

Office of Inspector General




February 1, 2001
Audit Report No. 01-004

Audit of the Contractor Background
Investigation Process



DATE: February 1, 2001

TO: Arleas Upton Kea
Director
Division of Administration

FROM: 
David H. Loewenstein
Assistant Inspector General

SUBJECT: *Audit of the Contractor Background Investigation Process*
(Audit Report No. 01-004)

The Office of Inspector General (OIG) has completed an audit of the FDIC's contractor background investigation process. Previous contractor-related audits indicated that the Division of Administration (DOA) was not always conducting contractor background investigations as required by the Acquisition Policy Manual (APM). In response to these reports, DOA took corrective action to strengthen controls for requesting, tracking, and documenting the contractor background investigation process. This audit assessed the progress that DOA has made in controlling the contractor background investigation process and in complying with applicable laws and regulations.

BACKGROUND

Rules and regulations of the FDIC regarding contractor conflicts of interest and minimum standards are stated in 12 CFR Part 366 that became effective on April 10, 1996, pursuant to the Federal Deposit Insurance Act. The Congress, mindful of the abuses that had taken place in the awarding of contracts by the Department of Housing and Urban Development, imposed standards of conduct for the Resolution Trust Corporation's (RTC) independent contractors that were later adopted by the FDIC when the FDIC assumed responsibility for RTC-related matters upon the RTC's sunset in December 1995. These regulations apply to contractors that submit offers to provide services to the FDIC or that enter into contracts for services with the FDIC and subcontractors that enter into contracts to perform services under a proposed or existing contract with the FDIC. Disqualifying conditions under this regulation are that:

(1) No person shall perform services under an FDIC contract and no contractor shall enter into any contract with the FDIC if that person or contractor:

- (a) Has been convicted of any felony;
- (b) Has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System or the FDIC or their successors;
- (c) Has demonstrated a pattern or practice of defalcation regarding obligations; or
- (d) Has caused a substantial loss to any federal deposit insurance funds.

The policies for ensuring that contractors meet minimum standards of competence, experience, integrity, and fitness as stated in 12 CFR Part 366 are included in the APM issued by DOA. According to the APM, the Contracting Officer is responsible for requesting a background investigation on the contractor, subcontractors, management officials, and key personnel for (1) contracts for services of \$100,000 or greater; (2) awards where the contractor's employees will be required to work on-site at an FDIC office regardless of dollar amount; and (3) any other award at the discretion of the Contracting Officer. Key personnel are defined as a contractor's employees designated to perform essential work under the contract. Contracts for goods do not require background investigations.

The background investigation process is initiated when the contract is awarded and the Contracting Officer obtains background questionnaires that include certifications regarding disqualifying conditions from key personnel designated in the contract. This information is provided to the Chief, Employee/Contractor Security Unit (ECSU) who is then responsible for conducting the background investigation. The background investigation consists of various database checks on the individual or company including searches of Dun & Bradstreet (D&B), Credit Bureaus, Lexis/Nexis, General Services Administration (GSA) Debarred Lists, National Association of Securities Dealers Activities Query, FDIC and other bank regulatory databases, and court records from the last known address of the individual.

In addition to the background investigations conducted on key personnel, any contractor issued a badge for access to FDIC premises completes a Background Investigation Questionnaire to certify whether they have any disqualifying conditions and is fingerprinted. The fingerprints are submitted to the Federal Bureau of Investigation (FBI) to determine whether the contract employee has a history of felony convictions. Additionally, the APM was amended as of March 2000 to also require fingerprinting of any contract personnel who obtain a log-on identification for access to the FDIC network. Table 1 shows the type of background investigation a contractor should be subjected to based on their designation as "key personnel" and access to FDIC premises or systems.

Table 1: Type of Background Investigation Conducted Based on Designation of Contractor Personnel

Role Assigned to Contractor Personnel	Contract Employee Submits Self-Certification on Disqualifying Conditions	Database Inquiry of Credit Bureaus, D&B, GSA, FDIC, and Courts of Last Known Address	Fingerprints Submitted to FBI for Criminal Record History
Key Personnel Issued FDIC Badge or with Log-On Access	Yes	Yes	Yes
Key Personnel Without FDIC Badge or Log-On Access	Yes	Yes	No
Non-Key Personnel Issued FDIC Badge or with Log-On Access	Yes	No	Yes
Non-Key Personnel Without FDIC Badge or Log-On Access	No	No	No

To strengthen controls over the background investigation process, the Acquisition Section in DOA implemented the Background Investigation Tracking System (BITS) in July 1999. BITS is a database that tracks background investigations from the date requested until the results are reported by ECSU. Until implementation of BITS, ECSU maintained the only tracking system for background investigations, the Fitness and Integrity Tracking System (FITS). An additional procedure was also implemented in October 1999 for a biweekly reconciliation to be conducted between the Purchase Order System (POS) and BITS. These procedures were implemented to track background investigation requests made on contracts in excess of \$100,000 and to ensure background investigations were requested as required by the APM.

OBJECTIVE, SCOPE, AND METHODOLOGY

The audit objective was to evaluate the process for requesting, tracking, and documenting contractor background investigations and to assess whether the process complied with applicable laws and regulations. The audit scope included contracts awarded in excess of \$100,000 from January 1, 1999 to December 31, 1999. The audit methodology included:

- Identifying contracts awarded during 1999 and selecting a sample of 40 contracts in excess of \$100,000. We selected our sample to include contracts from each month and from each FDIC division in Washington and the Dallas Regional Office.¹

¹ Our sample included Legal Division Contracts for services other than retention of outside counsel because the Legal Division is not subject to the APM for those types of engagements.

- Reviewing ACSB contract files for each contract selected in our sample for evidence of background requests as required by the APM.
- Reviewing contractor invoices submitted to identify contractor personnel who were submitting billings but who were not listed as key personnel.
- Comparing information in the contract files with BITS and FITS.
- Reviewing applicable laws, regulations, and FDIC procedures on the requirements for background investigations.
- Reviewing background investigation files in the ECSU related to our audit sample.
- Interviewing DOA contracting and security officials responsible for the background investigation process to identify procedures and practices implemented during the audit scope.
- Obtaining information from the FBI regarding the National Criminal Information Center system and processes related to obtaining criminal record histories.
- Reviewing sign-in logs from January 1, 2000 to April 30, 2000 in one of the FDIC's headquarters buildings for recurring entries exceeding a 2-week timeframe.
- Reviewing prior audit reports containing issues related to contractor background investigations.

The audit was conducted in accordance with generally accepted government auditing standards. Audit fieldwork was conducted from January 2000 to August 2000 at DOA offices in Washington, D.C., and the Dallas Regional Office.

RESULTS OF AUDIT

Current contractor background investigation policies do not consistently cover all contractor personnel. Only contractor personnel designated as "key personnel" or those who obtain a contractor badge to enter FDIC premises self-certify by completing background questionnaires and undergo any form of background investigation. Therefore, many contractor personnel are able to enter FDIC premises and work on FDIC contracts without either receiving any form of background investigation or self-certifying that they do not possess disqualifying conditions. At a minimum, FDIC should ensure that all contractor personnel self-certify that they have no disqualifying conditions.

In July 1999, the Acquisition Section in DOA improved the process for requesting, tracking and documenting contractor background investigations by implementing the BITS. In October 1999, the process was further strengthened when steps were added to compare background

investigation requests entered into BITS with the Purchase Order System to verify that background investigations were requested for all contracts as specified in the APM. Prior to these improvements, the Acquisition Section did not have controls in place to verify that contract specialists ordered background investigations on contractors as required by the APM. As a result, contracts were awarded without contractor personnel receiving the background investigations required by the APM. While the process has been improved, further actions are needed to improve the contractor background investigation program. Specifically,

- DOA should take steps to verify that contractor personnel working for the FDIC self-certify that they have no disqualifying conditions.
- The need for background investigations of contractor personnel should be based on an evaluation of the roles of contractor personnel rather than on their designation as "key personnel."
- Contract Specialists at the Regional Offices should be required to submit background investigation requests through the Contractor Relations Group (CRG) in Headquarters.
- Procedures should require that the ECSU receive and review the POS report to verify that background investigations are requested.
- Fingerprinting of contractor employees with log-on access needs to be implemented.

CURRENT PRACTICES DO NOT CONSISTENTLY COVER ALL CONTRACTOR PERSONNEL

Under the Federal Deposit Insurance Act and 12 CFR 366, no contractor employee who has a disqualifying condition should work for the FDIC. The contractor must agree that no person will be employed, directly or indirectly, under any contract with the FDIC unless they meet the minimum standards set forth in the regulation. The purpose of the FDIC background investigation program is to further ensure that contractors do not possess disqualifying conditions. However, under the current contractor background investigation policy, only contractor personnel designated as "key personnel" undergo a background investigation that covers all disqualifying conditions. This policy relies on the contractor to verify that non-key personnel do not have disqualifying conditions unless the individual designated as "non-key" is fingerprinted when obtaining a badge to enter FDIC premises or log-on access to FDIC systems. As a result of fingerprinting, the FDIC is able to verify that contractor personnel do not have a felony conviction; however, other disqualifying conditions are not verified. The current background investigation program could be improved by using a basis other than "key personnel" as the determining factor in when to conduct a background investigation.

"Key Personnel" Is Not an Effective Designation for Determining Background Investigations

According to the APM, the contracting officer is responsible for requesting a background investigation on the contractor, subcontractors, management officials, and key personnel for (1) contracts for services of \$100,000 or greater, (2) awards where the contractor's employees will be required to work on-site at an FDIC office regardless of dollar amount, and (3) any other award at the discretion of the Contracting Officer.

During our review of 40 contract files, we identified 8 contracts for which background investigations were requested per the APM requirement pertaining to "key personnel." However, in reviewing the contractors' billings for those 8 contracts, we identified 55 individuals that billed hours but were not designated as key personnel. As a result, these 55 individuals were not required to submit certifications as to whether they had any disqualifying conditions and did not undergo background investigations. The definition of key personnel as stated in the APM is "a contractor's employees designated to perform essential work under the contract." Based on discussions with DOA contract specialists and management officials, the term "key personnel" is primarily used in determining contract award. These are often managers and senior staff whose qualifications are critical to the contract but who may not actually perform the bulk of the work. While qualifications of key personnel may be important in awarding a contract to a particular firm, the designation of key personnel is not an effective method of determining whether a background investigation should be conducted. For instance, some individuals may perform substantial work on the contract but are not designated as being "key personnel." Also, some individuals may be designated as "key personnel" but do not perform a significant amount of work related to the contract. As a result of using "key personnel" as the basis for when to conduct background database inquiries, DOA may not be targeting the most appropriate contractor personnel for verification of all disqualifying conditions.

Some Contractor Personnel Enter FDIC Premises Without Being Fingerprinted or Self-Certifying That They Have No Disqualifying Conditions

Before contractor personnel obtain a badge to enter FDIC premises, they complete a Background Questionnaire certifying whether they have disqualifying conditions and are fingerprinted. Their fingerprints are sent to the FBI, and a criminal record history is obtained verifying that they have not been convicted of any felony. However, contractors who enter FDIC premises on an intermittent basis or anticipate working on FDIC premises for less than a 2-week period are not required to obtain a badge and are not fingerprinted. We reviewed sign-in logs for the FDIC's 801 17th Street, N.W. Washington, D.C. location over a consecutive 4-month period and noted that over 800 contract personnel had signed in because they did not have a badge. Many of these contractors signed in multiple times over the 4-month period. Such contractors included office movers, locksmiths, and maintenance personnel, many of whom entered after normal working hours when the building was empty or when only a few FDIC employees might have been in the building. Unless these individuals were designated as key personnel on the contract, they never certified regarding disqualifying conditions and were not considered for or subjects of a background investigation or criminal record history.

Recommendations

The Associate Director, ACSB, DOA should:

- (1) implement a program to verify that contractors are taking steps to ensure that management officials, employees, and subcontractors working under a contract with the FDIC meet minimum standards as stated in 12 CFR 366.
- (2) base the need for conducting database background investigations on the anticipated work of the contract employee rather than on their designation as "key personnel."

CONTROLS SHOULD INCLUDE REGIONAL OFFICES AND ECSU

Procedures implemented during 1999 by the Acquisition Section of ACSB improved controls over the contractor background investigation process. However, these procedures did not include contracting functions in the FDIC Regional Offices or include the ECSU in the control process. As a result, there is no tracking system for contractor background investigations on contracts awarded from the Regional Offices. Also, the ECSU has responsibility for conducting background investigations, but procedures do not facilitate that section's ability to ensure they are requested as required by the APM. In addition, while the APM was amended effective March 31, 2000 to require fingerprinting of all contractors with log-on access, as of July 31, 2000, the ECSU had not received any such requests.

On July 19, 1999, the Acquisition Section instituted new procedures to monitor contractor background investigation requests and created BITS. Under these new procedures, Contract Specialists in headquarters were instructed to forward contractor background investigation request packages through the CRG for review. The CRG reviews the request package for completeness and enters data from the request in BITS in order to track the progress of the background investigation. In addition, to verify that background investigation requests were made for all headquarters contracts over \$100,000, the CRG added a procedure to obtain a bi-weekly report from the POS that lists all contracts awarded in excess of \$100,000. This report is compared to BITS to ensure that a background investigation was requested for each contractor.

We reviewed our sample of 40 contracts in excess of \$100,000 (31 from headquarters and 9 from the Dallas Regional Office) awarded during 1999 to determine compliance with the APM for contractor background investigations. Our review found non-compliance on 5 of 12 headquarters contracts awarded prior to July 19, 1999, and non-compliance on 1 of 19 contracts awarded after July 19, 1999. The one exception, after the new procedures were implemented occurred because the contract specialist had inadvertently coded the contract as being for the purchase of goods. The error was later corrected when the miscoding was identified in the POS. We also found non-compliance on 2 of 9 contracts awarded in the Dallas Regional Office.

Based on discussions with contract specialists, the exceptions we found during our review occurred due to interpretations by the contract specialist as to the need for the background

investigation and under what circumstances a background investigation is required. The procedures implemented by the Acquisition Section during 1999 provided needed controls to ensure that the background investigation process is completed in headquarters as required by the APM. Had they been in effect prior to July 1999, and in the Regional Offices, it is likely that compliance with APM requirements would have been improved. Including the ECSU in the control process would also strengthen current procedures because the ECSU is a separate function from the Acquisition Section and is responsible for the contractor background investigation program. It would benefit DOA to formally assign responsibility to ECSU for reviewing the POS and determine whether required background investigations are being requested.

Recommendations

The Associate Director, ACSB, DOA, should:

- (3) instruct that ACSB functions at the Regional Offices submit contractor background investigation requests through the CRG to be reviewed and tracked by BITS.
- (4) instruct that the Chief, ECSU receive and review a bi-weekly copy of the POS report and contractor sign-in logs to verify that background investigations are requested as required by the APM.
- (5) ensure that fingerprinting of contractor employees with log-on access to FDIC computer systems is implemented in a timely manner.

CORPORATION COMMENTS AND OIG EVALUATION

On December 21, 2000, the Director, DOA, provided a written response to a draft of this report addressing each of the report's recommendations (Appendix I). On January 17, 2001, the Assistant Director, Acquisition Section, Division of Administration provided more specific information clarifying DOA's earlier response. With respect to recommendation 1, the Assistant Director added that in conjunction with DOA's ongoing initiatives to increase contractor oversight and ensure compliance by contractors, DOA will continue to develop and implement practical alternatives for further verifying that contractors are in compliance with the applicable laws and regulations. Regarding recommendation 2, the Assistant Director indicated that in addition to key personnel, the FDIC now requires self certifications and fingerprinting of all contractor personnel working on-site and contractor personnel working off-site with access to FDIC systems.

The Corporation's responses provided us with the requisite elements of a management decision for all recommendations as shown in Appendix II.



FDIC
Federal Deposit Insurance Corporation
550 17th Street, NW, Washington, DC 20429

Division of Administration

December 21, 2000

TO: David H. Loewenstein
Assistant Inspector General

FROM: for Arleas Upton Kea *Arleas Upton Kea*
Director, Division of Administration

SUBJECT: Management Response to Draft Report: *Audit of the Contractor Background Investigation Process*

The Division of Administration (DOA) has completed its review of the Office of Inspector General (OIG) Draft Report entitled “*Audit of the Contractor Background Investigation Process.*” The OIG identified two audit findings and made five recommendations.

We generally agreed with the OIG conclusions. Our analysis and comments address all of the audit findings presented in the report. Recommendation 3 will require corrective action; and this response includes our expected completion date and the documentation that will confirm completion of the actions taken. **Based on this Management Response, this serves as a statement of certification that the Acquisition and Corporate Services Branch (ACSB) has completed necessary corrective action for recommendation numbers 1, 2, 4, and 5.**

MANAGEMENT DECISION

Finding #1: Current practices do not consistently cover all contractor personnel.

Recommendation #1: The Associate Director, ACSB, DOA should implement a program to verify that contractors are taking steps to ensure that management officials, employees and subcontractors working under a contract with the FDIC meet minimum standards as stated in 12 CFR 366.

Management Response: We agree and believe that the processes in place address 12 CFR 366. The statute and regulation requires that the contractor agree that no person will be employed, directly or indirectly, under any contract with the FDIC unless they meet the minimum standards set forth in the regulation. The FDIC's Eligibility Representations and Certifications implement the statutory intent by requiring that the contractors certify that they do not use ineligible persons on FDIC contracts. The Acquisition Policy Manual further provides that the FDIC Eligibility Representations and Certifications are required on all service contracts of \$25,000 and above. The APM addresses the minimal risk factor in service contracts below \$25,000 by requiring that the FDIC Contractor Application be obtained from any contractor interested in doing business with the FDIC. The application requires the self certification by the contractor on the mandatory disqualifying conditions set forth in 12 CFR 366. Further, the FDIC Background Investigation Process requires any contractor employee who works on a FDIC site or who has access to our FDIC systems to be fingerprinted for an FBI criminal records check. Also, the application for a FDIC badge requires the employee to self certify to the mandatory disqualifying conditions set forth in 12 CFR 366 and likewise be fingerprinted.

This response serves as a statement of certification that ACSB has completed the necessary corrective action for recommendation #1.

Recommendation #2: The Associate Director, ACSB, DOA should base the need for conducting database background investigations on the anticipated work of the contract employee rather than on their designation as “key personnel.”

Management Response: We agree with the recommendation. DOA ACSB recently implemented actions that are consistent with the OIG’s recommendation. As discussed above the FDIC now requires self certifications and fingerprinting of all contractor personnel working on-site and all contractor personnel working offsite who have access to FDIC systems. All individuals required to be fingerprinted to undergo an FBI criminal records check.

Finding #2: Controls should include Regional Offices and Employee/Contractor Security Unit (ECSU).

Recommendation #3: The Associate Director, ACSB, DOA should instruct that ACSB functions at the Regional Offices submit contractor background investigation requests through the CRG to be reviewed and tracked in BITS.

Management Response: We agree with the recommendation. DOA ACSB will modify the Acquisition Policy Manual to reflect the standard operating procedure for Headquarters Operations and the Regional Offices. This will ensure timely completion of the background investigation process. The APM will be changed as set forth herein.

6.E.2.e. (3) If background investigations are required, then the Contracting Officer shall provide the completed background forms for the successful contractor for review prior to award, as follows:

(a) For Headquarters Operations, background investigation requests shall be routed through the Policy and Compliance Unit before going to the Employee/Contractor Security Unit.

(b) For Regional Offices, background investigation requests shall be routed to the Policy and Compliance Unit and the Employee/Contractor Security Unit simultaneously for processing.

The investigations will generally be completed within ten (10) calendar days. However, if an investigation takes longer, the award may be made contingent upon the outcome of the investigation as specified in APM, 6.E.9.d, *Award Prior to Completion of Reviews and Verifications*.

The APM revisions will confirm our completion of corrective action. We estimate completion by March 31, 2001.

Recommendation #4: The Associate Director, ACSB, DOA should instruct that the Chief, ECSU receive and review a bi-weekly copy of the POS report and contractor sign-in logs to verify that background investigations are requested as required by the APM.

Management Response: We agree in part with the OIG recommendation. The Purchase Order System (POS) report is received and reviewed by the ECSU. If background investigations have not been requested on contractors reflected in the report, the Contractor Relations Group is immediately notified via e-mail. We do not agree with the OIG's suggestion that the Chief, ECSU review contractor sign-in logs. These logs are already being reviewed by the Security Operations Center at the end of each shift. The sign-in logs are examined to identify any pattern of contractors repeatedly signing in in lieu of being badged/fingerprinted. This information is then provided to the Chief, Physical Security Unit, for follow-up and action. That action consists of contacting the FDIC oversight manager to arrange for fingerprinting and badging of those contractors identified.¹

Recommendation #5: The Associate Director, ACSB, DOA should ensure that fingerprinting of contractor employees with log-on access to FDIC computer systems is implemented in a timely manner.

Management Response: We agree with the recommendation. DIRM notifies the ECSU when an off-site contractor is given access. ECSU enters the information into FITS and promptly notifies the contractor to report for fingerprinting.

If you have any questions regarding this response, you may contact Andrew O. Nickle, Audit Liaison for the Division of Administration, at (202) 942-3190.

cc: Mike Rubino
Deborah Reilly
Patricia McClintock Harry Baker
Richard Johnson Bill Kmetz
Linda Phillips
Andrew Nickle
Kenneth T. Jones

¹ Management's response reflects an alternative procedure that is acceptable to OIG.

MANAGEMENT RESPONSES TO RECOMMENDATIONS

The Inspector General Act of 1978, as amended, requires the OIG to report the status of management decisions on its recommendations in its semiannual reports to the Congress. To consider FDIC's responses as management decisions in accordance with the act and related guidance, several conditions are necessary. First, the response must describe for each recommendation

- the specific corrective actions already taken, if applicable;
- corrective actions to be taken together with the expected completion dates for their implementation; and
- documentation that will confirm completion of corrective actions.

If any recommendation identifies specific monetary benefits, FDIC management must state the amount agreed or disagreed with and the reasons for any disagreement. In the case of questioned costs, the amount FDIC plans to disallow must be included in management's response.

If management does not agree that a recommendation should be implemented, it must describe why the recommendation is not considered valid. Second, the OIG must determine that management's descriptions of (1) the course of action already taken or proposed and (2) the documentation confirming completion of corrective actions are responsive to its recommendations.

This table presents the management responses that have been made on recommendations in our report and the status of management decisions. The information for management decisions is based on management's written responses to our report.

Rec. Number	Corrective Action: Taken or Planned/Status	Expected Completion Date	Documentation That Will Confirm Final Action	Monetary Benefits	Management Decision: Yes or No
1	The Director, DOA, agreed with the recommendation and stated that the Eligibility and Certifications form requires contractors to certify that they do not use ineligible persons on FDIC contracts. Further, DOA will continue to develop and implement practical alternatives for further verifying that contractors are in compliance with 12 CFR 366.	March 31, 2001	Documentation of procedures for further verifying contractors' compliance	N/A	Yes
2	The Director, DOA, agreed with the recommendation and stated that DOA recently implemented actions that now require, in addition to key personnel, self certifications and fingerprinting of all contractor personnel working on-site and all contractor personnel working offsite who have access to FDIC systems.	Completed	Management Response	N/A	Yes
3	The Director, DOA, agreed with the recommendation and stated that DOA ACSB will modify the Acquisition Policy Manual to reflect the standard operating procedure for Headquarters and the Regional Offices.	March 31, 2001	Amendment to APM	N/A	Yes
4	The Director, DOA, agreed in part with the recommendation and now the POS is received and reviewed by the Employee/Contractor Security Unit (ECSU). Sign-in logs will be reviewed by the Chief Physical Security Unit rather than the Chief, ECSU.	Completed	Management Response	N/A	Yes
5	The Director, DOA, agreed with the recommendation and stated that DIRM notifies the ECSU when an off-site contractor is given access. ECSU enters the information into FITS and promptly notifies the contractor to report for fingerprinting.	Completed	Management Response	N/A	Yes