U.S. Department of Energy
Office of Inspector General
Office of Audits and Inspections

Inspection Report

Alleged Health and Wellness Benefits Irregularities by a Department Contractor

INS-L-12-03

May 2012

Department of Energy
Washington, DC 20585

May 21, 2012

MEMORANDUM FOR THE DIRECTOR, NATIONAL ENERGY TECHNOLOGY LABORATORY

Sandra D. Bruce

From: Sandra D. Bruce
Assistant Inspector General
for Inspections
Office of Inspector General

Subject: INFORMATION: Inspection Report on "Alleged Health and Wellness Benefit Irregularities by a Department Contractor"

BACKGROUND

The National Energy Technology Laboratory (NETL), owned and operated by the Department of Energy, supports the Department's mission to advance the national, economic and energy security of the United States. NETL has 5 sites with 81 buildings and 14 major research facilities on nearly 200 acres. More than half of NETL's 1,100 employees are site support contractors. Ahtna Facility Services, Inc. (Ahtna) is one of the support contractors that is responsible for providing security services for sites located in Morgantown, West Virginia; Pittsburgh, Pennsylvania; and Albany, Oregon.

The Office of Inspector General received allegations concerning irregularities with health and wellness fringe benefits (fringe benefits) and retaliatory practices by Ahtna.[1] Specifically, it was alleged that Ahtna: (1) did not provide a specific group of employees at the Albany, Oregon site an option to receive cash in lieu of fringe benefits; (2) established individual 401(k) accounts without the employee's consent and withheld information concerning employee fringe benefits contributions of approximately $10,000; and (3) terminated an Ahtna employee for complaining about issues related to fringe benefits administration. We initiated an inspection to review the facts and circumstances surrounding these allegations.

CONCLUSIONS AND OBSERVATIONS

While we generally substantiated allegations one and two, we determined that in most instances Ahtna's actions were not contrary to contractual and regulatory requirements. Regarding the third allegation, the Office of Inspector General's Hotline referred the employee to the Department's local Employee Concerns Program.

[1] Fringe benefits may include health, dental and life insurance, and short and long term disability.

Fringe Benefits Plan Options

We substantiated the allegation that Ahtna did not provide a specific group of employees at the Albany site the option to receive cash in lieu of fringe benefits. The Service Contract Act (SCA) requires contractors to pay service employees \$3.50 per hour for fringe benefits up to 40 hours weekly for employees working in Oregon. For example, if employee "A" worked 40 hours per week, their fringe benefits would be \$560 per month. If employee "A" elected the fringe benefits monthly option (at a cost of \$325), the \$560 would be allocated: \$250 for health care; \$50 for long term disability; \$25 for life insurance; and the residual balance of \$235 would be transferred to the employee's 401(k) retirement plan.

We determined that contrary to the former site support contractor's practice, Ahtna did not afford employees at the Albany site the option of receiving \$3.50 per hour for up to 40 hours per week in their paychecks. Instead, Ahtna opted to use the funds to pay individual employee's fringe benefits and the residual amounts, if any, were placed in the employee's individual 401(k) accounts. Title 29 Code of Federal Regulations § 4.177, *Discharging fringe benefit obligations by equivalent means*, allows an employer to discharge fringe benefits obligations by providing a combination of fringe benefits or making equivalent or differential payments in cash.

Our review of Ahtna's security contract revealed that it was at Ahtna's discretion to determine how the fringe benefits funds would be distributed to its employees. Both the contracting officer and Ahtna Corporate officials also confirmed that it was at the employer's discretion to determine how fringe benefits were administered. Further, our review of the hiring packages of affected employees at the Albany site revealed that the following language was included in the package: "Fringe benefits not used to pay for an employee's insurance premiums … will be deposited into the employee's 401(k)."

401(k) Retirement Plan

We substantiated the allegation that Ahtna had established individual 401(k) accounts without the employee's consent. Our interviews with employees at the Albany site revealed that they neither wanted nor consented to Ahtna establishing individual 401(k) accounts. According to Ahtna's Corporate Benefits officials, Ahtna can establish employee's individual 401(k) accounts without the employee's consent for fringe benefits residuals. Also, 401(k) accounts are automatically established for all new employees. We noted that with the award of the Ahtna contract, all employees were considered new employees.

Ahtna officials told us that new hire presentations included information that informed employees that residuals from fringe benefits would be automatically distributed to individual 401(k) accounts. Our review of the SCA Fringe Administration document revealed that the document included language stating that employee's fringe earnings pay for their monthly insurance premiums and the balance is deposited into a 401(k) account. Based on our assessment of the SCA Fringe Administration document, we were unable to find language in the document requiring an employee's signature to establish a 401(k) plan. Further, our interviews with affected Ahtna employees revealed that they believed they could opt out of the 401(k) program and it was not clear that Ahtna was not required to pay the \$3.50 directly to them.

Our review of the Ahtna SCA Contract 401(k) Enrollment Form, which includes a section on payroll deduction authorization, revealed that the employee had an option to authorize deduction in the "Before-Tax Contribution Roth Contribution" or "Decline Plan Participation." Ahtna Corporate Benefits officials explained that this section referred only to payroll deductions for 401(k) plan participation above the $3.50 fringe benefits allotments. However, the employees stated that they believed by selecting "Decline Plan Participation," they would receive the $3.50 per hour as cash. After discussing this issue with Ahtna Corporate Benefits officials, they agreed that the language could be confusing and informed us that they would take action to ensure that the information was clear to current and future Ahtna employees. Thereafter, we reviewed Ahtna's 2012 Employee Benefit Summary and noted that the modified summary included the following clarifying language: "Employee's fringe earnings pay for their monthly insurance premiums and the remaining fringe is deposited into a 401(k) account."

Furthermore, we substantiated the allegation that Ahtna withheld information concerning employee fringe benefits contributions of approximately $10,000. We noted that certain employees at the Albany site began contributions to the 401(k) plans as early as February 2011; however, quarterly fringe benefits statements were not provided to the employees until September 2011. Ahtna's internal policy required Ahtna to provide benefits statements to its employees within 60 days of the 401(k) distribution. Ahtna Corporate officials stated that the delay in providing the quarterly statements was due, in part, to a delay by the employees at the Albany site in submitting the required paperwork to elect benefits. For example, one official stated that employees at the Albany site did not submit paperwork prior to March 2011, and as a result, quarterly deposits were not made until June 2011. We also learned during our interviews that the delay was due to an oversight by Ahtna Corporate Benefits personnel who failed to enroll employees at the Albany site in the corporate benefits plan.

Ahtna Corporate Benefits officials stated that this issue has been resolved and that the employees were added to the corporate benefits plan in March 2011. Although we were unable to obtain individual 401(k) plan statements for all of the affected employees, we reviewed Ahtna Corporate Contribution reports, which showed the affected employees that were added to Ahtna's benefits plan and that 401(k) fringe benefit contributions were accounted for in the individual employee's account. We also found that, in general, Ahtna was allocating the funds to the appropriate individual accounts. However, our review disclosed concerns relating to allocation of funds.

Other Matters

We found discrepancies concerning Ahtna's allocation of funds to individual employee 401(k) plans. Specifically, during two consecutive quarters (January-June 2011), we determined that for four of the seven affected employees,[2] Ahtna paid fringe benefits above the 40 hours that is required by the SCA, and there was an underpayment of fringe benefits in the second quarter ranging from $15.50 to $98.00. We discussed these discrepancies with an Ahtna Corporate Benefits official who agreed that the Employee Earning Reports for the employees at the Albany

[2] One of the seven employees was considered a corporate employee and would not receive the fringe benefit of $3.50. The other two employees only worked for a short period and were paid their 401(k) benefits upon their departure.

site for the second quarter were incorrect and that employees were inappropriately paid $3.50 fringe benefits payments for overtime hours. The official further stated that Ahtna had previously adjusted the 401(k) statements for these employees to reflect the removal of the funding.

Our review of the employee's statements determined that Ahtna had adjusted the 401(k) correctly for the overpayment involving more than 40 hours and the underpayment for the four employees. Specifically, our review of a modified contribution report showed that the corrected amounts matched the amounts actually reflected on the employee's statements.[3] Also, our review of a spreadsheet calculation provided to Ahtna from its third party administrator revealed that the adjusted amounts identified on the provided spreadsheets mirrored the discrepancies we identified.

When we discussed the results of our assessment of the four affected employees' fringe benefits payments with Ahtna Corporate Benefits officials, these officials stated that the circumstances surrounding the miscalculations also affected approximately 375 other Ahtna employees, encompassing approximately $20,000 in fringe benefits payments. Ahtna officials informed us that this issue has been resolved; however, we did not review the actions taken by Ahtna concerning the 375 employees.

Contributing Factors

As previously stated, there were several contributing factors that led to employees' concerns at the Albany site about receiving fringe benefits instead of the $3.50 per hour. Specifically:

- The previous contractor allowed employees to opt out of the fringe benefits and receive cash;
- Employees were not initially enrolled in the corporate benefits plan, which was an oversight by Ahtna Corporate Benefits personnel; and,
- There were delays in employees completing the benefits paperwork.

Additionally, the current Ahtna contract for Morgantown and Pittsburgh allows its employees to opt out of the fringe benefits and receive cash, based upon the collective bargaining agreement, due to the two sites being unionized. These actions, in combination with the lack of clear communications and delays in receiving initial quarterly statements concerning the 401(k) fringe benefits funding, also caused employees at the Albany site to question Ahtna's management of these funds. During our discussions with Corporate Benefits officials, we were told that the Ahtna Corporate Benefits Department has instituted an internal monthly audit of payroll records to help ensure that new hires are promptly added to the corporate benefits plan. We were also told that quarterly fringe benefits audits will be conducted by an external entity. We believe these actions should assist Ahtna in ensuring that the employees are receiving proper fringe benefit allocations to the individual 401(k) plans.

[3] Corporate Benefit officials stated that the underpayments were a result of the four employees receiving payments for over 40 hours.

Retaliatory Practices

Regarding the third allegation, that Ahtna terminated an employee for complaining about issues related to fringe benefits administration, the Office of Inspector General's Hotline referred the former employee to the Department's local Employee Concerns Program.

We appreciated the cooperation received from your staff during the inspection. Based on the results of our review, no recommendations are being made and no formal response is required.

Attachment

cc: Deputy Secretary
Associate Deputy Secretary
Acting Under Secretary of Energy
Chief of Staff

OBJECTIVE, SCOPE AND METHODOLOGY

OBJECTIVE

The objective of the inspection was to determine the facts and circumstances surrounding allegations concerning health and wellness fringe benefits irregularities and retaliatory practices by Ahtna Facility Services Inc (Ahtna).

SCOPE

This allegation-based inspection was performed from November 2011 through April 2012 at Albany, Oregon, and Washington, D.C. To accomplish the inspection objective, we:

- Reviewed and analyzed pertinent Federal Regulations related to fringe benefits and Ahtna's internal fringe benefits and 401(k) procedures;

- Reviewed and analyzed electronic communication provided to employees concerning fringe benefits;

- Conducted interviews of Federal and contractor personnel; and,

- Tested Ahtna's financial system concerning fringe benefits.

METHODOLOGY

We conducted this inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*, January 2011. The standards require that we plan and perform the inspection to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions and observations based on our inspection objective. We believe the evidence obtained provides a reasonable basis for our conclusions and observations based on our inspection. The inspection included tests of controls and compliance with laws and regulations to the extent necessary to satisfy the inspection objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our inspection. Finally, we relied on computer-processed data to some extent to satisfy our objective related to 401(k) plans. We confirmed the validity of such data, when appropriate, by reviewing source documents and performing physical observations.

The exit conference with management was waived.

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