FDIC Office of Inspector General

Conflicts of Interest in the Acquisition Process

Evaluation Report - Final - Audits, Evaluations, and Cyber

September 2024 | **No.** EVAL-24-06

Office of Inspector General

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NOTICE

Pursuant to Pub. L. 117-263, section 5274, non-governmental organizations and business entities identified in this report have the opportunity to submit a written response for the purpose of clarifying or providing additional context to any specific reference. Comments must be submitted to comments@fdicoig.gov within 30 days of the report publication date as reflected on our public website. Any comments will be appended to this report and posted on our public website. We request that submissions be Section 508 compliant and free from any proprietary or otherwise sensitive information.

Executive Summary

Conflicts of Interest in the Acquisition Process (EVAL-24-06) **September 23, 2024**

What We Did

This evaluation was initiated in response to a Congressional request to review conflicts of interest at the Federal Deposit Insurance Corporation (FDIC) and the effectiveness of existing rules and laws to prevent such conflicts.

The objective of this evaluation was to determine the extent to which the FDIC has processes and procedures to identify, analyze, respond to, and monitor for conflicts of interest of FDIC employees engaged in the acquisition process.

Impact on the FDIC

Employees' adherence to principles of ethical conduct, to include not holding financial interests that conflict with duties and avoiding actions creating the appearance of violations of ethical standards, helps ensure public confidence and integrity of the Federal Government. Absent strong internal controls related to identifying, analyzing, reporting, and monitoring of conflicts of interest of all FDIC employees engaged in the acquisition process, the FDIC could face increased legal and reputational risks.

What We Found

The FDIC has processes and procedures to identify, analyze, respond to, and monitor for conflicts of interest in the acquisition process. However, improvements are needed. FDIC guidance does not require all employees involved in the acquisition planning and approval process to assess and document potential or actual conflicts of interest. Instead, in accordance with Federal Regulations, the FDIC places primary responsibility on FDIC employees to self-identify and avoid conflicts of interest. While FDIC guidance requires reasonable planning for all procurement actions, the identification and description of conflict of interest-related risks are not specifically required. Absent additional internal controls throughout the acquisition lifecycle, the FDIC may not be equipped to identify, analyze, respond to, and monitor for potential or actual conflicts of interest in the acquisition process.

We also found that the FDIC Ethics Unit has not established specialized ethics training requirements beyond the initial new employee and annual ethics training but will provide specialized training if requested by FDIC Program Offices. As a result of a media report of alleged conflicts of interest of FDIC officials engaged in acquisitions, two Program Offices requested and received specialized training to address acquisition-related risks. These training requests reflect a commitment to enhanced internal controls and support the importance of specialized employee training related to conflicts of interest in acquisitions across the FDIC, which may reduce the likelihood of ethics violations and protect the integrity of the FDIC's acquisition process.

Finally, we determined that the FDIC's approach to confidential financial disclosure reviews could be enhanced by ensuring financial disclosure review guidance contains clear instructions for evaluating financial disclosure forms for completeness and by training Deputy Ethics Counselors (DEC) on the enhanced guidance. Further, the FDIC could enhance its approach by reevaluating the seniority, position descriptions, and number of personnel appointed as DECs, and by developing an action plan to address DEC survey responses.

What We Recommended

We made five recommendations intended to improve the FDIC's internal controls related to conflicts of interest in the acquisition process and three recommendations intended to enhance the FDIC's financial disclosure review program. The FDIC concurred with all eight recommendations and plans to complete all corrective actions by August 31, 2025.

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OBJECTIVE

In December 2022, *The Wall Street Journal* (WSJ) reported that some Federal officials, including three from the Federal Deposit Insurance Corporation (FDIC), not only invested in companies their agencies oversaw but personally worked on significant matters affecting those companies.[1] In light of this and other media reports of financial conflicts of interest of senior government officials across the executive branch,[2] on February 28, 2023, the Office of Inspector General (OIG) received a Congressional request to conduct a review of conflicts of interest at the FDIC and the effectiveness of existing rules and laws to prevent such conflicts.[3] The OIG agreed to conduct a limited-scope evaluation related to this request.

The objective of this evaluation was to determine the extent to which the FDIC has processes and procedures to identify, analyze, respond to, and monitor for conflicts of interest of FDIC employees engaged in the acquisition process.

We conducted this evaluation from February 2024 through August 2024 in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*. These standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings, conclusions, and recommendations based on our evaluation objective. We believe that the evidence obtained provides a reasonable basis for our findings, conclusions, and recommendations based on our evaluation objective. Appendix 1 of this report includes additional details about our objective, scope, and methodology.

BACKGROUND

The Federal Deposit Insurance Act authorizes the FDIC to acquire goods and services to achieve its mission and operations.[4] From January 1, 2021, through December 31, 2023, the FDIC awarded 1,592 contracts valued at approximately $4.6 billion for goods and services in support of its mission.

[1] WSJ, "*When Federal Officials Help Companies – and Their Own Financial Interests*," Rebecca Ballhaus, Brody Mullins, and James V. Grimaldi, December 30, 2022.
[2] WSJ, "*Federal Officials Trade Stock in Companies Their Agencies Oversee*," Rebecca Ballhaus, Brody Mullins, Chad Day, John West, Joe Palazzolo, and James V. Grimaldi, October 11, 2022.
[3] United States Congress, Letter from Senator Warren and Representative Jayapal. February 2023. See page 29 for the FDIC OIG letter.
[4] 12 United States Code (U.S.C.) § 1819(a). In particular, the Federal Deposit Insurance Act authorizes the FDIC "[t]o make contracts", "[t]o appoint … such officers and employees … to define their duties", and "[t]o prescribe, by its Board of Directors, bylaws… regulating the manner in which its general business may be conducted…." Further, the Federal Deposit Insurance Act authorizes the FDIC to establish policies and procedures to enter into contracts.

The FDIC's acquisition policies are implemented through the procedures set forth in the Acquisition Procedures and Guidance Manual (APGM).[5] The FDIC's acquisition process involves several organizations within the Agency, including Program Offices[6] and the Division of Administration's (DOA) Acquisition Services Branch (ASB).

- Program Offices are responsible for determining what goods and services are needed and for initiating the acquisition process by submitting a procurement request to DOA's ASB.
- DOA's ASB is responsible for providing the overall management, administration, and oversight of the Agency's acquisition policies and procedures. ASB's Deputy Director appoints Contracting Officers with the authority to enter into, administer, and terminate contracts on behalf of the FDIC. When DOA's ASB receives a procurement request from a Program Office, it assigns the request to a Contracting Officer.[7] The Contracting Officer works with the Program Office throughout the acquisition process. Based on the Program Office's nominations, the Contracting Officer appoints an Oversight Manager and, if required, Technical Monitor(s).[8]

The FDIC's Acquisition Process

The FDIC's acquisition process is divided into four phases: (1) Procurement Planning; (2) Solicitation and Award; (3) Contract Management; and (4) Contract Closeout. Figure 1 depicts the four phases of the FDIC's acquisition process and provides an overview of the activities within each phase.

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[5] The APGM states that the Federal statutes and regulations that establish government procurement policies and procedures and govern procurement by agencies funded through congressional appropriations do not apply to the FDIC. Federal statutes and regulations that do not apply to the FDIC include Federal Acquisition Regulation (Title 48 Code of Federal Regulations (C.F.R.) Parts 1-53).
[6] For the purposes of this report, we refer to FDIC Divisions and Offices as Program Offices.
[7] The Contracting Officer is responsible for ensuring the performance of all actions necessary for efficient and effective contracting, ensuring compliance with the terms of contracts, and with protecting the interests of the FDIC in all of its contractual relationships.
[8] The Oversight Manager acts as a liaison between the FDIC and the contractor and is responsible for monitoring the contractor's performance and ensuring contractor compliance with the contract. If required, the Technical Monitor is responsible for assisting the Oversight Manager in monitoring and evaluating contractor performance.

Figure 1: The FDIC's Acquisition Process

Procurement Planning	Solicitation and Award	Contract Management	Contract Closeout

• Program Office identifies contracting need
• Program Office and Contracting Officer conduct market research
• Contracting Officer reviews acquisition documents
• Program Office and Contracting Officer jointly develop the Acquisition Plan
	• Contracting Officer issues Request for Proposal
	• Technical Evaluation Panel members sign Conflict of Interest Certifications
	• Proposals reviewed by Contracting Officer and Technical Evaluation Panel
	• Contracting Officer notifies offerors of results
	• Contracting Officer awards contract
		• Program Office nominates Oversight Manager, and if required, Technical Monitor(s)
		• Contracting Officer appoints Oversight Manager, and if required, Technical Monitor(s)
		• Contracting Officer, with the help of the Oversight Manager and Technical Monitor(s), manages the contract and contractor performance
			• Contracting Officer and Oversight Manager complete all close-out activities
			  • All deliverables delivered and accepted
			  • FDIC property returned
			  • Payments made and reconciled
			  • Contractor Performance Evaluation
			• Contracting Officer closes out contract

Source: OIG Summary of Acquisition Procedures and Guidance Manual (APGM) (July 2023).

FDIC Directive 3700.16, *Acquisition Program*, describes procurement[9] planning as "a process that includes the determination of the requirements and appropriate strategy for procuring necessary goods or services, and the development of requirements packages and acquisition strategies, both at the larger corporate and individual Division/Office levels." The APGM states that Program Offices must coordinate with ASB as soon as a potential procurement need is identified and support the acquisition planning process. The APGM also states that close coordination and early planning between the Program Office, Contracting Officer, and other members of the Acquisition Team[10] are essential for an effective and efficient procurement.

The Program Office and the Contracting Officer must work together to conduct market research to support all acquisition planning. Market research involves obtaining information and knowledge about the different types of goods or services in the commercial marketplace, and

[9] FDIC Directive 3700.16 uses the terms 'acquisition' and 'procurement' interchangeably to describe the "process of procuring goods and services through contracts or other authorized mechanisms."
[10] FDIC Directive 3700.16 defines the acquisition team as "[a] group that consists of the Contracting Officer; supporting Contract Specialists and other support staff in ASB; the responsible officials of the Division/Office, particularly including the Oversight Manager and Technical Monitor; the Legal Division, including the [Contracts and Risk Management Unit] and the Opinions and Research Unit; and, as appropriate, the supporting officials and staff of [Office of Minority and Women Inclusion] and [Acquisition Policy and Systems Section], ASB."

their availability and pricing. Market research can also identify the type and extent of competition that may exist for a product or service. Market research must be conducted and documented in a Market Research Memorandum[11] for all actions over $10,000 in value. The Program Office and the Contracting Officer also jointly prepare an Acquisition Plan, when necessary, using the FDIC-developed Acquisition Plan template, to document the course of action for the procurement.[12] This template requires a description of “risks associated with the procurement,” which includes technical, cost, and schedule risks, and a description of efforts planned or underway to reduce those risks and the consequences. The template does not include conflicts of interest-related risks.

During the solicitation and award phase of complex acquisitions, the Program Office must identify a Technical Evaluation Panel (TEP) to review and evaluate proposals received in response to a Request for Proposal.[13] TEP members are appointed by the Contracting Officer.[14] Each member of the TEP must read and sign a Confidentiality Agreement and a Conflict of Interest Certification and submit these documents to the Contracting Officer prior to beginning the technical evaluation process. The Conflict of Interest Certification requires individuals to review and identify on a continuous basis any financial and/or employment interests related to themselves, their spouse, minor child, or dependent(s) which may create a conflict of interest or the appearance thereof in the context of their duties and responsibilities. If, for any reason, a TEP member cannot evaluate a proposal objectively, that member must alert the Contracting Officer immediately and be removed from the TEP.

The APGM only requires members of the TEP to certify they are free from actual or potential conflicts. However, according to the APGM, all employees are responsible for complying with standards of ethical conduct incorporated in FDIC Directive 2410.6, *Standards of Ethical Conduct for Employees*.[15] Further, FDIC Directive 3700.16, *Acquisition Program*, states that “FDIC business must be conducted in a manner that is above reproach, with complete impartiality and preferential treatment for none.” FDIC Directive 3700.16 also states “[t]he

[11] The Market Research Memorandum became a part of the requirements package with the issuance of the APGM in July 2023.
[12] Written Acquisition Plans must be prepared for all acquisitions valued at $1 million or more. While written Acquisition Plans are not required for acquisitions under $1 million, reasonable planning is expected for all procurement actions. However, the APGM does not define “reasonable planning” or what those efforts may entail. The Contracting Officer is responsible for ensuring the Acquisition Plan is completed and approved.
[13] Complex acquisition procedures are used for the acquisition of goods or services when extensive evaluation is needed to determine best value. The purpose of the Request for Proposal is to provide potential offerors the information they need to respond to FDIC requirements. When only limited technical evaluations are required, such as price only or the lowest technically acceptable evaluations, non-complex acquisitions are used instead of complex acquisition procedures. For the two acquisitions cited in Finding 1 in the Results section of this report, the FDIC utilized complex acquisition procedures to determine the best value of the acquired goods or services.
[14] The size and membership of the TEP are at the discretion of the Contracting Officer and depend upon the size and complexity of the acquisition requirements. The objective of the technical evaluation is to determine which of the offerors is most qualified. The TEP Chairperson provides the Contracting Officer a TEP Report, which documents the panel’s consensus ratings of each proposal.
[15] Standards of ethical conduct, including 5 C.F.R. Part 2635 and 5 C.F.R. Part 3201, that require employees to avoid conflicts of interest are described in more detail below.

general rule is to avoid any conflict of interest or even the appearance of a conflict of interest or unethical behavior in FDIC-contractor relationships." FDIC Directive 3700.16 further states that "FDIC official conduct must be such that there would be no reluctance to make a full public disclosure of procurement-related actions."

Ethical Standards

FDIC Directive 2410.6, *Standards of Ethical Conduct for Employees*, states that the *Standards of Ethical Conduct for Employees of the Executive Branch*[16] and the *Supplemental Standards of Ethical Conduct for Employees of the FDIC*[17] apply to FDIC employees and that it is the responsibility of each employee to understand and abide by the ethics laws and regulations. The *Standards of Ethical Conduct for Employees of the Executive Branch* describes the general principles of ethical conduct applicable to all employees. These standards emphasize that public service is a public trust; require employees to place loyalty to the Constitution, the laws, and ethical principles above private gain; and state that adhering to the principles of ethical conduct ensures public confidence and integrity of the Federal Government. The general principles of ethical conduct include:

- Employees shall not use public office for private gain;
- Employees shall act impartially and not give preferential treatment to any private organization or individual;
- Employees shall not hold financial interests that conflict with the conscientious performance of duty; and
- Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards.

The *Supplemental Standards of Ethical Conduct for Employees of the FDIC*, among other things, prohibits FDIC employees from acquiring, owning, or controlling securities of FDIC-insured banks, bank holding companies, financial holding companies, and savings and loan holding companies.[18]

In addition to these standards of ethical conduct, criminal conflict of interest statutes prohibit certain conduct.[19] Executive branch employees are prohibited from working on government matters that will affect their own personal financial interests or the financial interests of certain other people, including a spouse, minor child, or general partner.[20]

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[16] 5 C.F.R. Part 2635. According to 5 C.F.R. § 2635.102(a), an executive agency is defined in 5 U.S.C. § 105 as any executive department, Government corporation, or independent establishment.
[17] 5 C.F.R. Part 3201.
[18] 5 C.F.R. § 3201.103(a).
[19] ***See*** 18 U.S.C. § 201-209.
[20] 18 U.S.C. § 208. As previously noted, employees of the FDIC are subject to the *Standards of Ethical Conduct for Employees of the Executive Branch* at 5 C.F.R. Part 2635. According to 5 C.F.R. § 2635.101(c), conflict of interest statutes at 18 U.S.C. § § 201, 203, 205, 208, and 209 prohibit certain conduct and generally apply to all employees.

Executive Branch Ethics Program

The Office of Government Ethics (OGE) is responsible for leading and overseeing executive branch ethics programs to prevent conflicts of interest on the part of executive branch employees and resolve those conflicts of interest that do occur. The term "conflicts of interest" stems from financial interests; business or personal relationships; misuses of official position, official time, or public resources; and the receipt of gifts.[21] The executive branch ethics program is intended to ensure that public servants make impartial decisions based on the interests of the public when carrying out governmental responsibilities entrusted to them, serve as good stewards of public resources, and loyally adhere to the Constitution and the laws of the United States.[22] Among other things, OGE makes and interprets ethics laws and regulations, supports and trains executive branch ethics officials, and administers the executive branch financial disclosure systems, which require certain employees to disclose their financial interests in either annual public or confidential financial disclosure reports. The manner of disclosure depends on the grade level and the duties of the employee.[23]

The FDIC Ethics Unit in the Legal Division provides overall leadership and oversight of the FDIC's ethics program. The primary mission of the ethics program is to prevent and resolve conflicts of interest. FDIC Directive 2410.02, *Required Public and Confidential Financial Disclosure Reports and Other Related Employee Ethics Forms*, establishes the FDIC's policy regarding public and confidential financial disclosure reports and other related employee ethics forms for processing any determination, approval, or other action required for ethics compliance. According to the Directive, public and confidential financial disclosure reports are to be filed, reviewed, certified, and retained in accordance with 5 C.F.R. Part 2634. The FDIC utilizes Deputy Ethics Counselors (DEC) to review confidential financial disclosure reports.[24] DECs are appointed and trained by the Ethics Unit to review confidential financial disclosure reports to identify and resolve actual or apparent conflicts of interest.[25] DECs are instructed to identify connections between anything reported on an employee's confidential financial disclosure report and the employee's current or anticipated duties and assignments, and to contact the Ethics Unit to review any suspected connections. Furthermore, FDIC employees are instructed to consult with a DEC whenever there may be a possible overlap between their FDIC duties and their financial interests or outside relationships.

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[21] 5 C.F.R. § 2638.101(b).
[22] *Ibid*.
[23] Employees of the executive branch may be required to file either an Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e) or an Executive Branch Confidential Financial Disclosure Report (OGE Form 450). At the FDIC, high-level officials, such as Presidential appointees, Executive Managers, and Corporate Experts, must publicly disclose their financial interests. Confidential filers at the FDIC include those that hold positions at or below the Corporate Manager grade level.
[24] Ethics Unit personnel review public financial disclosure reports.
[25] According to 5 C.F.R. § 2634.605(b)(2), reviewing officials must examine the report to determine, to the reviewing official's satisfaction, that: (i) each required part of the report is completed; and (ii) no interest or position disclosed on the report violates or appears to violate, among other things, any applicable provision of chapter 11 of title 18, U.S.C., the Ethics In Government Act of 1978, and any other agency-specific statute or regulation that governs the filer.

RESULTS

We found that the FDIC has processes and procedures to identify, analyze, respond to, and monitor for conflicts of interest in the acquisition process. However, improvements are needed. FDIC guidance does not require employees involved in the acquisition planning and approval process at the Program Office level to assess and document potential or actual conflicts of interest. Instead, in accordance with Federal Regulations, the FDIC places primary responsibility on FDIC employees to self-identify and avoid conflicts of interest.

The APGM requires reasonable planning for all procurement actions, which can include a written Acquisition Plan that identifies and describes risks and efforts to reduce risk. However, the identification and description of conflict of interest-related risks are not specifically required by the APGM. Absent additional internal controls throughout the acquisition lifecycle, Program Office-level employees and contracting officials may not be equipped to identify, analyze, respond to, and monitor for potential or actual conflicts of interest.

We also found that the FDIC Ethics Unit has not established specialized ethics training requirements beyond the initial new employee and annual ethics training, but will provide additional, specialized ethics training if requested by FDIC Program Offices. As a result of a media report of alleged conflicts of interest of FDIC officials engaged in acquisitions, two Program Offices requested and received specialized training to address acquisition-related risks. While these requests for additional training reflect a commitment to enhanced internal controls, they also support the importance of additional employee training related to conflicts of interest in acquisitions across the FDIC, which may reduce the likelihood of ethics violations and protect the integrity of the FDIC's acquisition process.

Finally, we determined that the FDIC's approach to confidential financial disclosure reviews could be enhanced by ensuring financial disclosure review guidance contains clear instructions for evaluating financial disclosure forms for completeness and by training DECs on the enhanced guidance. Further, the FDIC could enhance its approach by reevaluating the seniority, position descriptions, and number of personnel appointed as DECs, and by developing an action plan to address DEC survey responses.

Finding 1

The FDIC's Processes and Procedures to Identify, Analyze, Respond to, and Monitor for Conflicts of Interest of FDIC Employees Engaged in the Acquisition Process Could Be Strengthened.

We found that the FDIC has processes and procedures to identify, analyze, respond to, and monitor for conflicts of interest in the acquisition process, but improvements are needed. Specifically, the APGM requires that each member of the TEP complete a Conflict of Interest Certification. However, the APGM does not require employees involved in the acquisition planning and approval process at the Program Office level to complete a Conflict of Interest Certification. Additionally, FDIC processes and procedures for public and confidential financial disclosure reporting and review serve to help prevent and identify potential conflicts of interest through a systematic review of the financial interests that employees self-report. However, these reviews are not intended to identify conflicts of interest in acquisition-related activities. Outside of the financial disclosure review process, the FDIC conducts limited to no verification or monitoring over employee's actions that overlap between their FDIC duties and their interests that could create an actual or perceived conflict of interest in the acquisition process. Instead, in accordance with Federal Regulations,[26] the FDIC places primary responsibility on FDIC employees to self-identify and avoid conflicts of interest.

While the APGM requires reasonable planning for all procurement actions, which can include a written Acquisition Plan that identifies and describes risks and efforts to reduce risk, the identification and description of conflict of interest-related risks are not specifically required. Absent additional internal controls throughout the acquisition lifecycle, Program Office-level employees may not be equipped to identify, analyze, respond to, and monitor for potential or actual conflicts of interest.

The Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government* (Internal Control Standards), states that management designs appropriate types of control activities to help management fulfill responsibilities and address identified risk responses in the internal control system.[27] GAO Internal Control Standards also state that management should implement control activities through policies.[28] GAO Internal Control Standards further explain that management performs ongoing monitoring of the design and operating effectiveness of the internal control system as part of the normal course of operations.[29] In addition, GAO Internal Control Standards state that risk assessment is the identification and

[26] 5 C.F.R. Part 2634.
[27] GAO, *Standards for Internal Control in the Federal Government* (GAO-14-704G) (September 2014) § 10.03.
[28] GAO-14-704G § 12.01.
[29] GAO-14-704G § 16.05.

analysis of risks related to achieving the defined objectives to form a basis for designing risk responses.[30]

FDIC Processes and Procedures

The FDIC has processes and procedures to identify, analyze, respond to, and monitor for conflicts of interest in the acquisition process. Specifically, the APGM requires that each member of the TEP complete a Conflict of Interest Certification. The Conflict of Interest Certification requests individuals continuously consider and identify whether they, their spouse, minor children, or dependent(s) have any financial and/or employment-related interests that may create a conflict of interest or the appearance thereof in the context of their duties and responsibilities. However, we found that FDIC guidance does not contain requirements for all acquisition team members, including those involved in the acquisition planning and approval process at the Program Office level, to complete a Conflict of Interest Certification.[31] Furthermore, we found FDIC guidance does not include a means for identifying and documenting all acquisition team members involved in the acquisition planning and approval processes.

According to the APGM, during an acquisition's planning phase, market research must be conducted and

> One of the two contract files we reviewed for conflict of interest-related documentation included a TEP report dated January 29, 2018, stating that all TEP members signed a Conflict of Interest statement and Confidentiality Agreement and that all members acknowledged they were free from actual and/or potential conflicts of interest. However, the contract file did not contain the TEP members' signed Conflict of Interest statements or certifications.
>
> According to FDIC guidance in effect at the time of this acquisition, each member of the TEP must sign a Conflict of Interest Certification and submit it to the Contracting Officer for inclusion in the official contract file, prior to beginning the technical evaluation process. ASB officials were unable to produce the document after our request for the missing information. ASB officials did not know why the documentation was missing and stated the awarding contracting officer had retired more than 5 years prior to our request and the acquisition occurred before the FDIC went to electronic records.
>
> We recommended the FDIC address its record retention issues in recent OIG reports; therefore, we are not including related recommendations in this report. Specifically, our OIG report *The FDIC's Implementation of Supply Chain Risk Management* (March 2022) noted that Contracting Officers did not maintain contract documents in the FDIC Contract Electronic File System. The FDIC concurred with the OIG's recommendation that the FDIC implement internal controls to ensure that Contracting Officers maintain contract documents in the FDIC's acquisition system as required, and are held accountable for failure to do so. Our OIG report *Contract Oversight Management* (October 2019) noted a similar issue in that Oversight Managers did not upload contract-related documentation to the Contract Electronic File System due to system challenges. The FDIC concurred with the OIG's recommendation to implement a process to verify that Oversight Managers are uploading documents in the Contract Electronic File System in a timely manner and are maintaining complete files.

[30] GAO-14-704G § 7.02.
[31] As noted in the Background section of this report, FDIC Directive 3700.16, *Acquisition Program,* defines the acquisition team as a group that consists of the Contracting Officer; supporting Contract Specialists and other support staff in ASB; the responsible Program Office officials, including the Oversight Manager and Technical Monitor; the Legal Division; and, as appropriate, the supporting officials and staff of Office of Minority and Women Inclusion.

documented in a Market Research Memorandum for all actions over $10,000 in value. Market research provides information about commercial practices that can be used to shape the acquisition strategy, statement of work, evaluation factors, and contract terms and conditions. Market research also includes identifying vendors that may offer goods and/or services required by the FDIC for current or future procurements. While the Market Research Memorandum identifies the "Program Office preparer(s)," the individual(s) is not required to sign a Conflict of Interest Certification form prior to conducting research. However, as described in the next section of this report, individuals have an obligation to self-identify, report, and avoid conflicts of interest.

Additionally, the APGM requires "reasonable planning for all procurement actions" but does not define what "reasonable planning" entails for those actions valued under $1 million. For acquisitions valued at more than $1 million, the APGM requires the Program Office and the Contracting Officer to jointly develop a written Acquisition Plan using the FDIC's Acquisition Plan template.[32] This template requires a written description of "risks associated with the procurement," including technical, cost, and schedule risks, and a written description of efforts planned or underway to reduce risk and the consequences. However, the template does not specifically include requirements for an assessment or written description of conflict of interest-related risks. Further, while the template requires employees involved in the Acquisition Plan preparation be identified, these individuals are not required to sign a Conflict of Interest Certification form prior to their involvement.

FDIC processes and procedures for public and confidential financial disclosure reporting serve to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of employees. However, these annual financial disclosure reviews are not intended to identify conflicts of interest in acquisition-related activities, nor would they be able to because the FDIC does not maintain a listing of the acquisition team members for each acquisition.[33]

<u>Self-Reported Disclosures</u>

FDIC processes and procedures to identify, analyze, respond to, and monitor for conflicts of interest in the acquisition process place primary responsibility on FDIC employees to self-identify, report, and avoid conflicts of interest, in accordance with Federal Regulations.[34] The primary mechanism for reporting conflicts of interest is the financial disclosure reporting process. Outside of the financial disclosure review process, the FDIC conducts limited to no verification or monitoring over employee's actions that overlap between their FDIC duties and their interests that could create an actual or perceived conflict of interest in the acquisition process. Specifically, the FDIC relies on certifications from only one segment of the acquisition

[32] The Acquisition Plan is completed after Market Research.
[33] *See* Finding 3 in the Results section of this report for more information on the FDIC's confidential financial disclosure review program.
[34] 5 C.F.R. Part 2634.

team, the TEP. Further, while the APGM requires reasonable planning for all procurement actions, that planning does not specifically include risk assessment requirements related to potential conflicts of interest of FDIC employees engaged in the acquisition process.

Although ASB personnel told us they have considered making improvements in employee conflict of interest reporting, they determined that expanding the conflicts of interest certification requirement within the acquisition process could be administratively burdensome. An ASB official stated that because there are multiple people involved in the planning phase, it could be difficult to track and collect Conflict of Interest Certification documentation. ASB management officials stated that the onus is on the employee to self-disclose any conflict of interest to the Ethics Unit, which is responsible for reviewing the reported conflicts of interest and informing or advising the employee. ASB management officials acknowledged, however, that the Ethics Unit would not notify them of an employee's self-disclosure of a potential or actual conflict of interest. Further, Ethics Unit officials clarified that when an employee contacts the Ethics Unit regarding a potential or actual conflict of interest, the Ethics Unit does not share the advice provided to the employee with the employee's supervisor due to potential Privacy Act violations. Therefore, the onus is on the employee to act according to the Ethics Unit's advice as FDIC processes and procedures, in accordance with Federal Regulations, place primary responsibility on FDIC employees to self-identify and avoid conflicts of interest.

Limited Internal Controls Introduce Risk

Collectively, the preceding factors (requiring only TEP members to sign Conflicts of Interest Certifications, reviewing annual financial disclosures that are not specific to acquisition-related activities, relying on self-reporting, and not requiring an assessment of conflict of interest-related risk in acquisitions) introduce the human element of risk, which relates to either purposeful or accidental acts performed by individuals that may lead to financial or reputational damage.[35] Accidental acts can be seen as consequences rather than causes, having their origins not so much in human nature as in organizational factors.[36] Countermeasures, such as internal controls, are based on the assumption that although organizations cannot change the human condition, organizations can change the conditions under which humans work.[37]

No amount of added processes, procedures, or controls can prevent all potential and/or actual conflicts of interest. However, absent additional internal controls in the acquisition planning and approval process at the Program Office level, employees may not be equipped to identify, analyze, respond to, and monitor for potential or actual acquisition-related conflicts of interest.

Furthermore, potential conflicts of interest may go undetected or not be detected prior to an employee acting in their own self-interest, which creates legal and reputational risks for the FDIC. For example, in responding to a confidential complaint related to the award of an

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[35] Understanding the Human Element of Risk, December 2022, SC&H Group.
[36] Human error: models and management, James Reason, March 2000, British Medical Journal.
[37] *Ibid*.

Information Technology contract, the FDIC OIG discovered information that suggested an FDIC employee serving as a Technical Monitor used their official position to provide an unfair advantage to a contractor during the acquisition process. In addition, the OIG established that the FDIC employee:

- used contacts gained through their official FDIC duties to assist adult (non-spousal) family members in securing employment with an FDIC contractor and potential FDIC contractors (seeking to do business with the FDIC); and
- accepted a gift from employees of a contractor (a prohibited source) for which the employee was a Technical Monitor.

The relationship with the adult family members and the gift from a prohibited source, which was valued under $375, would not have been reportable on the employee's confidential financial disclosure report.[38] These conflicts of interest examples demonstrate the financial disclosure report process alone is not sufficient to identify all potential conflicts of interest in the acquisition process. Ultimately, the FDIC employee cited in these examples was terminated for their actions which created the appearance that the employee was providing certain individuals or potential vendors with preferential treatment in the awarding of FDIC contracts.

The FDIC also faces legal and reputational damage resulting from the appearance of conflicts of interest of FDIC employees engaged in acquisition planning activities. For example, the WSJ reported that three FDIC officials involved in the acquisition deliberations regarding a contract to Microsoft Corporation had a personal or financial interest in Microsoft.[39] One of these officials, a senior-level FDIC employee who owned Microsoft stock, reviewed and signed a Microsoft Professional Services Acquisition Plan requesting a non-competitive contract award to Microsoft.

As previously noted, because there is no requirement for employees involved in preparing the Acquisition Plan to sign a Conflict of Interest Certification form, potential conflicts of interest may go undetected or not be detected prior to an employee acting in their own self-interest. The Microsoft Professional Services Acquisition Plan was ultimately approved and resulted in a non-competitive negotiation and sole source award to Microsoft. The FDIC OIG confirmed the three FDIC employees' involvement in the Microsoft acquisition deliberations while holding Microsoft stock. Ultimately, one FDIC employee resigned from the agency prior to the FDIC OIG's work. The two remaining FDIC employees received personnel actions citing that their actions reflected poorly on the FDIC as a whole.

[38] Regulations in effect for this example required filers to report their spouse's earned income and assets as well as investment income held by the spouse and dependent children. Regulations also required filers to report gifts totaling more than $375 from any one source during the reporting period for themselves, their spouse, and dependent children.
[39] *Supra* note 1.

Recommendation 1

We recommend the **Chief Operating Officer** develop a means of identifying and documenting acquisition-specific team members from the Program Offices, Division of Administration Acquisition Services Branch, Legal Division, and Office of Minority and Women Inclusion.

Recommendation 2

We recommend the **Director, Division of Administration** update the Acquisition Procedures and Guidance Manual to (1) define “reasonable planning,” (2) require the documentation of “reasonable planning” for all acquisitions, and (3) require a written description of potential or actual acquisition-specific conflict of interest-related risks in planning documentation.

Recommendation 3

We recommend the **Chief Operating Officer in coordination with the Director, Division of Administration** develop procedures requiring acquisition team members, as defined in response to Recommendation 1, to complete a conflict of interest certification in which each team member is to assess and document that they do not have a potential or actual conflict of interest related to the specific acquisition prior to participating in any phase of the acquisition lifecycle (from planning to closeout). These procedures should require that evidence of acquisition team members’ conflict of interest certifications is maintained in accordance with requisite FDIC records retention schedule requirements.

Recommendation 4

We recommend the **Chief Operating Officer in coordination with the Director, Division of Administration** develop procedures requiring acquisition team members, as defined in response to Recommendation 1, to re-certify annually that they remain free of actual or potential conflicts of interest as long as the acquisition is in place.

Finding 2

The FDIC Should Continue to Develop and Deliver Specialized Acquisition-Related Conflict of Interest Training

As a result of a media report of alleged conflicts of interest involving FDIC officials engaged in acquisitions,[40] the FDIC’s Division of Resolutions and Receiverships (DRR) and Division of Information Technology (DIT)/Chief Information Officer Organization

[40] *Supra* note 1.

(CIOO) requested additional acquisition-related trainings to respond to and address Program Office acquisition-related risk. OGE states that because ethics risks and education needs are unlikely to be uniformly distributed throughout an agency, the agency's Designated Agency Ethics Official (DAEO) should develop different ethics education messages and products for different groups of employees based on risk. While the FDIC Ethics Unit has not established specialized ethics training requirements beyond the initial new employee and annual ethics training, it will provide FDIC Program Offices with additional ethics training upon request, including training related to conflicts of interest in the acquisition process. Although the Program Offices' requests for additional training reflect a commitment to enhanced internal controls, they also support the importance of additional employee training related to conflicts of interest in acquisitions across the FDIC that may reduce the likelihood of ethics violations and protect the integrity of the FDIC's acquisition process.

GAO Internal Control Standards state that Management should internally communicate necessary quality information to achieve the entity's objectives.[41] Communicating quality information enables personnel to perform key roles in addressing risk and supporting the internal control system.[42]

OGE Training Resources and Advice

OGE notes that an agency's education program increases employees' awareness of their ethical obligations, helps them identify ethics issues that may arise in the work they perform, and provides employees with guidance and support for making ethical decisions. OGE also notes that through education, ethics officials assist employees in fulfilling their responsibility to act at all times in the public's interest and avoid losing impartiality or appearing to lose impartiality in carrying out their official duties. According to OGE, an agency educates its employees through a combination of targeted notices, training, personalized ethics advice, and ongoing agency communications. To be effective, the DAEO should assess ethics risks, identify employees most at risk, and deliver training and counseling that is directly responsive to the risk those employees face. Further, OGE states that because ethics risks and education needs are unlikely to be uniformly distributed throughout an agency, DAEOs should develop different ethics education messages and products for different groups of employees based on risk. For example, OGE states "employees involved in procurement may require a greater emphasis on financial conflicts of interest."

Regulations state that the DAEO may establish additional requirements for the agency's ethics education program and specific government ethics training requirements for groups of agency employees.[43] Because this is not a requirement, the FDIC Ethics Unit has not established

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[41] GAO-14-704G § 14.01.
[42] GAO-14-704G § 14.03.
[43] 5 C.F.R. § 2638.309 and 5 C.F.R. § 2638.309(a).

additional ethics training requirements beyond the initial new employee and annual ethics training.[44] Currently, specialized training related to conflicts of interest in acquisitions is only provided to Program Offices upon request.

FDIC Division and Office Acquisition-Related Trainings

As a result of the aforementioned WSJ article reporting that three FDIC officials involved in acquisition deliberations had a personal or financial interest in Microsoft,[45] DRR and DIT/CIOO requested additional acquisition-related trainings to respond to and address Program Office acquisition-related risk.[46] Specifically, the DRR Division Director requested additional training for DRR employees "to keep top of mind" that an employee's ethical obligations are broader than financial conflicts of interest. The additional training provided to DRR by ASB covered the Procurement Integrity Act.[47] The DRR Director stated that DRR plans to have the ASB-provided training be regular and recurring.[48]

Additionally, the Chief Information Officer requested additional training for all CIOO employees to address contract management issues in general, including a "conflict of interest" module. Further, because the WSJ also reported information about the actions of a CIOO employee, this training was leveraged to ensure compliance with ethics laws and regulations, and FDIC-specific ethics rules.

While Program Office requests for additional training reflect a commitment to enhanced internal controls, they also support the importance of additional employee training related to conflicts of interest in acquisitions across the FDIC. Additional employee training to strengthen employee knowledge and skills related to ethics laws and regulations may reduce the likelihood of ethics violations and protect the integrity of the FDIC's acquisition process.

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[44] In July 2022, at the request of the FDIC DAEO, the FDIC Chairman announced that all FDIC employees would be required to complete annual ethics training starting in calendar year 2022.
[45] *Supra* note 1.
[46] DRR and DIT/CIOO are two of the top three FDIC Program Offices with the highest volume and dollar amount of contracting activities from January 2021 to December 2023. *See* Appendix 1 for additional details regarding the objective, scope, and methodology of this evaluation.
[47] While not binding on the FDIC, *The Procurement Integrity Act,* prohibits the disclosure of procurement information and knowingly disclosing contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates (41 U.S.C. § 2102(a)(1)). Violations of *The Procurement Integrity Act* can result in criminal, civil and/or administrative penalties (41 U.S.C. Part 2105).
[48] According to DRR officials, this training will be in addition to the existing DRR requirement to have employees complete the FDIC Contract Oversight Level 1 training that includes a module on ethics and procurement integrity. This training states that it is the Oversight Manager's responsibility to be familiar with, and comply with, ethics standards, laws, and regulations, as applicable to contract administration and oversight management.

Recommendation 5

We recommend the **General Counsel in coordination with the Director, Division of Administration** develop and deliver specialized acquisition-related conflict of interest training on at least an annual basis to all acquisition team members to strengthen employee knowledge and skills related to ethics laws and regulations.

Finding 3

The FDIC Can Enhance Its Confidential Financial Disclosure Review Program

At the FDIC, DECs, who are located within each Division or Office nation-wide, identify and report to the Ethics Unit potential conflicts of interest reported by employees on confidential financial disclosure forms. We noted during our evaluation that this decentralized approach to confidential financial disclosure reviews could be enhanced by ensuring financial disclosure review guidance contains clear instructions for evaluating financial disclosure forms for completeness and by training DECs on the enhanced guidance. Further, the FDIC could enhance its approach by reevaluating the seniority, position descriptions, and number of personnel appointed to be DECs. The FDIC could also more formally assess and address DEC survey comments and concerns. These modifications could enhance the consistency of DEC reviews of confidential financial disclosure forms and help ensure the effectiveness of the FDIC's confidential financial disclosure review program.

GAO Internal Control Standards state that management should periodically review policies, procedures, and related control activities for continued relevance and effectiveness in achieving objectives or addressing risks. Any significant process change must be reviewed to determine that control activities are designed and implemented appropriately.[49]

<u>Financial Disclosure Review Programs</u>

As the supervising ethics agency, OGE notes there is no one-size-fits-all approach to financial disclosure programs.[50] We confirmed this through our review of other Federal regulators' and agencies' practices for reviewing confidential financial disclosures. Specifically, we noted there are two main approaches to confidential financial disclosure reviews - a centralized approach that uses Ethics officials and a decentralized approach that uses additional agency officials.

[49] GAO-14-704G §12.05.
[50] *See* "Executive Branch Ethics Program" in the Background section of this report for additional information on OGE responsibilities.

The FDIC follows the decentralized approach, using DECs located in each Division or Office nationwide.

FDIC Deputy Ethics Counselor Review of Confidential Financial Disclosure Reports

FDIC processes and procedures require the Ethics Program Manager (or designee) to review Public Financial Disclosure Reports (OGE Form 278e) and DECs to review Confidential Financial Disclosure Reports (OGE Form 450) in accordance with 5 C.F.R. Part 2634, Subpart F. The FDIC's Ethics Unit relies on DECs to identify and report to the Ethics Unit potential conflicts of interest reported by employees on confidential financial disclosure forms. According to 5 C.F.R. § 2634.605(b)(2) the reviewing official must examine the report to determine, to the reviewing official's satisfaction, that each required part of the report is completed. Additionally, the reviewing official need not audit the report, and disclosures are taken at "face value" as correct, unless there is a patent omission, ambiguity, or the official has independent knowledge of matters outside the report.[51] As part of the review process, if, in the opinion of the reviewer, the filer is in compliance with applicable ethics laws and regulations, the DEC will certify financial disclosure reports. Filers whose forms require further follow-up are contacted by a reviewing official for additional information.

FDIC Financial Disclosure Review guidance reflected the regulatory requirements that DECs do not need to audit the financial disclosure reports and that DECs may take filers' disclosures at "face value." However, the guidance did not address the responsibility for DECs to identify patent omissions and ambiguity based on their independent knowledge of matters outside of the report. Consequently, the FDIC's guidance did not state that DECs should review forms for completeness, which would help the DECs determine whether a potential conflict exists. As a result of our evaluation fieldwork, the Ethics Unit updated its guidance to clarify the completeness requirement for financial disclosure reviews. Specifically, FDIC Financial Disclosure Review guidance, distributed on April 30, 2024, states that DECs, "must follow-up with an employee if a report omits an entry the DEC has independent knowledge of that is relevant to the conflict of interest analysis (e.g., missing a spouse's employer, a retirement plan, an outside position, etc.)." While these updates clarified DECs' responsibilities regarding confidential financial disclosure form completeness, training DECs on the new guidance will help ensure consistent application of the new guidance.

Deputy Ethics Counselor Appointments

The FDIC has no formal policy related to the appointment or assignment of DECs, including the minimum qualifications and requirements, whether the employees' position descriptions incorporate DEC duties, or the minimum number of DECs needed across the FDIC or by Division or Office. According to Ethics Unit officials, all information about DEC appointments and seniority is communicated directly to Division or Office management, who in turn are

[51] 5 C.F.R. § 2634.605(b)(3).

responsible for selecting the DECs for their organization. Ethics Unit officials also stated that all information about DEC job duties is communicated to new DECs when they are trained, prior to their formal designation.

According to Ethics Unit officials, DECs, located in each Division and Office nationwide, are utilized because they are considered to have more insight into filers'[52] work activities than Ethics Unit officials. The Ethics Unit encourages, but does not require, Divisions and Offices to appoint more senior employees as DECs because they are more aware of potential conflicts of interest of filers engaged in acquisitions within their work units. We noted the FDIC's Division of Depositor and Consumer Protection and the Division of Risk Management Supervision have incorporated DEC responsibilities into select supervisory employee position descriptions. However, DECs appointed by other FDIC Divisions and Offices may not necessarily hold supervisory positions.

Additionally, according to Ethics Unit data, the ratio of filers to DECs in each FDIC Division and Office varied anywhere from 3 filers per DEC up to 73 filers per DEC, with the highest ratios in the FDIC's Washington D.C. offices. According to an Ethics Unit official, the Ethics Unit monitors for workload concerns and coordinates with Division and Office heads annually on the number of DECs the Division or Office will appoint, to include requests for additional DEC support.[53] An Ethics Unit official also stated that DECs can request their management to assign more DECs to make their workload manageable. According to Ethics Unit officials, they are available to, and do, step in to assist DECs as needed to conduct confidential financial disclosure reviews.

<u>FDIC DEC Survey Results</u>

According to results from the FDIC Ethics Unit 2023 DEC Survey, many DECs commented that the Ethics Unit was supportive, knowledgeable, and responsive. Many DEC survey responses indicated DECs felt sufficiently trained and familiar with the duties and responsibilities of the filers they review. However, some DEC survey responses expressed concerns that DEC responsibilities were collateral duties and the DECs had limited visibility into filers' work assignments.

According to Ethics Unit officials, survey results are reviewed and analyzed internally and discussed with DECs in quarterly meetings. Ethics Unit officials stated that survey results were predominately positive and that negative comments are reviewed and considered in order to enhance the ethics program; however, officials opined that not all negative comments required further action. Ethics Unit officials stated that many comments received in the DEC Survey expressed general concerns that are addressed on an ongoing basis in DEC training and other

[52] The term 'filer' refers to the employee who is submitting a public or confidential financial disclosure report.
[53] An Ethics Unit official stated that the unit coordinated with three Division Directors in November 2023 regarding DEC concerns about workload assignments. However, the Divisions decided not to make any changes to their DEC assignments.

guidance in an effort to assist DECs with their financial disclosure reviews. We believe the Ethics Unit could more formally assess and address DEC survey comments and concerns to identify strengths and opportunities to enhance the confidential financial disclosure review program.

Recommendation 6

We recommend the **General Counsel** ensure Deputy Ethics Counselors (DEC) are trained on the revised Financial Disclosure Review guidance to follow up with filers when a financial disclosure report omits an entry the DEC has independent knowledge of that is relevant to the conflict of interest analysis.

Recommendation 7

We recommend the **General Counsel** evaluate whether there should be minimum qualifications and requirements for appointed Deputy Ethics Counselors (DEC), a desired ratio of DECs to filers across FDIC Divisions and Offices, and whether DEC duties should be incorporated into FDIC employee position descriptions to better equip DECs to monitor and respond to employees' potential and actual conflicts of interest.

Recommendation 8

We recommend the **General Counsel** develop and implement an action plan utilizing Deputy Ethics Counselor survey results and other relevant information to help identify strengths and opportunities for continuous improvement in the FDIC's financial disclosure review program.

FDIC COMMENTS AND OIG EVALUATION

On September 11, 2024, the FDIC's Deputy to the Chairman, Chief Operating Officer, Director, Division of Administration, and General Counsel provided a written response to a draft of this report, which is presented in its entirety in Appendix 2.

In its response, the FDIC agreed it was important to have government decisions, including those involving acquisitions, free from personal financial bias. The FDIC concurred with the report's recommendations and plans to complete all corrective actions by August 31, 2025.

We consider all eight recommendations to be resolved. All of the recommendations in this report will remain open until we confirm that corrective actions have been completed and the actions are responsive. A summary of the FDIC's corrective actions is contained in Appendix 3.

APPENDIX 1: OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The evaluation objective was to determine the extent to which the Federal Deposit Insurance Corporation (FDIC) has processes and procedures to identify, analyze, respond to, and monitor for conflicts of interest of FDIC employees engaged in the acquisition process.

We conducted this evaluation from February 2024 through August 2024 in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*. These standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings, conclusions, and recommendations based on our evaluation objective. We believe that the evidence obtained provides a reasonable basis for our findings, conclusions, and recommendations based on our evaluation objective.

Scope and Methodology

The scope of the evaluation focused on the FDIC's conflict of interest processes and procedures within the acquisition process. We applied internal control components and underlying principles promulgated by the Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government* (GAO-14-704G) (September 2014) to guide our work assessing the extent to which the FDIC has processes and procedures to identify, analyze, respond to, and monitor for conflicts of interest of FDIC employees engaged in the acquisition process.

To obtain an understanding of the FDIC's processes and procedures and to address the evaluation objective, we interviewed FDIC personnel from the Legal Division's Ethics Unit and the Division of Administration's Acquisition Services Branch. We identified the FDIC's contracting universe from January 1, 2021, through December 31, 2023, and identified that the Divisions of Administration, Information Technology, and Resolutions and Receiverships were the top three FDIC Program Offices with the highest volume and dollar amount of contracting activities. We interviewed officials from these top three Program Offices with the highest contracting activities to identify any Program Office-specific leading practices related to identifying, analyzing, responding to, and monitoring for conflicts of interest of FDIC employees engaged in the acquisition process.

To address the objective, we reviewed relevant FDIC policies, procedures, and guidance, including:

- FDIC Acquisition Procedures and Guidance Manual (APGM) (July 2023);
- FDIC Directive 3700.16, *Acquisition Program* (July 2023);

- FDIC Directive 2410.02, *Required Public and Confidential Financial Disclosure Reports and Other Related Employee Ethics Forms* (April 2023); and
- FDIC Directive 2410.6, *Standards of Ethical Conduct for Employees* (October 2017).

In addition, we reviewed applicable Federal laws and regulations, including:

- Federal Acquisition Regulation Part 3, *Improper Business Practices and Personal Conflicts of Interest*;
- 5 C.F.R. Part 2634, *Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture*;
- 5 C.F.R. Part 2635, *Standards of Ethical Conduct for Employees of the Executive Branch*;
- 5 C.F.R. Part 2638, *Executive Branch Ethics Program;*
- 5 C.F.R. Part 3201, *Supplemental Standards of Ethical Conduct for Employees of the Federal Deposit Insurance Corporation;*
- 12 U.S.C. § 1819, Federal Deposit Insurance Act; and
- 18 U.S.C. Chapter 11, Bribery, Graft, and Conflicts of Interest.

We reviewed the FDIC's Risk Profile and Risk Inventory as of February 2024 to determine if there were any Agency risks related to the objective. We obtained and analyzed FDIC OIG Office of Investigations reports issued between 2019 and 2023 related to conflicts of interest within the acquisition process and coordinated with the FDIC OIG Office of Investigations on FDIC follow-up actions related to those reports. We reviewed contract documentation in the FDIC's Contract Electronic File system related to the acquisitions identified in the FDIC OIG Office of Investigations' reports to determine whether conflict of interest certifications were completed.

We also interviewed ethics and procurement officials from the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and National Credit Union Administration to understand roles and responsibilities for financial disclosure reviews and whether the agencies had policies and procedures addressing conflicts of interest of agency employees engaged in the acquisition process. To understand non-financial regulatory agency practices for conducting financial disclosure reviews, we interviewed a United States Department of Education ethics official and obtained and reviewed Office of Government Ethics Plenary Reports (ethics program reviews) for the United States Postal Service, Department of Housing and Urban Development, Department of Health and Human Services, and Department of Commerce.

Internal Controls

We determined that three of the five internal control components cited in the *Standards for Internal Control in the Federal Government* - control activities, information and communication, and monitoring - were significant to the evaluation objective. We interviewed FDIC officials and reviewed FDIC policies, procedures, and other guidance to obtain an understanding of the internal controls related to the components identified as significant to this evaluation. Internal control deficiencies identified during the evaluation that are significant within the context of the evaluation objective are presented in the Results section of this report.

Prior Office of Inspector General Reports

We reviewed the following FDIC OIG reports related to the FDIC's acquisition process:

- *Contract Oversight Management* (EVAL-20-001) (October 2019);
- *Critical Functions in FDIC Contracts* (EVAL-21-002) (March 2021);
- *The FDIC's Implementation of Supply Chain Risk Management* (EVAL-22-003) (March 2022);
- *FDIC Oversight of a Telecommunications Contact* (REV-23-002) (March 2023); and
- *The FDIC's Purchase and Deployment of the FDIC Acquisition Management System* (EVAL-24-04) (January 2024).

APPENDIX 2: FDIC COMMENTS

FDIC Federal Deposit Insurance Corporation

MEMO

TO: Terry L. Gibson
Assistant Inspector General, Audits, Evaluations & Cyber
Office of Inspector General

FROM: Daniel H. Bendler
Deputy to the Chairman and Chief Operating Officer
and Director, Division of Administration

DANIEL BENDLER Digitally signed by DANIEL BENDLER Date: 2024.09.11 10:25:34 -04'00'

Harrel M. Pettway
General Counsel

HARREL PETTWAY Digitally signed by HARREL PETTWAY Date: 2024.09.11 10:56:09 -04'00'

DATE: September 11, 2024

RE: Management Response to the Draft Evaluation Report Entitled, *Conflicts of Interest in the Acquisition Process* (No. 2024-003)

Thank you for the opportunity to review and comment on the subject Office of Inspector General (OIG) draft evaluation report. The objective of the OIG's evaluation was to determine the extent to which the FDIC has processes and procedures to identify, analyze, respond to, and monitor for conflicts of interest of FDIC employees engaged in the acquisition process.

The FDIC agrees it is important to have government decisions, including those involving acquisitions, free from personal financial bias. In that regard, as the report describes, the Ethics Unit in the Legal Division provides overall leadership and oversight of the FDIC's ethics program. The primary mission of the ethics program is to prevent and resolve conflicts of interests. The Ethics Unit leads efforts to review confidential financial disclosure reports to identify and resolve actual or apparent conflicts of interest. In addition, FDIC employees are instructed to consult with an Ethics Official whenever there may be a possible conflict between their FDIC duties and their financial interest or outside relationships.

With regard to our acquisition program, the Acquisition Procedures and Guidance Manual states that FDIC employees are held to the highest standards of conduct in performing their duties and indicates that employees involved in acquisitions must be familiar with and comply with FDIC and Government-wide ethics standards. Further, individuals serving on Technical Evaluation Panels, which are responsible for reviewing and evaluating vendor proposals, must read and sign a Confidentiality Agreement and a Conflict of Interest Certification, and submit these documents to the Contracting Officer prior to beginning the technical evaluation process. The Conflict of Interest Certification requires individuals to review and identify on a continuous basis any financial and employment interests related to themselves, their spouse, minor child, or dependent(s) that may create a conflict of interest or the appearance thereof in the context of their duties and responsibilities.

We appreciate the OIG's review and findings that identify opportunities for the FDIC to strengthen its controls in the ethics program and in particular ensuring employees participating in the acquisition process do not have

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any conflicts of interests. The OIG made eight recommendations in its report. The FDIC concurs with all of the recommendations and has proposed corrective actions. We believe the actions we are proposing provide complementary controls in the two areas that provide greater assurance that potential and actual conflicts of interest are identified and mitigated in a cost-effective manner. The following presents the FDIC's proposed corrective action for each recommendation and estimated completion dates.

Recommendation 1:

The Chief Operating Officer develop a means of identifying and documenting acquisition-specific team members from the Program Offices, Division of Administration Acquisition Services Branch, Legal Division, and Office of Minority and Women Inclusion.

Management Decision: Concur

Corrective Action: According to Directive 3700.16, *Acquisition Program*, the acquisition team is defined as a group that consists of the Contracting Officer; supporting Contract Specialists and other support staff in the Division of Administration (DOA) Acquisition Services Branch (ASB); the Oversight Manager; the responsible officials of the Division/Office, particularly including the Technical Monitor; the Legal Division, including the Contracts and Risk Management Unit and the Opinions and Research Unit; and, as appropriate, the supporting officials and staff of the Office of Minority and Women Inclusion and the Acquisition Policy and Systems Section, ASB.

The acquisition team is composed of multi-functional subject matter experts who understand the requirement, how it relates to the mission, and can collectively establish an executable strategy to support the requirement throughout the acquisition lifecycle. The composition of an acquisition team can vary widely from acquisition to acquisition based on the complexity, criticality, risk, estimated dollar value, and overall nature of the procurement.

It is important that decision makers and key influencers are free of conflicts of interest or the appearance of conflicts of interest throughout the acquisition lifecycle. Not all members of the acquisition team are decision makers or key influencers. To ensure acquisition-specific decision makers and key influencers involved during the planning process are identified and documented, the DOA ASB will update the Requirements Package Checklist to include a mandatory conflict of interest document where the Program Office identifies these employees and requires a signature certifying there is no conflict of interest.

Estimated Completion Date: 6/30/2025

Recommendation 2:

The Director, Division of Administration update the Acquisition Procedures and Guidance Manual to (1) define "reasonable planning," (2) require the documentation of "reasonable planning" for all acquisitions, and (3) require a written description of potential or actual acquisition-specific conflict of interest-related risks in planning documentation.

Management Decision: Concur

Corrective Action: The DOA ASB will revise the Acquisition Procedures and Guidance Manual to provide additional guidance on "reasonable planning." Reasonable planning occurs for all acquisitions during the requirements development process and is documented in the acquisition package submitted by the Program

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Office to ASB. The nature and amount of necessary acquisition planning varies depending on the complexity, criticality, risk, estimated dollar value, and overall nature of the procurement.

Prior to initiating a procurement, the Program Office must submit to ASB a set of documents created during planning. To ensure acquisition-specific conflicts of interest are documented, the DOA ASB will update the Requirements Package Checklist to include a mandatory conflict of interest document where Program Office decision makers or key influencers involved in the planning process are identified and sign certifying there is no conflict of interest.

Estimated Completion Date: 6/30/2025

Recommendation 3:

The Chief Operating Officer in coordination with the Director, Division of Administration develop procedures requiring acquisition team members, as defined in response to Recommendation 1, to complete a conflict of interest certification in which each team member is to assess and document that they do not have a potential or actual conflict of interest related to the specific acquisition prior to participating in any phase of the acquisition lifecycle (from planning to closeout). These procedures should require that evidence of acquisition team members' conflict of interest certifications is maintained in accordance with requisite FDIC records retention schedule requirements.

Management Decision: Concur

Corrective Action: The DOA ASB will update the following documents to add a conflict of interest statement. By signing the document, decision makers and key influencers will be certifying there is no conflict of interest on those specific acquisitions. These documents will be maintained in accordance with FDIC records retention schedule requirements.

- The written conflict of interest document developed during planning that identifies Program Office decision makers and key influencers will be added to the Requirements Package Checklist and become a mandatory document that must be submitted to ASB prior to initiation of a procurement.

- The written **Acquisition Plan** is a comprehensive document that provides information related to the background and objectives including a summary of the requirement, procurement history, risks associated with the procurement, procurement request authority and period of performance. This document also includes a detailed description of the Plan of Action, which is comprised of sixteen different areas (such as sources to be solicited, competition, source selection procedures, security considerations, business continuity planning, contract administration, and milestone schedule).

- The written **Source Selection Plan** is a comprehensive document that outlines how proposal evaluations are conducted. It includes a description of the evaluation methodology to include evaluation factors based on the requirements of the procurement, the roles to be played by respective evaluation personnel to analyze proposals and any special or unique requirements and approvals.

- The written **Selection Recommendation Report and Price Evaluation Memorandum** provide a summary of the contractor's proposal and the results of the evaluation and basis for the award recommendation and requires the CO to make a determination of price reasonableness.

- The written **Justification for Non-Competitive Procurement** documents the decision and justification for non-competitive procedures for any action above $10,000. It includes a description of goods and services, recommended source, description of contract action and any pertinent history, a description and results of market research, and rationale for non-competitive procedures.

- For procurements above $20 million, board approval for contract authority is required via a **Board Case**, which is a comprehensive document that describes the procurement, to include scope, implementation approach, planned schedule, proposed investment budget, contracting approach, risks, and governance. Board approval is obtained via a Resolution.

- The written **Oversight Manager (OM) and Technical Monitor (TM) Appointment Memorandums** delegate tasks and performance oversight authority for matters within the scope of the contract action and must be acknowledged by the OM or TM.

Estimated Completion Date: 6/30/2025

Recommendation 4:

The Chief Operating Officer in coordination with the Director, Division of Administration develop procedures requiring acquisition team members, as defined in response to Recommendation 1, to re-certify annually that they remain free of actual or potential conflicts of interest as long as the acquisition is in place.

Management Decision: Concur

Corrective Action: The DOA ASB, in coordination with Program Offices, will establish a process and means to identify acquisition team members on active contracts and require an annual certification confirming they do not have a conflict of interest while working in this role.

Estimated Completion Date: 8/30/2025

Recommendation 5:

The General Counsel in coordination with the Director, Division of Administration develop and deliver specialized acquisition-related conflict of interest training on at least an annual basis to all acquisition team members to strengthen employee knowledge and skills related to ethics laws and regulations.

Management Decision: Concur

Corrective Action: The Ethics Unit, in coordination with the DOA ASB, will develop and deliver specialized acquisition-related conflict of interest training on an annual basis to acquisition team members.

Estimated Completion Date: 8/30/2025

Recommendation 6:

The General Counsel ensure Deputy Ethics Counselors (DEC) are trained on the revised Financial Disclosure Review guidance to follow up with filers when a financial disclosure report omits an entry the DEC has independent knowledge of that is relevant to the conflict of interest analysis.

Management Decision: Concur

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Corrective Action: Completed. The Ethics Unit updated the existing guidance and notified the DECs on April 30, 2024. The Ethics Unit will continue to provide this notification in all future DEC training sessions.

Estimated Completion Date: 4/30/2024

Recommendation 7:

The General Counsel evaluate whether there should be minimum qualifications and requirements for appointed Deputy Ethics Counselors (DEC), a desired ratio of DECs to filers across FDIC Divisions and Offices, and whether DEC duties should be incorporated into FDIC employee position descriptions to better equip DECs to monitor and respond to employees' potential and actual conflicts of interest.

Management Decision: Concur

Corrective Action: The Ethics Unit will evaluate the minimum qualification and requirements for appointed DECs and the desired ratio of DEC to filers across FDIC Divisions and Offices. Also, the Ethics Unit will evaluate whether DEC duties should be incorporated into FDIC employee position descriptions to better equip DECs to monitor and respond to employees' potential and actual conflicts of interest.

Estimated Completion Date: 8/31/2025

Recommendation 8:

The General Counsel develop and implement an action plan utilizing Deputy Ethics Counselor survey results and other relevant information to help identify strengths and opportunities for continuous improvement in the FDIC's financial disclosure review program.

Management Decision: Concur

Corrective Action: The General Counsel, in his capacity of Designated Agency Ethics Official, will develop and implement an FDIC Financial Disclosure Review Program Action Plan after reviewing Deputy Ethics Counselor survey results and other relevant information to help identify program strengths and opportunities for continuous improvements.

Estimated Completion Date: 8/31/2025

APPENDIX 3: SUMMARY OF THE FDIC'S CORRECTIVE ACTIONS

This table presents management's response to the recommendations in the report and the status of the recommendations as of the date of report issuance.

Rec. No.	Corrective Action: Taken or Planned	Expected Completion Date	Monetary Benefits	Resolved:[a] Yes or No	Open or Closed[b]
1	To ensure acquisition-specific decision makers and key influencers involved during the planning process are identified and documented, the DOA ASB will update the Requirements Package Checklist to include a mandatory conflict of interest document where the Program Office identifies these employees and requires a signature certifying there is no conflict of interest.	June 30, 2025	$0	Yes	Open
2	The DOA ASB will revise the Acquisition Procedures and Guidance Manual to provide additional guidance on "reasonable planning." Reasonable planning occurs for all acquisitions during the requirements development process and is documented in the acquisition package submitted by the Program Office to ASB prior to initiating a procurement. To ensure acquisition-specific conflicts of interest are documented, the DOA ASB will update the Requirements Package Checklist to include a mandatory conflict of interest document where Program Office decision makers or key influencers involved in the planning process are identified and sign certifying there is no conflict of interest.	June 30, 2025	$0	Yes	Open
3	The DOA ASB will update the documents listed below to add a conflict of interest statement. By signing the document, decision	June 30, 2025	$0	Yes	Open

Rec. No.	Corrective Action: Taken or Planned	Expected Completion Date	Monetary Benefits	Resolved:[a] Yes or No	Open or Closed[b]
	makers and key influencers will be certifying there is no conflict of interest on those specific acquisitions. The documents will be maintained in accordance with FDIC records retention schedule requirements. • The written conflict of interest document, developed during planning that identifies Program Office decision makers and key influencers, will be added to the Requirements Package Checklist and become a mandatory document that must be submitted to ASB prior to initiation of a procurement. • The written Acquisition Plan, a comprehensive document that provides information related to the background and objectives including a summary of the requirement, procurement history, risks associated with the procurement, procurement request authority, period of performance, and Plan of Action. • The written Source Selection Plan, a comprehensive document that outlines how proposal evaluations are conducted. • The written Selection Recommendation Report and Price Evaluation Memorandum, which provide a summary of the contractor’s proposal and the results of the evaluation and basis for the award recommendation and requires the Contracting Officer to make a determination of price reasonableness.				

Rec. No.	Corrective Action: Taken or Planned	Expected Completion Date	Monetary Benefits	Resolved:[a] Yes or No	Open or Closed[b]
	• The written Justification for Non-Competitive Procurement, which documents the decision and justification for non-competitive procedures for any action above $10,000. • The Board Case, which requires board approval for contract authority for procurements above $20 million, is a comprehensive document that describes the procurement, to include scope, implementation approach, planned schedule, proposed investment budget, contracting approach, risks, and governance. • The written Oversight Manager and Technical Monitor Appointment Memorandums, which delegate tasks and performance oversight authority for matters within the scope of the contract action and must be acknowledged by the Oversight Manager or Technical Monitor.				
4	The DOA ASB, in coordination with Program Offices, will establish a process and means to identify acquisition team members on active contracts and require an annual certification confirming they do not have a conflict of interest while working in this role.	August 30, 2025	$0	Yes	Open
5	The Ethics Unit, in coordination with the DOA ASB, will develop and deliver specialized acquisition-related conflict of interest training on an annual basis to acquisition team members.	August 30, 2025	$0	Yes	Open

Rec. No.	Corrective Action: Taken or Planned	Expected Completion Date	Monetary Benefits	Resolved:[a] Yes or No	Open or Closed[b]
6	The Ethics Unit updated the existing guidance and notified the DECs on April 30, 2024. The Ethics Unit will continue to provide this notification in all future DEC training sessions.	April 30, 2024	$0	Yes	Open
7	The Ethics Unit will evaluate the minimum qualification and requirements for appointed DECs and the desired ratio of DEC to filers across FDIC Divisions and Offices. Also, the Ethics Unit will evaluate whether DEC duties should be incorporated into FDIC employee position descriptions to better equip DECs to monitor and respond to employees' potential and actual conflicts of interest.	August 31, 2025	$0	Yes	Open
8	The General Counsel, in his capacity of Designated Agency Ethics Official, will develop and implement an FDIC Financial Disclosure Review Program Action Plan after reviewing Deputy Ethics Counselor survey results and other relevant information to help identify program strengths and opportunities for continuous improvements.	August 31, 2025	$0	Yes	Open

[a] Recommendations are resolved when —

1. Management concurs with the recommendation, and the OIG agrees the planned corrective action is consistent with the recommendation.
2. Management does not concur or partially concurs with the recommendation, but the OIG agrees that the proposed corrective action meets the intent of the recommendation.
3. For recommendations that include monetary benefits, management agrees to the full amount of OIG monetary benefits or provides an alternative amount and the OIG agrees with that amount.

[b] Recommendations will be closed when the OIG confirms that corrective actions have been completed and are responsive.

APPENDIX 4: ACRONYMS AND ABBREVIATIONS

APGM	Acquisition Procedures and Guidance Manual
ASB	Acquisition Services Branch
C.F.R.	Code of Federal Regulations
CIOO	Chief Information Officer Organization
DAEO	Designated Agency Ethics Official
DEC	Deputy Ethics Counselor
DIT	Division of Information Technology
DOA	Division of Administration
DRR	Division of Resolutions and Receiverships
FDIC	Federal Deposit Insurance Corporation
GAO	Government Accountability Office
OGE	Office of Government Ethics
OIG	Office of Inspector General
TEP	Technical Evaluation Panel
U.S.C.	United States Code
WSJ	Wall Street Journal

Federal Deposit Insurance Corporation

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The OIG's mission is to prevent, deter, and detect waste, fraud, abuse, and misconduct in FDIC programs and operations; and to promote economy, efficiency, and effectiveness at the agency.

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