were submitted only on an ad hoc basis. Another contracting officer said the new directive was already having a positive effect because it had resulted in more communication between procurement staff and COTRs.

**Table 4: New Tools and Practices for PBGC's Contract Oversight**

Tool/practice	Recent change
<p><i>Directive Number: PM 25-5: Selection, Appointment, Training and Management of Contracting Officer Technical Representatives (COTRs) and Task Monitors (TMs)</i></p> <p>Establishes uniform policies and procedures for the selection, appointment, training, and management of COTRs</p>	<p>Issued in December 2010, it requires</p> <ul style="list-style-type: none"> <li>all COTRs to be Federal Acquisition Certification-COTR certified,</li> <li>COTR performance objectives to be included in plans to appraise employee performance,</li> <li>COTRs to submit a quarterly status report to the contracting officer for each assigned contract, and</li> <li>annual reviews of COTR records to determine compliance with this directive and other requirements.</li> </ul>
<p><i>New "Education and Experience Qualifications" contract clause and related changes to the COTR appointment letter</i></p> <p>To be inserted in all future contracts where personnel qualifications are specified in terms of minimum education and/or experience qualifications</p>	<p>Instituted in July 2009, these changes require</p> <ul style="list-style-type: none"> <li>contractors to provide personnel who meet or exceed the minimum qualifications under the contract,</li> <li>contractors to keep a record of the education and/or training credentials for staff assigned to the contract,</li> <li>COTRs to document their review of the contractor's compliance with this contract clause and report any instances of noncompliance to the contracting officer,</li> <li>the removal of contractor staff who do not meet the minimum qualifications upon request by PBGC, and</li> <li>the contracting officer to determine whether the price or cost of work performed by contractor staff should be reduced for those who do not meet the personnel qualifications called for in the contract.</li> </ul>



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Tool/practice	Recent change
<i>PBGC Guidance on Required COTR Employee Performance Objectives</i> Provides specific instructions for the inclusion of a detailed COTR performance objective and related performance standards in fiscal year 2011 performance appraisal plans	Issued in November 2010, it calls for <ul style="list-style-type: none"><li>• all COTRs to be held accountable for specific requirements associated with their responsibilities,</li><li>• all plans to appraise the performance of COTR staff to include the performance objective developed for the effective management of PBGC contracts, and</li><li>• all COTRs to be evaluated in accordance with this performance standard, which should have a minimum weight of 15 percent of the employee's total rating.</li></ul>

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Source: GAO analysis of PBGC data.

PBGC also has established more rigorous certification and training requirements for its COTRs. The December 2010 COTR directive requires COTRs to be properly certified at the time of appointment, or within 6 months if a waiver is granted. Certification requires 40 hours of relevant training from a structured program that meets OMB requirements for a newly appointed COTR and a minimum of 40 additional hours of job-related continuous learning every 2 years that is job related. Previously, the requirement at PBGC was completion of COTR refresher training every 3 years. Since June 2009, the Procurement Department has placed a greater emphasis on COTR training by sponsoring “Acquisition Excellence” workshops, covering such topics as the new COTR directive, acquisition planning, and use of the contractor performance reporting system. The Procurement Director told us that the Procurement Department has a COTR nomination process in place to determine whether individuals have completed the required COTR training before being appointed, and that the COTRs’ on-going training is monitored through the annual COTR file review process which is conducted by a contractor. Our evaluation of the COTR file review documents provided by the Procurement Director showed that the contractor had completed 54 COTR file reviews as of May 2011, identifying 47 instances of lack of adequate documentation of the COTR’s certification or completion of the continuous learning needed to maintain this certification. In these instances, the Procurement Department sent written notification of these deficiencies to the COTRs, their immediate supervisors, and the contracting officers. The letter indicated that immediate corrective action was required to meet training and certification requirements and that the COTR was to notify the contracting officer within 30 days of the action taken to address any deficiency.

New requirements to strengthen postaward contract oversight of contractor staff qualifications have also been adopted in response to a

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PBGC IG recommendation. In a September 2009 report, the IG recommended PBGC implement controls and procedures to ensure that required experience is verified and documented in personnel files for all contractor workers prior to their assignment to a PBGC contract.<sup>63</sup> In response, PBGC has added an “Education and Experience Qualifications” clause to all contracts specifying contractor personnel qualifications in terms of education and/or experience,<sup>64</sup> and has added a requirement for the COTR to review compliance with this new contract clause to the COTR appointment letter. Three of the eight contract files we reviewed were labor hour contracts where contractors must meet specific qualifications,<sup>65</sup> and we found that the COTRs were conducting the compliance reviews as required in their COTR appointment letter, for all three. However, in one case, we found the “Education and Experience Qualifications” clause missing from the contract. When we brought this to the Procurement Department’s attention, officials acknowledged this had been omitted in error and told us the required clause would be added to the contract in a future modification.

In addition, the IG found in a December 2007 report there was no formal system for measuring the COTR’s performance of contract monitoring duties and recommended PBGC officials collaborate on developing a COTR performance goal and objectives.<sup>66</sup> In response, PBGC’s Procurement and Human Resources Departments worked together to develop new employee performance standards to more clearly establish the COTR’s responsibilities associated with effectively managing PBGC contracts. Beginning in fiscal year 2011, PBGC is requiring all staff who have been assigned COTR duties to have these performance standards added to their performance evaluations.

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<sup>63</sup>PBGC IG, *Agreed-Upon Procedures to Verify Contract Personnel Qualifications*, Contract PBGC01-CT-04-0727 for Fiscal Years ended September 30, 2006 and 2007 (AUD-2009-07 / CA-08-53) (Washington D.C., Sept. 25, 2009).

<sup>64</sup>This contract clause requires the contractor to validate the educational and/or experience qualifications for all staff it assigns to personnel positions which call for minimum qualifications in the contract. The contractor must also retain a record of this independent validation for government inspection.

<sup>65</sup>For details of our review of the eight contract files, see appendix III.

<sup>66</sup>PBGC IG, *Report on PBGC’s Administration of Contractor* (2008-4/CA-0033-2) (Washington D.C., Dec. 7, 2007).

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## Increased Use of Competitive and Fixed Price Contracts

When determining how to acquire needed goods and services, federal agencies—including PBGC—must determine whether it is appropriate to use competitive or noncompetitive procedures to award contracts, and the type of pricing arrangement, such as fixed price or cost reimbursement.<sup>67</sup> These decisions are the principal means that PBGC has for allocating cost and performance risk between the agency and its contractors. With respect to various agencies' contracting governmentwide, we have reported that the awarding of contracts without the benefits of competition or with contract types chosen without adequately considering the risks involved are unsound procurement and management practices.<sup>68</sup> Conversely, the use of sound procurement methods improves the integrity of the contracting process.

## More Competitive Contract Awards

Contracting officers are required, with limited exceptions, to utilize full and open competition in soliciting offers and awarding federal government contracts.<sup>69</sup> Competitive procedures for awarding contracts call for the issuance of a solicitation or request for proposals, the receipt of competing proposals, and the subsequent evaluation of these proposals against evaluation factors stated in the solicitation to be used as the basis for the award decision. In contrast, a noncompetitive contract award is made without permitting all prospective firms to submit competing proposals generally under an exception to full and open competition allowed by the FAR.<sup>70</sup> Use of competitive contracting procedures thus encourages firms to offer their best proposals when competing for work in response to a solicitation issued by PBGC, thereby leveling the playing field for competitors and potentially reducing costs and protecting the interests of the agency. In our analysis of FPDS-NG data on PBGC contracting, we found that between fiscal years 2008 and 2010,<sup>71</sup> the number of new contracts awarded competitively increased from 51 percent to 67 percent

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<sup>67</sup>The term "fixed price," as used in this report, refers to contracts that are firm fixed price, fixed price incentive fee, and fixed price with economic price adjustment. The term "cost reimbursement," as used in this report, refers to contracts such as cost sharing, cost plus incentive fee, cost plus award fee, and cost plus fixed fee.

<sup>68</sup>See, for example, GAO, *Federal Contracting: Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received*, [GAO-10-833](#) (Washington D.C.: July 26, 2010). For a list of additional previous GAO reports on this topic, see the Related GAO Products section at the end of this report.

<sup>69</sup>48 C.F.R. § 6.101 (2011).

<sup>70</sup>48 C.F.R. § 6.302 (2011).

<sup>71</sup>PBGC began providing complete data to FPDS in fiscal year 2008.

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of all new contracts, and that the share of total contract obligations made on competitive contracts increased from 70 percent to 83 percent.<sup>72</sup>

Another issue related to competition is the exercise of options to continue services under an existing contract for a stated period of time. Options can be a useful tool to realize efficiencies in the contracting process, but they should be used appropriately. The FAR requires contracting officers to justify, in writing, the quantities or terms under the option, and the notification period for exercising the option among other things, and include this justification document in the contract file. Before exercising the option, the FAR also requires contracting officers to make a written determination that the exercise of the option is in accordance with the option's terms and relevant FAR provisions.<sup>73</sup> However, we found that the required justifications were missing for the award of option periods for two contracts and a task order awarded under a third contract that we reviewed. Without these justifications in the contract files, it is more challenging to determine the contracting officer's rationale for inclusion of option periods and be assured that it is in the government's best interest to extend the contract, rather than seek new competition for the additional work.

## More Fixed Price Contract Awards

In addition, agencies can choose from a number of different pricing arrangements or contract types to acquire goods and services from contractors. For example, contract types can be grouped into two broad categories: fixed price contracts, where the government agrees to pay a set price for goods or services regardless of the actual cost to the contractor; and cost reimbursement contracts, where the government agrees to pay all allowable costs incurred by the contractor regardless of whether the deliverable or service is completed.<sup>74</sup> As with competition, use of fixed price contracts is another tool that can help ensure government contracts are structured to "minimize risk and maximize value" for the taxpayer.<sup>75</sup> In

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<sup>72</sup>OMB defines "contract obligation" as a legally binding agreement that will result in the immediate or future disbursement of funds to pay a company in private industry or an individual for goods or services that it provides under contract to the government. When PBGC signs a new contract, places an order on an existing contract, or takes other actions that require the government to make payments to a contractor, the agency is incurring a contract obligation.

<sup>73</sup>48 C.F.R. §§ 17.205 and 17.207 (2011).

<sup>74</sup>48 C.F.R. § 16.101(b) (2011).

<sup>75</sup>The President's March 4, 2009, *Memorandum for the Heads of Executive Departments and Agencies on Government Contracting*.

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many cases, fixed price contracts are well suited for achieving this goal because they provide the contractor with the greatest incentive for efficient and economical performance. In contrast, cost reimbursement and labor hour contracts leave the agency exposed to a higher risk for cost overruns due to the allocation of cost risk between the government and the contractor.<sup>76</sup>

Over the past decade, PBGC's Procurement Department has made efforts to increase the use of fixed price contracting. In 2000, we reported that about 60 percent of PBGC's active contracts involved labor hour pricing and recommended that, where appropriate, PBGC should utilize more fixed price contracts. Furthermore, the PBGC IG told us that the agency has been utilizing some contractors on a labor hour basis for many years and should have a good understanding and sense of how the work is being done so they could structure the statement of work differently to use a fixed price contract or something less risky than the current labor hour approach. Our analysis of FPDS-NG data found that PBGC has made some progress recently in its use of fixed price contracts. PBGC's use of fixed price contracts increased from just under 85 percent of all new contracts in fiscal year 2008 to almost 91 percent in fiscal year 2010. In addition, the share of total contract obligations on new fixed price contracts at PBGC was 69 percent in fiscal year 2010, which is an increase from 50 percent in fiscal year 2008.

PBGC's procurement officials provided examples of its efforts to encourage departments to increase use of fixed price contracts over labor hour contracts. In 2010, the Procurement Department disagreed with a BAPD request to award a new labor hour contract for recurring actuarial services. Although a new 5-year labor hour contract was awarded for these services, BAPD officials also agreed to have a consultant conduct a study to determine if the services could be obtained more effectively under another contract type. The study, delivered to PBGC in December 2010, recommended that PBGC make incremental improvements to the current contracting approach and transition over time to a fixed price contract for

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<sup>76</sup>In circumstances where there is considerable uncertainty regarding the requirements, however, cost reimbursement contracts or, in more limited circumstances, labor hour contracts may provide for a more effective allocation of risk between PBGC and the contractor. But, labor hour contracts pose an especially high risk to the government since the contractor is only obligated to provide its best efforts in accomplishing the objectives of a contract with few direct incentives for the contractor to control costs and perform efficiently.

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these services if certain criteria such as accurate cost estimates and successful implementation of a performance-based approach are met.<sup>77</sup> BAPD has agreed to comply. In another example, the Human Resources Department initially proposed a labor hour contract for support services claiming that the labor hours needed to perform the services could not be precisely estimated. Procurement Department officials disagreed, suggesting that the labor hours could be estimated based on hours regularly worked by the government employee who formerly performed the tasks. The Human Resources Department adopted this suggestion and switched to a 3-year fixed price contract for these services.

In addition, one of the contracts included in our file review involved a contract that was part of a follow-on requirement for all of BAPD's field benefit administration contracts that were awarded in 2009. These contracts had been identified by a PBGC internal study and an IG report as areas where PBGC should give stronger consideration to using fixed price contracts. All together, these contracts were valued at more than \$150 million and had contract lengths of several years before they were expected to be competed for again. The IG noted in a 2004 report that these contracts had been repeatedly awarded as labor hour contracts since the early 1980s when the current field benefit administration structure was created. Similarly, an internal study conducted by PBGC in 2010 found that most statements of work for these contracts had been brought forward over the years with only slight updates in scope. Consistent with the more recent OMB guidance, the study recommended that data on the performance of contracts be accumulated and summarized to document the level of service performed over time and examined closely to allow PBGC to possibly restructure its statements of work (or objectives) to accommodate different contract types.

To promote the use of fixed price contracting governmentwide, OMB issued guidance in October 2009 recommending that agencies collect historical data on costs incurred on cost reimbursement, time and materials, and labor hour contracts, and use the data in structuring future contracts under certain circumstances to a fixed price approach instead.<sup>78</sup>

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<sup>77</sup>Grant Thornton, *Benefits Administration and Payment Department: Analysis of Contracting for Actuarial Support Services*, a study for PBGC (Washington D.C., December 2010).

<sup>78</sup>OMB, *Increasing Competition and Structuring Contracts for the Best Results* (Washington D.C., October 2009).

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However, in our limited review of contract files, we found little evidence that PBGC officials had made efforts to use experiences gained on past contracts to change contract type when recompeting. Three of the eight contracts we reviewed were labor hour contracts.<sup>79</sup> In each of these files, we found justifications for the use of labor hour pricing, but we found no evidence of efforts by PBGC to apply past experience to inform future cost estimates and transition the work performed under these contracts to a fixed price basis.

Among the cost reimbursement contracts we reviewed, we found that decisions regarding use of this contract type were not always documented, as required by the FAR.<sup>80</sup> Under the FAR, a cost reimbursement contract is suitable only when circumstances do not allow the requirement to be sufficiently defined to allow for a fixed price contract or the uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use a fixed price contract.<sup>81</sup> However, in one contract file, we found no documentation to support the decision to use cost reimbursement pricing for four of the contract's cost reimbursement task orders. Without such documentation, the contract file is incomplete and the reasoning used to support PBGC's contracting process is not clearly justified.

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<sup>79</sup>Of the three labor hour contracts, two were awarded by BAPD and one was awarded by DISC. One BAPD contract, awarded in September 2010, supports determining and valuing pension plan benefits for PBGC-trusted plans. The other BAPD contract, awarded in August 2009, provides field benefit administration services in Miami, Florida. The DISC contract, awarded during November 2008, supports analyses that are used to mitigate risks and increase overall funding levels for plans in PBGC's insurance program. See appendix III for a more complete description of the contracts included in our review.

<sup>80</sup>The contents of the contract file must be sufficient to constitute a complete history of the transaction for purposes of: providing a complete background as a basis for informed decisions at each step in the acquisition process; supporting actions taken; providing information for reviews and investigations; and for furnishing essential facts in the event of litigation or congressional inquiry. 48 C.F.R. § 4.801 (2011). The FAR provides examples of the records normally contained, if applicable, in contract files which include: acquisition-planning information and other presolicitation documents; required justifications and approvals such as for the type of contract awarded; other justifications and determination and findings; and source selection documentation such as technical evaluation reports and source-selection decision memorandum. 48 C.F.R. § 4.803 (2011).

<sup>81</sup>Other requirements found in the FAR state that a cost reimbursement contract may be used only when (1) the contractor's accounting system is adequate for determining costs applicable to the contract, and (2) appropriate government surveillance during contract performance will provide reasonable assurance that efficient methods and effective cost controls are used. 48 C.F.R. §16.301-3(a)(3)(4) (2011).

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## Increased Use of a Performance-Based Approach to Contracting, but Links to Agency Goals Still Lacking

To achieve greater cost savings and better outcomes when agencies acquire services, Congress and the executive branch have encouraged greater use of performance-based contracting. The use of performance-based contracts to acquire services offers a number of potential benefits. Performance-based contracts can encourage contractors to be innovative and to find cost-effective ways of delivering services. Performance-based contracting also helps improve the agency's internal controls over the contracting process by using performance metrics to assess contractor performance during contract monitoring. However, challenges to this method of contracting have been encountered governmentwide. Since 2008, PBGC has made progress in increasing its use of this method of contracting, and has implemented new guidance and training to help expand its use further. In addition, PBGC has increased its incorporation of performance metrics across various types of contracts. However, such metrics—whether part of a performance-based or other type of contract—are not required to be linked to PBGC's mission and goals. Such linkage is important to ensuring contract work is well integrated into PBGC's strategic plan, just as PBGC does with work performed in house.

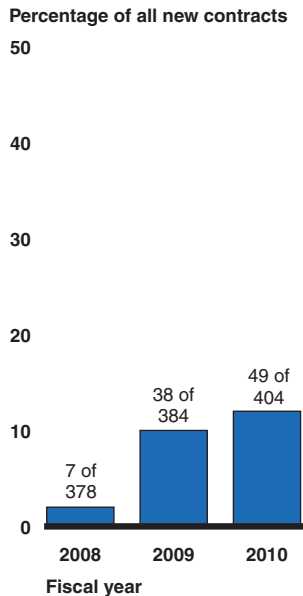
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## Challenges Faced in Efforts to Increase Use of Performance-Based Service Contracts

In 2008, we reported that PBGC had begun awarding more contracts using the performance-based contracting method as a means to achieve better contract outcomes. Since then, FPDS-NG data show that use of the performance-based method of contracting has continued to increase—from 7 of 378 new contracts in fiscal year 2008, to 49 of 404 new contracts in fiscal year 2010 (see fig. 9). But, this contracting method is still used in less than 15 percent of new contracts.



**Figure 9: Increase in Percentage of Performance-Based Contract Awards, Fiscal Years 2008-2010**



Source: GAO analysis of FPDS data.

The performance-based contracting method has been acknowledged as creating challenges for contract oversight and monitoring efforts at agencies governmentwide, which may be deterring its use. In our 2008 report, we noted that PBGC would likely face technical challenges similar to other agencies that have attempted to increase their use of this contracting method, such as deciding which contracts are appropriate for a performance-based approach and which outcomes to measure and emphasize. Other common barriers included fear of change, lack of understanding of performance-based contracting methods, and fear of loss of control over the contracting process. More recently, a May 2010 Procurement Department internal briefing report stated that performance-based contracting was still considered a technical challenge because of the contract oversight and monitoring efforts required.

In addition, PBGC may not be adequately prepared across all departments to increase use of performance-based contracting due to management challenges. A recent study conducted by a consulting firm for PBGC, issued in December 2010, found that BAPD's workforce lacked the technical and cultural readiness needed to implement performance-based contracting. It stated that BAPD—the program department responsible for

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generating contracts for administering benefit services performed at field offices—lacked a performance management framework that would enable it to effectively link the quality of contract outcomes with organizational performance and to establish appropriate incentive mechanisms.<sup>82</sup>

In 2007, PBGC officials stated that they had initiated an effort to utilize performance-based contracting for the field offices, but had to abandon the effort for reasons unrelated to the attempt to use this contracting method. This solicitation process, which spanned more than 2 years, involved numerous staff from various departments, and was one of the largest procurement efforts ever undertaken by PBGC. Had it been successful, it would have been a major step forward in the agency's use of performance-based contracting at its field offices. However, as BAPD later reported, the strategy to issue a single request for proposals to encompass the work previously performed under all eight contracts created too much complexity when trying to evaluate the proposals. The solicitation was canceled in August 2008 and BAPD abandoned the effort to use performance-based contracting for these contracts.

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### New Guidance and Training on Performance-Based Contracting Being Implemented

In our 2008 report, we recommended that PBGC provide increased guidance and training for staff on the use of the performance-based contracting method. Since then, PBGC has issued detailed guidance in its SOP, and has offered training focused specifically on this contracting method to staff, managers, and acquisition-related workforce.

### Detailed Guidance Provided in the 2009 Updated Procedures

The Procurement Department's SOP provides detailed guidance on the various elements of performance-based contracting, based on the FAR.<sup>83</sup> It cites the FAR's policy for acquiring services using performance-based contracting methods as the preferred method for acquiring services,<sup>84</sup> provides definitions of terms associated with performance-based service acquisitions (PBSA), and outlines PBSA requirements to be included in the performance work statement (see table 5).

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<sup>82</sup>Grant Thornton, *Benefits Administration and Payment Department: Analysis of Contracting for Actuarial Support Services*.

<sup>83</sup>For a detailed description of the elements of a PBSA as outlined in the FAR, see appendix V.

<sup>84</sup>The FAR states that when acquiring services, including those acquired under supply contracts or orders, agencies must, with several exceptions, use performance-based acquisition methods to the maximum extent practicable. 48 C.F.R. § 37.102 (2011).

**Table 5: Performance-Based Contracting Requirements Described in the 2009 Updated Procedures**

<i>The performance work statement defines the required outcomes for...</i>	
Performance requirements	Performance requirements define what must be accomplished in terms of measurable, mission-related outcomes. Avoid statements of how the work must be performed.
Performance standards	Performance standards define the level of service required to meet mission objectives—how well the work must be performed to satisfy requirements.
Performance measures	Performance measures describe the methods used to assess contractor performance.
Incentives and remedies (optional)	Incentives and remedies are used to motivate contractors to achieve optimal levels of performance.

Source: PBGC's 2009 SOP.

According to the FAR, once an agency determines a contract should have a written acquisition plan, that plan must describe the strategies for implementing performance-based acquisition methods or must provide the rationale for not using those methods.<sup>85</sup> PBGC has designated all contracts with an estimated value greater than \$100,000 as those required to have written plans. However, PBGC allows departments to choose whether or not to use the performance-based method of contracting, and the SOP does not mention the FAR requirement to document the rationale for not using this acquisition method, even for large service contracts. Only when departments choose to use this method does the SOP provide detailed instructions on what is entailed. For example, the SOP instructs users that each performance requirement should have a performance standard and provides guidelines on the development of the summary of performance requirements, which is to document the desired outcomes, performance objectives, and performance standards developed for a performance-based contract. The ultimate goal is to describe the requirement in a way that allows a potential contractor to understand fully what is necessary to meet these standards, resulting in better performance by focusing on results rather than process.

<sup>85</sup> Agencies are allowed to establish their own criteria for determining which contracts are required to have written acquisition plans, and therefore subject to this requirement. 48 C.F.R. §§ 7.103(d) and (e), and 7.105 (2011).

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In addition, the SOP includes other key mechanisms that are critical to performance-based contracting. For example, the SOP provides information to assist users in developing the Quality Assurance Surveillance Plan, which specifies the surveillance schedule, methods, and performance metrics acquisition staff can use to assess the outcomes of contractor performance. The SOP provides commonly used assessment methods as well as guidelines on how to determine the most appropriate method for assessment. The SOP stresses that past performance is an important element of every evaluation and contract award. It also discusses remedies for reductions in fees when services rendered do not meet requirements of the contract. The SOP also includes a section on contract incentives for performance-based contracts and describes the flexibility of using different criteria to award fees to reflect changes in mission priorities. Incentives encourage contractors to develop innovative cost-effective methods of performance while maintaining the quality of services provided. Through proper monitoring, the agency can take steps to correct performance that does not meet requirements or to negotiate changes to award fees to reflect changes in the agency's mission and objectives.

#### Additional Training on Performance-Based Contracting Under Way

To help address the barriers to using the performance-based contracting method that stem from fear of change, lack of understanding of performance-based contracting methods, or fear of loss of control over the contracting process, our 2008 report recommended that PBGC provide comprehensive training on performance-based contracting for PBGC's Procurement Department staff, managers, and acquisition-related workforce. As of 2010, PBGC noted that the PBGC Training Institute provided a wide range of procurement-related training for Procurement Department personnel and COTRs, including training on performance-based contracting. In addition, Procurement Department officials indicated the department had incorporated training on performance-based contracting in its Acquisition Excellence Workshops. In October 2009, PBGC contracted with an outside educational firm to provide this training. As of May 2011, implementation of this training was still under way.

#### Linkage Between Performance Metrics and Agency Goals Still Lacking

In addition to increasing its use of performance-based contracts, we found that PBGC is using performance metrics—one of the key elements of a PBSA—in various types of contracts as an alternative way of expanding its performance-based approach to contracting. In 2008, we reported that most of PBGC's contracts at that time lacked performance incentives and methods to hold contractors accountable, and we recommended that PBGC ensure that contracts measure performance in terms of outcomes.

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Since then, we found that PBGC has taken steps to increase its use of performance metrics, but that links to PBGC's strategic goals and objectives are still lacking.

We have long stressed the need for agencies to use performance metrics as an internal management control and to link metrics to agency goals as a way to ensure proper stewardship and accountability for government resources and for achieving effective and efficient program results.<sup>86</sup> Our tool for internal controls describes standards for agencies to establish and monitor performance metrics and indicators by taking specific actions to assess data on performance outcomes, including comparing data against planned goals and ensuring performance factors being analyzed are linked to agency mission and objectives. Management-control activities such as use of performance measures to evaluate outcomes are applicable to all services that an agency uses to meet its goals and objectives.

PBGC has implemented a management control concerning the use of performance measures linked to agency mission and goals with respect to its in house workforce, but not with respect to its contract work. PBGC's Procurement Department's SOP does not discuss the use of performance metrics in all contract types, only for performance-based service acquisitions, and—even with respect to performance-based contracts—the SOP does not require that the performance metrics be designed to link to specific agency goals. Nevertheless, we found some efforts in the program departments to increase the use of performance metrics. PBGC officials from two departments we spoke with noted that they had been increasing their use of performance metrics in various contract types, and we found evidence of this in our review of selected contract files. For example, our contract review included several cost plus fixed fee task orders that OIT awarded under a contract with multiple awards using a PBSA approach, and they all included specific performance metrics to assess contractor performance. We also reviewed two CID awards for firm fixed price contracts for management services for asset investment that did not use a PBSA method of contracting, but the contracts nevertheless had incorporated metrics for monitoring contractor performance against the agency's investment benchmarks based on the contractors' monthly performance reports. In addition, we reviewed a BAPD labor hour contract for services at a field office that did not use the PBSA method,

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<sup>86</sup>See GAO, *Internal Control Management and Evaluation Tool*, [GAO-01-1008G](#) (Washington, D.C.: August 2001).

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but still included a matrix of performance metrics that had not been included in the previous contract for these services. The matrix provided specific descriptions of desired activity outcomes, required services, acceptable quality levels, quantified and measurable performance standards, and monitoring methods to assess contractor performance, and BAPD officials report quarterly on how the performance metrics are being met. However, these performance metrics were not linked to specific measurable agency objectives and goals.

In contrast, PBGC's policies do require linkage between performance metrics and agency goals for work performed by its in-house federal workforce. For example, one goal listed in PBGC's *Human Capital Strategic Plan, FY 2010-2014* is to develop processes and procedures based on OPM's Performance Appraisal Assessment Tool to ensure that individual employee performance and accountability are linked to PBGC's strategic goals.<sup>87</sup> Similarly, PBGC's most recent 5-year strategic plan includes performance metrics and targets which are used to assess the performance of its federal workforce toward achieving its strategic goals. While performance metrics developed to measure the performance of in-house employees would not be appropriate for measuring the performance of individual contractor workers—as they work for the contractor, not directly for PBGC—these performance metrics may be useful in helping to develop metrics for contract work at the contract level, especially in areas where comparable work is performed both in house and under contract. For example, in interviews with PBGC officials, we learned that in-house DISC actuaries perform the same work that is performed by the contractor, and that to a certain extent, both internal and external actuaries have their work measured using the same standard metrics.<sup>88</sup>

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<sup>87</sup>OPM's Performance Appraisal Assessment Tool is a tool federal managers can use to develop results-oriented performance cultures through their appraisal programs. Appraisal programs provide a formal process for communicating organizational goals and individual performance expectations by promoting accountability for achieving those goals, identifying developmental needs, and assessing performance using appropriate measures. See OPM, *Performance Appraisal Assessment Tool Instructions* (Washington, D.C., July 2010). PBGC officials told us they made a deliberate choice to exclude contract employees from this goal and that the *Human Capital Strategic Plan, FY 2010-2014* was based on OPM criteria and had been approved by OPM.

<sup>88</sup>Specifically, every actuarial work request assigned to a contractor is reviewed by a DISC actuary (the reviewing actuary), the same procedure as for actuarial work requests completed by in-house DISC actuaries. Whether an actuarial work request is completed by a DISC actuary or a contractor, the reviewing actuary determines whether the calculations in the actuarial work request have been done accurately and in accordance with a common set of case review guidelines.

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However, contracts we reviewed for work performed by external actuaries do not link performance metrics to specific agency goals.

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## Conclusions

With nearly three-fourths of its budget allocated to contracts, PBGC relies heavily on contracting to achieve its corporate mission. We believe that PBGC needs to be more deliberative in making decisions to contract. Although we made previous recommendations in both 2000 and 2008 that PBGC include contract decision making in its strategic planning, PBGC continues to consider contracting as a supporting function to fulfilling its mission rather than a key element of its corporate-level strategic planning. To this end, we reiterate our prior recommendations in this area, which have yet to be implemented. In addition, extensive use of contractors over time may diminish PBGC's management control over contracts and staff expertise with respect to critical mission activities. After steadily expanding its use of contracts over the past 20 years, with only occasional limited efforts to examine the cost effectiveness of this development, a reassessment of PBGC's rationale for this arrangement is overdue.

Once the decision to contract has been made, we applaud PBGC's many recent changes to the contracting process which are intended to improve integrity, but implementation of these new measures is still under way and required documentation that would assure full implementation is lacking in some cases. Without full implementation of these new controls, PBGC may not be making well-informed decisions for efficient contract management, which ultimately place the agency's assets at greater risk. PBGC has also made progress in implementing a performance-based approach to contracting. However, additional action is needed to fully implement past recommendations regarding incorporation of performance metrics linked to PBGC's mission and goals. Unless contract metrics for work performance are linked to agency objectives—as PBGC currently does with its in-house workforce—the effectiveness of the contractors' work in assisting PBGC to achieve its mission and goals is diminished. Federal regulations call on agencies to ensure that performance-based contracting methods are used to the maximum extent practicable, and we believe PBGC could be doing more to encourage greater use of this method of contracting and to include performance metrics linked to the agency's mission and strategic goals in its major service contracts with an estimated value over \$100,000.

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## Recommendations for Executive Action

To improve PBGC's performance in an environment of heavy contractor use, further efforts are needed to better integrate contract decision making and contract management into PBGC's agency-level strategic planning process. While recognizing that OMB guidance is not binding for PBGC, to assist PBGC in reassessing its extensive reliance on contracting, we recommend that the Director of PBGC implement OMB guidance that calls on agencies to

- develop a service contract inventory, by function and location across the agency and within its departments, to identify the extent of its current reliance on contractors and enable a balanced workforce analysis. At a minimum, such reviews should capture the total dollar amount of service contract spending by function and the role services play in achieving agency objectives. Consistent with OMB guidance, PBGC should give priority consideration to functions that require increased management attention due to heightened risk of workforce imbalance; and
- undertake a risk analysis in areas identified as heavily reliant on contractors, including an evaluation of the costs and benefits of decisions to award work to contractors in such areas.

In addition, to encourage expanded use of performance-based contracting with performance metrics linked to the agency's mission and goals, we recommend that the Director of PBGC

- ensure that the rationale for not using a performance-based service acquisition approach is documented, consistent with the FAR; and
- ensure that the performance metrics for major service contracts are linked to specific corporate strategic goals to the maximum extent practicable.

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## Agency Comments and Our Evaluation

We obtained written comments on a draft of this report from PBGC, which are reproduced in appendix VI. PBGC also provided technical comments, which are incorporated into the report where appropriate. In addition, we provided a copy of the draft report to the Department of Labor for its comments. The Department of Labor did not provide written comments on our findings.

In response to our draft report, PBGC generally concurred with our recommendations and outlined actions the agency has under way or plans



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to take to address each topic of concern. With respect to the first recommendation, PBGC agreed and noted that the agency will use internal systems for contracting to develop a sufficiently detailed service contract inventory to enable a better workforce analysis and assist in potentially rebalancing its workforce as challenges arise. With respect to the second recommendation, PBGC agreed and commented that it generally considers risks and costs in making contract decisions, but that it would conduct a more formal process as it relates to staffing and contracting. With respect to the third recommendation, PBGC agreed and noted that the agency has added a line to its advance procurement planning form to raise the issue in a deliberative manner prior to soliciting the contract. Finally, with respect to the fourth recommendation, PBGC agreed and noted that its management team understands the relationship between contracting and achieving the agency's goals, and is comfortable with documenting that relationship. We are pleased to learn of the steps under way to address our recommendations and strengthen PBGC's contracting process. Further monitoring will be required to ensure that the results of the service contract inventory and risk and cost analyses are used effectively to better integrate decisions on contracting and management of contracts into PBGC's agency-level strategic planning process, and that the linkage between performance metrics for major service contracts to specific corporate strategic goals provides greater assurance that contract work is used effectively to support PBGC's mission.

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As agreed with your staff, we will send copies of this report to the Secretary of Labor, the Director of PBGC, and other interested parties. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>. If you or your staff has any questions concerning

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this report, please contact Barbara Bovbjerg at (202) 512-7215 or [bovbjergb@gao.gov](mailto:bovbjergb@gao.gov), or William Woods at (202) 512-4841 or [woodsw@gao.gov](mailto:woodsw@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff members who made key contributions to this report are listed in appendix VII.

Sincerely yours,

A handwritten signature in black ink that reads "Barbara D. Bovbjerg". The signature is written in a cursive style with a large, stylized "B" and "D".

Barbara D. Bovbjerg  
Managing Director, Education, Workforce, and Income Security Issues

A handwritten signature in black ink that reads "William T. Woods". The signature is written in a cursive style with a large, stylized "W" and "T".

William T. Woods  
Director, Acquisition and Sourcing Management Issues

# Appendix I: Federal Contracting Policies and Guidance Cited in This Report

Source	Summary
<i>Regulation</i>	
Federal Acquisition Regulation (FAR), 48 C.F.R. ch. 1 (2011)	<p>The FAR is the primary regulation for all federal executive agencies in their acquisition of supplies and services with appropriated funds. The Office of Management and Budget's (OMB) Office of Federal Procurement Policy establishes policy guidelines for some sections of the FAR, such as the policy for using a performance-based approach to service contracting. The FAR</p> <ul style="list-style-type: none"> <li>• provides contracting policies and procedures for, among other things, acquisition planning, and competing, awarding, and monitoring contracts;</li> <li>• indicates a performance-based approach as the preferred acquisition method for services;</li> <li>• provides a prohibition on contracting for services that constitute inherently governmental functions and offers lists of functions considered inherently governmental and functions not considered inherently governmental; and</li> <li>• would be supplemented by policy letter, as proposed by Office of Federal Procurement Policy, to clarify when outsourcing for services is and is not appropriate and what functions are inherently governmental and must always be performed by federal employees.<sup>1</sup></li> </ul>
<i>The President and OMB</i>	
Presidential Memorandum of March 4, 2009, <i>Government Contracting</i> , 74 Fed. Reg. 9,755 (Mar. 6, 2009)	<p>Memorandum expressed concern that agencies' excessive reliance on contracts creates a risk that poorly designed contracts will not meet the needs of the federal government or the interest of taxpayers, and</p> <ul style="list-style-type: none"> <li>• noted that the line between inherently governmental functions—those that must be performed by federal employees—and commercial activities that may be subject to contract performance—has been blurred; and</li> <li>• directed OMB to lead a series of contracting-related efforts, including clarifying when outsourcing for services is and is not appropriate.</li> </ul>

<sup>1</sup>75 Fed. Reg. 16,188 (Mar. 31, 2010). Office of Federal Procurement Policy proposed replacing the definition of "inherently governmental functions" in existing policy and regulation with the definition found in the Federal Activities Inventory Reform Act of 1998 (FAIR Act), which is that an inherently governmental function is one that is so intimately related to the public interest as to mandate performance by federal employees. Pub. L. No. 105-270, § 5(2), 112 Stat. 2382, 2384 (codified as amended at 31 U.S.C. § 501 note). The Office of Federal Procurement Policy's proposal also included a new category, "critical function," which would be defined to help agencies identify and build sufficient internal capacity to effectively perform and maintain control over functions that are core to the agency's mission and operations. OMB has not yet finalized the proposed policy.

**Appendix I: Federal Contracting Policies and  
Guidance Cited in This Report**

Source	Summary
OMB Memorandum M-09-25, <i>Improving Government Acquisition</i> (July 29, 2009)	<p>Memorandum described two actions that OMB was imposing, based on the Presidential Memorandum of March 4, 2009, that required agencies to</p> <ul style="list-style-type: none"> <li>review existing contracts and acquisition practices and develop a plan to save 7 percent of baseline contract spending by the end of fiscal year 2011; and</li> <li>reduce by 10 percent the share of dollars obligated in fiscal year 2010 under new contract actions that are awarded with high-risk contracting authorities that pose special risks of overspending; examples cited included noncompetitive contracts, cost reimbursement contracts, and labor hour contracts.</li> </ul>
OMB Memorandum M-09-26, <i>Managing the Multi-Sector Workforce</i> (July 29, 2009)	<p>Memorandum discussed achieving the best mix of contractors and federal employees and required agencies to begin the process of developing and implementing policies, practices, and tools for managing the multisector workforce by</p> <ul style="list-style-type: none"> <li>adopting a framework for planning and managing the multisector workforce built on strategic human-capital planning;</li> <li>conducting a human-capital analysis of at least one program, project, or activity where the agency has concerns about the extent of reliance on contractors and reporting on the pilot by April 2010; and</li> <li>using guidelines that facilitate consistent and sound application of statutory requirements when considering insourcing as a tool to manage work.</li> </ul>
OMB Memorandum, <i>Increasing Competition and Structuring Contracts for the Best Results</i> (Oct. 27, 2009)	<p>Memorandum provided initial guidelines to help Chief Acquisition Officers and Senior Procurement Executives evaluate the effectiveness of their agency's competition practices and processes for selecting contract types. The guidelines focused around three key questions:</p> <ul style="list-style-type: none"> <li>How is the agency maximizing the effective use of competition and choosing the best contract type for the acquisition?</li> <li>How is the agency mitigating risk when noncompetitive, cost reimbursement, or time and materials/labor hour contracts are used?</li> <li>How is the agency creating opportunities to transition to more competitive and lower-risk contracts?</li> </ul> <p>The guidelines also included a set of considerations to help agencies address each of these questions.</p>
OMB Memorandum, <i>Acquisition Workforce Development Strategic Plan for Civilian Agencies – FY 2010 – 2014</i> (Oct. 27, 2009)	<p>Memorandum provided guidance for civilian agencies to augment and improve the skills of their acquisition workforce, which includes contract specialists, contracting officer's technical representatives, and program and project managers. Required actions included the following mandates:</p> <ul style="list-style-type: none"> <li>Each civilian agency covered by the Chief Financial Officers Act must submit an annual Acquisition Human Capital Plan to OMB by March 31, 2010, that identifies specific strategies and goals for increasing both the capacity and capability of its respective acquisition workforce for the period ending in fiscal year 2014.</li> <li>Agencies must use the plan to address needs for an acquisition workforce in their annual budget submissions.</li> </ul>

**Appendix I: Federal Contracting Policies and  
Guidance Cited in This Report**

Source	Summary
OMB Memorandum, <i>Achieving Better Value from Our Acquisitions</i> (Dec. 22, 2009)	<p>Memorandum gave a status report on the federal contracting community's actions toward meeting the President's goal of saving \$40 billion annually, reducing reliance on high-risk contracting, and achieving a more appropriate mix of in-house and contractor labor, including:</p> <ul style="list-style-type: none"> <li>• Agencies' fiscal year 2010 acquisition plans that identified a variety of strategies, such as new avenues for strategic sourcing; program terminations and reductions; use of online reverse auctions and electronic sealed bids; and more aggressive renegotiation of contracts.</li> <li>• Initiatives were provided that intended to improve the acquisition workforce's capability to manage high-risk contracts and to ensure use of the most appropriate contract type for each procurement.</li> </ul>
OMB Memorandum, <i>Service Contract Inventories</i> (Nov. 5, 2010)	<p>Memorandum provided guidance for agencies in preparing their initial service contract inventory for fiscal year 2010. The inventories should</p> <ul style="list-style-type: none"> <li>• serve as a tool for assisting agencies in better understanding how their contracted services are being used to support mission and operations and ascertain whether the contractors' skills are being utilized in an appropriate manner, including insight into the extent to which contractors are being used in performing activities by analyzing how contracted resources are distributed by function and location across an agency and within its components; and</li> <li>• grant insight that is especially important for contracts whose performance may involve critical functions or functions closely associated with inherently governmental functions.</li> </ul>
<b>GAO</b>	
<p><i>Framework for Assessing the Acquisition Function at Federal Agencies</i>, <a href="#">GAO-05-218G</a> (Washington, D.C.: September 2005)</p>	<p>Published in response to agencies' increasing reliance on contractors and systemic contracting weaknesses we and other accountability organizations identified, the framework enables high-level assessments of an agency's contracting function. It consists of interrelated cornerstones essential to an efficient, effective, and accountable contracting process, including:</p> <ul style="list-style-type: none"> <li>• Organizational alignment and leadership that appropriately places the contracting function in the agency, with stakeholders having clearly defined roles and responsibilities; aligns contracting with the agency's mission and needs; and organizes the contracting function.</li> <li>• Policies and processes that are clear, transparent, and implemented consistently in the planning, award, administration, and oversight of contracting efforts.</li> <li>• Human capital, which involves strategically thinking about attracting, developing, and retaining talent, and creating a results-oriented culture within the contracting workforce.</li> <li>• Knowledge and information management that provides credible, reliable, and timely data to contracting process stakeholders, including the agency's Procurement Department and program staff who decide which services to buy, project managers who receive the services, managers who maintain supplier relationships, contract administrators who oversee compliance, and the finance department that pays for the goods and services.</li> </ul>
<b>Pension Benefit Guaranty Corporation (PBGC)</b>	
Procurement Department's <i>Standard Operating Procedures Manual</i> , December 2009	This manual implements the FAR and other statutory requirements in PBGC to guide procurement activities and establishes basic uniform procedures for the internal operation of acquiring supplies and services within PBGC.

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**Appendix I: Federal Contracting Policies and  
Guidance Cited in This Report**

<b>Source</b>	<b>Summary</b>
<i>Guidelines for Determining Whether to Use Contractors or Government Employees and Contracting with PBGC Retirees</i> (Directive GA 15-4) Aug. 11, 2009	This guidance provides a step-by-step process to assist managers in deciding whether to use contractors or government employees to perform the agency's work and discusses the agency's approach in applying the FAR's guidance on inherently governmental functions.
<i>Selection, Appointment, Training and Management of Contracting Officer Technical Representatives (COTRs) and Task Monitors (TMs)</i> (Directive PM 25-5) Dec. 21, 2010	This guidance establishes uniform policies and procedures for the selection, appointment, training, and management of COTRs and TMs.

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Sources: Federal regulations and documents from the White House, OMB, GAO, and PBGC.

# Appendix II: Summary of PBGC Actions Taken to Improve Contracting in Response to Previous Recommendations

PBGC has taken a number of steps to strengthen its contracting process in response to contract-related recommendations from previous GAO reports, as well as reports from PBGC's Office of Inspector General (IG). The tables below provide a detailed summary of the recommendations from these reports and PBGC's corresponding actions.

**Table 6: Steps Taken by PBGC in Response to Previous GAO Contract-Related Recommendations, 2000 to Present**

Report	Recommendation	PBGC response/action taken	Status as of 2010
<i>Pension Benefit Guaranty Corporation Contracting Management Needs Improvement</i> <a href="#">GAO/HEHS-00-130</a> Sept. 18, 2000	To improve PBGC's management of its contract responsibilities, we recommend that PBGC's Executive Director:		
	<ul style="list-style-type: none"> <li>Conduct a comprehensive review of PBGC's future human capital needs, including the size of the workforce; deployment across the organization; and the knowledge, skills, and abilities needed by PBGC.</li> </ul>	PBGC engaged the National Academy of Public Administration to examine human capital issues and assist it in conducting a strategic workforce planning study. The National Academy of Public Administration recommended a six-step process for PBGC: (1) forecast strategic direction; (2) assess business environment; (3) assess human capital requirements; (4) determine gaps; (5) develop solutions/strategies; and (6) develop an implementation plan.	Closed-implemented
	<ul style="list-style-type: none"> <li>Address weaknesses in PBGC's procurement process to ensure that decisions to award contracts best serve the needs of the government and plan participants, while fostering competition.</li> </ul>	To improve competition, PBGC established a team with Procurement Department participation to analyze software needs for managing customer relations and conduct market research, and a similar team to address its customer service center procurement needs. PBGC also began competing more information resource management contracts, and contracts with field offices that formerly had been sole source.	Closed-implemented
	<ul style="list-style-type: none"> <li>Where appropriate, utilize more fixed price contracts and fewer labor hour payment arrangements consistent with best practices in performance-based contracting.</li> </ul>	PBGC agreed with this recommendation. PBGC noted that it should use more fixed price contracts as appropriate, and cited evidence of its efforts to do so beginning in fiscal year 2004.	Closed-implemented

**Appendix II: Summary of PBGC Actions  
Taken to Improve Contracting in Response to  
Previous Recommendations**

<b>Report</b>	<b>Recommendation</b>	<b>PBGC response/action taken</b>	<b>Status as of 2010</b>
	<ul style="list-style-type: none"> <li>Strengthen policies and procedures for evaluating proposals by ensuring that review panels adequately document their contract award recommendations in accordance with PBGC's internal guidelines.</li> </ul>	PBGC stated that it had met this recommendation with its September 1999 requirement to retain individual scores from members of Technical Evaluation Panels in the contract files, and that it would ensure that other needed documentation is retained in the files to ensure that procurement decisions are thoroughly documented.	Closed-implemented
	<ul style="list-style-type: none"> <li>Strengthen PBGC's contract oversight role by developing the capacity to centrally compile and monitor essential field office performance data.</li> </ul>	PBGC's Insurance Operations Department was developing a centralized web site that would allow for more effective field office oversight, with better tracking of PBGC issues, administrative actions, and work plan management.	Closed-implemented
	<ul style="list-style-type: none"> <li>Address weaknesses in PBGC's review process for field office performance to better ensure that contractors providing benefit administration services meet quality and accuracy requirements.</li> </ul>	The field office review function was moved to the division responsible for ensuring compliance with program procedures. Also, a consultant was hired to do a risk assessment of field office processes, and numerous enhancements were made to the review process as a result. The field office review teams underwent a 4-day training session.	Closed-implemented
	<ul style="list-style-type: none"> <li>Develop a comprehensive set of procedural guidance for staff responsible for awarding contracts and monitoring contractor performance.</li> </ul>	PBGC has posted contract-policy guidance on the Procurement Department intranet site for staff responsible for awarding contracts and monitoring contractor performance.	Closed-implemented
	<ul style="list-style-type: none"> <li>Revise the current organizational placement and reporting relationship of the Contracts and Controls Review Department to promote objectivity and independence.</li> </ul>	The National Academy of Public Administration study addressed this issue and PBGC implemented some organizational changes to provide greater departmental independence. Responsibility for oversight of contract audits was moved from this department to the IG. PBGC revised the department's mission, function statement, and operating procedures to describe its new duties and coordinate respective functions with the IG.	Closed-implemented



**Appendix II: Summary of PBGC Actions  
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Previous Recommendations**

<b>Report</b>	<b>Recommendation</b>	<b>PBGC response/action taken</b>	<b>Status as of 2010</b>
<p><i>Pension Benefit Guaranty Corporation Some Steps Have Been Taken To Improve Contracting, but a More Strategic Approach is Needed</i></p> <p><a href="#">GAO-08-871</a></p> <p>Aug. 18, 2008</p>	<p>To improve PBGC's performance in an environment of heavy contractor use, the Director of PBGC should revise its strategic plan and, in drafting the corporation's human capital strategic plan, we recommended that the Director of PBGC should:</p>		
	<ul style="list-style-type: none"> <li>• Include the Procurement Department in agency-wide strategic planning.</li> </ul>	<p>PBGC believes that its current strategic plan is sufficiently comprehensive to address the recommendation; that its final <i>Human Capital Strategic Plan, FY 2010-2014</i> recognizes the importance of contracting; and that the Procurement Department provides input to the corporate strategic planning process in various ways. In response, GAO stated that the strategic plan only briefly mentions performance-based contracting, and that PBGC is missing the opportunity to gain the Procurement Department's insight very early in the process before contracting decisions are made.</p>	<p>Open pending re-evaluation following completion of this study</p>
	<ul style="list-style-type: none"> <li>• Ensure that the Procurement Director sits on PBGC's three strategic teams—the Operations Integration Board, the Budget and Planning Integration Team, and the Capital Planning for Information Technology Team.</li> </ul>	<p>PBGC reported that the Director of the Procurement Department regularly provides advice and consultation on procurement-related issues to the three strategic planning and coordination teams, among others; and that he also participates in weekly Department Director meetings and regularly participates in agency-wide strategic planning sessions. In response, GAO noted the Procurement Department's role in the organization is not consistent with the role that procurement plays in achieving the agency's mission, both in terms of dollars spent and in terms of the size of the contractor workforce. PBGC is missing the opportunity to use the Procurement Department's expertise to focus more strategically and help PBGC achieve its strategic goals.</p>	<p>Open pending re-evaluation following completion of this study</p>

**Appendix II: Summary of PBGC Actions  
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<b>Report</b>	<b>Recommendation</b>	<b>PBGC response/action taken</b>	<b>Status as of 2010</b>
	<ul style="list-style-type: none"> <li>Broaden the Procurement Department's May 2007 staffing study to include as part of PBGC's agency-wide acquisition workforce those positions outside of the Procurement Department that have a significant impact on procurement outcomes.</li> </ul>	In response to our recommendation, PBGC expanded its comprehensive review of necessary staffing levels relating to procurement functions to include acquisition positions outside of the Procurement Department. It identified the universe of acquisition positions at PBGC; conducted a review of best practices using GAO's Framework for Assessing the Acquisition Workforce; and assessed its acquisition-staffing levels using data from the Federal Procurement Data System and the Federal Acquisition Institute, including supplemental analysis of PBGC's COTR workload data.	Closed-implemented
	<ul style="list-style-type: none"> <li>Include in PBGC's human capital strategy detailed plans for how PBGC will obtain contract support.</li> </ul>	PBGC reported that human capital management, including contractor support, is a planned process that is strategically linked to their goals. In response, GAO noted that PBGC's <i>Human Capital Strategic Plan, FY 2010-2014</i> did not include any detail about how contractor support will be used to meet PBGC's goals, and that PBGC needs to address the use of contractors from a more strategic level, including current and future needs.	Open pending re-evaluation following completion of this study
	<ul style="list-style-type: none"> <li>Assess PBGC's contract information to determine if additional information is needed to support strategic management of acquisition decisions.</li> </ul>	PBGC reported that information needed to support strategic management of acquisition decisions is available from the Procurement Department, and that contracting officers in the Procurement Department and COTRs have access to and use this information. However, PBGC was seeking funds to better integrate its data systems.	Open pending re-evaluation following completion of this study
	<ul style="list-style-type: none"> <li>Develop metrics for PBGC's annual performance plan that document how the acquisition function supports PBGC's mission and goals.</li> </ul>	PBGC stated that it has metrics relating to contractor performance in individual performance plans of senior executives with major contracting projects, as well as in those of Procurement Department employees. PBGC will review whether these measures can be incorporated into the annual performance budget to document how the acquisition function supports PBGC's mission and goals.	Open pending re-evaluation following completion of this study

**Appendix II: Summary of PBGC Actions  
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Report	Recommendation	PBGC response/action taken	Status as of 2010
	To improve PBGC's contract management as it implements a performance-based approach to contracting, the Director of PBGC should:		
	<ul style="list-style-type: none"> <li>Provide comprehensive training on performance-based contracting for PBGC's Procurement Department staff, managers, and acquisition-related workforce.</li> </ul>	In 2008, PBGC reported that it began training Procurement Department staff in developing performance-based statements of work, and as of 2010, PBGC noted that the PBGC Training Institute provided a wide range of procurement-related training for Procurement Department personnel and COTRs, such as training on performance-based contracting. In addition, the Procurement Department has incorporated training on performance-based contracting in its Acquisition Excellence Workshops.	Open pending re-evaluation following completion of this study
	<ul style="list-style-type: none"> <li>Develop practices to help ensure accountability for the Procurement Department staff carrying out contract-monitoring responsibilities.</li> </ul>	In 2008, PBGC stated that Procurement Department staff were working closely with departmental representatives to ensure that statements of work and resulting contracts were properly structured to achieve desired outcomes. In 2010, PBGC reported that in November 2008, three new full-time equivalents (FTE) were added to the Procurement Department staff and that in May 2009, a contract was issued to provide two contract close-out specialists to help ensure the proper administration and accountability of PBGC contracts. In response, however, we noted that it is unclear how PBGC will ensure that contracts are structured to include quality monitoring and mechanisms such that deficiencies can be corrected and good performance is rewarded; that monitoring plans are developed; and that contract monitoring is occurring.	Open pending re-evaluation following completion of this study

**Appendix II: Summary of PBGC Actions  
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Report	Recommendation	PBGC response/action taken	Status as of 2010
	<ul style="list-style-type: none"> <li>Ensure that future contracts measure performance in terms of outcomes, provide incentives for desired outcomes, and ensure payment of award fees only for excellent performance.</li> </ul>	<p>In 2010, PBGC reported that its Procurement Department staff was working closely with its customers to properly analyze requirements and to ensure that, when possible, requirements were being staffed in performance-based terms and resulting contracts are structured to achieve desired outcomes. To ensure proper review of future requirements, PBGC had implemented a process for the advance procurement planning of all requirements with an estimated value greater than \$100,000, including provisions related to justification and approval of labor hour contracts. In response, however, we noted that it is not clear that PBGC has implemented a performance-based approach to contracting, that contracts measure performance in terms of outcomes, or that that the contracts provide incentives for accomplishment of desired outcomes.</p>	<p>Open pending re-evaluation following completion of this study</p>

Source: GAO.

**Appendix II: Summary of PBGC Actions  
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**Table 7: Steps Taken by PBGC in Response to Previous IG Contract-Related Recommendations, 2005 to Present**

<b>Report</b>	<b>Recommendation</b>	<b>PBGC response/action taken</b>	<b>Status as of 6/8/2011</b>
Fiscal Year 2004 Financial Statement Audit—Management Letter (Financial) (2005-10) 3/31/05	PD-82: Develop and implement a policy related to deobligating prior program years' unliquidated balances in a timely manner.	The Procurement Department and its staff are in compliance with PBGC's procurement function by adhering to the general policy requirements cited in Directive FM 15-2, <i>Obligating Procedures for PBGC Procurements</i> .	IG is reviewing management's submission
Controls Related to the Purchase Card Program (2005-14) 6/7/05 (Reopened 8/21/09)	PD-37: Establish a process whereby all cardholders and approving officials are reviewed at least annually, verifying such items as spending limits, number of cards assigned, and actual card usage.  PD-38: Identify, document, and make available the requirements for documentation to support purchases and approvals including retention.	Management has reported completing corrective actions for this recommendation. The Procurement Department developed and implemented a new Purchase Card Manual.	IG is reviewing management's submission
Audit of Procurement Activities Related to Award of Morneau Sobeco Contracts PBGC01-CT-00-0597 and PBGC01-CT-03-0667 (2005-18) 9/29/05 (Reopened 8/21/09)	PD-39: Establish and document procedures requiring retention of all documents supporting the advanced planning process in accordance with FAR and PBGC requirements.  PD-40: Establish and document detailed policies and procedures for PBGC's procurement activities, including duties performed by the contracting officer, contract specialists, and the competition advocate.	Management is currently working to address the issues raised by the IG.	Management expects to submit a revised response by 6/30/2011
Audit of Monitoring Activities Related to Morneau Sobeco Contracts PBGC01-CT-00-0597 and PBGC01-CT-03-0667 (2005-19) 9/29/05 (Reopened 8/21/09)	PD-42: The Procurement Department should ensure that status-report due dates have appropriate reporting deadlines and that the reports contain useful information.  PD-43: The Contracting Officer Technical Representatives (COTR) for the Morneau Sobeco contracts should ensure that all required status reports are submitted in a timely manner.  PD-44: The COTR for the Morneau Sobeco contracts should ensure that acceptance and receipt of all contract deliverables are documented in writing.  PD-47: The Procurement Department should establish written operating procedures, including establishing due dates, for contract-monitoring duties, including those of the contract specialist and contracting officer.	Management has reported completing corrective actions for this recommendation. To correct the finding and institutionalize the contracting officer review process, PBGC issued Directive PM 25-5, entitled, <i>Selection, Appointment, Training, and Management of Contracting Officer Technical Representatives (COTRs) and Task Monitors (TMs)</i> , on December 21, 2010.	IG is reviewing management's submission

**Appendix II: Summary of PBGC Actions  
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Report	Recommendation	PBGC response/action taken	Status as of 6/8/2011
	PD-48: The contract specialist for the Morneau Sobeco contracts should document reviews performed of the COTR status reports as well as any review and approval of invoices.		
	PD-49: The Procurement Department should formalize its procedures for contract specialist reviews of invoices, including determining compliance with contract terms, such as labor rates, other direct costs, and subcontracting.		
Audit of Costs Claimed by Morneau Sobeco under Contract Nos. PBGC01-00-0597 and PBGC01-CT-03-0667 from July 24, 2000, through November 30, 2004 (2005-20) 9/29/05	PD-76: The contracting officer should direct Morneau to establish formal written procedures to recalculate invoice amounts and reconcile invoices to supporting documentation.	Management has reported completing corrective actions for this recommendation. During the contract performance period an invoice review was completed and no exceptions were taken to the contractor cost representations.	IG is reviewing management's submission
Procurement Cycle Performance Audit Report on the Initiation, Monitoring, and Close-out of Acquisition of Goods and Services in Excess of \$2,500. (2006-09) 3/16/06 (Reopened 8/21/09)	PD-61: Create a single, definitive source for PBGC procurement procedures, and assign responsibility for monitoring contract-administration responsibilities below the contracting officer level.	Management has reported completing corrective actions for this recommendation. PBGC issued Directive PM 25-5 entitled, <i>Selection, Appointment, Training, and Management of Contracting Officer Technical Representatives (COTRs) and Task Monitors (TMs)</i> , on December 21, 2010. Paragraph 8f of the Directive requires the COTR to submit a quarterly status report to the contracting officer.	IG is reviewing management's submission
	PD-62: Issue guidance that requires: review of documents before inclusion into the contract file to ensure it is complete and contains all necessary items, such as signatures; and documentation evidencing invoice review by contract specialists is included in the contract file.		
	PD-64: Implement controls to ensure the COTR/contract database is updated each time a COTR changes so that the database remains continuously up to date.	Management has reported completing corrective actions for this recommendation.	

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<b>Report</b>	<b>Recommendation</b>	<b>PBGC response/action taken</b>	<b>Status as of 6/8/2011</b>
	PD-65: Implement controls so that invoices are identified and marked as "final" or "not final."	Management has reported completing corrective actions for this recommendation. Management concurred with the finding and recommendation and is currently in compliance with PBGC Directive FM 15-2, <i>Obligating Procedures for PBGC Procurements</i> .	
	PD-69: Implement contract close-out procedures required by the FAR, namely the inclusion in the contract file of evidence of receipt of goods/services and final payment. Among the items tested, we did not identify any instances of contracts receiving payment for goods and services not delivered. Procurement Department management indicated that PBGC has compensating controls which reduce this risk to an acceptable level.	Management has reported completing corrective actions for this recommendation. The Procurement Department provided the IG examples of two contracts that were closed in accordance with its Standard Operating Procedures (SOP).	
	PD-70: Evaluate the need for a COTR to write and submit a Monthly Status Report to the contract specialist.	Management has reported completing corrective actions for this recommendation. PBGC issued Directive PM 25-5, entitled, <i>Selection, Appointment, Training and Management of Contracting Officer Technical Representatives (COTRs) and Task Monitors (TMs)</i> , on December 21, 2010. Paragraph 8f of the Directive requires the COTR to submit a quarterly status report to the contracting officer.	
Unisys Corporation Examination of Contract Termination Proposal Under Delivery Order No.	PD-71: The IG recommends reviewing \$197,035 in questioned costs to determine reasonableness, allocability, and allowability.	Management has reported completing corrective actions for this	IG is reviewing management's submission

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<b>Report</b>	<b>Recommendation</b>	<b>PBGC response/action taken</b>	<b>Status as of 6/8/2011</b>
PBGC01-DO 04-0143 (Issued under Prime Contract No. GSOOT99ALDO212) (2006-14) 9/29/06 and Audit of Incurred Costs on Delivery Order No. PBGC01-DO-04-0143 (Issued under Prime Contract No. GSOOT99ALDO212 (2006-16) 9/29/06	PD-72: The IG recommends reviewing \$146,626 in questioned costs to determine reasonableness, allocability, and allowability.	recommendation. A settlement agreement was reached with the contractor. All monies due the PBGC have been collected under the contract.	
Resource Consultants (RCI), Inc. Report for Costs Incurred by Resource Consultants, Inc. under Contract PBGC01-CT-01-603 for Fiscal Years ended September 30, 2001, 2002, 2003, 2005, and 2006 (2007-13) 9/27/07 and under Contract PBGC01-CT-04-691 for Fiscal Years ended September 30, 2005, and 2006 (2007-14) 9/27/07	PD-86: PBGC's contracting officer should instruct RCI's management personnel to comply with the contract's provision to submit time sheets to PBGC for every contract employee billed. PBGC's contracting officer should review the unsupported billings of \$52,380 for the eight employees to determine the allowability of these billings and initiate necessary collection actions.  PD-92: PBGC contracting officer should instruct RCI's management personnel to comply with the contract's provision to submit time sheets to PBGC for every contract employee billed. PBGC's contracting officer should review the unsupported billings of \$2,051 for this employee to determine the allowability of these billings and initiate necessary collection actions.	The contracting officer issued a demand letter on May 18, 2009, to the contractor. The contractor has filed an appeal with Civilian Board of Contract Appeals which has established November 7 through November 10, 2011, as dates for hearing the appeal.	Management expects to forward information to the IG for review by 12/31/2011
Limited Disclosure Report on Internal Controls—PBGC's Fiscal Years 2007 and 2006 Financial Statements Audit (2008-02) 11/15/07	FS-07-16: Enforce directive PM 05-1, <i>PBGC Entrance and Duty and Separation Procedures for Federal and Contract Employees</i> , to ensure contract personnel can effectively be tracked and ensure a formal Entrance on Duty and Separation Clearance processes are followed.	Management has reported completing corrective actions for this recommendation. Management updated Directive PM 05-01, entitled, <i>PBGC Entrance on Duty and Separation Procedures for Federal and Contract Employees</i> . The revised directive was finalized and distributed during the week of October 18, 2010.	IG is reviewing management's submission



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Previous Recommendations**

Report	Recommendation	PBGC response/action taken	Status as of 6/8/2011
Integrated Management Resources Group (IMRG), Inc. Report on PBGC's Contract Administration of the IMRG Contract CT-03-0652 (2008-04) 12/7/07	PD-102: We recommend that the Contracting Officer take steps to verify that contractor personnel assigned to PBGC contracts meet the required educational and experience requirements in the contracts and develop a written document of requirements, such as a contract administration plan, for COTRs to use in determining the adequacy of the contractor's process for assigning the personnel to PBGC contracts.	Management has reported completing corrective actions for this recommendation. PBGC issued Directive PM 25-5, entitled, <i>Selection, Appointment, Training and Management of Contracting Officer Technical Representatives (COTRs) and Task Monitors (TMs)</i> , on December 21, 2010. Paragraph 8f of the Directive requires the COTR to submit a quarterly status report to the contracting officer.	IG is reviewing management's submission
	PD-103: We recommend the Procurement Department issue written guidance to persons acting as technical monitors and assisting in the contract-deliverable process. The guidance should outline their duties and responsibilities and also be linked to the terms and provisions of the contract.		
	PD-104: We recommend the contracting officer and COTR for each department collaborate to include procedures on the contract-administration plan to ensure contract employees who work 5 hours or more do not charge 30 minutes for lunch to the PBGC contract.	Management has reported completing corrective actions for this recommendation. The Procurement Department provided evidence to the IG that the contractor was in compliance with the terms and conditions of the contract.	
	PD-105: The contracting officer and officials for each department should collaborate on developing a performance goal and objectives to assess the COTR's performance on monitoring contractors.	Management has reported completing corrective actions for this recommendation. PBGC issued Directive PM 25-5, entitled, <i>Selection, Appointment, Training and Management of Contracting Officer Technical Representatives (COTRs) and Task Monitors (TMs)</i> , on December 21, 2010. Paragraph 8e of the Directive discussed the evaluation of COTR performance.	

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<b>Report</b>	<b>Recommendation</b>	<b>PBGC response/action taken</b>	<b>Status as of 6/8/2011</b>
Booz Allen Hamilton (BAH) Audit on Costs Incurred by BAH under Contracts: PBGC01-CT-00-0596, PBGC01-CT-03-0681, PBGC01-CT-04-0685, PBGC01-CT-05-0742 for Contractor Fiscal Year ended March 31, 2006 (2008-09) 8/26/08	PD-109: The Defense Contract Audit Agency questioned \$97,581 of indirect costs. The IG recommended that delaying closing out any of the above contracts until the final indirect cost rates have been issued. When the rates have been finalized and provided, request adjustments on current public vouchers under each contract if there is a substantial difference between costs billed using the 2006 interim indirect rates and the costs incurred using the 2006 final indirect rates. Settling indirect costs on an annual basis will prevent substantial underpayment or overpayment which otherwise may not be corrected until the contract is completed. The IG can provide assistance in calculating the difference if necessary.	Final indirect rates have not been determined by the Defense Contract Audit Agency. Until they finalize the rates and provide them to us, management cannot proceed.	Management expects to forward information to the IG for review by 8/31/2011.
TechGuard Security, LLC. Report for Costs Incurred by TechGuard Security under Contract PBGC01-CT-05-0739 for Fiscal Years ended September 30, 2006, and September 30, 2007 (2008-11) 9/30/08	PD-119: Procurement Department should review invoices that were submitted and question all costs related to these individuals.	Management has reported completing corrective actions for this recommendation. A settlement agreement was reached with the contractor. All monies due the PBGC have been collected under the contract.	IG is reviewing management's submission
	PD-121: Obtain documentation of employment/educational verification from TechGuard officials for these individuals. Pending receipt of documentation, these individuals should not be assigned to PBGC contracts.		
	PD-122: Determine the labor costs and total dollars billed to PBGC that should be refunded for individuals whose employment and/or education cannot be verified. Pending verification of authenticity, these individuals should not be assigned to work on PBGC contracts.		
Spectrum International, Inc. Report for Costs Incurred by Spectrum International, Inc. under Contract PBGC01-03-0654 for Fiscal Years ended September 30, 2006, and September 30, 2007 (2008-12) 9/30/08	PD-112: Follow up on proposed corrective actions by Spectrum officials for developing and implementing written policies and procedures for comparing an applicant's education and experience to the contract requirements and documenting the analyses.	Management has reported completing corrective actions for this recommendation. The PBGC contracting officer provided the IG evidence that the contractor is in compliance with the terms and conditions of the contract.	IG is reviewing management's submission
	PD-114: Require Spectrum officials to provide evidence that the four individuals identified in the report meet education and experience requirements of the contract.		

**Appendix II: Summary of PBGC Actions  
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Report	Recommendation	PBGC response/action taken	Status as of 6/8/2011
	<p>PD-115: Require Spectrum officials to provide to PBGC a detailed corrective-action plan time frame for completion of the necessary steps to implement written policies and procedures for performing limited-scope background checks prior to submitting personnel for approval by PBGC; and that PBGC monitor the progress of the corrective-action plan and follow up on those actions when necessary.</p> <p>PD-117: Require Spectrum officials to develop written accounting policies and procedures to include such areas as payroll, timekeeping, invoicing, human resources, and personnel files. These written procedures should provide for independent checks of key accounting records, such as recalculating invoices and tracing invoices to supporting documentation.</p>		
Paragon Technology Group, Inc. (2008-13) 9/30/08	PD-123: Determine the extent to which reliance will be placed on the building-access report and whether to seek a refund of \$21,164 from Paragon officials.	Management has reported completing corrective actions for this recommendation. The PBGC contracting officer reached a settlement with the contractor.	IG is reviewing management's submission
	PD-124: Initiate collection efforts to recover \$21,164.		
	PD-125: Conduct a detailed audit of all hours worked by the program manager to determine if additional questioned costs exist.		
	PD-126: Seek a refund of \$30,622 from Paragon officials.		
	PD-127: Review invoices that were submitted and question all costs related to the individual identified in the report.		
	PD-129: Obtain documentation of employment/educational verification from Paragon officials for individuals identified in the report. Pending receipt of documentation, these individuals should not be assigned to PBGC contracts.		
	PD-130: Obtain evidence verifying the authenticity of degrees awarded abroad. Pending verification of authenticity, these individuals should not be assigned to work on PBGC contracts.		
	PD-131: Determine the labor costs and total dollars billed to PBGC that should be refunded for individuals whose employment and/or education cannot be verified.		

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<b>Report</b>	<b>Recommendation</b>	<b>PBGC response/action taken</b>	<b>Status as of 6/8/2011</b>
Fiscal Year 2009 FISMA Independent Evaluation Report (EVAL-2010-07) 3/22/10	FISMA-09-12: Ensure all PBGC IT acquisitions include appropriate language as required by FAR § 39.101(d)	Management has reported completing corrective actions for this recommendation. In cooperation with the Office of General Counsel and the Office of Information Technology Enterprise Information Security Office, we developed a local clause which will be included in future contracts for information technology, as required by FAR 39.101 (d).	IG is reviewing management's submission
Fiscal Year 2010 Financial Statement Audit—Management Letter (Financial) (2011-06) 2/24/11	<p>PD-133: Management should formalize the paper review process in the Procurement Department and emphasize the importance of the compliance with FAR requirements regarding justification for other than full and open competition and determination of price reasonableness.</p> <p>PD-134: Management should implement controls in the certification of the justification for other than full and open competition to ensure that the contracting officers review and certify the justification for other than full and open competition for accuracy and completeness.</p> <p>PD-135: Management should implement controls in the approval of the determination of price reasonableness to ensure that the contracting officers grant approval based on the reasonableness of the contract price.</p> <p>PD-136: Management should implement controls in the peer-review process to ensure that all required documentation is listed on the peer-review checklist, and to ensure that all applicable documentation is signed by the contracting officers.</p> <p>PD-136: Management should implement controls in the peer-review process to ensure that the corrective actions are taken timely based on the results of the paper-review process.</p>	Management has reported completing corrective actions for this recommendation. The peer-review process has undergone a significant enhancement. The enhanced peer review focuses on improving quality and upholding standards. The Procurement Department also conducted mandatory FAR Part 13, Simplified Acquisition Procedures training for all contracting personnel.	IG is reviewing management's submission

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<b>Report</b>	<b>Recommendation</b>	<b>PBGC response/action taken</b>	<b>Status as of 6/8/2011</b>
Evaluation of PBGC's Strategic Preparations for a Potential Workload Influx (EVAL-2011-01) 11/16/10	PBGC-02: Coordinate the corporation-wide development and implementation of the Workload Surge Strategy Plan with the Executive Management Committee and key department directors, to include the Director of the Procurement Department and the Director of the Human Resources Department. Facilitate this coordination by ensuring that the methodologies used to develop the plans are consistent and that key decisions are documented.	As an alternative to the recommendation, PBGC proposed developing a directive to ensure there is corporate-wide understanding and vetting of the Large Influx Working Group and planning documentation.	Unresolved
	PBGC-03: Develop a workforce strategy tailored to address gaps in numbers, deployment, and alignment of the human capital to be obtained through contracts. This strategy, which may incorporate aspects of PBGC's Human Capital Strategy, should reflect the importance of the contact workforce to PBGC and support linkage of staffing and contracting decisions at the corporate level.	<p>As an alternative PBGC proposed:</p> <ul style="list-style-type: none"> <li>- Identifying contract work (not contracts) that will be relied on in large influx situations.</li> <li>- Identifying contract work where there are limited market alternatives, hence requiring increased managerial awareness.</li> <li>- Creation of a capacity model that can be used to project the impact of an influx on existing contracts.</li> <li>- Annual and as needed COTR reviews of projected workloads, including an evaluation of existing contractors to gauge capacity.</li> <li>- In scenarios where the Large Influx Working Group is acting, COTRs will identify areas that have potentially limited capacity and plan accordingly.</li> </ul>	
	PBGC-04: As part of planning for the workload surge, ensure that business units vet the feasibility of plans to expand existing contracts with subject matter experts in the Procurement Department.	As an alternative to the recommendation, PBGC proposed incorporating contract ceilings and scope evaluations in the Large Influx Working Group Planning Document to be developed.	

Source: Based on information provided by PBGC IG.

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# Appendix III: Scope and Methodology of the Contract File Review

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To obtain examples of recent improvements to PBGC's contracting processes and help illustrate the extent to which PBGC is ensuring the integrity of its contracting process, we selected a small judgmental sample of eight contracts for review. Two contracts were selected from each of PBGC's four main program departments. These four departments, listed below, account for more than 70 percent of the agency's contract obligations in fiscal year 2010

- Benefits Administration and Payment Department (BAPD);
- Corporate Investments Department (CID);
- Department of Insurance Supervision and Compliance (DISC); and
- Office of Information Technology (OIT).

To select specific contracts for review, we obtained a list of all active contracts from each of these four program departments, supplemented by data from PBGC's procurement department and from the Federal Procurement Data System-Next Generation (FPDS-NG).<sup>1</sup> In selecting contracts, we looked for the following characteristics

- contracts awarded relatively recently (if possible, in fiscal year 2009 or 2010);
- contracts for an ongoing activity (including some for actuarial services);
- contracts awarded for a large dollar amount;
- some contracts awarded to the same contractor that held the contract previously and some that changed to a different contractor; and
- proximity of the primary location where services provided under the contract are performed.

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<sup>1</sup>FPDS is a database for the government-acquisition community that provides summary-level data on federal contracts and is used for policy and trend analysis. The FPDS-NG was intended to improve the prior FPDS system in several ways, including providing more timely and accurate data; enabling users to generate their own reports; and providing easier user access to data. Although we have identified issues with the system, we believe the data used in this report are sufficiently reliable for our purposes. For an example of our work on FPDS, see [GAO-05-960R](#) and [GAO-09-1032T](#).

Table 8 provides an overview of the attributes of the eight contracts we chose for our review based on these selection criteria.

**Table 8: Summary of PBGC Contracts Selected for Review**

Contract/ contract number	PBGC department	Activity/service provided	Contract award date	Contract type	Estimated contract value at award	Cumulative total amount obligated (03/30/2011)	Length of contract with option periods
Hewitt Associates, LLC PBGC01-CT- 10-0023	BAPD	Actuarial support services to support pension benefit administration	9/28/2010	Labor hour	\$45,850,000	\$500,000	5 years
Randstad US, L.P. PBGC01-CT- 09-0034	BAPD	Pension benefit administration services at Miami, Florida, field benefit administration office	8/21/2009	Labor hour	27,847,898	6,308,000	5 years
PIMCO PBGC01-CT- 09-0004	CID	Investment management services for a fixed income debt portfolio	10/1/2008	Firm fixed price	34,580,000 <sup>a</sup>	15,465,238	7 years
Thornburg Investment Management PBGC01-CT- 10-0017	CID	Investment management services for an international equity portfolio	4/21/2010	Firm fixed price	22,400,000	3,200,000	7 years
Barclays Capital Inc. <sup>b</sup> PBGC01-CT- 07-0775	DISC	Financial advisory, analytical, and expert witness services provided in support of the mitigation of risks to the PBGC pension insurance program	8/7/2007	Firm fixed price indefinite delivery/ indefinite quantity contract	30,100,000	9,602,000	4.3 years
Milliman, Inc. PBGC01-CT- 09-0008	DISC	Actuarial support services provided in support of the mitigation of risks to the PBGC pension insurance program	11/12/2008	Labor hour	3,738,700	2,303,450	5 years

**Appendix III: Scope and Methodology of the  
Contract File Review**

<b>Contract/ contract number</b>	<b>PBGC department</b>	<b>Activity/service provided</b>	<b>Contract award date</b>	<b>Contract type</b>	<b>Estimated contract value at award</b>	<b>Cumulative total amount obligated (03/30/2011)</b>	<b>Length of contract with option periods</b>
Booz Allen Hamilton PBGC01-D- 09-0004	OIT	Computer software support services for various PBGC business information systems	2/27/2009	Firm fixed price and cost plus fee indefinite delivery/ indefinite quantity PBSA contract	43,110,914	11,163,921	5 years
TechGuard Security, LLC PBGC01-CT- 10-0021	OIT	Information technology security support services	4/30/2010	Firm fixed price	461,205	499,639 <sup>c</sup>	0.5 years

Source: GAO analysis of PBGC data.

<sup>a</sup>Total contract value for PIMCO assumes that the \$4.94 million obligated at award for assets under management during the base year and an equivalent amount will be obligated under each of the 6 option years that follow.

<sup>b</sup>The contractor at award was Lehman Brothers which was purchased by Barclays Capital Inc. during 2008. A novation agreement was executed in November 2008 that formalized the arrangement for Barclays to provide the required services under this contract.

<sup>c</sup>This contract was extended for 15 days; therefore the cumulative amount reflects the firm fixed price increase of \$38,734.

To conduct our review of contract files, we used a standardized data collection instrument organized around certain indicators of key management controls that we developed based on provisions of the Federal Acquisition Regulation (FAR),<sup>2</sup> PBGC's own internal policies and procedures for contracting (see app. I), and past GAO work. These indicators are summarized in table 9. We also used structured interview guides to obtain information from PBGC officials familiar with each contract's award process and postaward monitoring.

<sup>2</sup>48 C.F.R. ch. 1 (2011). The FAR is the primary regulation for all federal executive agencies in their acquisition of supplies and services with appropriated funds. Although PBGC is not required to follow the FAR in all acquisitions, it generally does so on a voluntary basis. For a complete list of contract-related policies and regulations that we reviewed, see appendix I.



**Table 9: Indicators of Key Contracting Process Controls**

Indicator	Definition/description
Acquisition planning	<p>Advance procurement planning documentation prepared with all required elements</p> <p>An advance procurement planning document is prepared to initiate procurement actions with sufficient lead time and to summarize the acquisition planning deliberations for the future contract award.</p>
Initial contract award	<p>Full and open competition used to solicit offers and award the contract, except when FAR allowed a noncompetitive award</p> <p>For proposed contract actions expected to exceed \$25,000, the contracting opportunity is posted to FedBizOpps for all interested firms to see and submit a proposal. PBGC may award a contract using less than full and open competition only when certain circumstances such as the unique capabilities of a single vendor are required or if PBGC would suffer serious financial or other injury from the delay caused by full and open competition</p>
	<p>Justification documented for the use of labor hours or cost plus fixed fee contracts, where applicable</p> <p>A written justification is prepared by the contracting officer to show why the award of certain types of contracts, including a cost reimbursement contract or labor hours contract was the most suitable contract type for the future contract award.</p>
	<p>Technical Evaluation Panel formed correctly and the evaluation process was documented</p> <p>Source selection records are maintained for negotiated procurements that include a written report documenting the assessment of each offeror's proposal against the stated evaluation criteria by the technical evaluation panel and a written report is prepared documenting the rationale used by the source selection authority to justify the contract award made to the successful offeror.</p>
Option-year award	<p>Inclusion of option years justified; and if applicable, awarded with the proper justification documented</p> <p>The contracting officer justifies in writing, among other things, the notification period for exercising an option and includes the justification in the contract file. When exercising an option period, the contracting officer prepares a written justification showing that exercising the option is the best method of fulfilling the government's continuing need after considering price and other factors.</p>
Contract oversight	<p>COTR assigned before contract award and is properly trained and certified</p> <p>PBGC department directors recommend employees to the Procurement Department to serve as COTRs for contracts within their areas of responsibility. The Procurement Department prepares COTR designation letters to the specified individuals (by name, not position) and describes delegated responsibilities. All COTRs complete the formal COTR training class before being appointed and maintain their skills through subsequent COTR refresher training classes.</p>

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**Appendix III: Scope and Methodology of the  
Contract File Review**

Indicator	Definition/description
Adequate controls to ensure that contractor personnel assigned to the contract met PBGC specifications	An “Education and Experience Qualifications” contract clause has been included as part of the contract, if applicable. This is needed to facilitate the review of contractor workers assigned to the contract to ensure they meet the staffing qualifications and experience requirements outlined in the contract.
Contractor oversight and performance evaluations documented as applicable	Oversight will vary by department and contract and may include contractor performance reports and COTR site visit reports; but the review of contractor invoices (before payment is made) is mandatory for all contracts.

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Source: GAO analysis of the FAR and PBGC documents.

In conducting our review, we examined the documentation in the files for evidence that PBGC’s contracting processes were adhering to these key contracting process management controls. We then summarized the results of our review into categories reflecting the various stages of PBGC’s contracting process (see table 10).

**Table 10: Evidence of Contracting Process Management Controls at PBGC**

PBGC contract/task order (TO)	Award date	For acquisition planning	Documentation in the contract file					
			To justify the use of nonfixed price controls, if applicable	To justify noncompetitive contract awards, if applicable	To provide a complete history of the contract award decision	To support the use of option years, if applicable	To show the COTR assigned properly and meets training standards	To contain contract oversight measures and invoice reviews
Hewitt Associates, LLC PBGC01- CT-10-0023	9/28/2010	Yes	Yes	N/A	Yes	Yes	Yes	Yes
Randstad US, L.P. PBGC01- CT-09-0034	8/21/2009	Yes	Yes	N/A	Yes	Yes	Yes	Yes
PIMCO PBGC01- CT-09-0004	10/1/2008	No	N/A	N/A	No	No	Yes	Yes
Thornburg Investment Management PBGC01- CT-10-0017	4/21/2010	Yes	N/A	N/A	Yes	Yes	Yes	Yes
Barclays Capital Inc. <sup>a</sup> PBGC01- CT-07-0775	8/7/2007	No	N/A	N/A	No	No	Yes	Yes
TO #08-03	3/18/2008	No	N/A	N/A	No	N/A	Yes	Yes
TO #09-04	6/2/2009	No	N/A	N/A	No	N/A	Yes	Yes
TO #10-08	9/20/2010	Yes	N/A	N/A	Yes	N/A	No	Yes
TO #10-09	9/29/2010	Yes	N/A	N/A	Yes	N/A	No	Yes
Milliman, Inc. PBGC01- CT-09-0008	11/12/2008	Yes	Yes	N/A	Yes	Yes	Yes	Yes
Booz Allen Hamilton PBGC01-D- 09-0004	2/27/2009	Yes	No	N/A	Yes	Yes	Yes	Yes
TO# DO - 09-9047	9/24/2009	No	No	N/A	No	N/A	Yes	Yes
TO# DO- 10-9009	3/22/2010	No	No	N/A	Yes	No	Yes	Yes

**Appendix III: Scope and Methodology of the  
Contract File Review**

PBGC contract/task order (TO)	Award date	For acquisition planning	Documentation in the contract file					
			To justify the use of nonfixed price controls, if applicable	To justify noncompetitive contract awards, if applicable	To provide a complete history of the contract award decision	To support the use of option years, if applicable	To show the COTR assigned properly and meets training standards	To contain contract oversight measures and invoice reviews
TO# DO- 10-9042	9/7/2010	Yes	No	N/A	Yes	Yes	Yes	Yes
TO# DO- 10-9056	9/22/2010	Yes	No	N/A	Yes	N/A	Yes	Yes
TechGuard Security, LLC PBGC01- CT-10-0021	4/30/2010	Yes	N/A	Yes	Yes	Yes	Yes	Yes

Source: GAO analysis of PBGC data.

Note: Shaded rows denote that the contract award was made *before* the PBGC procurement SOP was issued in December 2009. Nonshaded rows denote that the contract award was made *after* the PBGC procurement SOP was issued in December 2009.

<sup>a</sup>The contractor at award was Lehman Brothers which was purchased by Barclays Capital Inc., during 2008. A novation agreement was executed in November 2008 that formalized the arrangement for Barclays to provide the required services under this contract.

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# Appendix IV: Elements of a Performance-Based Service Acquisition Contract

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Element	Description
Measurable results	To the maximum extent practicable, describe the work in terms of the required results rather than either “how” the work is to be accomplished or the number of hours to be provided. Agencies should structure performance work statements in solicitations around the purpose of the work to be performed, that is, what is to be performed rather than how to perform it. For example, instead of telling the contractor how to perform aircraft maintenance or stating how many mechanics should be assigned to a crew, the solicitation, which is incorporated into the contract, should state that the contractor is accountable for ensuring that 100 percent of flight schedules are met or that 75 percent of all aircraft will be ready for flight.
Performance standards	Include measurable performance standards (i.e., in terms of quality, timeliness, quantity, etc.). Performance standards should be set in terms of quality, timeliness, and quantity, among other things.
Performance-assessment methods	Include the methods of assessing contractor performance against the performance standards. Describe how the contractor’s performance will be evaluated in a quality assurance plan.
Use of incentives	Include performance incentives where appropriate. When used, the performance incentives shall correspond to the performance standards set forth in the contract. Incentives should be used when they will induce better quality performance and may be either positive or negative, or a combination of both.

Source: GAO analysis of the FAR and Office of Federal Procurement Policy guidance, *Performance-Based Service Acquisition*, Interagency Task Force on Performance-Based Service Acquisition, *Contracting for the Future*, (Washington D.C., July 2003).

# Appendix V: Comments from the Pension Benefit Guaranty Corporation



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

Office of the Director

June 8, 2011

Barbara D. Boybjerg  
Managing Director, Education, Workforce and Income Security Issues  
U.S. Government Accountability Office  
Washington, DC 20548

Dear Ms. Boybjerg: *Hi, Barbara,*

Thank you for the opportunity to comment on your draft report on contracting (GAO-11-588).

Contracting is critically important to PBGC. It's an activity we take very seriously, and we appreciate GAO's work in helping to make us even better.

PBGC also appreciates that your report recognized the recent improvements we have made in our contracting practices. We have worked hard at PBGC to implement prior GAO and Office of Inspector General recommendations related to contracting. Our new policies and procedures, training of staff, and increased use of performance based contracting have all contributed to a better controlled procurement environment at PBGC.

There is always room for additional improvement. In that spirit, we agree with the recommendations in your report.

While PBGC is not subject to the FAIR Act, we are prepared to use our current Comprizon system to code by function and address your first recommendation, i.e., to develop a sufficiently detailed service contract inventory to enable a better workforce analysis. This should help us in balancing—and rebalancing—our workforce as new challenges arise.

Your second recommendation, to conduct a risk analysis in contractor-reliant areas and evaluate costs and benefits of using contractors, is also well taken. PBGC management already considers risks and costs in its decision making, but we can and will conduct a more formal process as it relates to staffing and contracting.

With respect to your third recommendation, to document the rationale when not using a performance-based service acquisition approach, we have already added a line to the Advanced Procurement Plan form in order to raise the issue in a deliberate manner prior to contract solicitation and will ensure further documentation in the future.

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**Appendix V: Comments from the Pension  
Benefit Guaranty Corporation**

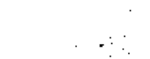
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We agree with you that it is important that we tie the performance metrics of major service contracts to PBGC's strategic goals. We do. Our purchases are essential to achieving those goals, and our management team well understands both that relationship and the emphasis on our goals and mission. For that reason, we're comfortable with your recommendation that we document the relationship.

Under separate cover, we are providing technical comments to your staff and are prepared to discuss these, as necessary.

PBGC has come a long way in contracting in recent years. We appreciate GAO's both recognizing it and helping us strengthen this key capability in protecting America's pensions.

Sincerely,



Josh Gotbaum

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# Appendix VI: GAO Contacts and Staff Acknowledgments

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## GAO Contacts

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## Staff Acknowledgments

In addition to the contacts named above, Margie Shields, Assistant Director; Ted Burik, Analyst-in-Charge; Matt Drerup; Najeema Washington; and Paul Wright made significant contributions to this report. Susan Aschoff, Gena Evans, Sheila McCoy, Mimi Nguyen, Ken Patton, Sylvia Schatz, Walter Vance, and Craig Winslow also made important contributions.



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